

Executive Note

The Sea Fishing (Prohibition on the Removal of Shark Fins)(Scotland) Order 2007 S.S.I. 2007/39

The Sea Fishing (Prohibition on the Removal of Shark Fins)(Scotland) Order 2007 was made in exercise of the powers conferred by section 30(2) of the Fisheries Act 1981. The instrument is subject to negative resolution procedure.

Policy Objective

The objective of The Sea Fishing (Prohibition of the Removal of Shark Fins)(Scotland) Order 2007 is to implement Council Regulation (EC) 1185/2003 for Scotland, the Scottish zone, and Scottish vessels wherever they may be.

Council Regulation (EC) 1185/2003 prohibits the practice of 'finning', the removal of shark fins at sea, within all Community waters and for all Community vessels around the world. The Council Regulation prohibits the removal of fins on board a vessel and the keeping on board, transshipping or landing of shark fins which have been removed from the fish body.

The Regulation recognises a practical need to remove shark fins on board and for separate on-board processing of fins and bodies, even when the carcass is retained, for example for freezer vessels that stay at sea for a long period.

It allows Member States to derogate from the general prohibitions by issuing a special permit which allows on-board removal, subject to the conditions that such processing is duly justified and that all parts of the sharks are used. The weight of fins kept from the catch must not exceed 5% of the live weight of the shark catch.

Council Regulations are directly applicable under Community law in each Member State. Section 30(2) of the Fisheries Act 1981 gives powers to penalise breaches of directly applicable Community restrictions on sea fishing.

The Scottish Executive has been in regular contact with DEFRA to seek a consistent approach to the implementation of Council Regulation (EC) 1185/2003 across the UK and UK waters. Initial understanding was that the Regulation could be enforced through the UK licensing system by the issue of special permits to allow the removal of fins. However, this only allows the Scottish Fisheries Protection Agency to take enforcement action in respect of vessels licensed in the UK, but not foreign vessels fishing in the Scottish zone or landing at Scottish ports. It is therefore necessary to make a Scottish Statutory Instrument to provide powers of enforcement to British Sea Fishery Officers and apply penalties for offences; it is also necessary to allow British Fishery Officers to take enforcement action against all fishing vessels operating in the Scottish zone. A failure to do so exposes the UK to potential infraction proceedings. An Order is therefore required.

Consultation

The Scottish Federation of Fishermen and the owners of vessels identified as being involved in shark finning activity were approached for their comments on the draft Scottish statutory instrument in December 2006. The draft was also circulated to the National Federation of Fishermen's Organisations for their information. No objections were received to the SI. One respondent expressed a preference for an increase in the % weight of shark fin allowable from 5%

to 6%. This would represent an approach more lenient than that required by the Council Regulation – this suggestion could therefore not be agreed.

Enforcement

Enforcement has been discussed with the Scottish Fisheries Protection Agency (SFPA). The SFPA has suggested that fishermen be supported in complying with the Regulation by guidelines on shark processing which would facilitate the most accurate possible assessment of the live weight of the processed shark catch held on board. Under the terms of the Regulation, each Member State which issues permits must establish conversion factors which give a theoretical correspondence between fins and bodies, taking into account the type of fishery, the species composition, and the type of processing and storage. The conversion of the weight of processed shark on board to the appropriate live weight would be facilitated by stipulating that sharks should be stored on board by species, in separate containers. The appropriate conversion factor to be applied will be agreed in consultation with FRS and SFPA colleagues.

In order to secure a level playing field across Europe, it is not permissible to legislate to a more restrictive degree than that required by Council Regulation (EC) 1185/2003. It would therefore not be acceptable for any Scottish statutory instrument to include statutory guidance on storage. The most appropriate approach to this issue is to include these requirements in the terms of the special permit for Scottish vessels.

As yet it remains unclear how DEFRA will deal with the live weight conversion issue. As each Member state will be adopting its own approach to the conversion factor, a difference between the Scottish and English approaches is not considered significant. In enforcing the Regulation in respect of non-Scottish vessels in Scottish waters, Fishery Officers will apply the conversion factor stipulated by the Member State which has issued the relevant special permit.

Financial implications

The SSI fulfils an EU obligation and is not expected to impact on current Scottish fisheries or enforcement practices. There are no financial costs to fishermen associated with securing a shark finning permit and the application process is minimal (by telephone or in person to the relevant fishery office).

The financial implications are therefore nil.

The **Regulatory Impact Assessment** is attached.

Contact point for enquiries:

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Regulatory Impact Assessment: The Sea Fishing (Prohibition on the Removal of Shark Fins)(Scotland) Order 2007 S.S.I. 2007/39

1. Title of proposal

The Sea Fishing (Prohibition of the Removal of Shark Fins)(Scotland) Order.2007 (S.S.I. 2007/39)

2. Purpose and intended effect

Objective

To implement Council Regulation (EC) 1185/2003 for Scotland, the Scottish zone, and Scottish vessels wherever they may be.

Background

Council Regulation (EC) 1185/2003 prohibits the practice of 'finning', the removal of shark fins at sea, within all Community waters and for all Community vessels around the world. The Council Regulation prohibits the removal of fins on board a vessel and the keeping on board, transshipping or landing of shark fins which have been removed from the fish body.

The Regulation recognises a practical need to remove shark fins on board and for separate on-board processing of fins and bodies, even when the carcass is retained, for example for freezer vessels that stay at sea for a long period.

It allows Member States to derogate from the general prohibitions by issuing a special permit which allows on-board removal, subject to the conditions that such processing is duly justified and that all parts of the sharks are used. The weight of fins kept from the catch must not exceed 5% of the live weight of the shark catch.

In implementation of our EU obligations, and to ensure consistency of treatment of all vessels seeking to land shark fins in Scottish ports, it is considered necessary to make an SSI to bring the Council Regulation into effect.

Rationale for government intervention

Council Regulations are directly applicable under Community law in each Member State. However, it is necessary to make a Scottish Statutory Instrument to provide powers of enforcement to British Sea Fishery Officers and apply penalties for offences. A failure to do so exposes the UK to potential infraction proceedings.

Section 30(1) of the Fisheries Act 1981 gives powers to penalise breaches of directly applicable Community restrictions on sea fishing within British fishery limits where domestic transposition of EC law has not taken effect. Our legal advice is that it does not give effect to restrictions on finning; neither does it implement the ancillary obligations on fishermen required under the Regulation,

nor give necessary effect to the Regulation on land. An Order is therefore required.

Offences created

Council Regulation (EC) 1185/2003 gives rise to a number of offences:

1. The removal of, or retention of, shark fins on board vessels, and the transshipment or landing of shark fins.
2. The discarding at sea of the remaining parts of sharks (except those parts resulting from basic processing operations) where the shark finning has taken place in accordance with a special permit.
3. The retention on board of fins, the weight of which exceeds 5% of the live weight of the shark catch.
4. Where a vessel master holds a special permit, a failure to keep records of the weight of shark fins and the remaining parts of sharks retained on board, transhipped or landed; the failure to keep log book records with valid landing , transshipment and sales documentation where the shark catch is not landed as a whole.
5. Where the vessel intends to land shark fins or remaining parts of sharks outside of Community ports, the failure to notify relevant details to the authorities of the flag State and the authorities of the State whose ports or landing facilities they wish to use at least 72 hours before the estimated time of arrival at the landing port.

3. Consultation

- **Within government**

SEERAD officials have been in regular contact with DEFRA to seek a consistent approach to the implementation of Council Regulation (EC) 1185/2003.

The lead branch within SEERAD has consulted relevant colleagues as appropriate. This has involved input from colleagues in Sea Fisheries Management Division, the Scottish Fisheries Protection Agency, Criminal Justice Division and OSSE.

The implementation of Council Regulation (EC) 1185/2003 is not considered to raise any equalities issues.

- **Public consultation**

There is no obligation to conduct a public consultation on a measure of this nature.

SEERAD is consulting relevant stakeholders on a draft Scottish statutory instrument. The Scottish Federation of Fishermen and the agents of the owners of vessels identified as being involved in shark finning activity

have been approached for their comments. The draft has also been circulated to the National Federation of Fishermen's Organisations for their information.

We do not expect significant objection from the industry.

- **DEFRA**

DEFRA solicitors advice to the DEFRA team was that no public consultation would be required on the instrument. The team have opted to seek comment on the instrument from the National Federation of Fishermen's Organisation and the owners of the vessels which will be affected by the provision.

4. Options

Implementation of Council Regulation (EC) 1185/2003 is an obligation under EU legislation. The Scottish Executive has no option but to enforce these provisions in the Scottish zone and apply penalties for offences.

5. Costs and benefits

- **Sectors and groups affected**

The current approach of enforcing the Regulation is through the UK licensing system by the issue of special permits to allow the removal of fins. However, this only allows the SFPA to take enforcement action in respect of vessels licensed in the UK, not foreign vessels fishing in the Scottish zone or landing at Scottish ports. It is therefore necessary to implement the Regulation by means of an SSI which will provide enforcement powers and penalties to allow the SFPA to take enforcement action against all fishing vessels operating in the Scottish zone.

It is not anticipated that this measure will have a significant impact on Scottish fishing vessels. To date only 8 Scottish registered vessels, administered from Ayr, have been issued with a special permit to allow the removal of fins. These vessels normally fish outside the Scottish zone, and land their catches in Spain or very occasionally in England or Wales.

- **Benefits**

Save our Sharks and recreational sea anglers are creating some pressure regarding policies on elasmobranchs (sharks and dogfish). The establishment of the SSI will be welcomed by these bodies and by environmental NGOs generally.

Introducing an SSI will fully implement our EU obligations, ensuring consistency of treatment of all vessels seeking to land shark fins into Scottish ports.

- **Costs**

The SSI would fulfil an EU obligation and is not expected to impact on current Scottish fisheries or enforcement practices. Thus the financial

implications are nil.

6. Small Firms Impact Test

Council Regulation (EC) 1185/2003 is already directly effective in Scots law. A Sea Fishing (Prohibition of the Removal of Shark Fins)(Scotland) Order would reinforce the application of the measure, in particular as regards the entitlement to issue licences for shark finning activity, and the application of the criminal penalties.

The policy that shark finning is only permitted where the vessel owner holds the correct licence has an impact on business in that they must seek a special permit for the activity. There are however no financial costs associated with securing a shark finning permit and the application process is minimal (by telephone or in person to the relevant fishery office).

There are currently eight Scottish vessels licensed to be involved in shark finning activity. There are a number of English vessels participating in the activity; most are believed to be landing their catch into Spanish ports. Foreign vessels may also be fishing sharks for their fins in Scottish waters, but landing into foreign ports.

7. Competition assessment

A Sea Fishing (Prohibition of the Removal of Shark Fins)(Scotland) Order is considered necessary to the full implementation of Council Regulation (EC) 1185/2003 in Scotland, the Scottish zone, and all Scottish vessels.

The uniform application of Community law to all vessels operating in all Community waters is necessary to ensuring a level competitive playing field for those involved in shark finning. Any failure to fully implement Council Regulation (EC) 1185/2003 is likely to result in an anti-competitive effect. All member states of the European Union are required to implement the Regulation.

8. Enforcement, sanctions and monitoring

The enforcement powers and sanctions proposed to be implemented under the Sea Fishing (Prohibition of the Removal of Shark Fins)(Scotland) Order apply only to Scotland, the Scottish zone, and Scottish fishing boats wherever they may be.

Enforcement and monitoring

Fisheries Officers, under the auspices of the Scottish Fisheries Protection Agency, would be the front line of enforcement of the Sea Fishing (Prohibition of the Removal of Shark Fins)(Scotland) Order. It is proposed that the Sea Fishing (Prohibition of the Removal of Shark Fins)(Scotland) Order give powers to Fisheries Officers both at sea and on land in relation to the prevention of illegal shark finning.

At sea, Fisheries Officers would be entitled to:

- board fishing boats for the purpose of searching the boat for evidence of shark finning
- require the cooperation of any person on board the boat in the production of any relevant document, the conduct of a search for any relevant document

- seize or detain any relevant document if required as evidence
- where it appears that an offence has been committed, to require the boat to be taken to land and detained in port

On land, in relation to premises (used for fishing boat related purposes or the treatment, storage or sale of sharks, shark fins or other parts of sharks) and vehicles (which are reasonably believed to transport sharks, shark fins or other parts of sharks) Fisheries Officers would be entitled to:

- Enter and inspect the premises or vehicle, along with necessary staff and equipment
- Inspect any shark parts and carry out other necessary inspections
- Require the production of any relevant documentation and conduct any necessary search for documentation
- seize or detain any relevant document if required as evidence
- seek a search warrant

Sanctions

Breach of the provisions of the Sea Fishing (Prohibition of the Removal of Shark Fins)(Scotland) Order would incur criminal sanctions. Any person found guilty of an offence under the Order would be liable to:

- On summary conviction, a fine of up to the statutory maximum (currently £5000) and confiscation of the catch, or the value of the catch if it has been sold
- On conviction on indictment, a fine as imposed by the court
- Give up any shark fins or remaining parts of sharks if so instructed by the court

9. Implementation and delivery plan

- **Statutory Instrument (Order)**

A draft Order has been compiled by OSSE. Comment has been sought from licensing and enforcement colleagues, SFPA and other relevant colleagues. A draft of the Order has also been circulated to relevant stakeholders for comment.

The Order would be signed by the Minister and laid before Parliament in accordance with negative procedure as required by statute.

- **Special permits**

Relevant vessels are already subject to the requirements of the Order, and the necessary mechanisms for the issue of the permits are in place. Vessels licensed by SEERAD, administered by Ayr Fisheries Office, have already been issued with special permits for their shark finning activity. The implementation of the Regulation by statutory instrument should not impact on the current operation of vessels involved in shark finning.

- **Enforcement mechanisms**

- Enforcement powers

The Order would give the SFPA the necessary authority and powers to enforce the Regulation in Scotland, the Scottish zone and on Scottish vessels wherever they may be.

Fisheries officers would be informed of the powers available to them under the SSI.

- Conversion factor

To facilitate enforcement of the Regulation, SFPA colleagues would require details of a conversion factor to allow the onboard shark weight to be equated to the relevant live weight. The appropriate conversion factor would be agreed in consultation with FRS and SFPA colleagues.

- Sanctions

Criminal Justice Division colleagues have input to discussions on the appropriate sanctions for the offences detailed in the SSI.

In due course, the Crown Office would be informed of these new offences.

10. Post-implementation review

The operation of The Sea Fishing (Prohibition on the Removal of Shark Fins)(Scotland) Order will be reviewed within ten years of it coming into force.

11. Summary and recommendation

The Minister has previously agreed (29 Nov 2006) to the recommendation that Council Regulation 1185/2003 be implemented by statutory instrument in accordance with the approach outlined in the minute of 28 Nov 2006 (E135474).

12. Declaration and publication

I have read the regulatory impact assessment and I am satisfied that the benefits justify the costs

Signed ...ROSS FINNIE.....

Date 23 December 2006

**Mr Ross Finnie
Minister for Environment and Rural Development
Scottish Executive**

Contact point for enquiries and comments:

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