
SCOTTISH STATUTORY INSTRUMENTS

2018 No. 245

SEA FISHERIES

**The Scalpay Island, Isle of Skye,
Scallops Several Fishery Order 2018**

Made - - - - *30th July 2018*
Laid before the Scottish
Parliament - - - - *1st August 2018*
Coming into force - - *29th October 2018*

The Scottish Ministers make the following Order in exercise of the powers conferred by sections 1 and 7(4)(a)(iii) of the Sea Fisheries (Shellfish) Act 1967⁽¹⁾ (as read with section 2 and schedule 1 of that Act) and all other powers enabling them to do so.

In accordance with paragraphs 1 and 6 of that schedule⁽²⁾, 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 Crown Estate Scotland (Interim Management)⁽³⁾.

The applicant has caused printed copies of a draft of this Order to be published and circulated and has given notice of the application in accordance with paragraph 2 of that schedule.

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.

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- (1) [1967 c.83](#) (“the 1967 Act”). Section 1 was relevantly amended by the Fishery Limits Act [1976 \(c.86\)](#), section 9 and schedule 2, paragraph 15; the Marine and Coastal Access Act [2009 \(c.23\)](#) (“the 2009 Act”), section 203; the Marine (Scotland) Act [2010 \(asp 5\)](#) (“the 2010 Act”), section 160(1) and (2) and 161(2); the Aquaculture and Fisheries (Scotland) Act [2013 \(asp 7\)](#) (“the 2013 Act”), section 55(1); and by 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). Section 2 was modified by the Fisheries Act [1981 \(c.29\)](#), section 34. Section 7(4)(a)(iii) was inserted by the Sea Fisheries (Shellfish) Amendment (Scotland) Act [2000 \(asp 12\)](#), section 1. Schedule 1 of the 1967 Act was amended by the Sea Fisheries Act [1968 \(c.77\)](#), section 15(7); the 2009 Act, section 214; the 2010 Act, sections 160(3), 161(1)(g) and (h) and 161(5); the 2013 Act, section 58(1); and Crown Estate Transfer Scheme 2017, schedule 5, paragraph 13 ([S.I. 2017/524](#)). 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).
- (2) Paragraph 6(1) of schedule 1 of the 1967 Act was amended by the 2013 Act, section 58(1). Paragraph 6(2) of schedule 1 of the 1967 Act was inserted by the 2010 Act, section 160(3) and was amended by [S.I. 2017/524](#), schedule 5, paragraph 13.
- (3) This Order relates to a portion of the sea shore which belongs to Her Majesty in right of the Crown and which is part of the property, rights and interests to which section 90B(5) of the Scotland Act [1998 \(c.46\)](#) applies. In such a case, paragraph 6(2) of schedule 1 of the 1967 Act requires the Scottish Ministers to have regard to the powers and duties of the person who has the management of the portion. In this case that is Crown Estate Scotland (Interim Management), who is the manager by virtue of paragraph 3 of [S.I. 2017/524](#).

Citation and commencement

1. This Order may be cited as the Scalpay Island, Isle of Skye, Scallops Several Fishery Order 2018 and comes into force on 29th October 2018.

Interpretation

2.—(1) In this Order—

“the applicant” means the partnership of M.F.G. & J.A. Walford, Scalpay House, Broadford, Isle of Skye, IV49 9BS;

“the fishery” means that part of the bed of the sea lying off the east coast of Scalpay Island, Isle of Skye, described in the schedule; and

“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.

(2) A reference in this Order to anything produced in written form includes a reference to an electronic communication, as defined in section 15(1) of the Electronic Communications Act 2000(4), which has been recorded and is consequently capable of being reproduced.

Right of several fishery

3. Subject to the following provisions of this Order, the right of several fishery for scallops with respect to the whole area of the fishery is conferred on the applicant until 28th October 2033.

Restriction on harvesting

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

Assignment

5. The grantee must not without the prior written consent of the Scottish Ministers 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.

Rights of the Crown

7.—(1) Nothing in this Order affects 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 or a relevant person.

(2) In paragraph (1), “relevant person”, in relation to any property, rights or interests to which section 90B(5) of the Scotland Act 1998(5) applies, means the person who manages that property or those rights or interests.

(4) 2000 c.7. Section 15(1) was amended by the Communications Act 2003 (c.21) schedule 17, paragraph 158.

(5) 1998 c.46. Section 90B was inserted by section 36(1) of the Scotland Act 2016 (c.11).

Revocation

8. The Scalpay Island, Isle of Skye, Scallops Several Fishery Order 1998(6) is revoked.

St Andrew's House,
Edinburgh
30th July 2018

MAIRI GOUGEON
Authorised to sign by the Scottish Ministers

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SCHEDULE

Article 2(1)

DESCRIPTION OF THE FISHERY

Interpretation**1.** In this schedule—

“co-ordinate” means a co-ordinate defined on the World Geodetic System 1984 Datum⁽⁷⁾;
 co-ordinate “A” is 57°17.526' North latitude and 005°55.496' West longitude;
 co-ordinate “B” is 57°16.880' North latitude and 005°55.267' West longitude; and
 co-ordinate “C” is 57°16.861' North latitude and 005°55.577' West longitude.

Description of the fishery

2. That part of the bed of the sea at the island of Scalpay, near the Isle of Skye, extending to 18 hectares or thereby, which is bounded by the lines (the topographical descriptions of which are provided in the third column of the following table) which join in the order given the co-ordinates listed in the second column.

| <i>Boundary Line</i> | <i>Co-ordinates between which the boundary line extends</i> | <i>Topographical description of boundary line</i> |
|----------------------|---|---|
| 1. | A and B | Geodesic line |
| 2. | B and C | Geodesic line |
| 3. | C and A | By Mean Low Water Springs |

EXPLANATORY NOTE

(This note is not part of the Order)

This Order confers on M.F.G & J.A. Walford (“the applicant”) for a period of 15 years beginning on the date on which this Order comes into force the right of several fishery for scallops in part of the sea bed lying off the east coast of Scalpay Island, Isle of Skye (article 3). The part of the seabed at the island of Scalpay, near the Isle of Skye, to which the Order applies is described in the schedule of the Order. The location of the area to which the Order applies is also shown on the indicative map, one copy of which is held in the principal office of Marine Scotland, Victoria Quay, Leith, Edinburgh EH6 6QQ and another of which is held by the applicant at Scalpay House, Broadford, Isle of Skye, IV49 9BS. A representation of the indicative map is appended to this note for illustrative purposes.

By virtue of section 2 of the Sea Fisheries (Shellfish) Act 1967, article 3 of this Order confers on the applicant the exclusive right to deposit, propagate, fish for and take scallops within the area, subject to certain restrictions.

(7) Definitions of the World Geodetic System 1984 datum and co-ordinate reference system are available via EPSG Geodetic Parameter Registry at EPSG:6326 (<http://epsg.io/6326-datum>) and EPSG:4326 (<http://epsg.io/4326>).

Article 4 of the Order requires the harvesting of scallops under the right of several fishery to be carried out manually by divers.

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

Article 6 of the Order 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 effect of the Order does not prejudicially affect the rights of the Crown.

Article 8 revokes the Scalpay Island, Isle of Skye, Scallops Several Fishery Order 1998 (the right of several fishery it conferred expired on 15th November 2003).

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 online at www.legislation.gov.uk.

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