

2017 No. 127

SEA FISHERIES

CONSERVATION OF SEA FISH

The Regulation of Scallop Fishing (Scotland) Order 2017

<i>Made</i> - - - -	<i>25th April 2017</i>
<i>Laid before the Scottish Parliament</i>	<i>27th April 2017</i>
<i>Coming into force</i> - -	<i>1st June 2017</i>

The Scottish Ministers make the following Order in exercise of the powers conferred by sections 1(1), (4) and (6), 3(1), (2) and (4), 5, 20(1), 22(2) and 22A of the Sea Fish (Conservation) Act 1967(a) and section 5 of the Sea Fisheries Act 1968(b) and all other powers enabling them to do so.

Citation, commencement and extent

1.—(1) This Order may be cited as the Regulation of Scallop Fishing (Scotland) Order 2017 and comes into force on 1st June 2017.

(2) This Order extends to Scotland and the Scottish zone only.

Interpretation

2. In this Order—

“the Act” means the Sea Fish (Conservation) Act 1967;

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- (a) 1967 c.84 (“the 1967 Act”). Section 1 was substituted by the Fisheries Act 1981 (c.29) (“the 1981 Act”), section 19(1) and was relevantly amended by the Merchant Shipping Act 1995 (c.21), schedule 13, paragraph 38(a); and by the Marine and Coastal Access Act 2009 (c.23) (“the 2009 Act”), section 194 and schedule 15, paragraph 1, which extend to Scotland by virtue of the Marine (Scotland) Act 2010 (asp 5) (“the 2010 Act”), section 158(1). Section 3 was relevantly amended by the Fishery Limits Act 1976 (c.86), schedule 2, paragraph 16(1); the Inshore Fishing (Scotland) Act 1984 (c.26), schedule 1; the 2009 Act, section 195 and schedule 22, Part 4, which extend to Scotland by virtue of the 2010 Act, section 158(1); and by the Scotland Act 1998 (Consequential Modifications) (No. 2) Order 1999 (“S.I. 1999/1820”), schedule 2, paragraph 43(2)(b) and (4). Section 5 was amended by the 1981 Act, section 22; by the 2009 Act, section 198 and schedule 15, paragraph 3, which extend to Scotland by virtue of the 2010 Act, section 158(1); and by S.I. 1999/1820, schedule 2, paragraph 43(2)(b). Sections 1, 3, 5, 20 and 22(2) of the 1967 Act are modified in relation to Scotland by section 22A(2), (2A), (2B), (6), (11) and (12) of the 1967 Act. Section 22A was inserted by S.I. 1999/1820, schedule 2, paragraph 43(13) and section 22A(6) was substituted by section 159(4) of the 2010 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. Section 22(2) of the 1967 Act, which contains a definition of “the Ministers” for the purposes of relevant powers, was amended by the 1981 Act, sections 19(2)(d) and (3) and 45. The definition is modified in relation to Scotland by section 22A(12)(b) of the 1967 Act.
- (b) 1968 c.77. Section 5 was amended by the Fishery Limits Act 1976 (c.86), sections 4 and 24, schedule 1, paragraph 3 and schedule 2, paragraph 17; and by S.I. 1999/1820, schedule 2, paragraph 48.

“British fishing boat” means a fishing boat which is either registered in the United Kingdom under Part II of the Merchant Shipping Act 1995(a) or is owned wholly by persons qualified to own British ships for the purposes of that Part of that Act;

“king scallop” means a scallop of the species *Pecten maximus*;

“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;

“Scotland” and “the Scottish zone” have the same meaning as in section 126(1) of the Scotland Act 1998(b);

“Scottish inshore waters” has the same meaning as in section 9(1) of the Inshore Fishing (Scotland) Act 1984(c); and

“the territorial sea of the United Kingdom adjacent to Scotland” means waters which are treated as the territorial sea of the United Kingdom adjacent to Scotland, within the boundaries described in article 3 and schedule 1 of, the Scottish Adjacent Waters Boundaries Order 1999(d).

Prescribed minimum size for landing king scallops

3.—(1) For the purposes of section 1(1) of the Act (which prohibits the landing in Scotland of any sea fish of any description, which does not meet such requirements as to size as may be prescribed in relation to sea fish of that description), in relation to landing in any part of Scotland apart from the areas of coast specified in paragraph (2), there is prescribed as the minimum size in relation to sea fish of the description of king scallop a size of 105 millimetres.

(2) The specified areas of coast are—

(a) the west coast of mainland Scotland south of 55 degrees north latitude, lying adjacent to ICES Division VIIa; and

(b) the coast of the islands of the Shetland Islands.

(3) Landing from foreign fishing boats is exempted from the prohibition imposed by section 1(1) of the Act as read with paragraph (1).

(4) For the purposes of this article, the size of a scallop is measurable in accordance with paragraph 6 of Annex XIII to Council Regulation (EC) No 850/98 for the conservation of fishery resources through technical measures for the protection of juveniles of marine organisms(e).

(5) In this article—

(a) “foreign fishing boat” means any fishing boat other than a British fishing boat; and

(b) “ICES Division” means a statistical division of the International Council for the Exploration of the Sea(f).

(a) 1995 c.21.

(b) 1998 c.46. In relation to the definition of “the Scottish zone”, 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).

(c) 1984 c.26. The definition of “Scottish inshore waters” was amended by section 4(2) of the Inshore Fishing (Scotland) Act 1994 (c.27) and by S.I. 1999/1820.

(d) S.I. 1999/1126.

(e) OJ L 125, 27.4.1998, p.1; as last amended by Regulation (EU) 2015/812 of the European Parliament and of the Council amending Council Regulations (EC) No 850/98, (EC) No 2187/2005, (EC) No 1967/2006, (EC) No 1098/2007, (EC) No 254/2002, (EC) No 2347/2002 and (EC) No 1224/2009, and Regulations (EU) No 1379/2013 and (EU) No 1380/2013 of the European Parliament and of the Council, as regards the landing obligation, and repealing Council Regulation (EC) No 1434/98 (OJ L 133, 29.05.2015 p.1).

(f) Cmnd. 2586.

Restrictions on number of scallop dredges

- 4.** Subject to article 5, a British fishing boat must not deploy at any time—
- (a) in Scottish inshore waters—
 - (i) more than 8 scallop dredges from each of the port and starboard sides of the fishing boat; or
 - (ii) more than 16 scallop dredges in total;
 - (b) in any other part of the territorial sea of the United Kingdom adjacent to Scotland—
 - (i) more than 10 scallop dredges from each of the port and starboard sides of the fishing boat; or
 - (ii) more than 20 scallop dredges in total; and
 - (c) in any other part of the Scottish zone—
 - (i) more than 14 scallop dredges from each of the port and starboard sides of the fishing boat; or
 - (ii) more than 28 scallop dredges in total.

Exemption from the restrictions in article 4

5.—(1) A British fishing boat is exempt from the restrictions in article 4 if and so long as either the first condition referred to in paragraph (2) or the second condition referred to in paragraph (3) is complied with.

(2) The first condition is that while the British fishing boat is in Scottish inshore waters or any other part of the territorial sea of the United Kingdom adjacent to Scotland—

- (a) the total length of any tow bar deployed does not exceed 7.5 metres;
- (b) no more than 2 tow bars are deployed at any time; and
- (c) no more than 8 scallop dredges are towed from each of the port and starboard sides of the fishing boat at any time.

(3) The second condition is that—

- (a) a British fishing boat undertakes a single fishing trip for king scallops within the Scottish zone;
- (b) in the course of such a trip, the fishing boat tows scallop dredges in both—
 - (i) any part of the territorial sea of the United Kingdom adjacent to Scotland; and
 - (ii) any other part of the Scottish zone;
- (c) the total length of any tow bar carried on board the fishing boat or deployed does not exceed 7.5 metres;
- (d) no more than 2 tow bars are deployed at any time; and
- (e) no more than 8 scallop dredges are towed from each of the port and starboard sides of the fishing boat at any time.

(4) For the purposes of this article—

- (a) “tow bar” means any device or appliance which is capable of being used for the purpose of fixing or attaching a scallop dredge to a British fishing boat for the purpose of enabling such a dredge to be towed by the fishing boat; and
- (b) the length of a tow bar is measured by measuring the length of the bar, including those parts of the bar which extend over the wheels, skids or any other devices at each end of the bar which are designed to facilitate its movement.

Requirement to install a functioning remote electronic monitoring system

6.—(1) Subject to paragraph (3), and for the purpose of securing that the restrictions in article 4 are not evaded, a remote electronic monitoring system must be installed on board any British fishing boat which deploys scallop dredges in the Scottish zone.

(2) A remote electronic monitoring system installed on board a fishing boat in accordance with paragraph (1) must be fully functional at all times.

(3) The requirement to install a functioning remote electronic monitoring system under this article does not apply to any British fishing boat which tows scallop dredges within the Scottish zone but which—

- (a) is exempt from the restrictions in article 4 by virtue of article 5; or
- (b) does so solely in that part of the Scottish zone which does not form part of—
 - (i) Scottish inshore waters; or
 - (ii) any other part of the territorial sea of the United Kingdom adjacent to Scotland.

(4) In this article, “remote electronic monitoring system” means a remote electronic monitoring system which includes—

- (a) a control box or storage box which is capable of housing and storing software and data—
 - (i) consisting of recorded images from digital cameras and recorded data from winch sensors and a global positioning system device;
 - (ii) which is capable of storing a minimum of 1000 hours of recorded data; and
 - (iii) which automatically over-writes the recorded data when the maximum data capacity is reached;
- (b) a minimum of 2 digital cameras, each of which—
 - (i) produces images of at least 1080 pixels per frame;
 - (ii) is capable of visually recording fishing and related activities, including all movements related to the setting and hauling of fishing gear; and
 - (iii) has a minimum IP Rating of IP66;
- (c) winch sensors which are—
 - (i) connected to the winches by which fishing gear can be deployed;
 - (ii) activated when the winches are operated; and
 - (iii) linked to the digital cameras in such a way that clear recorded images from the point at which the winches are operated can be readily retrieved;
- (d) a global positioning system device which automatically stores in the control box or storage box, at intervals of a least once every 10 seconds, the following information:—
 - (i) the fishing boat’s unique identifier;
 - (ii) the most recent geographical position of the fishing boat, using co-ordinates of latitude and longitude on the World Geodetic System 1984 Datum^(a);
 - (iii) the date and time of the fixing of each geographical position of the fishing boat; and
 - (iv) the speed and course of the fishing boat at that time;
- (e) a means of enabling the master to view the recorded data in real time on board the fishing boat on which the system is installed; and
- (f) a means of allowing a British sea fishery officer—
 - (i) from a position inside the wheelhouse of the fishing boat, to extract data held in the control box or storage box; and

(a) The World Geodetic System 1984 Datum is defined at paragraph 2.1 of the United States National Imagery and Mapping Agency Technical Report TR8350.2, third edition, amendment 1 of 3rd January 2000 entitled “Department of Defense World Geodetic System 1984” (<http://earth-info.nga.mil/GandG/publications/tr8350.2/wgs84fin.pdf>).

(ii) to view recorded data on the system from a remote location.

(5) In paragraph (4)(b)(iii), “IP Rating” means ingress protection rating as defined in international standard IEC 60529, setting out degrees of protection by enclosures against harmful ingress of water^(a).

Revocation

7. Article 5 of the Prohibition of Fishing for Scallops (Scotland) Order 2003^(b) is revoked.

FERGUS EWING

A member of the Scottish Government

St Andrew’s House,
Edinburgh
25th April 2017

(a) Edition 2.1, Geneva: International Electrotechnical Commission, 2011.
(b) S.S.I. 2003/371.

EXPLANATORY NOTE

(This note is not part of the Order)

This Order, which applies in relation to the Scottish zone and to landings in Scotland, introduces measures for the conservation of king scallops.

Article 3 prescribes a minimum size (of 105 millimetres) for the landing of king scallops in any part of Scotland, apart from two specified areas: an area of coastline in the south west of mainland Scotland and the Shetland Islands. By virtue of Annex XII of Council Regulation (EC) No 850/98 (OJ L 125, 27.4.1998, p.1) for the conservation of fishery resources through technical measures for the protection of juveniles of marine organisms (“the Council Regulation”) the minimum size for the landing of scallops remains 100 millimetres in the Shetland Islands and 110 millimetres in the area of coastline in the south west of mainland Scotland.

Article 4 restricts the number of scallop dredges that can be towed at any time by British fishing boats in the Scottish zone, and the way in which such dredges can be deployed.

Article 5 provides for two alternative exemptions from the restrictions in article 4, in so far as they apply to scallop dredging by British fishing boats within the Scottish zone. The exemptions are that the restrictions in article 4 do not apply in two specified situations in which the total length of any tow bar deployed does not exceed 7.5 metres, no more than 2 tow bars are deployed at any time and no more than 8 scallop dredges are towed from either side of the fishing boat.

Article 6 imposes a requirement for a fully functional remote electronic monitoring system to be installed on board a British fishing boat while it is engaged in scallop dredging in the Scottish zone. This requirement does not apply to any boat which is exempt from the restrictions in article 4, by virtue of article 5. Nor does it apply to any boat which dredges for king scallops within the Scottish zone, but solely in that part of the Scottish zone which does not form part of Scottish inshore waters or any other part of the territorial sea of the United Kingdom adjacent to Scotland.

Article 7 revokes article 5 of the Prohibition of Fishing for Scallops (Scotland) Order 2003 (S.S.I. 2003/371), as that provision is superseded by this Order.

Offences for breach of this Order are contained in section 1(7) and 3(5) of the Sea Fish (Conservation) Act 1967 (“the Act”). Penalties, which are set out at section 11 of the Act, include a fine not exceeding £50,000 on summary conviction and a fine on conviction on indictment. The court may impose an additional fine not exceeding the value of the fish caught in contravention of the Act or caught with fishing gear that contravened the Act. The court may also order the forfeiture of that fish or fishing gear.

For the purposes of this Order, a British sea-fishery officer has the powers conferred by section 15 of the Act, by Part 7 of the Marine (Scotland) Act 2010 (asp 5) and by sections 35, 36 and 39 of the Aquaculture and Fisheries (Scotland) Act 2013 (asp 7).

The Order was made in accordance with the procedure set out in Article 46 of the Council Regulation. Article 46 of the Council Regulation authorises Member States to take certain national measures for the conservation and management of local stocks.

The provisions contained in the Order were notified in draft to the European Commission in accordance with the requirements of Article 5 of Directive (EU) 2015/1535 of the European Parliament and of the Council laying down a procedure for the provision of information in the field of technical regulations and of rules on Information Society services (codification) (OJ L 241, 17.9.2015, p.1).

A Business and Regulatory Impact Assessment has been prepared in relation to this Order and placed in the Scottish Parliament Information Centre. A copy of this can be obtained from Marine Scotland, the Scottish Government, Victoria Quay, Edinburgh EH6 6QQ.

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