

**IN THE FALKLAND ISLANDS**  
**MAGISTRATES' COURT**

**Before the Senior Magistrate**

**Case Numbers: (1) MC/CRIM/23(a)/15**  
**MC/CRIM/24(a)/15**  
**MC/CRIM/25(a)/15**  
**(2) MC/CRIM/23(b)/15**  
**MC/CRIM/24(b)/15**  
**MC/CRIM/25(b)/15**  
**(3) MC/CRIM/23(c)/15**  
**(4) MC/CRIM/24(c)/15**  
**(5) MC/CRIM/25(c)/15**

**BETWEEN:**

**REGINA**

**- v -**

**(1) PESQUERIAS MARINENSES S.A. (Defendant 1)**

**(2) FIBOW LIMITED (Defendant 2)**

**(3) JOAQUIN LOPEZ CHOUZA (Defendant 3)**

**(4) SAMUEL ACUNA RECAMAN (Defendant 4)**

**(5) JOSE RODRIGUEZ GOMEZ (Defendant 5)**

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***SENTENCING DECISION with REASONS***

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1. The Crown and the five defendants, all represented by Mr Damian Sabino, have agreed that, to save time and costs, the several cases should be dealt with at the same time. I am grateful for this co-operative attitude. For ease, I shall call them Defendant 1, 2, 3, 4 and 5 respectively.

**Background**

2. The Defendant 1 is the owner of the three fishing vessels involved in the offences: F/V Playa Pesmar Uno of which Defendant 3 was master; F/V Playa Pesmar Dos of which Defendant 4 was master; and F/V Playa de Tambo of which Defendant 5 was master. Defendant 2 is the charterer of the three vessels and held Individual Transferable Quotas (ITQs) in relation to restricted fin fish and the ITQs were utilised by Defendant 2 by allocating a proportion of catch entitlement to each vessel.

3. For the three vessels to fish legitimately in Falkland waters each was required to hold an appropriate licence issued under the Fisheries (Conservation and Management) Ordinance 2005. Furthermore, each master was also required to hold an appropriate licence. During the period relevant to these offences, Playa Pesmar Uno and Playa Pesmar Dos were licensed to fish for specific species of finfish that did not include hake. Playa de Tambo was licensed to fish for skate (ray). Defendants 3 and 5 held the necessary Overseas Master Fishing Licences but Defendant 4 had applied for, but had not yet been granted, such a licence.

4. Section 194 Fisheries (Conservation and Management) Ordinance 2005 provides that where an offence is committed in relation to a fishing vessel, the owner, the charterer, and the master of that fishing vessel shall each be deemed to have committed that offence. Unless specifically otherwise provided in the Ordinance, neither a defendant's lack of knowledge of the act or omission giving rise to the commission of the offence nor the absence of a reasonable means for a defendant to prevent the commission of the offence provides a defence to prosecution under the Ordinance. Similarly, under regulation 61 Fishing Regulations Order 1988 the owner, master or charterer of any vessel commits an offence if the Regulations or the terms of a vessel's licence are contravened.

#### The Offences

5. I shall give only a short summary of the offences.

Defendant 3 was the master of the Playa Pesmar Uno and between 18th June 2015 and 8th July 2015 the vessel caught large quantities of hake in breach of its licence. In addition to this, Playa Pesmar Uno submitted false reports on 19th, 21st and 23rd June and 5th July 2015. The vessel was called to port and the false information became apparent when catch verification was undertaken. It was found that Playa Pesmar Uno had declared having a total of 128,801 kgs of hake on board whereas, in reality it had 194,275 kgs of hake on board. The under-reporting of hake was 65,474 kgs (or 51%). An over-report had been made of rock cod as 47,184 kgs had been declared as on board whereas there were only 36,918 kgs, resulting in an over-report of 10,266 kgs (or 21.75%). Hake has a higher commercial value than rock cod.

6. Defendant 4 was master of the Playa Pesmar Dos and between 22nd June 2015 and 30th June 2015 the vessel caught large quantities of hake in breach of its licence. The Playa Pesmar Dos made a false report on 23rd June and 2 false reports on 29th June 2015. The false reports became apparent when catch verification was undertaken after the vessel had been called to port. The Playa Pesmar Dos had declared having 52,691 kgs of hake on board but was found to have 85,855.5 kgs on board. The under-report was, therefore, 33,164.5 kgs (or 63%). It was found that the amount of rock cod had been over-reported and instead of the 50,625 kgs declared there was only 25,785.5 kgs of rock cod on board (over-report by 49%).

7. At the time, Defendant 4 did not hold an Overseas Master Fishing Licence.

8. Defendant 5 was master of the Playa de Tambo and submitted false reports on 26th June, 2nd July and 3rd July 2015. On catch verification it was found that Playa de Tambo had declared 1,156 kgs less hake than was actually on board. With 98,184 kgs on board the under report was 1%. The vessel had 13,600 kgs of rock cod on board but under-reported by 8,067 kgs (or 59%).

9. It is convenient at this point to refer to a preliminary point that was raised before pleas were entered. The Crown accepts that Defendants 3, 4 and 5 are “foreign persons” for the purposes of section 203 Fisheries (Conservation and Management) Ordinance 2005. Under section 203 the Court does not have power to sentence a foreign person to a term of imprisonment. Defendants 3, 4 and 5 were not, therefore, liable to a sentence of imprisonment and it was open to them to enter a written guilty plea and not to attend the Court. Defendants 1 and 2 are companies and not liable to imprisonment in any event. All Defendants entered written guilty pleas as set out below but all pleaded not guilty to charges under s 168 Fisheries (Conservation and Management) Ordinance 2005 (intentionally fishing without licence). The Crown offered no evidence on the s 168 charges and they were dismissed.

10. Defendant 1 pleaded guilty to:

- 2 offences (fishing without licence) under section 167(1) Fisheries (Conservation and Management) Ordinance 2005 – one each in respect of Playa Pesmar Uno and Playa Pesmar Dos.
- 1 offence (no Overseas Master fishing licence) under section 44 Fisheries (Conservation and Management) Ordinance 2005 in respect of Playa Pesmar Dos.
- 12 offences (providing false report) under regulation 61 of Fishing Regulations Order 1988, 6 in respect of Playa Pesmar Uno, 3 for Playa Pesmar Dos and 3 for Playa de Tambo.

Defendant 2 pleaded guilty to:

- 2 offences (fishing without licence) under section 167(1) Fisheries (Conservation and Management) Ordinance 2005 – one each in respect of Playa Pesmar Uno and Playa Pesmar Dos.
- 1 offence (no Overseas Master fishing licence) under section 44 Fisheries (Conservation and Management) Ordinance 2005 in respect of Playa Pesmar Dos.
- 12 offences (providing false report) under regulation 61 of Fishing Regulations Order 1988, 6 in respect of Playa Pesmar Uno, 3 for Playa Pesmar Dos and 3 for Playa de Tambo.

Defendant 3 pleaded guilty to:

- 1 offence (fishing without licence) under section 167(1) Fisheries (Conservation and Management) Ordinance 2005 in respect of Playa Pesmar Uno.
- 6 offences (providing false report) under regulation 61 of Fishing Regulations Order 1988 in respect of Playa Pesmar Uno.

Defendant 4 pleaded guilty to:

- 1 offence (fishing without licence) under section 167(1) Fisheries (Conservation and Management) Ordinance 2005 in respect of Playa Pesmar Dos.
- 1 offence (no overseas master fishing licence) under section 44 Fisheries (Conservation and Management) Ordinance 2005 in respect of Playa Pesmar Dos.

- 3 offences (providing false report) under regulation 61 of Fishing Regulations Order 1988 in respect of Playa Pesmar Dos.

Defendant 5 pleaded guilty to:

- 3 offences (providing false report) under regulation 61 Fishing Regulations Order 1988 in respect of Playa de Tambo.

11. Section 202 Fisheries (Conservation and Management) Ordinance 2005 sets out matters to be taken into consideration in sentencing in these terms:

*"In sentencing any person for an offence under this ordinance of which that person has been convicted the court shall, in addition to any other matters, take into account*

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*(a) The difficulty of detecting and apprehending persons committing offences under the provisions of this Ordinance and bringing them to justice;*

*(b) The need to discourage others from committing like offences."*

12. I also note section 13 of the Ordinance in which the Director of Fisheries' objectives are set out thus:

*"(a) the implementation of efficient and cost-effective fisheries management on behalf of the Falkland Islands;*

*(b) ensuring that the exploitation of fisheries resources and the carrying on of any related activities are conducted in a manner consistent with the need to have regard to the impact of fishing activities on non-target species and the long term sustainability of the marine environment.*

*(c) ensuring, through proper conservation and management measures, that the living resources of the fishing waters are protected from over-exploitation;*

*(d) achieving the optimum utilisation of the living resources of the fishing waters;*  
*and*

*(e) ensuring that conservation and management measures in the fishing waters and the high seas are in accordance with the obligations of the Falkland Islands under international agreements that deal with fish stocks."*

13. There can be no doubt that fishing offences are to be treated as serious and no-one should be able to achieve a financial benefit by fishing except in accordance with the terms of his licence and fulfilling his duty to provide honest and accurate

information about his catches. That said, when deciding the appropriate sentence the Court must consider the particular facts of each case and any aggravating or mitigating factors. The Court must also take account of the particular circumstances of each defendant.

14. In these cases all the Defendants have pleaded guilty at the earliest opportunity and none of them have previous convictions. I have been informed that the Defendant masters brought the vessels to port as requested, the Defendants have co-operated with the Fisheries Department with the catch verifications and in the investigations generally. Mr Sabino has informed the Court that Defendant 1 has been fishing legitimately in Falkland waters for 20 years, Defendants 3 and 5 have held Overseas Master licences for the past 5 years and Defendant 4 held a licence for the previous year and has, even since he committed his offences, has been granted his Overseas Master licence again. Mr Sabino has also urged that these offences may have significant ramifications for the Defendant companies, increasing costs and adversely impacting on their future business. I take account of these mitigating factors and give full credit for the early guilty pleas.

15. I am told that Defendant 2 (of which Defendant 1 is a joint owner) as charterer did not stand to receive any benefit from the false reporting. However, Defendant 2 was supplied with the reports as they were made and, had the information been dealt with properly, would have soon realized that the reports did not add up.

16. I am also told that the Defendant masters each receive a basic salary of £36,000 per year and normally received bonuses according to their fishing success. Each has a home and family to support and, depending on the outcomes of these cases, restrictions may be placed on their bonuses and their pay be subject to financial penalties but they have not lost their jobs.

17. Defendant 3 committed the offences over a three week period. He under-reported hake by 50%, over-reported rock cod by just under 22%. I have noted that hake is the more commercially valuable species.

18. Defendant 4 committed the offences over an 18 day period. He under-reported hake by almost 63% and over reported rock cod by nearly 50% . As I said before, hake is the more commercially valuable species.

19. It stretches credulity that these under-reportings of hake were accidental or simple error. I accept Mr Sabino's submission that the mis-reporting was unsophisticated and was not the result of a conspiracy. It is of concern that Defendants 3 and 4 showed cavalier attitudes to the need to keep within the terms of licence and worrying disregard for the reporting system and the requirement to report accurately. Defendant 4 appears to have treated the need to have an Overseas Master Licence all too lightly. However, I put weight on the fact that he has held a licence in the past and has been granted one since.

20. Defendant 5 committed the false reporting offences over a 13 day period and is the least serious offender. His under-reporting was by just over 1% for hake and just over 59% for rock cod.

21. I accept the Crown's submission that the maximum penalty for the offences under Fishing Regulations Order 1988 is £10,000 (a Level 6 fine).

22. I have taken into account all the facts that have been put before the Court relating to the commission of the offences, including the value and total weight of fish involved, and the Defendants' circumstances. I have applied the totality principle and given credit for early guilty pleas. The penalties I impose are as follows:

Defendant 1 (Pesquerias Marinenses SA): £65,000 on each section 167 offence, £10,000 on the section 44 offence and £5,000 on each of the 12 Regulation 61 offences (Total £200,000)

Defendant 2 (FIBOW Ltd): £60,000 on each section 167 offence, £10,000 on the section 44 offence and £5,000 on each of the 12 Regulation 61 offences (Total £190,000)

Defendant 3 (Joaquin Lopez Chouza): £6,500 on the section 167 offence and £500 on each of the 6 regulation 61 offences (Total £9,500.00)

Defendant 4 (Samuel Acuna Recamen): £6,500 on the section 167 offence, £1,000 on the section 44 offence and £500 on two of the Regulation 61 offences and £250 on the third (Total £8,250)

Defendant 5 (Jose Rodriguez Gomez): £200 on each of the 3 offences (Total £600)

23. The Crown seeks costs of £2,000 against each defendant. The Court has been told that such an order is not opposed. An order for costs of £2,000 per defendant is made accordingly.

24. The Crown also seeks a confiscation order under section 63 Criminal Justice Ordinance 1989 against Defendant 1 (only) for £154,971.77 and the value of the fish seized from the vessels Playa Pesmar Uno and Playa Pesmar Dos. A draft order has been submitted. The Court notes that the Crown and Defendant 1 have reached an agreement as to the means by which the value of the seized fish will be calculated. The confiscation order will be made as sought.

25. The Defendants have 2 months in which to pay the fines.

3<sup>rd</sup> March 2016

#### VARIATION TO CORRECT ERRORS

Immediately after the sitting of the Court on 3<sup>rd</sup> March 2016 the Defence drew my attention to errors in the sentences I had imposed in that those imposed in respect of offences under regulation 61 of Fisheries Regulations Order 1988 were not in line with the Goodyear indication I had given in Court on 24<sup>th</sup> February 2016. I am obliged to Counsel for drawing this to my attention and acknowledge the errors are entirely mine. I have exercised my power under section 142 Magistrates' Court Act 1980 in its application in the Falkland Islands and have re-opened the cases to rectify the errors. I held a further hearing today, 7<sup>th</sup> March 2016, and I have corrected the

errors by varying the sentences to take account of the Goodyear indication. I have varied the sentences for the offences under section 167(1) Fisheries (Conservation and Management) Ordinance 2005 as well as those under regulation 61 Fisheries Regulations Order 1988 because I have applied the totality principle. As a result the totals that Defendants 1 and 2 have to pay remain unchanged. The corrections lie in the divisions of the totals between the various offences. The sentences as varied are as follows:

1. Defendant 1 (Pesqueras Marinenses SA):

Vessel	Offence	Fine
Playa Pesmar Uno	1 x s167(1) FC&MO	£87,500
	6 x r 61(3) FRO	6 x £2,000
Playa Pesmar Dos	1 x s167(1) FC&MO	£78,500
	1 x s44 FC&MO	£10,000
	3 x r61(3) FRO	3 x £2,000
Playa de Tambo	3 x r61(3) FRO	3 x £2,000
		Total £200,000

2. Defendant 2 (FIBOW Ltd):

Vessel	Offence	Fine
Playa Pesmar Uno	1 x s167(1) FC&MO	1 x £82,500
	6 x r 61(3) FRO	6 x £2,000
Playa Pesmar Dos	1 x s167(1) FC&MO	1 x £73,500
	1 x s44 FC&MO	1 x £10,000
	3 x r61(3) FRO	3 x £2,000
Playa de Tambo	3 x r61(3) FRO	3 x £2,000
		Total £190,000

The costs and confiscation orders remain unchanged.

*Clare Faulds.*

Clare Faulds  
Senior Magistrate

7th March 2016

**IN THE FALKLAND ISLANDS**  
**MAGISTRATES' COURT**

Senior Magistrate

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(2) FIBOW LIMITED (Defendant 2)  
(3) JOAQUIN LOPEZ CHOUZA (Defendant 3)  
(4) SAMUEL ACUNA RECAMAN (Defendant 4)  
(5) JOSE RODRIGUEZ GOMEZ (Defendant 5)

**ORDER correcting ERROR**

Upon application made by Counsel for the Defence

AND UPON HEARING Counsel for the Defence and Counsel for the Prosecution

IT IS ORDERED that the fines imposed on Defendant 1 (Pesquerias Marinenses SA) and Defendant 2 (FIBOW Ltd) as set out in the Sentencing Decision with Reasons dated 3rd March 2016 be corrected so as to take effect as set out in the table below.

1. Defendant 1:

Vessel	Offence	Fine
Playa Pesmar Uno	1 x s167(1) FC&MO	£87,500
	6 x r 61(3) FRO	6 x £2,000
Playa Pesmar Dos	1 x s167(1) FC&MO	£78,500
	1 x s44 FC&MO	£10,000
	3 x r61(3) FRO	3 x £2,000
Playa de Tambo	3 x r61(3) FRO	3 x £2,000
		Total £200,000

2. Defendant 2

Vessel	Offence	Fine
Playa Pesmar Uno	1 x s167(1) FC&MO	1 x £82,500
	6 x r 61(3) FRO	6 x £2,000
Playa Pesmar Dos	1 x s167(1) FC&MO	1 x £73,500
	1 x s44 FC&MO	1 x £10,000
	3 x r61(3) FRO	3 x £2,000
Playa de Tambo	3 x r61(3) FRO	3 x £2,000
		Total £190,000

This 7<sup>th</sup> day of March 2016

*Clare Fawcett*

Senior Magistrate