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SCOTTISH STATUTORY INSTRUMENTS

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**2006 No. 284**

**SEA FISHERIES**

**The Sea Fishing (Marking and Identification of Passive Fishing Gear and Beam Trawls) (Scotland) Order 2006**

<i>Made</i>	- - - -	<i>24th May 2006</i>
<i>Laid before the Scottish Parliament</i>	- - - -	<i>30th May 2006</i>
<i>Coming into force</i>	- -	<i>21st June 2006</i>

The Scottish Ministers in exercise of the powers conferred by section 30(2) of the Fisheries Act 1981(1), and of all other powers enabling them in that behalf hereby make the following Order:

**Citation, commencement and extent**

1.—(1) This Order may be cited as the Sea Fishing (Marking and Identification of Passive Fishing Gear and Beam Trawls) (Scotland) Order 2006 and shall come into force on 21st June 2006.

(2) Subject to paragraph (3) this Order shall extend to Scotland and the Scottish zone and in so far as it extends beyond Scotland and the Scottish zone it does so only as a matter of Scots law.

(3) Nothing in paragraph (2) shall be treated as prejudicing the effect of section 30(2A) of the Fisheries Act 1981(2) in relation to, or for purposes incidental to, any provision in this Order which creates an offence.

**Interpretation**

2. In this Order:

“beam trawls” has the meaning given by Article 3 of Regulation 356/2005;

“equivalent provision” means any provision in any other order made under section 30(2) of the Fisheries Act 1981 for the purposes of implementing Regulation 356/2005, extending to

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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 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”, “master” and “the Ministers”. Section 30 has effect in relation to Scotland as modified by section 30(5), inserted by the Scotland Act (Consequential Modifications) (No. 2) Order 1999 (S.I. 1999/1820), Schedule 2, paragraph 68(5)(b).
- (2) Section 30(2A) was inserted by S.I. 1999/1820, Schedule 2, paragraph 68(5)(a). It allows proceedings for an offence under an order made under section 30(2) of the Fisheries Act 1981 to be taken and the offence to be treated as if it was committed in any place in the UK.

any part of the United Kingdom which has equivalent effect to a provision in this Order, proceedings in respect of which, by virtue of section 30(2A) of the Fisheries Act 1981, may be commenced in any place in the United Kingdom;

“fishery product” includes fish;

“other fishing boat” means–

- (a) a fishing vessel, other than a Scottish fishing boat, which is either registered in the United Kingdom under Part II of the Merchant Shipping Act 1995<sup>(3)</sup> or is wholly owned by persons qualified to own British ships for the purposes of that Part of that Act;
- (b) a fishing vessel flying the flag of and registered in a Member State of the European Community other than the United Kingdom; and
- (c) a fishing vessel flying the flag of and registered in a state other than a Member State of the European Community;

“passive gear” has the meaning given by Article 3 of Regulation 356/2005;

“Regulation 2847/93” means Council Regulation (EEC) No. 2847/93 establishing a control system applicable to the common fisheries policy<sup>(4)</sup> as amended by Council Regulation (EC) No. 2870/95<sup>(5)</sup>, Council Decision (EC) No. 95/528<sup>(6)</sup>, Council Regulation (EC) No. 2489/96<sup>(7)</sup>, Council Regulation (EC) No. 686/97<sup>(8)</sup>, Council Regulation (EC) No. 2205/97<sup>(9)</sup>, Council Regulation (EC) No. 2635/97<sup>(10)</sup> and Council Regulation (EC) No. 2846/98<sup>(11)</sup>;

“Regulation 356/2005” means Commission Regulation (EC) No. 356/2005 laying down detailed rules for the marking and identification of passive fishing gear and beam trawls<sup>(12)</sup> as amended by Commission Regulation (EC) 1805/2005<sup>(13)</sup>;

“Scottish fishing boat” means a fishing vessel which is registered in the register maintained under section 8 of the Merchant Shipping Act 1995 and whose entry in the register specifies a port in Scotland as the port to which the vessel is to be treated as belonging;

“Scottish zone” has the same meaning as in section 126(1) of the Scotland Act 1998<sup>(14)</sup>;

### **Application of articles 4, 5, 6, 7, 8, 9, 10, 11, 12 and 13**

3. Articles 4, 5, 6, 7, 8, 9, 10, 11, 12 and 13 of this Order apply to–

- (a) a Scottish fishing boat in accordance with Article 2 of Regulation 356/2005; and
- (b) any other fishing boat which is within the Scottish zone in accordance with Article 2.2 of Regulation 356/2005.

### **Beams of beam trawls carried on board**

4. Beams of beam trawls carried on board a fishing boat to which this article applies shall display in accordance with Article 5 of Regulation 356/2005 the information specified in that Article.

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(3) 1995 c. 21.

(4) O.J. No. L 261, 20.10.93, p.1.

(5) O.J. No. L 301, 14.12.95, p.1.

(6) O.J. No. L 301, 14.12.95, p.35.

(7) O.J. No. L 338, 28.12.96, p.12.

(8) O.J. No. L 102, 19.4.97, p.1.

(9) O.J. No. L 304, 7.11.97, p.1.

(10) O.J. No. L 356, 31.12.97, p.14.

(11) O.J. No. L 358, 31.12.98, p.5.

(12) O.J. No. L 056, 02.03.05, p.8.

(13) O.J. No. L290, 04.11.05, p12.

(14) 1998 c. 46. The sea within British Fishery Limits (that is, the limits set by or under section 1 of the Fishery Limits Act 1976 (c. 86)) which is adjacent to Scotland is determined by the Scottish Adjacent Waters Boundaries Order 1999 (S.I. 1999/1126).

**Assembled beams of beam trawls carried on board or used for fishing**

**5. Assembled beams of beam trawls—**

- (a) carried on board; or
- (b) used for fishing by,

a fishing boat to which this article applies shall display in accordance with Article 5 of Regulation 356/2005 the information specified in that Article.

**Passive gear carried on board or used for fishing**

**6. Passive gear—**

- (a) carried on board; or
- (b) used for fishing by,

a fishing boat to which this article applies shall have attached in accordance with Article 7 of Regulation 356/2005 labels displaying the information specified in that Article.

**Buoys carried on board or used for fishing**

**7. Buoys—**

- (a) carried on board; or
- (b) used for fishing by,

a fishing boat to which this article applies shall display in accordance with Article 10 of Regulation 356/2005 the information specified in that Article.

**Buoys fixed to passive gear used for fishing**

**8.** Passive gear used for fishing by a fishing boat to which this article applies shall have buoys rigged in accordance with the Annex to Regulation 356/2005 fixed to it and deployed in accordance with Article 9, Article 12.1 and Article 14.1 or 14.2 of Regulation 356/2005.

**End marker buoys fixed to passive gear used for fishing**

**9.—(1)** End marker buoys fixed and deployed in accordance with Article 9 and Article 12.1 of Regulation 356/2005 shall—

- (a) display in accordance with Article 10 of Regulation 356/2005, on a label, the information specified in that Article;
- (b) comply with the requirements of Articles 12.2 and 12.3 of Regulation 356/2005.

(2) End marker buoys fixed to passive gear in accordance with Article 13(a) shall in addition to the requirements of paragraph (1) be rigged with—

- (a) flags in accordance with Articles 12.4(a) and 13(a) of Regulation 356/2005;
- (b) lights in accordance with Article 12.4(b) and 13(a) of Regulation 356/2005;
- (c) a top sign with striped luminous bands in accordance with Articles 12.4(c) and 13(a) of Regulation 356/2005; and
- (d) radar reflectors in accordance with Article 12.4(d) of Regulation 356/2005.

(3) End marker buoys fixed to passive gear in accordance with Article 13(b) shall in addition to the requirements of paragraph (1) be rigged with—

- (a) a flag in accordance with Articles 12.4(a) and 13(b) of Regulation 356/2005;

- (b) a light in accordance with Articles 12.4(b) and 13(b) of Regulation 356/2005;
- (c) a top sign with a striped luminous band in accordance with Articles 12.4(c) and 13(b) of Regulation 356/2005; and
- (d) radar reflectors in accordance with Article 12.4(d) of Regulation 356/2005.

#### **Intermediary marker buoys fixed to passive gear used for fishing**

**10.** Intermediary marker buoys fixed and deployed in accordance with Article 14.1 of Regulation 356/2005 shall display in accordance with Article 10 of Regulation 356/2005, on a label, the information specified in that Article and shall be rigged with—

- (a) a flag in accordance with Articles 12.4(a) and 14.1(b) of Regulation 356/2005;
- (b) a light in accordance with Articles 12.4(b) and 14.1(b) of Regulation 356/2005; and
- (c) a top sign with a striped luminous band in accordance with Articles 12.4(c) and 14.1(b) of Regulation 356/2005.

#### **Intermediary marker buoys fixed to passive gear used for fishing in the Baltic Sea**

**11.** Intermediary marker buoys fixed and deployed in accordance with Article 14.2 of Regulation 356/2005 (derogation for intermediary marker buoys in the Baltic Sea) shall display in accordance with Article 10 of Regulation 356/2005, on a label, the information specified in that Article and shall be rigged with—

- (a) a flag in accordance with Articles 12.4(a) and 14.2(a) of Regulation 356/2005;
- (b) a light in accordance with Articles 12.4(b) and 14.2 of Regulation 356/2005;
- (c) a top sign with a striped luminous band in accordance with Articles 12.4(c) and 14.2 of Regulation 356/2005; and
- (d) radar reflectors in accordance with Article 14.2(b) of Regulation 356/2005.

#### **Labels**

**12.** A label required under articles 6, 9(1)(a), 10 and 11 of this Order shall comply with the requirements of Article 8 of Regulation 356/2005.

#### **Cords linking buoys to the passive gear**

**13.** Cords linking buoys to passive gear shall comply with the requirements of Article 11 of Regulation 356/2005.

#### **Offences**

**14.** Where there is a contravention of, or failure to comply with any provision of, articles 4, 5, 6, 7, 8, 9, 10, 11, 12 or 13 of this Order the master, the owner and the charterer (if any), of the fishing boat in relation to which the contravention or failure to comply has occurred, is guilty of an offence.

#### **Penalties**

- 15.—**(1) A person guilty of an offence under article 14 of this Order is liable—
- (a) on summary conviction to a fine not exceeding the statutory maximum; or
  - (b) on conviction on indictment to a fine.
- (2) A person found guilty of an offence under this Order or under any equivalent provision shall also be liable—

- (a) to the forfeiture of any net or other fishing gear in respect of which the offence was committed, or which was used in committing the offence, or which was used for catching any fish in respect of which the offence was committed; and
- (b) to the forfeiture of any fish in respect of which the offence was committed, or, on summary conviction only, to a fine not exceeding the value of any fish in respect of which the offence was committed.

### **Recovery of fines**

**16.**—(1) Without prejudice to section 221 of the Criminal Procedure (Scotland) Act 1995<sup>(15)</sup> where a court has imposed a fine on the master, owner or charterer or any other person who is convicted by it of an offence under this Order or under any equivalent provision, the court may for the purposes of recovering the fine—

- (a) order any boat involved in the commission of the offence and its gear and catch to be detained for a period not exceeding 3 months from the date of conviction or until the fine is paid, the order is renewed for a further such period or a warrant is issued under subparagraph (b), whichever occurs first; or
- (b) issue a warrant for arrestment and sale of any such boat and its gear and catch.

(2) The court shall not issue a warrant under paragraph (1)(b) without first affording the owner of the boat, its gear or catch liable to be included in the warrant an opportunity to be heard.

(3) A warrant issued under paragraph (1)(b) whatever the amount of the fine imposed, may be executed in the same manner as if the proceedings were on an extract decree of the sheriff in a summary cause.

(4) Where, in relation to a fine in respect of an offence under any equivalent provision, a transfer of fine order under section 222 of the Criminal Procedure (Scotland) Act 1995, section 90 of the Magistrates' Courts Act 1980<sup>(16)</sup> or Article 95 of the Magistrates' Courts (Northern Ireland) Order 1981<sup>(17)</sup> specifies a court of summary jurisdiction in Scotland, this article shall apply as if the fine were a fine imposed by that court.

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

**17.**—(1) For the purposes of enforcing this Order or any equivalent provision a British sea-fishery officer may exercise in relation to—

- (a) a Scottish fishing boat wherever it may be; and
- (b) any other fishing boat which is within the Scottish zone,

the powers conferred by paragraphs (2) to (4).

(2) The officer may go on board the boat, with or without persons assigned to assist the officer in the officer's 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) The officer may require the attendance of the master and other persons on board the boat and may make any examination and inquiry which appears to the officer to be necessary for the purposes of enforcement mentioned in paragraph (1) and, in particular—

- (a) may search for fishery products or fishing gear on the boat and may examine any fishery products on the boat and the equipment of the boat, including the fishing gear, and require persons on the boat to do anything which appears to the officer to be necessary for facilitating the examination;

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<sup>(15)</sup> 1995 c. 46.

<sup>(16)</sup> 1980 c. 43.

<sup>(17)</sup> S.I. 1981/1675.

- (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 the custody or possession of that person;
- (c) for the purposes of ascertaining whether an offence under this Order or under any equivalent provision has been committed may search the boat for any such document and may require any person on board the boat to do anything which appears to the officer to be necessary for facilitating the search;
- (d) inspect, take copies of and retain while the officer completes any search, examination or inspection provided for under this article, any such document produced to the officer or found on board;
- (e) may require the master of the boat to render all such documents on a computer system into visible and legible form and to produce them in a form in which they may be taken away; and
- (f) where the boat is one in relation to which there is reason to suspect that an offence under this Order or under any equivalent provision has been committed, may seize and detain any such document produced to the officer 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 (f) 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 this Order or under any equivalent provision has at any time been committed, the officer may—

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

and where such an officer detains or requires the detention of a boat the officer 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 to seize fishery products and fishing gear**

**18.**—(1) Any British sea-fishery officer may seize—

- (a) in Scotland or in the Scottish zone; or
- (b) on a Scottish fishing boat wherever it may be,

any fishery product (including any receptacle which contains such product) and any net or other fishing gear to which this article applies.

(2) This article applies to—

- (a) any fishery product (including any receptacle which contains such product) in respect of which the officer has reasonable grounds to suspect that an offence under this Order or under any equivalent provision has been committed; and
- (b) any net or other fishing gear which the officer has reasonable grounds to suspect has been used in the commission of an offence under this Order or under any equivalent provision.

### **Protection of officers**

**19.** A British sea-fishery officer or a person assisting such an officer by virtue of article 17(2) 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 the officer or person assisting by virtue of articles 17 and 18 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**

**20.**—(1) 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 17 or 18;
- (b) without reasonable excuse prevents, or attempts to prevent, any other person from complying with any such requirement; or
- (c) obstructs any such officer in the exercise of any of those powers,

shall be guilty of an offence.

(2) A person guilty of an offence under paragraph (1) shall be liable—

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

### **Provisions as to offences and proceedings**

**21.**—(1) Where any offence under this Order, or under any equivalent provision, 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, that person, 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 this Order, or under any equivalent provision, 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, that partner, 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 this Order, or under any equivalent provision 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, that officer, as well as the association, shall be guilty of the offence and liable to be proceeded against and punished accordingly.

### **Admissibility in evidence of logbooks and other documents**

**22.**—(1) Any—

- (a) logbook kept under Articles 6, 17.2 or 28c;
- (b) declaration submitted under Articles 8.1, 11, 12, 17.2 or 28f;
- (c) effort report completed under Articles 19b and 19c;
- (d) document drawn up under Articles 9 or 13; or
- (e) document containing required information received by a fisheries monitoring centre established under Article 3.7,

of Regulation 2847/93 shall, in any proceedings for an offence under this Order or under any equivalent provision, be received in evidence without being produced or sworn to by any witness and shall be sufficient evidence of the matters stated therein.

(2) For the purposes of paragraph (1), “required information” shall mean data relating to—

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- (a) a fishing boat's identification;
- (b) the most recent geographical position of the fishing boat expressed in degrees and minutes of longitude and latitude; and
- (c) the date and time of the fixing of that position,

as communicated via a satellite-based vessel monitoring system established under Article 3.1 of Regulation 2847/93.

St Andrew's House,  
Edinburgh  
24th May 2006

*ROSS FINNIE*  
A member of the Scottish Executive



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## EXPLANATORY NOTE

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

This Order provides for the enforcement of Commission Regulation (EC) No. 356/2005 as amended by Commission Regulation (EC) No. 1805/2005 (“the Commission Regulation”) laying down detailed provisions regarding the marking and identification of passive fishing gear and beam trawls. The Order extends to Scotland and the Scottish zone, and insofar as it extends beyond Scotland and the Scottish zone (as defined in Article 2 of the Order) it does so only as a matter of Scots law (article 1 of the Order).

The Order specifies in article 3 the boats which must comply with the requirements set down in the Order. Articles 4,5,6,7,8,9,10,11, 12 and 13 of the Order apply in accordance with Article 2 of the Commission Regulation to Scottish fishing boats and to any other fishing boat which is within the Scottish zone. Article 2 of the Commission Regulation provides that the Regulation applies to vessels fishing in Community waters but does not apply within 12 nautical miles measured from the baselines of coastal Member States.

Article 2 of the Order defines the terms Scottish fishing boat and any other fishing boat.

Articles 4 and 5 of the Order make provision in relation to beam trawls (defined in Article 3 of the Commission Regulation).

Article 4 of the Order makes provision in relation to beams of beam trawls carried on board a fishing boat to which the article applies.

Article 5 of the Order provides in relation to assembled beams of beam trawls carried on board or used for fishing by a fishing boat to which the article applies. The information required to be displayed on the beam or shoes of each beam is the external registration letters and numbers displayed on the hull of the boat to which the beam or assembled beam belongs.

Article 6 of the Order provides in relation to passive gear (which is defined in Article 3 of the Commission Regulation) carried on board or used for fishing by a fishing boat to which the article applies.

Article 7 of the Order provides in relation to end marker buoys and intermediary marker buoys, carried on board or used for fishing by a fishing boat to which the article applies.

Article 8 of the Order provides in relation to the fixing, rigging and deployment of buoys on passive gear which is used for fishing by a fishing boat to which the article applies.

Article 9 of the Order makes further provision as to the requirements for end marker buoys required to be deployed by Article 12.1 of the Commission Regulation as provided under article 8 of the Order.

Article 10 of the Order makes further provision as to the requirements for intermediary marker buoys required to be deployed by Article 14.1 of the Commission Regulation as provided under article 8 of the Order.

Article 11 of the Order makes provision for the derogation provided for in Article 14.2 of the Commission Regulation. This derogation was inserted by Commission Regulation 1805/2005. The derogation is in respect of intermediary marker buoys being used in the Baltic Sea.

Article 12 of the Order provides that the label required under articles 6, 9(1)(a), 10 and 11 must be in accordance with Article 8 of the Commission Regulation.

Article 13 of the Order provides as to the requirements for the cords linking the buoys to the passive gear by reference to Article 11 of the Commission Regulation.

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Article 14 of the Order creates offences in respect of breaches of the provisions of Articles 4, 5, 6, 7, 8, 9, 10, 11, 12 and 13. Penalties for contravention of the offences created by Article 14 are set out in Article 15. The statutory maximum is currently £5,000.

Article 16 of the Order makes further provision in relation to recovery of fines.

Articles 17 and 18 of the Order confer enforcement powers on British sea-fishery officers. Provision is also made in relation to the liability of officers for anything done in the purported exercise of powers conferred (article 19). The Order also creates offences and provides penalties in respect of obstruction of a British sea-fishery officer (article 20).

Articles 21 and 22 provide in relation to offences committed by bodies corporate, partnerships and unincorporated associations and the admissibility of documents compiled for the purposes of Council Regulation (EC) No. 2847/93.

A Regulatory Impact Assessment in relation to the application of the marking and identification of passive fishing gear and beam trawl measures to Scottish fishing boats has been prepared and placed in the Scottish Parliament Information Centre. Copies can be obtained from the Scottish Fisheries Protection Agency, Pentland House, 47 Robb's Loan, Edinburgh, EH14 1TW.