MC/CRIM/02/25
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SENTENCING REMARKS

REX

v

HUNG-CHUN WU

AND

AN FONG LIAN HSIANG FISHERY COMPANY LIMITED

before
HHJ Malcolm Simmons

GIVEN ON
12th June 2025

Representation:
Mr Stuart Walker — Crown Counsel, Prosecution
Mr. Stirling Harcus — Defendant

These sentencing remark] will be published until 14th May 2026 for this reason:

- As per Schedule 10 of the Criminal Procedure Evidence Ordinance, 2014, the conviction of the defendant will be considered spent.

Any concerns about the publication or content of this document will be placed before the Judicial Officer(s) for consideration.

IN THE FALKLAND ISLANDS
MAGISTRATES COURT
Case No. MC/CRIM/03/25

12th June 2025

Before:

HIS HONOUR JUDGE MALCOLM SIMMONS

BETWEEN:

REX

-v-

(1) HUNG-CHUN WU

(2) AN FONG LIAN HSIANG FISHERY COMPANY LIMITED

SENTENCING REMARKS

MR. STUART WALKER, Crown Counsel, appeared for the Prosecution

MR. STIRLING HARCUS appeared for the defendants

Procedural Background

1. The defendants were each charged with an offence under section 161(1) and section 194 of the Fisheries (Conservation and Management) Ordinance 2005.

2. On 14th May 2025, before the Summary Court, the defendants entered guilty pleas on the offence charged and this case was remitted to this Court for sentencing.

Factual Background

3. The *An Fong 158* is a jigger fishing vessel registered in Taiwan and licensed by the Falkland Islands Department of Natural Resources to fish in Falkland Islands waters.

4. The master of the *An Fong 158* is the defendant, Hung-Chun Wu. The owner of the vessel is the defendant, An Fong Lian Hsiang Fishery Company Limited.

5. On Monday 3rd March 2025 at around 11.00 hours (Falkland Islands time) the An Fong 158 was at sea, approximately 120 nautical miles from Stanley, when it collided with another licensed jigger fishing vessel, the Jyi Yang, causing substantial damage to the Jyi Yang.

6. Prior to the collision, the Jyi Yang was already present in the area and had manoeuvred into position at the fishing ground, deployed its sea anchor and was not using the vessel engines.

7. The An Fong 158 was positioned to the north-east and was sailing in the direction of the Jyi Yang at around 13 knots. It was mid-morning, broad daylight and visibility was good.

8. The An Fong 158 is fitted with operational radar which should have been monitored alongside observations by the master or officer of the watch. CCTV footage from the An Fong 158 shows the JYi Yang clearly in view for about 3 minutes before the collision occurred. The automatic identification system data and CCTV footage shows that the An Fong 158 did not alter its course or its speed and instead it sailed straight towards the Jyi Yang, colliding with the starboard quarter of the Jyi Yang at

speed. The force of the impact lifted the Jyi Yang out of the water, turning it on its anchor and causing significant damage.

9. The damage to the Jyi Yang can be summarised as follows:

(a) the bulbous bow of the An Fong 158 hit the Jyi Yang at the waterline, causing significant damage to the Jyi Yang. I note that due to the fact that, by sheer luck, the An Fong 158 was pitching at the time of the collision and its bow was high out the water. Had that not been the case, a point of impact might have been below the waterline of the Jyi Yang;

(b) the aft peak ballast tank, number six fuel oil tank and the starboard aft storeroom of the Jyi Yang were all damaged along with their associated framework. Again, by good fortune, the number 6 fuel oil tank was empty at the time of the collision.

(c) numerous electric cables which run along the outside deck of the Jyi Yang to power machinery and external lighting we caught in the impact. If these cables had been energised at the time of the collision they would have presented a fire risk;

(d) if the impact point of the collision occurred further forward, the An Fong 158 may have penetrated the external shell plating of the Jyi Yang at the location of the engine room that could have caused catastrophic flooding into this area.

10. The damage to the Jyi Yang was significant and the standard of seamanship of the first defendant, Hung-Chun Wu, fell far below what was reasonable to expect. But for sheer luck, the collision could have resulted in a catastrophic incident and it follows that there was a significant risk to life.

11. I note the master of the Jyi Yang did not issue any warning to the An Fong 158 about the collision course on which the An Fong 158 was sailing and the Jyi Yang was not displaying the appropriate day signals to notify other vessels that it was fishing and that manoeuvrability was restricted.

Relevant Law

12. Section 161 (1) of the Fisheries (Conservation and Management) Ordinance 2005 provides: *"A person commits an offence who (a) being the holder of a fishing licence, high seas fishing licence, overseas master fishing licence, scientific permit or fish receiver permit, contravenes a condition of that licence or permit or a provision of a temporary order".*

13. Section 194 of the said 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.

14. Schedule 3 of the Fisheries (Conservation and Management) Ordinance 2005 provides that the penalty for an offence under section 161 (1) of the said Ordinance shall be a Level 8 fine. Schedule 8 of the Criminal Procedure and Evidence Ordinance sets the maximum fine for each offence at Level 8 at £25,000.

15. In sentencing, I have had regard to the facts, the defendant's respective roles as well as aggravating and mitigating factors.

Sentencing Guidelines

16. There are no offence-specific sentencing guidelines for offences under the Fisheries (Conservation and Management) Ordinance 2005.

17. The Overarching Sentencing Guideline applies to this case and the General Principles Guideline provides some assistance in relation to identifying general factors which increase or decrease sentence. I have taken those guidelines into account in arriving at a sentence that is reasonable and proportionate.

Defendants

18. The First Defendant has 30 years' experience of squid fishing in the South Atlantic, comprising 6 years as a crew member, 15 years as an officer and 9 years as a Captain. This was his sixth season fishing with the owner of the An Fong 158.

19. Following this incident, the first defendant co-operated fully with the investigation by providing a witness statement and answering follow up questions from the authorities. Since this incident the first defendant has taken steps to alter the working practice on the bridge of the ship, ensuring there is adequate crew on watch at all times and that all automated collision detection systems are activated at all times.

20. The first defendant has not been subject to any previous regulatory investigations and had a clean fishing record. He has no relevant convictions. He is remorseful and recognizes that this incident could have resulted in significantly more harm. He recognizes that this incident may put in jeopardy his ability to fish in Falkland Islands waters in the future.

21. His net income is £2,833 per month. In addition, he has savings of £12,500. He is the sole provider for his wife and his elderly mother.

22. This was not a collision caused by sea conditions or poor weather. Instead, it was the product of the first defendants failure to adhere to basic standards of safe navigation, watchkeeping and good seamanship, such that are expected of a ships master operating under the terms of a licence issued by the Falkland Islands Government. Those failures resulted in significant damage to another vessel that had been 'holed' at the waterline. It was pure luck this incident did not cause more significant damage and, potentially, result in loss of life.

23. I recognize that, although no injuries were reported, collisions such as the one that occurred in this case put both ships and both crews in possible jeopardy.

24. The Second Defendant was the owner of the An Fong 158. It has been fishing in Falkland Islands waters for 9 years. The second defendant has cooperated with the investigation into the circumstances surrounding the collision. Since the collision, steps have been taken to ensure adherence to appropriate navigational standards.

25. The second defendant says that, as a result of this incident, it has incurred significant financial losses, including lost fishing days, paying for repairs to its own vessel not covered by insurance and management time spent liaising with the owner of the Jyi Yang.

26. The second defendant has no previous convictions and has not been subject to any previous regulatory investigations and had a clean fishing record. It has also been remorseful.

27. The standards required by the fishing licence were not met and, as a result, the terms of the fishing licence were breached. For breaches of licence, the law imposes criminal liability on both the master and owner of the fishing vessel on the basis that those who benefit financially from the fishing operation must share responsibility for failures to comply with the terms of the fishing licence.

28. I have carefully considered the submissions of Mr. Harcus, on behalf of the Defendants and Mr. Walker for the Crown, and take those submissions into account when sentencing. I have also had regard to the General Sentencing Guidelines.

29. The defendants were engaged in a commercial enterprise that was subject to stringent licensing conditions. Compliance with licensing conditions is expected. This was a serious collision that could have resulted in far more serious consequences.

30. The defendants share responsibility for their failure to ensure compliance with the conditions of the licence under which they operate. I have taken into account the harm caused and the culpability of each defendant, including aggravating factors.

31. I have also had regard to the first defendants' financial circumstances. I recognize these convictions will impact on the reputation of both defendants for whom fishing is their primary business activity. I give full credit for the early guilty pleas and take account of the mitigating factors.

SENTENCE

a. In respect of the First Defendant, the starting point on conviction following trial would have been a fine of £6,500. After consideration of your mitigation and early guilty plea, I reduce the sentence to a fine in the sum of **£4,000,** to be paid within 14 days.

b. In respect of the Second Defendant, the starting point on conviction following trial would have been a fine of £21,750. After consideration of your mitigation and early guilty plea, I reduce the sentence to a fine in the sum of **£14,000,** to be paid within 14 days.

c. The defendants shall each pay **£150** Prosecution costs, to be paid within 14 days.

32. I am not making a compensation order. I agree with the prosecution that issues of compensation are more appropriately dealt with in the jurisdiction where the vessels are registered and subject to the terms of their insurance.

HHJ Malcolm Simmons
Senior Magistrate