

EXECUTIVE NOTE

THE SEA FISHING (PROHIBITION ON THE REMOVAL OF SHARK FINS) (SCOTLAND) AMENDMENT ORDER 2009 SSI 2009/413

1. This Order was made in exercise of the powers conferred by section 30(2) of the Fisheries Act 1981. It is subject to negative resolution procedure.

Policy Objectives

2. The purpose of the Order is to strengthen the existing Community ban on shark finning (the practice of removing fins from sharks and discarding the remainder of the shark at sea).
3. At present, Council Regulation (EC) No. 1185/2003 (“the Regulation”) prohibits the removal of shark fins on board vessels at sea unless vessels hold, and comply with, a special fishing permit issued in accordance with Article 4 of the Regulation. Such a permit enables vessels to process sharks and fins separately on board vessels, subject to certain conditions.
4. The Sea Fishing (Prohibition on the Removal of Shark Fins) (Scotland) Order 2007 (“the principal Order”) enforces the provisions of the Regulation in or as regards Scotland. The principal Order currently prohibits shark finning by Scottish fishing boats (wherever they may be) and by any other fishing boats within the Scottish zone, subject to a defence of acting in compliance with a special fishing permit issued in accordance with Article 4 of the Regulation.
5. Special fishing permits are open to misuse. Enforcing the Community conditions associated with special fishing permits can be problematic. It is difficult to identify the species of a shark from its fin, and so permits potentially allow vulnerable or endangered shark species to be targeted.
6. The Scottish Government aims to promote shark conservation and further enhance the Community prohibition on shark finning in relation to Scottish fishing boats. The Scottish Ministers cannot prevent other British or Community fishing boats from shark finning within the Scottish zone, where this is undertaken in accordance with a special fishing permit issued under Article 4 of the Regulation. However, the Scottish Ministers no longer wish to take advantage of the derogation provided for under Article 4 of the Regulation, which allows them to issue special fishing permits to Scottish fishing boats.
7. Accordingly, this Order amends the principal Order by removing the defence of acting in compliance with a special fishing permit (issued under Article 4 of the Regulation) and altering the application of the offences provided for in the principal Order. The main effects of these amendments are that: (a) Scottish fishing boats will no longer be able to lawfully engage in shark finning by virtue of a special fishing permit issued in accordance with Article 4 of the Regulation; (b) the Scottish Ministers will no longer have a statutory discretion to issue

Scottish fishing boats with special fishing permits in accordance with Article 4 of the Regulation; (c) the principal Order will not apply to any non-Scottish fishing boat within the Scottish zone which holds, and complies with, a special fishing permit issued in accordance with Article 4 of the Regulation, and (d) the offences relating to non-compliance with special fishing permits will only apply to non-Scottish fishing boats which hold such permits and are within the Scottish zone.

8. The shark finning ban will therefore apply to: (a) all Scottish fishing boats, regardless of where they fish; and (b) any other fishing boat within the Scottish zone, except any non-Scottish fishing boat which holds, and complies with, a special fishing permit issued in accordance with Article 4 of the Regulation. Any non-Scottish fishing boat, which is within the Scottish zone and holds a special fishing permit, will be subject to criminal liability should it fail to comply with the Community obligations associated with such permits.

Consultation

9. There is no consultation requirement for this Order. However, the Scottish Government consulted representatives of the Scottish fishing industry during 2009. The industry confirmed that it was happy to support the decision to cease the provision of special fishing permits.

Financial Effects

10. The Order has no financial effects on the Scottish Government and the proposals would not give rise to additional costs. Enforcement of the proposed measures would be achieved within the existing provisions of Marine Scotland.

Scottish Government, Marine Scotland
November 2009