

C.S.

LEGAL.

PROTECTION OF FUR SEAL.

1931.

NAT/SEA/1 # 26

No. 992/31.

Secretary of State.

SUBJECT.

192 1.

10th Aug. 1931.

Previous Paper.

LEGISLATION FOR THE FURTHER PROTECTION OF THE
FUR SEAL.

Ordinance No 8 of 1931

See 0958/B for Ordinance 4/51

MINUTES.

EXTRACT FROM SECRETARY OF STATE'S DESPATCH No. 91 of the
10th of August, 1931.

Para. 7. You will observe from this correspondence that legislation will be required locally and I request that you will take steps to introduce into the Legislative Council an Ordinance amending Ordinance No. 1 of 1909 on the lines indicated in paragraphs 3 and 9 of the letter to the Foreign Office of the 16th July.

Encl (1)

Minutes of the Governor adopted by the Legislative Council at a meeting held on the 23rd of September, 1931.

Copied from G. S. 363/31.

Encl. (2)

Y. E. I have prepared a draft but it would I think be better to repeal the Seal Fishery Ordinance and consolidate their provisions in a new Ordinance. There is very little difference between the Seal Fishery Ordinance of 1909 as amended by Ord: No. 5 of 1921 and the Seal Fishery (Dependencies) Ordinance of 1909. The latter is an improved model.

Subsequent Paper.

6. If Y. E. approves of the above I can prepare the new Ordinance at once. This will be in a new jacket with ex

U. M. H.
15th October, 1921.

H. C. S.

I agree that a consolidating ordinance is preferable.

2. I think that specific power to fire on poaching vessels similar to that in Section 181 of Customs Consolidating Act 1876 should be taken (see letter from Fishery Board for Scotland 23rd May 1921) and protection should be afforded to "Sealing Officers" in accordance with provisions of Sec: 193 of the same act.

(intd) J. M.
17th October, 1921.

Encl. (4) Draft Ordinance in quadruplicate

" (5) Draft addition to Ordinance

Y.S.

I now submit a draft of the proposed Ordinance in complete form together with a note shewing how the draft has been built up.

2. I also put up encl. (5) a proposed additional section for consideration. I have borrowed the idea from Ord 5/1915. Although the power to grant licence by regulation exists ^{and} there is ^{consequently} power to revoke the regulation there appears to be no power ^{particular} to cancel a licence - at all events it does not seem to be inherent.

26/10/21

P.S. I might mention that the word "The Colony" means under the Interpretation Ordinance the Colony of the A. I. and their dependencies. There is therefore no need to mention the dependencies.

H.P.S.

Thank you for the carefully prepared
draft & for the explanatory note.

2. The amendments which are discrepancies
are shown in copy of draft marked A.
3. To Ex. Co. copy of draft with circulated.

M.

27/10/21.

Extract from minutes of meeting of
Executive Council held on the 28th
October 1921

The Council advised that the Bill
should be proceeded with

W. H. Brown
Clerk Executive Council
31st Oct 1921

Y.B. Submitted

2. Has Y.B. got the draft of the
section giving the Governor power to
revoke licences? I think that it
was the intention that Sec. 5 should
be entitled "Sealing licences and
power to revoke the same" sub.
section but I am not sure

4/11/21

H.P.S.

I am afraid that I have inadvertently
disturbed the draft of 5(2) which is

discussed but it was on basis of attached
draft which can be amended as you may
think desirable. *R.*

9 Nov. 1921.

3 p.m. to Col Office 30th Nov. 1921

Esch

Y.S.

Submitted.

2. On further consideration of the
Draft Ordinance I think that
some amendment is desirable in sections
15 and 16.

3. S. 1. (3) of sec. 15 has never seemed
very satisfactory to me and whereas in
sec. 13 the general act of firing at a
vessel is protected it seems that it
would be as well to state in terms
the ~~specific~~ protection which must be
afforded for firing at individuals
I have found a precedent in section 15
of the Wrecks Ordinance (p. 175) and
I would suggest deleting sec. 15 (3)
amending sec. 16 and inserting a new
section 17 running from 17 to 25.

4. I put up the draft amending
section and new section

5. I repeat that this should be
submitted as with such short time for
consideration.

Esch - 15/12/21

H.C.S.

I agree the amendment is desirable
 & have prepared a draft of 3 sections to
 replace sections 14, 15, 16 & 17 of present draft.
 Will you please make any further amendments
 or rearrangements which you may consider
 desirable.

2. The concluding part of new draft of new
 Section 16 is modelled on Article 52 of
 M.A. Act 19/1910.

M.

16 Dec 1921

Extract from minutes of Legislative Council,
 meeting held on 17th Dec 1921

The Bill ^{as amended in Committee} was read a third time and
 passed. G.R. Brown
 Clerk Legislative Council.

Y.S.

Ordinance submitted for perusal
 of signature and sealing

t t t t t 15/12/21

Transferred
 to 1155/21

P. 1. Will Y.S. be pleased
 now to appoint Mr. Hamilton, Captain
 Howall, Mr. Binnie, Mr. Barlas,
 Mr. Beale, and Mr. Bennett to be
 Seal Fitting Officers?

t t t t t 27/12/21

24

H.C.S.

Ordinance stated & signed.

2. I appoint officers named in P.S. to the
Fishing
or Seafaring Officers

Transferred
to 1153/21

Dr.

30 December 1921

Authenticated copy forwarded to
Registrar for his file. G.M.H. 13
6 Jan 1922

Dispatch to S of S No 112 of 13 Jan 1922.

Enclosures to despatch (Encl 7a & 7b)

Y.E.

Dispatch with report submitted

2. It has occurred to me since writing
the report that the last mentioned
paragraph is might more properly be
embodied in the despatch. On Y.E.

with this to be done.

3. The report is written under C.R. 102

It used at one time to accompany all
Ordinances from this Colony. I do not
know whether Y.E. wishes the practice to
be continued in the case of unimportant
Ordinances

13/1/22

H.C.S.

Para 2: Y.E. I think it would be better
the last para of report should be
embodied in despatch.

Para 3. It would be a great advantage that a
report should accompany important Ordinances. Dr. the 13th Jan 1922

Inside Minute Paper.

Y.S.

Despatch as amended submitted

M. ttttt 17 Jan.
14 Jan 1922S of S. Deshaizeh No 66 of 12th June 1922 — Encl (8)

Y.S.

Submitted

2. How dis allowance to be published
in usual manner?Registered in Hist. Sect. Despatch
of 27 June, 1922.Copies of Ord. No. 8
of 1921, forwarded to
S. of S. Library Dept
of 7th Sept. 1922.I am not aware of 12
further copies of the Ord. having
been asked for by the I.S., but
12 should be sent and a further
12 to the French Agents? Copies
might also be sent to the Consulates
at Punta Arenas, Monte Video,
New York and to the Canadian
Government?

19/10/22

ttttt

M.

21 August 1922

Government Notice No. of 23rd August 1922 — Encl. (9)Minute to Registrar of 23rd August 1922 — Encl. (10)For letters covering copies of
the Ordinance ttttt 23/8/22

Letter to the Crown Apts. of 20th Sept 1922 - Encl

(10)

3 P.Ns. to N. B. M. Consuls at New York, Montevideo and Punta Arenas of 20th Sept. 1922.

(11)

3 P.N. to Minister of Marine & Fisheries, Canada.
of 20th Sept. 1922

P.H.
12/7/33

Letter from Commodore, "Exeter" of 15/11/37.
to _____ of 20/11/37.

(12)

(13)

C.A.
20/11/37

See 0958/15 for Ordinance #51
"Leopard Seals"

Foreign Office,

S.W.1.

July 25th, 1921.

Sir,

I am directed by the Marquess Curzon of Kedleston to acknowledge receipt of your letter No.29174/21 of the 16th instant regarding the question of the protection of the Fur Seal Rookeries in the Falkland Islands.

2. I am to state that Lord Curzon agrees generally in the proposals put forward in your letter and concurs in the view that to pursue into the open sea, seize and bring back into port a foreign vessel that has violated British municipal law while within British territorial jurisdiction is in accordance with the Law of the Nations. Lord Curzon equally agrees with the contention of the local authorities of the Falkland Islands that they are entitled to use force in order to ensure the observance of regulations within their own territorial jurisdiction.

3. I am, however, to suggest for, the consideration of Mr. Secretary Churchill that if and when the new regulations come into force and the necessary local measure have been taken to cope with any attack by armed raiders, it might be desirable to publish in the countries of South America concerned a statement of the measures taken to protect the seal herds. Any poachers who subsequently endeavoured to raid these herds could then not plead ignorance of the conditions in force.

4. I am further to request that as soon as a definite decision in this matter has been come to Lord Curzon may be informed thereof, in order that the necessary instructions may be sent to His Majesty's representatives in the countries concerned.

I am etc.,

(Sgd) R. Sperling.

The Under Secretary of State,

Colonial Office.

COPY.

M. 52467.

Admiralty, S.W.

8th June, 1921.

Dear ^{Mr} Darnley,

Commander Cartwright has passed on to me your letter of 28th May as to the protection of the Fur Seal Rookeries in the Falkland group.

2. I rather think you are exaggerating the legal difficulties. I find that in 1881 an Ordinance of the Government of the Falkland Islands provided for the establishment of a close season in the Seal Fisheries. I presume that all you wish is to provide for the satisfactory enforcement of this Ordinance.

3. It is presumed that the Ordinance in question was communicated to the South American Republics that might be interested, and they raised no protest. It might therefore be assumed that they recognise the validity of the Ordinance, and that the Government of the Falkland Islands would be justified in arresting any vessel found infringing this Ordinance within the territorial waters of the Falkland Islands or its dependencies, or in pursuing such vessel outside territorial waters and arresting it in the open seas. Such action is recognised in international law as justified in case of any vessel violating the law of the state within whose territorial waters the vessel comes. The Government of the Falkland Islands may employ for the purpose of enforcing the Ordinance any properly authorised vessel with a duly appointed Master.

4. I see you mention the possibility of having to fire on a raiding party. I do not quite understand the conditions, but it does not seem to me that the difficulty can arise. The particular problem is to seize the ship. That is done by a recognised procedure as follows:- if the vessel disregards the summons to stop, the police vessel first fires blank, then fires a shot across the bows, and only fires at the vessel in case all other warnings are

disregarded

~~disregards the summons to stop, the police vessel first fires blank, then fires a shot across the bows, and only fires at the vessel in case all other warnings are~~ disregarded. A vessel which disregards warnings in this fashion must be expected to take the consequences. Provided the vessel is captured the party on shore would surely be helpless. Of course, if they start firing on the police vessel, the police vessel would be justified in retaliating.

5. It is possible you may not consider it sufficient to allow the police vessel to arrest vessels which it finds in territorial waters or chases out of territorial waters. The Falkland Islands Government may also wish to overhaul vessels on the high seas and arrest them there if they are found to have sealskins on board. Such action would exceed British strict rights in international law. Of course, if the vessel was found to have seal on board the police vessel's action would be held to be justified, but neighbouring States would probably resent, and would be justified in resenting the examination of innocent vessels outside territorial waters. To regularise such action the Foreign Office may consider it sufficient merely to notify the South American Republics that owing to the prevalence of seal poaching the Falkland Islands Government find it necessary to overhaul and examine vessels on the high seas; or on the other hand the Foreign Office may think it necessary to come to a formal agreement with the South American States on the subject.

6. I enclose a copy of the instructions which were issued in 1895 respecting the Behring Sea Fisheries. You will see that it contains little of any value. Please return it, as it is only spare copy.

I also enclose copy of the Sea Fisheries Manual, which again does not help very much. Please return this also.

7. As regards the remarks of the Scottish Fishery Board, the distinctions between the powers of Naval vessels and the Fishery Board's vessels are merely incidental to the terms of the North Sea Fishery Convention. There is nothing in international law which prevents any public vessel enforcing the laws of the country within its own territorial limits (including chasing outside those limits) but when Conventions are made relating to the high seas it is customary, and in some ways convenient, to specify that the ship enforcing the Convention should be a ship of war. The convenience lies in the fact that everybody knows what a ship of war is, whereas ~~the~~ status of any other class of vessel employed to enforce the law may not be so generally understood.

Believe me

Yours etc.,

(Sgd) T.E.Marrack.

COPY.

Downing Street,

28th May, 1921.

Dear Commander Cartwright,

As arranged over the telephone, I am now writing to you with regard to the question of the protection of the Fur Seal Rookeries in the Falklands group.

The question of the protection of these rookeries present considerable difficulties and has exercised the Colonial Government and the Colonial Office for some years now. The need for such protection has become very pressing, as although fortunately the rookeries were free from outside interference during the War, raids were made upon them by vessels from Punta Areas during the last breeding season.

We recently had a telegram from the Governor stating that he is submitting to the Secretary of State by despatch proposals for the acquisition of a vessel for policing the Islands. Such a vessel would, of course, have to be armed and the adoption of this course might at any time involve firing on a raiding party and possibly lead to international complications.

We propose to consult our legal advisers generally on the legal aspects of the matter, which are, I take it, very similar to those involved in the use of armed vessels for the protection of fisheries

COMMANDER C. A. CARTWRIGHT, R.N.

in

in territorial waters here, and for this purpose it seems desirable to obtain particulars as to the regulations and procedure adopted in such cases.

I have been in semi-official communication with the Ministry of Agriculture and Fisheries and at their suggestion wrote to the Secretary of the Scottish Fishery Board. I enclose a copy of his reply together with a copy of my letter to him. You will see that he refers me to the Admiralty for further information, and I shall be very glad if you could arrange for me to be furnished with particulars of the instructions issued by the Admiralty to naval officers employed on such duties.

I assume, of course, that as regards the international aspects of the matter, we shall have to consult the Foreign Office at some stage, but I am anxious to collect as much information as possible semi-officially in the first place.

I believe in years gone by the Admiralty employed a patrol boat in connection with the seal herds of the Pribiloff Islands which were afforded international protection at the time. Any Admiralty instructions in that case might possibly be of particular interest in connection with the policing of the rookeries in the Falkland Islands.

Yours sincerely,

(so) H. T. ALLEN.

To Sc. Fishery Bd.
20th May, 1921.
Fr. do. 23rd May.

COPY.

Fishery Board for Scotland,
Edinburgh,
23rd May, 1921.

Dear Sir,

With reference to your letter of 20th instant regarding the powers of patrol vessels in regard to foreign vessels found fishing in territorial waters, I would suggest that you would probably find useful information in the "Sea Fisheries Manual" (obtainable from the Admiralty) which contained the instructions issued to Naval officers employed in carrying out fishery superintendence duties in the waters round the British Islands, and deals, inter alia, with the use of force to prevent the escape of foreign fishing vessels.

As regards the Board's patrol vessels I may say that the Commanders are Herring Superintendents under various old statutes and that they hold warrants as "Sea Fishery Officers" issued by the Board of Trade and as such exercise the powers conferred by Sec. 12 of the Sea Fisheries Act, 1883. They may follow up foreign vessels observed fishing within the territorial limits and arrest them outside such limits, provided that the pursuit and arrest are continuous, but they have no powers as regards the operations of foreign vessels in extra-territorial waters, these being entrusted to Commanders of Naval vessels (see Article XXVI of North Sea Convention, 1882, appended to the 1883 Act referred to above).

The

HAROLD T. ALLEN, ESQ.,
COLONIAL OFFICE,
DOWNING STREET, LONDON, S.W.1.

The only suggestion which occurs to me is that if any legislation is required on the subject it might be advisable to take specific power to fire on poaching vessels, similar to that in Sec. 131 of the Customs Consolidation Act, 1876.

Yours sincerely,

(Signed) GEO. HOGARTH.

COPY.

Downing Street,

20th May, 1921.

Dear Sir,

We have under consideration the question of policing certain seal rookeries in the Falkland Islands. For the purpose the Governor has suggested acquiring a boat which would presumably have to be armed.

I understand that the Scottish Fishery Board keeps a police patrol for its fisheries and I should be greatly obliged if you could kindly furnish me with copies of any instructions issued to the patrol as regards dealing, in force or otherwise, with foreign or other vessels poaching within the three mile limit I perceive they have no powers outside that limit.

Any general observations that you may be able to offer for our guidance would be most useful.

The matter is somewhat pressing, and, if you could, without inconvenience, let me have an early reply, I should be very grateful.

Yours faithfully,

(Signed) H. T. ALLEN.

COPY.

29174/1921.

Downing Street,

16th July, 1921.

Sir,

With reference to your letter of the 17th of May (A 3218/1511/51), I am directed by Mr. Secretary Churchill to request you to bring to the notice of the Marquess Curzon of Kedleston the following matters arising out of the question of the protection of the Fur Seal Rookeries in the Falkland Islands.

To S.F.Bd. 20th May
From -do- 23rd May.
To Admy. 28th May.
From -do- 8th June.
Ordce. No. 1 of 1899.
Memo with 11636.
Gov. F.I. No. 42
28th April.

2. The question of the protection of these rookeries presents considerable difficulties and has exercised the Colonial Government and the Colonial Office for some years past. The need for such protection has become very pressing, since although fortunately the rookeries were free from outside interference during the war, raids were made upon them by vessels from Punta Arenas during the last breeding season.

3. The Governor recently reported by telegraph that he was submitting proposals for protecting the rookeries, and with a view to expediting consideration of the matter, it was thought desirable to obtain semi-official particulars as to the procedure adopted elsewhere in similar cases.

4. The Board of Agriculture, the Scottish Fisheries Board and the Admiralty were accordingly communicated with; and I am to enclose, for Lord Curzon's information, copies of the semi-official correspondence with the two latter Departments.

5. The despatch promised by the Governor has now been received, and a copy is also enclosed, together with a copy of the portion of the report of the Harbour Master

containing

The Under Secretary of State,

FOREIGN OFFICE.

containing his suggestions in regard to the protection of the rookeries. It will be observed that the main measures suggested by the Governor are -

(1) the stationing of an armed guard of three men on Elephant Jason Island, and

(2) the provision of a vessel for Police purposes.

It will also be observed that the Harbour Master suggests the provision also of a gun which elsewhere in his report he proposes should be mounted on Elephant Jason Island with an ammunition hut in the vicinity. It will be seen however that the Governor makes no mention of this suggestion in his despatch.

6. It is obvious that international complications might arise from the adoption of the proposed measures if offensive action had to be taken against a raiding vessel or party, and Mr. Churchill would be glad if he could be furnished with Lord Curzon's observations on this aspect of the matter. In this connection I am to point out the raids are most probably from the port of Punta Arenas in Chili, though the possibility of illicit sealing by vessels from Argentine ports or other ports on the South American coast should not be overlooked. It may also be noted that, in past years though not recently, vessels from United States and Canadian ports have conducted sealing operations in these waters.

7. Mr. Churchill is advised that the Government of the Falkland Islands has sufficient powers under Ordinance No. 1 of 1899, a copy of which is enclosed, to arrest any vessel found infringing the Ordinance within the territorial waters of the Falkland Islands or to pursue such vessel outside the territorial waters and arrest it in the open seas, provided that such pursuit be continuous. (As regards section 6 of the Ordinance I am to explain that the issue of licences to take the seals has been suspended). He is also advised that such action is recognised in international law and is justified if a vessel violates the law of the State within

whose

whose territorial waters it comes provided that a properly authorised vessel with a duly appointed master is employed for the purpose of enforcing the law.

8. With regard to the question of dealing with raiding parties, it may be observed that Ordinance 1 of 1899 (Section 5) only gives power to fine persons contravening the Ordinance, and Mr. Churchill is advised that the desired result would be better obtained if this power was increased to include the right to arrest and detain, and the alternative of imprisonment was added to the penalties mentioned in the Ordinance. Under Section 10 it is lawful to seize a raiding vessel and the person in charge.

9. The Ordinance might accordingly be amended by adding provisions authorising the Governor to station an armed guard at the rookeries and to prescribe the manner in which their duties should be carried out. The guard should be authorised in the discharge of their duties to arrest persons committing or appearing to be about to commit offences, and to use such force as may be necessary either to effect the arrest or overcome obstruction or prevent the offence.

10. The acquisition of a suitable boat for Police purposes will necessarily involve considerable expenditure and may not be financially practicable. The matter is, however, receiving careful consideration, and, in the meantime, Mr. Churchill desires to be furnished with Lord Curzon's views on the various questions raised in the preceding paragraphs, including the suggestion for the amendment of the existing Ordinance.

11. It will be observed that in the semi-official letter from the Admiralty reference is made to the possibility of concluding a formal agreement with the South American States on this subject. Lord Curzon will be aware that the question of international action for the prevention of illicit sealing in Southern, as well as in

Northern

Northern waters, has been considered in the past, and in this connection I am to enclose a copy of a note prepared in this Department, which shows that, when the matter was last under consideration, about the year 1912, it was decided that it was not at the time practicable to take international action and that it would be necessary to rely for the time being on local measures for protection.

12. Lord Curzon will no doubt also take this question into consideration; but I am to point out that apart from the doubt whether any effective agreement can be arrived at, international action on these lines would necessarily involve considerable delay, and the Governor points out that it is of the greatest importance that protective measures should be put into practice in the course of the next few months and before the season arrives (i.e. about November next) when indiscriminate killing of the animals on their breeding grounds becomes possible.

13. I am therefore to request that Mr. Churchill may be favoured with an early reply to this letter. He will be glad to receive any observations that Lord Curzon may desire to make on the subject generally, in addition to the specified points raised in this letter.

I am etc.,

(Sgd) G. Grindle.

99/31

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COPIED FROM C. S. 335/21.

EXTRACT FROM SECRETARY'S DESPATCH No. 91 of the 10th August, 1921.

: : : :

Para 7. You will observe from this correspondence that legislation will be required locally and I request that you will take steps to introduce into the Legislative Council an Ordinance amending Ordinance No. 1 of 1899 on the lines indicated in paragraphs 3 and 9 of the letter to the Foreign Office of the 16th July.

: : : :

Minute to the Legislative Council.

The question of the protection of the Fur Seal rookeries of the Colony presents considerable difficulties and has exercised the Government for some years past. The need for such protection has become very pressing since, although the rookeries were free from outside interference during the war owing to the protection afforded by His Majesty's ships, raids were made upon them during the last breeding season.

2. It is of the greatest importance that protective measures should be put into practice without delay. The breeding ground where the largest number of seals is reported is on a rock to the south west of Elephant Jason Island. Efficient protection of the herd would have an immediate effect in increasing its number and would afford a reasonable measure of security to the herds in other localities. It is proposed to station an armed guard on this island but it may be necessary later to station guards on Bird and Beauchene Islands to whom would be entrusted the protection, care and management of the herds on these islands.

3. A small guard on an island at a distance from the mainland might not be capable by itself of repelling a determined attack on the rookery, and the provision of an armed vessel equipped to afford prompt and adequate support in an emergency is essential.

4. The Lords Commissioners of the Admiralty expressed their willingness to assist the Colony by lending for this service a trawler of the Mersey class of about 236 tons gross and valued at £17,000 but the maintenance of such a vessel was not considered to be financially practicable. With a view to reducing recurrent expenditure, the purchase of a suitable motor boat has also been considered, but the estimated cost of £16,000, exclusive of armament, incidental expenses and cost of delivery was prohibitive.

5. The Lords Commissioners of the Admiralty have now agreed to sell to the Colonial Government for £1,000 a wooden drifter which was built at Lowestoft in 1918 and is reported to be in excellent condition. The dimensions of the drifter are, length 86 feet, breadth 19 feet and depth 10 feet. The vessel has good accommodation for the crew and is fitted with a gun platform, steam capstan and steering gear. The coal consumption for 24 hours at full speed is from 4 to 5 tons on good coal. It is estimated that in addition to the purchase price the following expenditure will be necessary:- voyage to the Colony £3,500, reconditioning £1,400, sheathing £300, contingencies £500. It is, however, hoped that by an arrangement with one of the Whaling Companies some reduction in the cost of the voyage may be effected.

6. The proposals which are now put forward involve expenditure amounting to a considerable sum, but in the fur seals which frequent its waters the Colony possesses an asset of which the economic value is capable of being increased and under scientific control the herds of fur seal may be expected in time and without injury to their numbers to contribute in a substantial measure towards the cost of the scheme.

7. It is also proposed that the vessel, provided that her duties in connection with the protection and scientific farming of the herds of fur seal are not interfered with, shall be available for maintaining communication between the East and West Falkland Islands.

8. The Governor has the honour to invite the Council to approve of the capital expenditure estimated at £7,000 on the acquisition of the drifter being met from the surplus balances of the Colony.

9. Under the Seal Fishery Ordinance (No. 1 of 1899) there is power to arrest any vessel found infringing the Ordinance within the territorial waters of the Falkland Islands or to pursue such vessel outside the territorial waters and arrest it in the open seas provided that such pursuit is continuous. A measure will be submitted at an early date for the consideration of the Council amending the principal Ordinance so as to give power to arrest and detain persons contravening the Ordinance and adding to the penalties mentioned in the Ordinance the alternative of imprisonment. The measure will also contain provisions authorising the stationing of armed guards at the seal rookeries and empowering the guards in the discharge of their duties to arrest persons committing or appearing to be about to commit offences and to use such force as may be necessary either to effect the arrest, overcome obstruction or prevent the offence.

✓ *hot-draft*

WHEREAS it is deemed necessary to make further provision for the protection of seals and the prevention of poaching.

BE IT THEREFORE ENACTED by the Governor of the Colony of the Falklands with the advice and consent of the Legislative Council thereof, as follows:

Title

1. This Ordinance may be cited as the Seal Fishery Ordinance (Amendment), 1921.

*Appointment
of Seal
Fishery Officers*

2. (1) The provisions of "The Seal Fishery Ordinance, 1899 and of the Seal Fishery (Dependencies) Ordinance, 1909 and of Proclamations and Rules made by the Governor in Council under the sections of the said Ordinances shall be enforced by seal fishery officers.

(2) The following persons shall be seal fishery officers that is to say, every commissioned officer of any of His Majesty's ships on full pay, and every officer in the employ of the Government of the Colony authorized in that behalf by the Governor

*Powers of
Seal Fishery
Officers*

3. For the purpose of enforcing the provisions of the Ordinances and Proclamations and Rules made by the Governor in Council under the Ordinances cited in the last preceding section, a seal fishery officer may with respect to any vessel found within the limits of the territorial waters of the Colony engaged or believed to be engaged or concerned in seal fishing exercise the following powers:-

(1) He may go on board at any time.

(2) He may require the owner, master, or crew, or any of them to produce any certificates of Registry, Licences, official log books, official papers, articles of agreement, muster rolls

2

and other documents relating to the boat or to the crew, or to any member thereof or to any person on board the boat, which are in their respective possession or control on board the boat and may take copies thereof or of any part thereof;

(3) He may muster the crew of the boat.

(4) He may require the master to appear and to give any explanation concerning his boat and her crew and any person on board his boat, and the said certificates of registry, licences, official log books, official papers, articles of agreement, muster rolls and other documents or any of them;

(5) He may make any examination or inquiry which he deems necessary to ascertain whether any contravention of the provisions of the Ordinances Proclamations or Rules as aforesaid has been committed.

(6) In the case of any person who appears to him to have committed any such contravention he may, without summons, warrant, or other process, both take the offender and the vessel to which he belongs and the crew thereof to the nearest port of entry in the Colony or its Dependencies, as defined by the Customs Ordinance, 1903 and bring him or them before a competent court and detain him, it, and them in the port until the alleged contravention has been adjudicated upon, or until the master of the said vessel has given security to be approved by the Chief Justice or a Magistrate of the Colony to abide the event of any action, suit, or other legal proceeding that may be instituted in respect of such vessel or of any person belonging thereto, and to ~~may~~ pay all penalties, costs and damages that may be awarded them.

awarded them.

In any legal proceedings under this subsection the person giving security may be deemed to be the owner of the detained vessel.

4. No seal fishery officer shall be liable for any costs or damages in respect of any vessel detained under the preceding section unless the detention is proved to have been without reasonable grounds.

5. If any vessel found in the waters of the Colony and suspected by a seal fishery officer to be engaged or concerned in seal fishing shall not bring to upon signal made, by any ship or boat in His Majesty's service or in the service of the Colonial Government, by hoisting the proper pendant or ensign, whereupon chase shall be ^{given} ~~made~~ and any person on board such vessel shall during chase or before such vessel shall bring to, throw overboard any part of her lading, such a vessel shall be forfeited

6.(1) A seal fishery officer may arrest any person committing or appearing to be about to commit an offence on land at any Seal Reserve against the provisions of the Seal Fishery Ordinance, 1899 or the Seal Fishery (Dependencies) Ordinance, 1909 or any Proclamations or Rules made thereunder. ~~For the assistance of~~

~~(2) such officer and~~ For the further enforcement of the above ^{in respect of the protection of Seal Reserves} Ordinances, the Governor may cause an armed guard to be stationed at any Seal Reserve, and such guard shall have power to arrest and detain any person committing or appearing to be about to commit an offence as aforesaid and to use such force as may be necessary either to effect the arrest, or overcome obstruction, or prevent the offence.

7. If any person obstructs any seal fishery officer or an armed guard acting under the powers conferred by this Ordinance or by the Seal Fishery Ordinance, 1899, or by the Seal Fishery (Dependencies) Ordinance, 1909 or refuses or neglects to comply with any requisition or direction lawfully asked by any seal fishery officer such person shall be liable on summary

conviction/

Protection of
Seal fishery Officers

Vessels not
bringing to
when summoned
or throwing over-
board goods during
chase to be
forfeited

Protection of
Seal Reserves

And to punish
Members in which
the duty shall
be carried out?
Shall the armed
guard be carrying?
Punishment for
obstructing Seal
Fishery Officers

*Imprisonment
for offence against
the Seal Fishery
Ordinance.*

conviction to a fine not exceeding One hundred Pounds *and*
to imprisonment with hard labour for a term not exceeding six months.

8. In any case where the imposition of a fine is authorized by the provisions of Seal Fishery Ordinance, 1899, or the Seal Fishery (Dependencies) Ordinance, 1909, the Court may in addition to and instead of such penalty order that the person shall be imprisoned with or without hard labour for any term not exceeding the period specified in the following scale:

For any sum not exceeding £100	Not exceeding Six months.
" " " exceeding £100	One year.

9. Section 10 of the Seal Fishery Ordinance, 1899 and Sections 9, 10, and 11 of the Seal Fishery (Dependencies) Ordinance, 1909, are hereby repealed.

Draft

Sec. 5 (2) The Governor may by
order in writing under his hand
revoke summarily any licence,
if the holder of the licence has
been found guilty of an offence against
this Ordinance or any Regulation
made thereunder.

(4) *Consolidation*
 NOTES ON DRAFT SEAL FISHERY ORDINANCE (1921)

<u>Section 2.</u>	Section 1 of Ordinance 6 of 1909.
<u>Section 3.</u>	Adapted from Sea Fisheries Act (U. K.) 1865 S. 11.
<u>Section 4.</u>	Section 2 of Ordinance 6 of 1909.
<u>Section 5.</u>	<i>Adapted from</i> S.S. (1) Section 3 " " " "
<u>Section 6.</u>	<i>S.S. (2) New provision</i> S.S. (3) Section 4 " " " " <i>But Governor in Council</i> to have power to impose penalties "not exceeding Twenty-five pounds or in default of payment to imprisonment not exceeding three months" for the breach of Regulations in lieu of Ten pounds" as provided in that Ordinance. For amount of fine note Section 22 of the Interpretation Ordinance (5 of 1900) and for penalty in lieu of fine see sec 35 of the same Act.
<u>Section 7.</u>	Section 2 of Ordinance 6 of 1909, with addition of 20. (2).
<u>Section 8.</u>	Section 3 " " " "
<u>Section 8. 8</u>	Section 7 " " " " with the following words inserted after "pounds" in the last line "and to imprisonment with hard labour for a period not exceeding twelve months"
<u>Section 10. 9</u>	Section 3 of Ordinance 6 of 1909 but with the following words inserted after the word "pounds" in the fourth line "and to imprisonment with hard labour for a period not exceeding six months"
<u>Section 11. 10</u>	Adapted from Sea Fisheries Act (U. K) 1865 S. 12.
<u>Section 12. 11</u>	" " Section 12 of Ordinance 6 of 1909.
<u>Section 13. 12</u>	" " Customs Laws Consolidated Act (U. K.) 1876 (Sec: 160
<u>Section 14. 13</u>	" " " " " " " Sec: 161.
<u>Section 15. 14</u>	New provision.
<u>Section 16. 15</u>	" " "
<u>Section 17. 16</u>	Adapted from Sea Fisheries Act (U. K.) 1865 S. 14. S.S. 2
<u>Section 18. 17</u>	" " Customs Laws Consolidated Act (U. K.) 1876, S. 193.
<u>Sections 18 to 22.</u>	Sections 12 to 16 of Ordinance 6 of 1909.

Section 16 *S.S. (1) New provision*
S.S. (2), (3) Adapted from Merchant Shipping Act 1908 Section
 574, 575 (2) and 576 (2). Also see also Section 15 of
 The Merchant Shipping Act 1894

Proposed draft for new section to
be inserted in the Seal Fishery Consolidation
Ordinance, 1921.

Governor in
Council em.
powered to
cancel licenses

Section 6. (1) It shall be lawful for the
Governor in Council by Order under
the hand of the Governor to cancel
any licence empowering any person
to take seals in Colonial Waters
and such licence shall thereupon become
void and of no effect.

(2) Any Order made by the Governor
in Council under this section shall
be published in the Gazette and
such publication shall be deemed to
be sufficient notice to all concerned.

(3) The Governor may direct a
proportionate part of any fee which
has been paid in respect of any licence
to be returned to any person by whom
it has been paid.

delay?

H.B. For above amendment vide cf. Whale Fishery
Regulation Ordinance 1915.

(6) 99/21

FALKLAND ISLANDS.

The Governor of the Falkland Islands presents his compliments to the Under Secretary of State for the Colonies and with reference to the second paragraph of Despatch No. 109 of the 25th of November, begs to forward, for the information of the Secretary of State, a first proof of the draft of a Bill to consolidate and amend the laws relating to Seal Fishery.

GOVERNMENT HOUSE,

STANLEY,

30th November, 1921.

NOTES ON THE SEAL FISHERY (CONSOLIDATION) ORDINANCE, No.8 of 1921.

- Section 2. Section 1 of Ordinance 6 of 1909.
- Section 3. Adapted from Sea Fisheries Act (U.K.) 1863 S. 11.
- Section 4. Section 2 of Ordinance 6 of 1909.
- Section 5.
- Subsection (1) Adapted from Section 3 of Ordinance 6 of 1909.
- Subsection (2) New provision.
- Section 6.
- Subsection (1) Adapted from Section 4 of Ordinance 6 of 1909.
- Subsection (2) For the amount of fine note Sec. 22 of the Interpretation Ordinance (3 of 1900) and for penalty in lieu of fine see Sec. 55 of Summary Jurisdiction Ordinance (5 of 1902)
- Section 7. Section 6 of Ordinance 6 of 1909, with omission of s.s.(2)
- Section 8. Section 7 of Ordinance 6 of 1909, with the following words inserted after the word "pounds" in the last line, "and to imprisonment not exceeding twelve months"
- Section 9. Section 8 of Ordinance 6 of 1909, with the following words inserted after the word "pounds" in the fourth line, "and to imprisonment with hard labour for a period not exceeding six months".
- Section 10. Adapted from Sea Fisheries Act (U.K.) 1863 S.12.
- Section 11. Adapted from Sec. 11 of Ordinance 6 of 1909.
- Section 12. Adapted from Customs Laws Consolidated Act (U.K.) 1876 Sec. 180.
- Section 13. Adapted from Customs Laws Consolidated Act (U.K.) 1876 Sec. 181.
- Section 14. New provision.
- Section 15. Adapted from Sea Fisheries Act. (U.K.) 1863 Sec. 14 s.s.(2)
- Section 16.
- Subsection (1) New provision.
- Subsections (2) & (3) Adapted from Merchant Shipping Act, 1906, Sec. 514 s.s.(2) s.s (3). See also Sec. 15 of The Wrecks Ordinance, 1899.
- Section 17. Adapted from Customs Laws Consolidated Act (U.K.) 1876 Sec. 193.
- Sections 18 to 22. Sections 12 to 16 of Ordinance 6 of 1909.

REPORT ON THE SEAL FISHERY (CONSOLIDATION) ORDINANCE,
1921.

The above Ordinance was drafted in pursuance of instructions received from the Secretary of State in despatch, No. 91 of the 10th of August, 1921. The object is to prevent the poaching of seals and more particularly to provide for the institution and the operation of a preventive service, consequent on the purchase of a patrol boat for the Colony and the establishment of armed guards at Fur Seal Rookeries.

There have been in force hitherto two separate Ordinances dealing with Seal Fishery, which were framed on almost identical lines for the Colony and the Dependencies, namely "The Seal Fishery Ordinance, 1909" and "The Seal Fishery (Dependencies) Ordinance, 1909". Opportunity has been taken to consolidate the two Ordinances.

The necessary amendments to the Ordinance have been effected by following the lines indicated in the despatch, and the connected correspondence, on the subject of the powers that may be exercised by Seal Fishery Officers. A note is attached to this report showing, in detail, the manner in which the Ordinance has been compiled. It will be observed that the amending provisions have been based on sections of the Customs Laws Consolidated Act, 1876, the Sea Fisheries Act, 1935, and the Merchant Shipping Act, 1906.

This Ordinance is one to which the Governor may properly give his consent.

Colonial Secretary & Legal Adviser.

December, 1921.

FARILAND ISLANDS.No. 14.

GOVERNMENT HOUSE,

STANLEY,

13th January, 1922.

Sir,

From Secretary of State
No. 91 of 10th Aug. 1921

To Secretary of State
No. 109 of 25th Nov. 1921

Ordinance No. 8 of 1921

With reference to the correspondence noted in the margin, I have the honour to transmit, for the signification of His Majesty's pleasure, two authenticated and twelve printed copies of an Ordinance to consolidate and amend the laws relating to seal fishery in the Colony and its Dependencies.

2. A report by Mr. H. Merricker-Heaton, Colonial Secretary and Legal Adviser, is annexed, explaining the object of the Ordinance and the manner in which it has been compiled.

3. The inclusion of Naval Officers, as Seal Fishery Officers, may have an important bearing on the re-establishment of the Fur Seal in the Dependencies, where poaching on the largest scale has taken place in the past. It is trusted that no exception will be taken on the part of the Admiralty.

I have the honour to be,

Sir,

Your most obedient,

humble servant,

THE RIGHT HONOURABLE

J. Middleton,

W. L. S. CHURCHILL, M.P.,

SECRETARY OF STATE FOR THE COLONIES.

1236

(8)

DUPLICATE

FALKLAND ISLANDS

NO

66



Downing Street,

12 June, 1922.

Sir,

I have the honour to acknowledge the receipt of your despatch No.14 of the 13th January, 1922 and to inform you that His Majesty will not be advised to exercise his power of disallowance with respect to Ordinance No.8 of 1921 of the Legislature of the Falkland Islands,

To Admiralty 30
March.

Admiralty 10 April.

To F.O. & Admiralty 17 May.

F.O. 23 May.

Admiralty 31 May.

entitled "An Ordinance to consolidate and amend the Laws relating to Seal Fisher in the Colony and its Dependencies

2. I have also to transmit to you a copy of correspondence with the Admiralty and Foreign Office on the subject, and to say that the six copies of the Ordinance have been supplied to the Foreign Office as desired, and that the six copies required by the Admiralty will be supplied out of the twelve further copies which have already been asked for.

I have the honour to be,

Sir,

Your most obedient,

humble Servant,

(Signed) WINSTON S. CHURCHILL

GOVERNOR

J. MIDDLETON, ESQ., C.M.C.,

&c., &c., &c.,

DOWNING STREET,

30th March, 1922.

Sir,

No.14. 13 Jan.
I am directed by Mr. Secretary Churchill to transmit to you, to be laid before the Lords Commissioners of the Admiralty, the accompanying copy of a despatch from the Governor of the Falkland Islands forwarding for the signification of His Majesty's pleasure an Ordinance which has been passed by the Legislature of the Colony entitled "An Ordinance to Consolidate and Amend the Laws relating to Seal Fishery in the Colony and its Dependencies".

2. Mr. Churchill would be glad to receive the observations of their Lordships regarding the provision in section 3 (2), appointing naval officers as "seal fishery officers" for the purposes of the Ordinance. He trusts that their Lordships will raise no objection to this proposal.

I am, etc.,

(Sgd) G. GRINDLE.

THE SECRETARY,

ADMIRALTY.

● Copy.

M.40871/22.

Admiralty, S.W.1.,

10th April, 1922.

Sir,

With reference to your letter 11411/1922 of the 30th March transmitting a copy of an ordinance which has been passed by the Legislature of the Falkland Islands, entitled "An Ordinance to Consolidate and Amend the Laws relating to Seal Fishery in the Colonies and its Dependencies", I am commanded by My Lords Commissioners of the Admiralty to request that you will inform the Secretary of State for the Colonies that they have no objection to the provision in section 3 (2) appointing Naval officers as "seal fishery officers" for the purpose of the Ordinance. I am to point out, however, that there is at present no H.M.Ship on the South America Station.

2. I am to request that six copies of the Ordinance may be supplied to this department in due course.

I am, &c.,

(Sd.) CHARLES WALKER.

THE UNDER SECRETARY OF STATE,
COLONIAL OFFICE.

3039.

Copy.

17919/1922.

Downing Street,

17th May, 1922.

Sir,

- (1) With reference to your letter of the 25th July
With reference to your letter of the 10th April

last, No.A 5179/1511/51 I am directed by Mr Secretary
No M 40871/22
Churchill to transmit to you, for any observations that

- (1) the Marquess Curzon of Kedleston
(2) the Lords Commissioners of the Admiralty

may wish to offer, the accompanying copy of instructions
which have been issued by the Governor of the Falkland
Islands to those employed on preventive duties in connec-
tion with the protection of the fur seal rookeries in
the Colony.

2. A similar communication has been sent to

- (1) the Admiralty
(2) the Foreign Office

(To F.O.only) (3) A copy of the Seal Fishery (Consolidation)
Ordinance 1921, under which these regulations have been
made is also enclosed. A copy of the Ordinance has
already been communicated to the Admiralty.

I am, &c.,

(Sd.) G.GRINDLE.

(1) THE UNDER SECRETARY OF STATE,
FOREIGN OFFICE.

(2) THE SECRETARY TO
THE ADMIRALTY.

FOREIGN OFFICE,

S.W.I.

23rd May, 1922.

Sir,

I am directed by the Marquess Curzon of Kedleston to acknowledge receipt of your letter 17919/1922 of the 17th instant enclosing copy of instructions issued by the Governor of the Falkland Islands to those employed in the protection of the fur seal rookeries in that Colony.

2. These instructions appear to raise no new points beyond those dealt with in my letter No.A.5179/1511/51 of the 25th July, 1921, and the Secretary of State does not desire to offer any further observations on the matter.

3. It is desired to forward to His Majesty's Ministers at Santiago, Monte Video, and Buenos Aires copies of the instructions and of the ordinance No.8 of 1921, for their confidential information in the event of any Chilean, Uruguayan or Argentine ships getting into trouble under the new ordinance.

4. I am accordingly to enquire whether six copies of the ordinance in question can be furnished to this department.

I am, etc.,

(Sgd) R. SPERLING.

THE UNDER SECRETARY OF STATE,
COLONIAL OFFICE.

ADMIRALTY, S.W.1.

31st May, 1922.

Sir,

With reference to your letter No.17919/1922 of the 17th May transmitting a copy of the instructions issued by the Governor of the Falkland Islands to Seal Fishery Protection Officers, I am commanded by My Lords Commissioners of the Admiralty to request that you will inform the Secretary of State for the Colonies that they have no objection to the terms of these instructions.

I am, etc.,

(Sgd) CHARLES WALKER.

THE UNDER SECRETARY OF STATE,
COLONIAL OFFICE.

GOVERNMENT NOTICE.

No.....

Colonial Secretary's Office,
Stanley, Falkland Islands.

....23rd August,....1932....

His Excellency the Governor directs it to be notified, for general information, that intimation has been received from the Secretary of State for the Colonies to the effect that His Majesty will not be advised to exercise his power of disallowance with respect to the following Ordinance of the Legislature of the Falkland Islands:-

Ordinance No. 8 of 1931, entitled "An Ordinance to consolidate and amend the laws relating to Seal Fishery in the Colony and its Dependencies."

By Command,

H. HENNIKER-HEATON,
Colonial Secretary.

M.P. 991/21.

(9)

No....991/21....

COLONIAL SECRETARY'S OFFICE,

STANLEY,

23rd August...1922.

To the Registrar.....

I am directed by the Governor to attach the
correspondence noted below for your information.

H. HENNIKER-HEATON,
Colonial Secretary.

Date	Description
23rd August, 1921	Copy of Government Notice relating to Non-disallowance of Ordinance No. 8 of 1921.

991/21.

20th September, 22.

Gentlemen,

I am directed by the Governor of the Falkland Islands to forward to you, for your information, the attached copies of Ordinance No. 8 of 1921, entitled "An Ordinance to Consolidate and Amend the Laws relating to Seal Fishery in the Colony and its Dependencies".

12 copies.

I am,

Gentlemen,

Your obedient servant,

H. Henniker-Heaton,

Colonial Secretary.

The Crown Agents for the Colonies,
4, Millbank, Westminster,
London, S.W. 1.

(//)

FALKLAND ISLANDS.

The Governor of the Falkland Islands
presents his compliments to His Britannic Majesty's
Consul at Punta Arenas, Chile, and has the honour
to transmit, for his information, the attached copy
of Ordinance No. 8 of 1921, entitled "An Ordinance
to Consolidate and Amend the Laws relating to Seal
Fishery in the Colony and its Dependencies.

GOVERNMENT HOUSE,
STANLEY,
20th September, 1922.

Copies also forwarded to Consulates at Monte Video
and New York, and the Minister of Marine and Fisheries,
Ottawa, Canada.

991/2
H.M.S. "EXETER",
at Stanley.

15th November 1937.

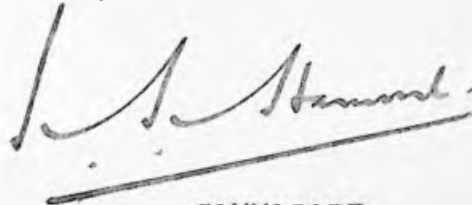
No.310.

Sir,

I have the honour to request that I may be informed whether Falkland Islands Ordinance No.8 of 1921 regarding seal fisheries is still in force.

If so, I would be grateful if a copy could be supplied to me.

I have the honour to be,
Sir,
your obedient servant,



COMMODORE.

The Hon. Colonial Secretary,
Port Stanley,
FALKLAND ISLANDS.

991/21.

20th November,

37.

Sir,

Ind 12
With reference to your letter No. 310 of the 15th of November, 1937, I am directed by the Acting Governor to inform you that Ordinance No. 8 of 1921 is still in force in this Colony, a copy of which is enclosed for your information.

I am,

Sir,

Your obedient servant,

OK
Acting Colonial Secretary,

Commodore H. H. Harwood, O.B.E., R.N.,
H.M.S. "Exeter",
at Stanley.

Y.E.

This is the file leading
up to Ord. 8/1921. ?

Thus the correspondence
with the F.C. & Admiralty
makes the international
position clear.

KB
26/8/44