

2013 No. 280

SEA FISHERIES

**The Loch Sligachan, Isle of Skye, Scallops Several Fishery
Order 2013**

Made - - - - 24th September 2013

Laid before the Scottish Parliament 26th September 2013

Coming into force - - 16th November 2013

The Scottish Ministers make the following Order in exercise of the powers conferred by section 1 of the Sea Fisheries (Shellfish) Act 1967(a) (as read with section 2 of, and Schedule 1 to, that Act) and all other powers enabling them to do so.

In accordance with paragraphs 1 and 6 of Schedule 1 to the Sea Fisheries (Shellfish) Act 1967(b), they have prepared a draft of this Order, served a copy of it on the applicant, and had regard to the powers and duties of the Crown Estate Commissioners under the Crown Estate Act 1961(c).

In accordance with paragraph 2 of that Schedule, the applicant caused a draft of this Order to be published and circulated and gave notice of the application.

With regard to paragraph 3 of that Schedule, no objections were received and no representations were made in writing to the Scottish Ministers in respect of the draft of this Order.

Citation, commencement and interpretation

1.—(1) This Order may be cited as the Loch Sligachan, Isle of Skye, Scallops Several Fishery Order 2013 and comes into force on 16th November 2013.

(2) In this Order—

“the applicant” means David Neil Oakes, having a place of business at Oakes Marine, Old Mission House, Sconser, Isle of Skye, IV48 8TD;

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- (a) 1967 c.83 (“the 1967 Act”). Section 1 was amended by the Sea Fisheries Act 1968 (c.77) (“the 1968 Act”), section 15(2); the Fishery Limits Act 1976 (c.86), section 9 and Schedule 2, paragraph 15; the Sea Fisheries (Shellfish) (Amendment) Act 1997 (c.3), section 1; the Scotland Act 1998 (Consequential Modifications) (No. 2) Order 1999 (S.I. 1999/1820), article 4 and Schedule 2, paragraph 42(2)(a) and (b); the Marine (Scotland) Act 2010 (asp 5) (“the 2010 Act”), sections 160(1) and (2) and 161(2); and the Aquaculture and Fisheries (Scotland) Act 2013 (asp 7) (“the 2013 Act”), section 55(1). Schedule 1 to the 1967 Act was amended by the 1968 Act, section 15(7) and by the 2010 Act, sections 160(3), 161(1)(g) and (h) and 161(5). The reference to the “appropriate Minister” in section 22(1) of the 1967 Act is to be read as a reference to the Scottish Ministers by virtue of S.I. 1999/1820, Schedule 2, paragraph 42(10).
- (b) Paragraph 6(1) of Schedule 1 to the 1967 Act was amended by the 2013 Act, section 58(1). Paragraph 6(2) of Schedule 1 to the 1967 Act was inserted by the 2010 Act, section 160(3), and requires the Scottish Ministers to have regard to the powers and duties of the Crown Estate Commissioners under the Crown Estate Act 1961 where a proposed Order under section 1 of the 1967 Act relates to any portion of the sea shore which belongs to Her Majesty in right of the Crown, as is the case here. “Sea shore” is described in section 1(1) of the 1967 Act, as read with section 1(1A).
- (c) 1961 c.55.

“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;

“the grantee” means the applicant or such other person as is for the time being entitled to the right of several fishery conferred by this Order;

“the definitive map” means the map prepared in duplicate, each copy of which is signed by Richard Lochhead, Cabinet Secretary for Rural Affairs and the Environment, and marked “Map referred to in the Loch Sligachan, Isle of Skye, Scallops Several Fishery Order 2013”, one copy of which is deposited in the principal office of Marine Scotland, Victoria Quay, Leith, Edinburgh, EH6 6QQ and the other of which is deposited in the applicant’s place of business at Oakes Marine, Old Mission House, Sconser, Isle of Skye, IV48 8TD; and

“the fishery” means that part of the bed of the sea in Loch Sligachan, Isle of Skye, described in the Schedule to this Order and shown hatched in grey on the definitive map.

Right of several fishery

2. Subject to the following provisions of this Order, the right of several fishery for scallops with respect to the whole of the area of the fishery is conferred on the applicant until 16th November 2028.

Restriction on harvesting

3. The right of several fishery granted by article 2 is subject to the restriction that the harvesting of scallops must be carried out manually by divers.

Permitted fishing implements

4. For the purposes of section 7(4)(a)(iii)(a) of the Sea Fisheries (Shellfish) Act 1967 (protection of fisheries: offences), a creel is specified as an implement of fishing the use of which is permitted within the fishery.

Assignment

5. The grantee must not without the prior written consent of the Scottish Ministers (which consent may be given in electronic form) assign or in any other way transfer the right of several fishery to any other person.

Marking of limits of fishery

6. The grantee must cause to be clearly marked the limits of the fishery on the bed and on the surface of the sea and must maintain the marks in position and in good repair.

(a) Section 7(4)(a)(iii) was inserted by the Sea Fisheries (Shellfish) Amendment (Scotland) Act 2000 (asp 12).

Rights of the Crown

7. Nothing in this Order shall affect prejudicially any estate, right, power, privilege, authority or exemption of the Crown and in particular and without prejudice to the generality of the foregoing, nothing in this Order authorises the applicant to take, use, enter upon or in any manner interfere with any land, or interest in land, any rights of whatever description (including any portion of the shore or bed of the sea, or of any river, channel, creek, bay or estuary) belonging to Her Majesty in right of the Crown and under the management of the Crown Estate Commissioners.

St Andrew's House,
Edinburgh
24th September 2013

RICHARD LOCHHEAD
A member of the Scottish Government

SCHEDULE

Article 1(2)

DESCRIPTION OF THE FISHERY

That part of the bed of the sea in Loch Sligachan, Isle of Skye, extending to 31.3 hectares or thereby and bounded as follows—

on or towards the east by a straight line extending in a generally southerly direction from a point at $57^{\circ}19.114'$ North latitude and $06^{\circ}06.979'$ West longitude to a point at $57^{\circ}18.864'$ North latitude and $06^{\circ}06.948'$ West longitude;

then on or towards the south by a line extending in a generally westerly direction following the line of mean low water springs to a point at $57^{\circ}18.682'$ North latitude and $06^{\circ}07.463'$ West longitude;

then on or towards the west by a straight line extending in a generally northerly direction to a point at $57^{\circ}18.950'$ North latitude and $06^{\circ}07.578'$ West longitude;

then on or towards the north by a line extending in a generally easterly direction following the line of mean low water springs to the point of beginning.

EXPLANATORY NOTE

(This note is not part of the Order)

This Order confers on David Neil Oakes for a period of 15 years the right of several fishery for scallops in part of Loch Sligachan (article 2). The part of Loch Sligachan to which the Order applies is described in the Schedule. The location of the area is also shown on the map which is described in article 1(2). A representation of the map, for illustrative purposes only, is appended to this Note.

Article 3 requires the harvesting of scallops under the right of several fishery to be carried out manually by divers.

Article 4 specifies creels as permitted fishing implements which can be used within the fishery.

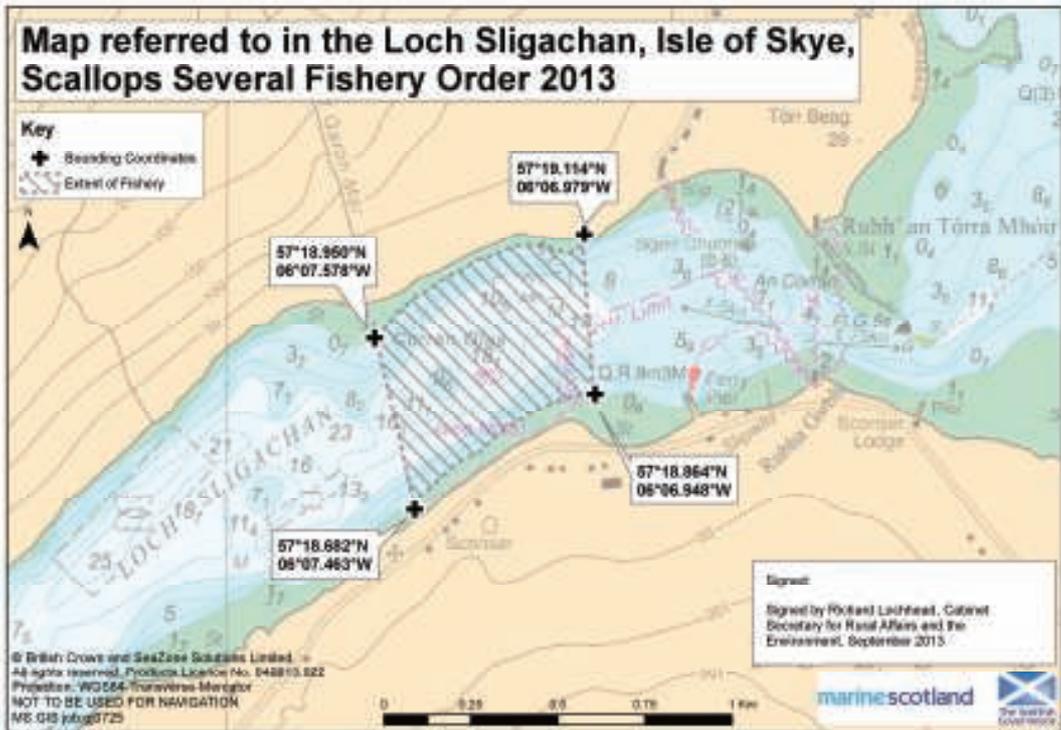
Article 5 prohibits the assignation or other transfer of the right of several fishery without the prior written consent of the Scottish Ministers.

Article 6 requires the limits of the area to be clearly marked and maintained on the bed and surface of the sea.

Article 7 provides that the Order will not prejudicially affect the rights of the Crown.

By virtue of section 2 of the Sea Fisheries (Shellfish) Act 1967 this Order confers on the applicant the exclusive right to deposit, propagate, fish for and take scallops within the area.

A Business and Regulatory Impact Assessment (“BRIA”) has been prepared in relation to this Order and placed in the Scottish Parliament Information Centre. Copies of the BRIA are available from Marine Scotland, Victoria Quay, Leith, Edinburgh EH6 6QQ and on line at www.legislation.gov.uk.



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