



**MAGISTRATE'S COURT  
FALKLANDS ISLANDS**

Case Nos:

MC/CRIM/22(a)/15

MC/CRIM/22(b)/15

MC/CRIM/22(c)/15

**REGINA**

**V**

**FREIREMAR S.A. (Defendant 1)**

**SULIVAN SHIPPING SERVICES LIMITED (Defendant 2)**

**FRANCISCO PEREZ BASTON (Defendant 3)**

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***SENTENCING DECISION with REASONS***

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**Background**

1. Defendant 1 is a Spanish company and is the owner of the fishing vessel *F/V Figaro* of which Defendant 3 was master. Defendant 2 is a Falkland Islands company and holds an Individual Transferable Quota (ITQ). To make use of the ITQ, Defendant 2 chartered *F/V Figaro* through Defendant 1. *F/V Figaro* was licensed to fish within Falkland Island waters and Defendant 3 was also licensed. The Falkland Islands' licensing system involves a pre-licence inspection of a vessel and the master is briefed in relation to the conditions on which a licence is granted. Emphasis is placed on the importance of the accurate reporting of catches. The master is required to sign that he understands the conditions.

2. Section 194 Fisheries (Conservation and Management) Ordinance 2005 ("the Ordinance") 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. This Court has held, following the raising of a preliminary point, that an offence under the Fishing Regulations Order 1987 (“the Regulations”) is subject to the provisions of section 194 of the Ordinance and where an offence under the Regulations is committed in relation to a fishing vessel or any fishing operation the owner, master or charterer of any vessel are deemed to commit an offence under the Ordinance.

### **Summary of the Offences**

3. The relevant period of activity is between the 5<sup>th</sup> June 2015 and the 4<sup>th</sup> July 2015. During this time *F/V Figaro* caught hake when the licence under which she was operating permitted the catching of rock cod, and the terms of the fishing licence were thereby breached, thus committing an offence contrary to section 167 of the Ordinance.

4. In addition, Defendant 3 provided false information in reports to the Director of Fisheries made on the 7<sup>th</sup> June, 12<sup>th</sup> June, 19<sup>th</sup> June, 20<sup>th</sup> June, 24<sup>th</sup> June, 26<sup>th</sup> June, 28<sup>th</sup> June, 2<sup>nd</sup> July and twice on 3<sup>rd</sup> July 2015. Providing information that is false or not believed to be true or that suppresses or conceals information, in such a manner as is calculated to mislead or deceive in a material respect constitutes a criminal offence contrary to regulation 61 of the Regulation. There are ten false reporting offences in relation to *F/V Figaro*.

5. As a result of the information in the fishing reports submitted to the Director of Fisheries from *F/V Figaro*, *F/V Figaro* was called into port to undergo catch verification and the extent of the false reporting became apparent.

6. The final figure that had been declared in relation to the quantity of hake on board *F/V Figaro* was 117,904kg whereas in reality there was 236,466.35kg on board. The under-reporting of hake was 118,562.35kg which equates to 50.1%.

7. The final figure declared in relation to the quantity of rock cod on board *F/V Figaro* was 163,001kg, whereas in reality there was 29,988.5kg on board. The over-reporting of rock cod was 133,012.5kg which equates to 81.6%.

8. It is of significance that hake commands a higher market price than rock cod and is the more commercially viable species.

### **Sentence**

9. I considering the appropriate sentences I note section 202 of the Ordinance:
- "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 –*
- (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."*

There can be no doubt that any fishing offence is 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.

10. I accept that in these cases all the Defendants have pleaded guilty at the earliest opportunity. I have been informed by the Crown that Defendant 3 brought the vessel to port as requested and that all the Defendants co-operated fully with the Fisheries Department with the catch verifications and in the investigations generally.

11. Defendant 1 has disclosed a previous conviction in a different jurisdiction (South Georgia and South Sandwich Islands) in 2004. I take account of the fact that the offence was over 10 years ago and Defendant 1 has maintained a clean record since but has been fishing legitimately in Falkland waters for 30 years and has worked hard to build a relationship with the Falkland Islands authorities. Nevertheless, I consider that Defendant 1 has a relevant record. I note that Defendant 1 did not gain from the commission of the offences and lost fishing time (and, therefore, lost income) during the investigation. I have been told that Defendant 1 has since taken steps to implement systems by which it can check fishing reports from any vessel with which it is involved.

12. Defendants 2 and 3 have no previous convictions.

13. Defendant 2 has been in business in the Falkland Islands for 30 years and has provided services to the Falkland Islands Government and other services to the community. I have been provided with references and other information which show an impressive record of good service to the Falkland Islands and a general respect for the integrity of the company. Defendant 2 is described as not wanting to jeopardise its good relationship with the Falkland Islands Government and being conservation orientated and deeply embarrassed by its involvement in the offences. I am told that Defendant 2 did not stand to receive any benefit from the false reporting.

14. I have been informed that Defendant 3 has held a master's licence for the past 2 years and is a comparatively inexperienced master and, also, that his job is at risk. I note that the offences were committed over a four week period. Defendant 3 had an "A" licence (hake) with days available but failed to switch from his "W" licence and attempted to cover up his failure by making false returns. The hake was under-reported by 50%, the rock cod was over-reported by just under 22%. I accept that at the time hake was unusually plentiful and that the damage to fish stocks is thought to be minimal in the circumstances.

15. I also accept that the convictions will have significant ramifications for all three Defendants, each in a different way, but with fishing at the core of their business or livelihood, the convictions will have a serious impact on their respective futures and reputations. Nevertheless, and this has been acknowledged by all three defendants, the offences must be treated as serious and the penalties faced.

16. I give full credit for the early guilty pleas and take account of the mitigating factors. I take 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, the confiscation of the value of the fish and the Defendants' circumstances. I apply the totality principle. The penalties I impose are as follows:

Defendant 1 (Freiremar): £80,000 on the section 167 offence and £2,000 on each of the 10 Regulation 61 offences (Total £100,000)

Defendant 2 (Sullivan Shipping Services Ltd): £40,000 on the section 167 offence and £1,000 on each of the 10 Regulation 61 offences (Total £50,000)

Defendant 3 (Francisco Perez Baston): £8,000 on the section 167 offence and £750 on each of the 10 regulation 61 offences (Total £15,500)

17. 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.

18. The Crown also seeks a confiscation order under section 63 Criminal Justice Ordinance 1989 against Defendant 1 for £33,253.25 being the balance after the deduction of £164,678 (the proceeds of sale of the catch) from £197,931.25 (the benefit to Defendant 1 of the criminal conduct). The Court notes that the terms of a draft order submitted by the Crown have been agreed. The confiscation order will be made as sought.

19. The Defendants will be allowed two months in which to pay the fines.



Clare Faulds  
Senior Magistrate

8<sup>th</sup> July 2016