

2010 No. 9

SEA FISHERIES

CONSERVATION OF SEA FISH

**The Sea Fish (Prohibited Methods of Fishing) (Firth of Clyde)
Order 2010**

<i>Made</i> - - - -	<i>20th January 2010</i>
<i>Laid before the Scottish Parliament</i>	<i>21st January 2010</i>
<i>Coming into force</i> - -	<i>14th February 2010</i>

The Scottish Ministers make the following Order in exercise of the powers conferred by sections 5(1)(c) and 15(3) of the Sea Fish (Conservation) Act 1967(a) and all other powers enabling them to do so.

Citation, commencement, cessation, effect and extent

1.—(1) This Order may be cited as the Sea Fish (Prohibited Methods of Fishing) (Firth of Clyde) Order 2010 and comes into force on 14th February 2010.

(2) This Order remains in force until the end of 30th April 2011.

(3) The prohibition in article 3(1) has effect during the following periods:—

(a) from 14th February 2010 until the end of 30th April 2010; and

(b) from 14th February 2011 until the end of 30th April 2011.

(4) Subject to paragraph (5), this Order extends to Scotland and the Scottish zone only.

(5) Insofar as it extends beyond Scotland and the Scottish zone, it does so only as a matter of Scots law.

(a) 1967 c.84 (“the 1967 Act”); section 5(1) was substituted by the Fisheries Act 1981 (c.29), section 22(1); section 15(3) was substituted by the Sea Fisheries Act 1968 (c.77), section 22(5), Schedule 1, paragraph 38(3) and amended by the Fishery Limits Act 1976 (c.86), Schedule 2, paragraph 16(1) and the Scotland Act 1998 (Consequential Modifications) (No. 2) Order 1999 (S.I. 1999/1820), Schedule 2, paragraph 43(2)(b). 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). Section 22(2) of the 1967 Act, which contains a definition of “the Ministers” for the purposes of sections 5 and 15(3), was amended by the Fisheries Act 1981, sections 19(2)(d), (3) and 45. The definition was modified in relation to Scotland by section 22A(12)(b) of the 1967 Act, as inserted by S.I. 1999/1820, Schedule 2, paragraph 43(13).

Interpretation

2.—(1) In this Order—

“the Council Regulation” means Council Regulation (EC) No. 850/98 of 30 March 1998 for the conservation of fishery resources through technical measures for the protection of juveniles of marine organisms(a);

“creel” means a basket, small cage, pot, receptacle or container with one or more openings or entrances, which may be baited and is placed on the seabed for the purpose of catching shellfish and crustacea;

“ICES statistical rectangle” followed by numerals with a letter is a reference to whichever of the statistical sub-areas and divisions of the International Council for the Exploration of the Sea(b) is identified therein by those numerals and that letter;

“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 Merchant Shipping Act 1995(c) or is owned wholly by persons qualified to own British ships for the purposes of that Part of that Act;

“scallop dredge” means an appliance with a rigid framed mouth which is towed through the water and is manufactured, adapted, used or intended for use for the purpose of fishing for king scallops of the species *Pecten maximus*;

“Scotland” and “the Scottish zone” have the same meanings assigned to those terms by section 126(1) of the Scotland Act 1998(d);

“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; and

“trawl” means a demersal trawl, Danish seine or similar towed net.

(2) For the purposes of this Order, a trawl is deemed to have been used for the purpose of fishing for Norway lobsters (*Nephrops norvegicus*) if the catch retained on board that boat meets the minimum percentage of target species specified for Norway lobster in respect of towed gears of mesh size range 80 to 99 millimetres in Annex I to the Council Regulation.

Prohibited methods of fishing

3.—(1) Subject to paragraphs (2) and (3), fishing for sea fish by any method, by any Scottish fishing boat or any relevant British fishing boat, within the area comprising that part of the Scottish zone contained within—

(a) that part of ICES statistical rectangle 39E4 which lies to the east of the peninsula of Kintyre and to the north of a straight line between 55°18'18" North, 05°38'50" West, and 55°00'30" North, 05°09'24" West; and

(b) that part of ICES statistical rectangle 39E4 which lies to the north of a straight line between 55°17'57" North, 05°47'54" West and 55°00'00" North, 05°21'00" West and to

(a) O.J. No. L 125, 27.4.98, p.1. Council Regulation (EC) No. 850/98 was corrected, in relation to Annex XII, by Corrigendum (O.J. No. L 318, 27.11.98, p.63) and was amended by Council Regulation (EC) No. 308/1999 (O.J. No. L 38, 12.2.99, p.6); Council Regulation (EC) No. 1459/1999 (O.J. No. L 168, 3.7.99, p.1); Council Regulation (EC) No. 2723/1999 (O.J. No. L 328, 22.12.99, p.9); Council Regulation (EC) No. 812/2000 (O.J. No. L 100, 20.4.00, p.3); Council Regulation (EC) No. 1298/2000 (O.J. No. L 148, 22.6.00, p.1); Council Regulation (EC) No. 724/2001 (O.J. No. L 102, 12.4.01, p.16); Council Regulation (EC) No. 973/2001 (O.J. No. L 137, 19.5.01, p.1); Council Regulation (EC) No. 602/2004 (O.J. No. L 97, 1.4.04, p.30); Council Regulation (EC) No. 1568/2005 (O.J. No. L 252, 28.9.05, p.2); and Council Regulation (EC) No. 2166/2005 (O.J. No. L 345, 28.12.05, p.5).

(b) Cmnd. 2586.

(c) 1995 c.21.

(d) 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).

the south of a straight line between 55°18'18" North, 05°38'50" West and 55°00'30" North, 05°09'24" West,

is prohibited.

(2) The prohibition in paragraph (1)(a) does not apply to any fishing boat that fishes with only—

- (a) a scallop dredge;
- (b) a creel; or
- (c) a trawl used for fishing for Norway lobsters.

(3) The prohibition in paragraph (1)(b) does not apply to any fishing boat that fishes with only—

- (a) a scallop dredge; or
- (b) a creel.

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

4.—(1) For the purposes of the enforcement of this Order, a British sea-fishery officer may exercise in relation to—

- (a) any Scottish fishing boat wherever it may be; and
- (b) any relevant British fishing boat within the Scottish zone,

the powers conferred by this article.

(2) The officer may go on board the boat, with or without persons assigned to assist with the duties of the officer, and for that purpose may require the boat to stop and do anything else which will facilitate the boarding of 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 purpose mentioned in paragraph (1) and, in particular—

- (a) 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 the officer 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 its fishing operations or other operations ancillary thereto or to the persons on board which is in the custody or possession of that person and may take copies of any such document;
- (c) for the purposes of ascertaining whether the master, owner or charterer of the boat has committed an offence under section 5(1) of the Sea Fish (Conservation) Act 1967, as read with 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 the officer to be necessary for facilitating the search; and
- (d) where the boat is one in relation to which the officer has reason to suspect that such an offence 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 (d) 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 a contravention of this Order has taken place the officer may—

- (a) require the master of the boat in relation to which the contravention took place to take, or the officer may 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.

(5) Where the officer detains or requires the detention of a boat under this article 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.

Revocation

5. The Sea Fish (Prohibited Methods of Fishing) (Firth of Clyde) Order 2009(a) is revoked.

Pentland House,
Edinburgh
20th January 2010

RICHARD LOCHHEAD
A member of the Scottish Executive

(a) S.S.I. 2009/38.

EXPLANATORY NOTE

(This note is not part of the Order)

This Order prohibits, subject to certain exceptions, all methods of fishing within certain areas of the Firth of Clyde from 14th February until 30th April, during both 2010 and 2011 (articles 1(3) and 3(1)). The Order is made pursuant to Article 46 of Council Regulation (EC) No. 850/98 of 30 March 1998 for the conservation of fishery resources through technical measures for the protection of juveniles of marine organisms. A map showing the areas closed to fishing under this Order is appended to this note for illustrative purposes only. The Order remains in force until the end of 30th April 2011 (article 1(2)).

Area 1 on the illustrative map is defined in article 3(1)(a).

Area 2 on the illustrative map is defined in article 3(1)(b).

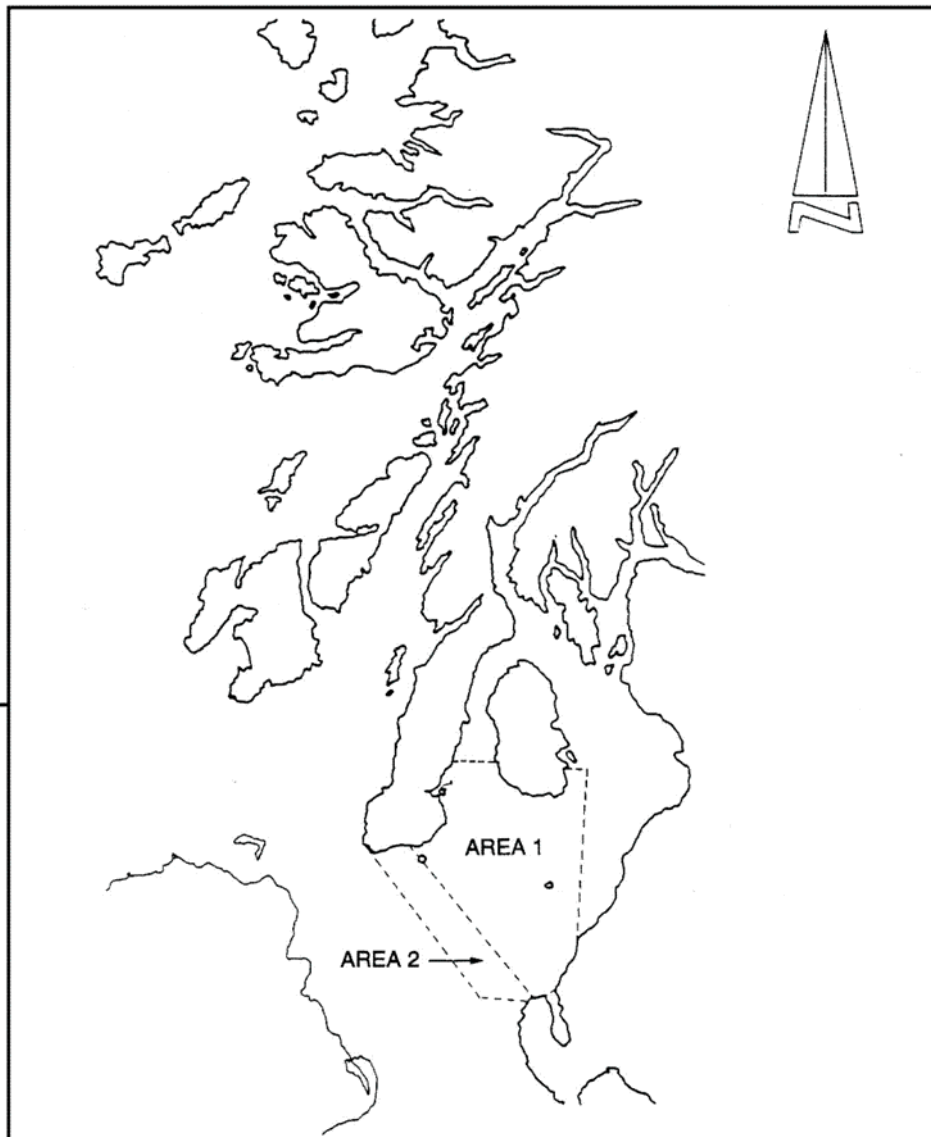
The Order applies only to Scottish fishing boats and relevant British fishing boats (articles 2(1) and 3(1)). The prohibition does not apply to fishing boats that fish within the closed areas exclusively with scallop dredges, creels and (in relation to area 1 on the illustrative map) trawls used for fishing for Norway lobsters (article 3(2) and (3)).

The Order gives British sea-fishery officers powers to enforce the Order, including power to detain a vessel in port (article 4).

It is an offence under section 5(1) of the Sea Fish (Conservation) Act 1967 to use a fishing boat in contravention of a prohibition imposed by this Order. The penalties are fixed by section 11 of that Act. On summary conviction, the penalty is a fine not exceeding £50,000. On conviction on indictment, the penalty is an unlimited fine. In either case, the court may also order forfeiture of any fish in respect of which the offence was committed and of any net or other fishing gear used in committing the offence. On summary conviction, if the court does not order the forfeiture of fish, it may impose an additional fine not exceeding the value of the fish.

The Order revokes the Sea Fish (Prohibited Methods of Fishing) (Firth of Clyde) Order 2009 (article 5).

A Regulatory Impact Assessment in relation to this Order has been prepared and placed in SPICE. Copies can be obtained from Marine Scotland, Pentland House, 47 Robb's Loan, Edinburgh, EH14 1TY.



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ILLUSTRATIVE MAP REFERRED TO IN THE
 EXPLANATORY NOTE TO THE SEA FISH
 (PROHIBITED METHODS OF FISHING)
 (FIRTH OF CLYDE)
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