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SCOTTISH STATUTORY INSTRUMENTS

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**2009 No. 413**

**SEA FISHERIES**

**The Sea Fishing (Prohibition on the Removal of Shark Fins) (Scotland) Amendment Order 2009**

*Made* - - - - 24th November 2009  
*Laid before the Scottish Parliament* - - - - 25th November 2009  
*Coming into force* - - 1st January 2010

The Scottish Ministers make the following Order in exercise of the powers conferred by section 30(2) of the Fisheries Act 1981(1) and all other powers enabling them to do so.

**Citation and commencement**

1. This Order may be cited as the Sea Fishing (Prohibition on the Removal of Shark Fins) (Scotland) Amendment Order 2009 and comes into force on 1st January 2010.

**Amendment of the Sea Fishing (Prohibition on the Removal of Shark Fins) (Scotland) Order 2007**

2.—(1) The Sea Fishing (Prohibition on the Removal of Shark Fins) (Scotland) Order 2007(2) is amended in accordance with this article.

(2) In article 2 (interpretation)—

(a) before the definition of “premises” insert—

““Community fishing boat” means a fishing boat flying the flag of, and registered in, a Member State of the European Community other than the United Kingdom;”

(b) before the definition of “relevant document” insert—

““relevant British fishing boat” means a fishing boat which is not a Scottish fishing boat and which either is registered in the United Kingdom under Part II of the

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(1) 1981 c.29 (“the 1981 Act”); relevant modifications are contained in the Scotland Act 1998 (Functions Exercisable in or as Regards Scotland) Order 1999 (S.I. 1999/1748), article 5 and the Scotland Act 1998 (Modification of Functions) Order 1999 (S.I. 1999/1756), articles 3, 5 and 6. The functions of the Secretary of State, in or as regards Scotland, were transferred to the Scottish Ministers by virtue of section 53 of the Scotland Act 1998 (c.46). See section 30(3) of the 1981 Act for definitions of “enforceable Community restriction”, “enforceable Community obligation” and “the Ministers”. Section 30 of the 1981 Act has effect in relation to Scotland as modified by section 30(5) of that Act, inserted by the Scotland Act 1998 (Consequential Modifications) (No. 2) Order 1999 (S.I. 1999/1820), Schedule 2, paragraph 68(5)(b).

(2) S.S.I. 2007/39.

- Merchant Shipping Act 1995(3) or is owned wholly by persons qualified to own British ships for the purposes of that Part of that Act;” and
- (c) for the definition of “relevant fishing boat”, substitute—
- ““relevant fishing boat” means—
- (a) in relation to article 3(1)—
- (i) a Scottish fishing boat wherever it may be; and
- (ii) any other fishing boat which is within the Scottish zone, except any relevant British fishing boat or Community fishing boat that holds, and operates in compliance with, a special fishing permit issued in accordance with Article 4 of the Regulation; and
- (b) in relation to article 3(3), any relevant British fishing boat or Community fishing boat which is within the Scottish zone and holds a special fishing permit issued in accordance with Article 4 of the Regulation;”.
- (3) In article 3 (offences)—
- (a) for paragraph (3) substitute—
- “A person in charge of a relevant fishing boat in relation to which there is a contravention of, or failure to comply with, a provision of the Regulation referred to in column 1 of Part 3 of the Schedule commits an offence.”; and
- (b) for paragraph (4) substitute—
- “Any person who, in purported compliance with Article 5 of the Regulation, knowingly or recklessly makes a false or misleading entry in a logbook, or furnishes information which is false in a material particular, commits an offence where the entry is made, or the information is furnished, in Scotland or in the Scottish zone.”.
- (4) In Schedule 1 (specified community provisions, contravention of which constitutes an offence)—
- (a) in Part 1 omit the entries in columns 1 and 2 for items 2, 3, 4 and 5; and
- (b) after Part 2 insert—

### “Part 3

<i>Column 1</i>	<i>Column 2</i>
<i>Provision of Regulation</i>	<i>Subject Matter</i>
1. Article 4.3	Prohibition on the discarding at sea of the remaining parts of sharks (except those parts resulting from basic operations) where the shark finning has taken place in accordance with a special fishing permit as specified in Article 4.1.
2. Article 4.4, as read with Article 4.5	Prohibition on the retention on board of fins, the weight of which exceeds 5% of the live weight of the shark catch.
3. Article 5.1	Requirement on masters holding special fishing permits to keep records of the weight of shark fins and the remaining parts of sharks retained on

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**Status:** This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

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<i>Column 1</i>	<i>Column 2</i>
<i>Provision of Regulation</i>	<i>Subject Matter</i>
	board, transhipped or landed; requirement to keep logbook records with valid landing, transhipment and sales documentation where the shark catch is not landed as a whole.”

St Andrew’s House,  
Edinburgh  
24th November 2009

*RICHARD LOCHHEAD*  
A member of the Scottish Executive

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## EXPLANATORY NOTE

*(This note is not part of the Order)*

This Order amends the Sea Fishing (Prohibition on the Removal of Shark Fins) (Scotland) Order 2007 (“the principal Order”). The principal Order makes provision for the enforcement of restrictions and obligations contained in Council Regulation (EC) No. 1185/2003 on the removal of fins of sharks on board vessels (O.J. No. L 167, 4.7.03, p.1) (“the Regulation”).

The Order amends article 2 (interpretation) of the principal Order by adding definitions of “Community fishing boat” and “relevant British fishing boat”. It also amends the definition of “relevant fishing boat”, which varies the application of the offence provisions under article 3 of the principal Order (article 2(2)).

The Order amends article 3 (offences) of the principal Order by—

- (a) removing the defence of acting in compliance with a special fishing permit, issued in accordance with Article 4 of the Regulation (article 2(3)(a));
- (b) amending the offence provisions so that they apply to redefined categories of fishing boats. It modifies article 3(1) of the principal Order by excluding from its application, any non-Scottish fishing boat within the Scottish zone which holds, and operates in compliance with, a special fishing permit issued in accordance with Article 4 of the Regulation. It substitutes article 3(3) of the principal Order to make it an offence for any non-Scottish fishing boat, which is within the Scottish zone and holds a special fishing permit, to contravene the specified provisions of the Regulation that relate to special fishing permits (article 2(2)(c) and (3)(a)); and
- (c) substituting article 3(4) of the principal Order to restrict the offence of providing false information, in purported compliance with Article 5 of the Regulation, to information which is provided in Scotland or in the Scottish zone and to remove reference to information provided in relation to a Scottish fishing boat (article 2(3)(b)).

The Order amends Schedule 1 to the principal Order by—

- (a) removing from Part 1, the offences relating to breaches of conditions associated with special fishing permits (article 2(4)(a)); and
- (b) inserting a Part 3 to make it an offence for any non-Scottish fishing boat, which is within the Scottish zone and holds a special fishing permit, to contravene any of the specified provisions of the Regulation that relate to special fishing permits (article 2(2)(c) and (4)(b)).

No Regulatory Impact Assessment has been prepared for this instrument as it has no impact on the cost of business.