

1999 No. 424

SEA FISHERIES

The Sea Fishing (Enforcement of Community Quota Measures) Order 1999

Made - - - - - 23rd February 1999
Laid before Parliament 24th February 1999
Coming into force 18th March 1999

The Minister of Agriculture, Fisheries and Food and the Secretaries of State respectively concerned with sea fishing in Scotland, Wales and Northern Ireland, in exercise of the powers conferred on them by section 30(2) of the Fisheries Act 1981(a), and of all other powers enabling them in that behalf, hereby make the following Order:

Title and commencement

1. This Order may be cited as the Sea Fishing (Enforcement of Community Quota Measures) Order 1999 and shall come into force on 18th March 1999.

Interpretation

2.—(1) In this Order—

“British fishing boat” means a boat which is registered in the United Kingdom, the Isle of Man or any of the Channel Islands;

“the Council Regulation” means Council Regulation (EC) No. 48/1999 fixing, for certain fish stocks and groups of fish stocks, the total allowable catches for 1999 and certain conditions under which they may be fished(b);

“Council Regulation 2241/87” means Council Regulation (EEC) No. 2241/87 establishing certain control measures for fishing activities(c);

“Council Regulation 2847/93” means Council Regulation (EEC) No. 2847/93 establishing a control system applicable to the common fisheries policy(d);

“specified Community provision” means a provision of the Council Regulation specified in column 1 of the Schedule to this Order as read with any qualifying words relating to that provision in that column.

(2) Any reference in this Order to a Community instrument is a reference to that instrument as amended on the date this Order is made.

(3) In this Order any reference to a document includes, in addition to a document in writing—

(a) any map, plan, graph or drawing;

(b) any photograph;

(c) any disk, tape, sound track or other device in which sounds or other data are recorded so as to be capable (with or without the aid of some other equipment) of being reproduced therefrom; and

(a) 1981 c. 29; see section 30(3) for the definitions of “enforceable Community restriction”, “enforceable Community obligation” and “the Ministers”.

(b) OJ No. L13, 18.1.99, p. 1.

(c) OJ No. L207, 29.7.87, p. 1, as last amended by Council Regulation (EC) No. 2846/98 (OJ No. L358, 31.12.98, p. 5).

(d) OJ No. L261, 20.10.93, p. 1, as last amended by Council Regulation (EC) No. 2846/98 (OJ No. L358, 31.12.98, p. 5).

- (d) any film (including microfilm), negative, tape, disk or other device in which one or more visual images are recorded so as to be capable (as aforesaid) of being reproduced therefrom.

(4) For the purpose of the prohibition contained in Article 8 of the Council Regulation the harbours at which a fishing boat to which this Order applies may land catches of fish containing unsorted herring are—

- (a) Aberdeen;
- (b) Lerwick;
- (c) any other harbour within British fishery limits whose sampling systems a British sea-fishery officer at that harbour decides, having regard to the overall size and characteristics of the catch, to be adequate for the purpose following application by the master of the boat to a British sea-fishery officer at that harbour before the landing of the catch,

and where a British sea-fishery officer has made a decision as to the adequacy of a harbour in accordance with sub-paragraph (c) above he shall notify the master of the boat accordingly.

Offences

3. Where there is, in respect of—

- (a) any British fishing boat wherever it may be; or
- (b) any other fishing boat which is within British fishery limits,

a contravention of, or failure to comply with, any specified Community provision, the master, the owner and the charterer (if any) shall each be guilty of an offence.

Penalties

4.—(1) A person guilty of an offence under article 3 of this Order shall be liable on summary conviction—

- (a) to a fine not exceeding the amount specified in column 3 of the Schedule to this Order in relation to the specified Community provision, the contravention of, or failure to comply with which, founded the offence; and
- (b) either—
 - (i) to a fine not exceeding the value of any fish in respect of which the offence was committed; or
 - (ii) to the forfeiture of any fish in respect of which the offence was committed; and
- (c) to the forfeiture of any net or other fishing gear which was used in the course of the commission of the offence.

(2) A person guilty of an offence under article 3 of this Order shall be liable on conviction on indictment—

- (a) to a fine; and
- (b) to the forfeiture of any fish in respect of which the offence was committed; and
- (c) to the forfeiture of any net or other fishing gear which was used in the course of the commission of the offence.

Recovery of fines

5.—(1) Where a fine is imposed by a magistrates' court in England and Wales or Northern Ireland on the master, owner or charterer of a fishing boat who is convicted by the court of an offence under article 3 or 10 of this Order, the court may—

- (a) issue a warrant of distress against the boat and its gear and catch and any property of the person convicted for the purpose of levying the amount of the fine; and
- (b) order the boat to be detained for a period not exceeding three months from the date of the conviction or until the fine is paid or the amount of the fine is levied in pursuance of any such warrant, whichever occurs first.

(2) Where a fine is imposed by a sheriff in Scotland on the master, owner or charterer of a fishing boat who is convicted by the sheriff of an offence under article 3 of this Order, the sheriff may—

- (a) issue a warrant for the arrestment and sale of the boat and its gear and catch and any property of the person convicted; and
- (b) order the boat to be detained for a period not exceeding three months from the date of the conviction or until the fine is paid, whichever occurs first.

(3) Sections 77(1) and 78 of the Magistrates' Courts Act 1980^(a) (postponement of issue of, and defects in, warrants of distress) shall apply to a warrant of distress issued under this article in England and Wales as they apply to a warrant of distress issued under Part III of that Act.

(4) Articles 114(2) and 154 of the Magistrates' Courts (Northern Ireland) Order 1981^(b) (postponement of issue of certain warrants and objections as to want of form or variance between complaint etc. and evidence adduced) shall apply to a warrant of distress issued under this article in Northern Ireland as it applies to a warrant referred to in those articles.

Powers of British sea-fishery officers in relation to fishing boats

6.—(1) For the purpose of enforcing article 3 of this Order a British sea-fishery officer may exercise in relation to—

- (a) any British fishing boat wherever it may be; or
- (b) any other fishing boat which is within British fishery limits,

the powers conferred by paragraphs (2) to (4) of this article.

(2) He may go on board the boat, with or without persons assigned to assist him in his duties, and may require the boat to stop and do anything else which will facilitate either the boarding of, or the disembarkation from, the boat.

(3) He may require the attendance of the master and other persons on board the boat and may make any examination and inquiry which appears to him to be necessary for the purpose mentioned in paragraph (1) of this article and, in particular—

- (a) may search for fish or fishing gear on the boat and may examine any fish on the boat and the equipment of the boat, including the fishing gear, and require persons on board the boat to do anything which appears to him to be necessary for facilitating the examination;
- (b) may require any person on board the boat to produce any document relating to the boat, to any fishing operations or other operations ancillary thereto or to the persons on board which is in his custody or possession;
- (c) for the purpose of ascertaining whether an offence has been committed under article 3 of this Order, may search the boat for any such document and may require any person on board the boat to do anything which appears to him to be necessary for facilitating the search including rendering all documents on the boat's computer systems into a visible and legible form;
- (d) inspect and take copies of any such document produced to him or found on board and, where any such document is kept by means of a computer, require it to be produced in a form in which it may be taken away; and
- (e) where the boat is one in relation to which he has reason to suspect that such an offence has been committed, may seize and detain any such document produced to him or found on board for the purpose of enabling the document to be used as evidence in proceedings for the offence;

but nothing in sub-paragraph (e) above shall permit any document required by law to be carried on board the boat to be seized and detained except while the boat is detained in a port.

(4) Where it appears to a British sea-fishery officer that an offence under article 3 of this Order has at any time been committed, he may—

- (a) require the master of the boat in relation to which the offence took place to take, or may himself take, the boat and its crew to the port which appears to him to be the nearest convenient port; and
- (b) detain or require the master to detain the boat in the port;

^(a) 1980 c. 43; section 78 was amended by the Criminal Justice Act 1982 (c. 48), sections 37 and 46.

^(b) S.I. 1981/1675 (NI 26).

and where such an officer detains or requires the detention of a boat he shall serve on the master a notice in writing stating that the boat will be or is required to be detained until the notice is withdrawn by the service on the master of a further notice in writing signed by a British sea-fishery officer.

Powers of British sea-fishery officers on land

7.—(1) For the purpose of enforcing the provisions of article 3 of this Order, any British sea-fishery officer may—

- (a) enter and inspect at any reasonable time any premises used for carrying on any business in connection with the operation of fishing boats or activities connected therewith or ancillary thereto or with the treatment, storage or sale of sea fish;
- (b) take with him such other persons as appear to him to be necessary and any equipment or materials;
- (c) examine any fish on the premises and require persons on the premises to do anything which appears to him to be necessary for facilitating the examination;
- (d) carry out at such premises such other inspections or tests as may reasonably be necessary;
- (e) require any person not to remove or cause to be removed any fish from such premises for such a period as may be reasonably necessary for the purposes of establishing whether an offence under article 3 of this Order has at any time been committed;
- (f) require any person on the premises to produce any documents which are in his custody or possession relating to the catching, landing, transportation, trans-shipment, sale or disposal of any sea fish;
- (g) for the purpose of ascertaining whether any person on the premises has committed an offence under article 3 of this Order, search the premises for any such document and may require any person on the premises to do anything which appears to him to be necessary for facilitating the search including rendering all documents on computer systems into a visible and legible form;
- (h) inspect and take copies of any such document produced to him or found on the premises and, where any such document is kept by means of a computer, require it to be produced in a form in which it may be taken away; and
- (i) if he has reason to suspect that such an offence has been committed, seize and detain any such document produced to him or found on the premises for the purpose of enabling the document to be used as evidence in proceedings for the offence.

(2) The provisions of paragraph (1) above shall apply *mutatis mutandis* in relation to any land used in connection with any of the activities described in paragraph (1) above, or in respect of any vehicle which a British sea-fishery officer has reasonable cause to believe is being used to transport fisheries products, as they apply in relation to premises and, in the case of a vehicle, shall include power to require the vehicle to stop at any time and, if necessary, direct the vehicle to some other place to facilitate the inspection.

Powers of British sea-fishery officers to seize fish and fishing gear

8. A British sea-fishery officer may seize—

- (a) any fish (including any receptacle which contains the fish) in respect of which he has reasonable grounds to suspect that an offence under article 3 of this Order has been committed; and
- (b) any net or other fishing gear which he has reasonable grounds to suspect has been used in the course of the commission of such an offence.

Protection of officers

9. An officer or a person assisting him by virtue of article 6(2) or 7(1)(b) of this Order shall not be liable in any civil or criminal proceedings for anything done in the purported exercise of the powers conferred on him by articles 6 to 8 of this Order if the court is satisfied that the act was

done in good faith, that there were reasonable grounds for doing it and that it was done with reasonable skill and care.

Obstruction of officers

10. Any person who—

- (a) fails without reasonable excuse to comply with any requirement imposed by a British sea-fishery officer under the powers conferred on British sea-fishery officers by articles 6 and 7 of this Order;
- (b) without reasonable excuse prevents, or attempts to prevent, any other person from complying with any such requirement; or
- (c) assaults an officer who is exercising any of the powers conferred on British sea-fishery officers by articles 6 to 8 of this Order or intentionally obstructs any such officer in the exercise of any of those powers,

shall be guilty of an offence and liable—

- (i) on summary conviction to a fine not exceeding the statutory maximum; or
- (ii) on conviction on indictment to a fine.

Provisions as to offences and proceedings

11.—(1) Where any offence under article 3 of this Order committed by a body corporate is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, a director, manager, secretary or other similar officer of the body corporate, or a person purporting to act in any such capacity, he as well as the body corporate shall be guilty of the offence and liable to be proceeded against and punished accordingly.

(2) Where any offence under article 3 of this Order committed by a partnership is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, a partner, he as well as the partnership shall be guilty of the offence and liable to be proceeded against and punished accordingly.

(3) Where any offence under article 3 of this Order committed by an unincorporated association (other than a partnership) is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, any officer of the association or any member of its governing body, he as well as the association shall be guilty of the offence and liable to be proceeded against and punished accordingly.

(4) Proceedings for an offence under the provisions of this Order may be taken, and the offence may for all incidental purposes be treated as having been committed, in any place in the United Kingdom.

Admissibility in evidence of logbooks and other documents

12. Any document kept or held on board under Article 5 of Council Regulation 2241/87 or Article 6 or 17.2 of Council Regulation 2847/93, any declaration submitted under Article 8.1, 12 or 17.2 of Council Regulation 2847/93 and any document drawn up under Article 9 or 13 of Council Regulation 2847/93 shall, in any proceedings for an offence under this Order—

- (a) in England, Wales or Northern Ireland, be evidence of the matters stated therein; and
- (b) in Scotland, be received in evidence without being produced or sworn to by any witness and shall be sufficient evidence of the matters stated therein.

Amendment of the Sea Fishing (Enforcement of Community Conservation Measures) Order 1997

13. In article 2(1) of the Sea Fishing (Enforcement of Community Conservation Measures) Order 1997^(a) for the definition of “the Council Regulation” there shall be substituted the following new definition:

^(a) S.I. 1997/1949 as amended by S.I. 1997/2841 and 1998/268, which makes provision for the enforcement of certain of the enforceable Community restrictions and obligations concerning technical measures for the conservation of fishery resources which are contained in Council Regulation (EC) No. 894/97 (OJ No. L132, 23.5.97, p. 1).

“the Council Regulation” means Council Regulation (EC) No. 894/97 laying down certain technical measures for the conservation of fishery resources(a) as read with Council Regulation (EC) No. 48/1999 fixing, for certain fish stocks and groups of fish stocks, the total allowable catches for 1999 and certain conditions under which they may be fished(b).”.

Revocation

14. The Sea Fishing (Enforcement of Community Quota Measures) Order 1998(c) is hereby revoked.

22nd February 1999

Elliot Morley
Parliamentary Secretary,
Ministry of Agriculture, Fisheries and Food

23rd February 1999

Calum MacDonald
Parliamentary Under Secretary of State, Scottish Office

Signed by authority of the Secretary of State for Wales

22nd February 1999

Jon Owen Jones
Parliamentary Under Secretary of State, Welsh Office

21st February 1999

Marjorie Mowlam
Secretary of State for Northern Ireland

(a) OJ No. L132, 23.5.97, p. 1.

(b) Article 13 of Council Regulation (EC) No. 48/1999 (OJ L13, 18.1.99, at pages 4 and 5) applies the following temporary provisions relating to technical measures during the year 1999: derogations from Article 10(17) of Council Regulation (EC) No. 894/97 permitting the undertaking of encirclements with purse seines on schools or groups of dolphins when aiming to catch tuna, under the conditions agreed within the Agreement for the International Dolphin Conservation Program signed in Washington on 15th May 1998 to certain vessels; derogations from Annex V to Council Regulation (EC) No. 894/97 providing that a minimum mesh of 90mm is applicable to sole (*Solea solea*) in ICES Divisions IVc and VIId; derogations from Annex V to Council Regulation (EC) No. 894/97 providing that the minimum mesh size of 120 mm applies to greater spotted dogfish (*Scyliorhinus stellaris*) and the minimum mesh size of 90mm applies to lesser spotted dogfish (*Scyliorhinus caniculus*) in all waters situated north of latitude 48°N, but excluding waters in ICES Divisions IIIb, IIIc and IIId; derogations from Article 7(6a) of Council Regulation (EC) No. 894/97 prohibiting fishing for herring from 21st September through to 15th November in specified waters of the Douglas Bank in the Irish Sea (ICES Division VIIa).

(c) S.I. 1998/268.

SCHEDULE

Articles 2(1) and 4(1)

SPECIFIED COMMUNITY PROVISIONS AND MAXIMUM FINES ON SUMMARY CONVICTION (APART FROM FINES RELATED TO VALUE OF FISH)

<i>Column 1 Provision of the Council Regulation</i>	<i>Column 2 Subject matter</i>	<i>Column 3 Maximum fine on summary conviction</i>
1. Article 6.1, in so far as that paragraph relates to retaining on board or landing	Prohibitions on retaining on board or landing catches from stocks for which total allowable catches or quotas are fixed and have been exhausted	£50,000
2. Article 6.1, in so far as that paragraph relates to catch composition or sorting	Prohibitions in certain circumstances on retaining on board or landing catches having a certain composition or which have been sorted	The statutory maximum
3. Article 6.2	Prohibition on landing catches which are unsorted and contain herring when the catch limitations set out in Annex II to the Council Regulation have been exhausted	£50,000
4. Article 8	Prohibition on landing catches containing unsorted herring in harbours where adequate sampling systems are not in place ^(a)	The statutory maximum
5. Article 12.3	Prohibition on offering for sale for human consumption of herring caught in the areas specified in Article 12.2 by vessels carrying towed nets of a minimum mesh size less than 32mm and landed	The statutory maximum

^(a) That is, any harbour other than a harbour to which article 2(3) refers.

EXPLANATORY NOTE

(This note is not part of the Order)

This Order makes provision for the enforcement of certain enforceable Community restrictions and other obligations relating to sea fishing set out in Council Regulation (EC) No. 48/1999 (OJ No. L13, 18.1.99, p. 1) (“the Council Regulation”). The Council Regulation fixes total allowable catches and member States’ quotas for 1999 and lays down certain conditions under which they may be fished.

Article 3 of the Order creates offences in respect of breaches of the provisions of the Council Regulation referred to in column 1 (and briefly described in column 2) of the Schedule to the Order. Penalties, which may include the forfeiture of fish, nets and other fishing gear, are specified for such offences (article 4). The statutory maximum penalty specified in the Schedule is currently £5,000.

The Order confers powers of enforcement on British sea-fishery officers in relation to fishing boats and on land and in relation to the seizure of fish and fishing gear (articles 6, 7 and 8). Provision is made for the punishment of anyone found guilty of assaulting or obstructing an officer (article 10).

Article 13 of the Order amends the Sea Fishing (Enforcement of Community Conservation Measures) Order 1997 (S.I. 1997/1949 as amended by 1997/2841 and 1998/268).

The Order revokes the Sea Fishing (Enforcement of Community Quota Measures) Order 1998 (S.I. 1998/268).

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