



## Directorate of Natural Resources - Fisheries Department

### Fisheries (Conservation and Management) Ordinance 2005

### Guidance on ITQ B Charter Party Agreements

#### Introduction

A fishing licence for Catch Entitlement derived from ITQ B where a vessel is being used through a charter party agreement, may only be granted if the charter party agreement has been approved by the Director of Natural Resources. See section 41(8)(b) of the Fisheries (Conservation & Management) Ordinance 2005, as amended in 2021.

This guidance sets out how the Director intends to exercise the power of approval over charter party agreements.

#### Criteria

The criteria for approval of charter party agreements are based on the well-established principles set out in the 'three tests' which have been part of the Fisheries Ordinance since 2005, and are now found at section 17C(6)(e).

A charter party agreement will be approved if it meets all the following requirements.

##### *Effective control:*

- The qualifying company (or eligible company) should own and insure the catch, until it is sold for processing, and retain responsibility for the marketing and sale of the catch, not the ship owner;
- The qualifying company (or eligible company) should receive daily reporting from the vessel on its general activities, catch and compliance with the fishing licence, with rights to inspect the vessel;

##### *Active involvement:*

- The qualifying company (or eligible company) should demonstrate their active involvement in one or more of on-shore support, crewing the vessel and transhipping the catch; rather than the shipowner taking responsibility for all of these;

##### *Economic efficiency:*

- The charter party agreement should involve the qualifying company (or eligible company) making payment for use of a vessel, rather than the ship owner paying to make use of the Catch Entitlement;
- There should be an appropriate balance of risk and reward between the two parties, to avoid the eligible or qualifying company effectively 'selling their Catch Entitlement' to the charter party and having no meaningful commercial stake in the fishing operation.

In addition, the Director must be satisfied that any vessel proposed under the charter party agreement complies with flag state and any other relevant international conventions. A proposed arrangement which fully meet the guidelines above will be approved by the Director. For any arrangement where there is any doubt as to whether the guidelines are met, the Director will refer to the underlying principles of the three tests in making an overall assessment. The Director will consider any evidence submitted by the eligible or qualifying company.

Any charter party agreement will not be approved if, in the view of the Director, it would in practice undermine the aims of the revised Ordinance to advance genuine local control of the Falkland Islands fisheries. If the effect of a charter party agreement is essentially the same as would arise if the eligible company or qualifying company were to sell its fishing rights to a third party shipowner (which is not permitted under the Ordinance) then the charter party agreement will not be approved. This could arise if the third party conducts all the fishing operations, and assume all the commercial risks and rewards, and simply pays a fee to the eligible company or qualifying company to make use of their Catch Entitlement.

The criteria above are intended to apply to long term charter party agreements extending over several fishing seasons. We recognise that operational needs may arise for short-term charter agreements to be put in place for a specific season, and that such needs may arise at short notice. This could apply, for example, in the case of vessel breakdown. The Director will apply the criteria more flexibly, on a lighter touch way, in such circumstances.

Where a vessel is undertaking fishing under charter for more than one fishing company or fishing partly in the Falkland Islands fishing zone and partly on the high seas, the Director will take account of those circumstances in applying the criteria above.

## **Process**

The charter party agreement must be approved before a fishing licence can be granted. Companies are encouraged to ensure that approvals are obtained in advance.

A copy of the charter party agreement should be submitted to the Director, accompanied by a short commentary to set out why the company believes that the agreement meets the criteria for approval.

The charter party agreement does not have to be resubmitted each time a fishing licence is granted, unless the agreement has been amended since last submitted.

The Director is willing to discuss applications in draft, on the request of companies, in advance of formal submission, where that would be helpful.

Charter vessels will need to comply with the flag regulations for the state where they are registered. We do not expect there to be any inconsistency between those regulations and these guidelines, but if there are concerns then companies are advised to contact the Director to discuss the issue.

For the avoidance of doubt, the approval of charter party agreements is not required for the issuing of fishing licences to fish Catch Entitlement derived from ITQ A.

**Review**

If the Director refuses to approve a proposed charter party agreement, the eligible company is entitled to request a review of the decision by Disputes Commission. Any application for review must be made in writing and delivered to the Registrar within 14 days of being notified of the refusal.