
STATUTORY INSTRUMENTS

2010 No. 269 (W.33)

SEA FISHERIES, WALES

CONSERVATION OF SEA FISH

The Scallop Fishing (Wales) (No.2) Order 2010

<i>Made</i>	- - - -	<i>8 February 2010</i>
<i>Laid before the National Assembly for Wales</i>	- -	<i>8 February 2010</i>
<i>Coming into force</i>	- -	<i>1 March 2010</i>

The Welsh Ministers make the following Order in exercise of the powers conferred by sections 1, 3, 5, 5A, 15(3) and 20(1) of the Sea Fish (Conservation) Act 1967(1), now vested in them(2), and paragraph 1A of Schedule 2 to the European Communities Act 1972(3).

This Order makes provision for a purpose mentioned in section 2(2) of the European Communities Act 1972, and it appears to the Welsh Ministers that it is expedient for the reference in article 11 of this Order to Council Regulation (EC) No 850/98 for the conservation of fishery resources through technical measures for the protection of juvenile marine organisms(4) to be construed as a reference to that Regulation as amended from time to time.

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- (1) 1967 c. 84. Section 1 was substituted by the Fisheries Act 1981 (c. 29), section 19(1) and amended by the Merchant Shipping Act 1995 (c. 21), section 314(2) and Schedule 13, paragraph 38(a) and the Scotland Act 1998 (Consequential Modifications) (No. 2) Order 1999 (S.I.1999/1820), Schedule 2, paragraph 43(1), (2) and (3). Section 3 was amended by the Fishery Limits Act 1976 (c. 86), section 9 and Schedule 2, paragraph 16(1), the Inshore Fishing (Scotland) Act 1984 (c. 26), section 10(1) and Schedule 1 and S.I. 1999/1820, article 4 and Schedule 2, paragraph 43(1), (2) and (4). Section 5 was amended by the Fisheries Act 1981 (c. 29), section 22(1), (2) and (3) and amended by the Merchant Shipping Act 1995 (c. 21), section 314(2) and Schedule 13, paragraph 38(b) and S.I. 1999/1820, article 4 and Schedule 2, paragraph 43(1) and (2). Section 5A was inserted by the Environment Act 1995 (c. 25), section 103(1). Section 15(3) was substituted by the Sea Fisheries Act 1968 (c. 77), section 22(1) and Schedule 1, paragraph 38(3) and amended by the Fishery Limits Act 1976 (c. 86), section 9 and Schedule 2, paragraph 16(1) and S.I. 1999/1820, article 4 and Schedule 2, paragraph 43(1) and (2). See section 22(2) for definitions of “the Ministers”; section 22(2) was amended by the Fisheries Act 1981 (c. 29), sections 19(2)(d), 45(a), (b) and (c) and 46(2) and by S.I. 1999/1820, article 4 and Schedule 2, paragraph 43(1) and (12) and the Northern Ireland Constitution Act 1973 (c. 36), section 40 and Schedule 5, paragraph 8(1).
- (2) By virtue of article 2 of and Schedule 1 to the National Assembly for Wales (Transfer of Functions) Order 1999 (S.I. 1999/672) the functions exercisable under sections 1, 3, 5, 5A, 15(3) and 20 of the 1967 Act were transferred to the National Assembly for Wales (as constituted under the Government of Wales Act 1998 (c. 38)) in so far as exercisable in relation to Wales (acting concurrently with any Minister of the Crown by whom they are exercisable in relation to section 15(3)). Those functions of the National Assembly for Wales were transferred to the Welsh Ministers by virtue of section 162 of and paragraph 30 of Schedule 11 to the Government of Wales Act 2006 (c. 32).
- (3) 1972 c. 68. Section 2(2) was amended by section 27(1) of the Legislative and Regulatory Reform Act 2006 (c. 51) (“the 2006 Act”). Paragraph 1A of Schedule 2 was inserted by section 28 of the 2006 Act. The Welsh Ministers have been designated (S.I. 2005/2766) for the purposes of section 2(2) of the 1972 Act in relation to the common agricultural policy of the European Community.
- (4) OJ No. L125, 27.4.1998, p. 1.

Title, commencement and application

- 1.—(1) The title of this Order is the Scallop Fishing (Wales) (No. 2) Order 2010.
- (2) This Order applies in relation to Wales and comes into force on 1 March 2010.

Interpretation

2. In this Order, unless the context requires otherwise—

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

“baselines” (“*gwaelodlinau*”) means the baselines from which the breadth of the territorial sea is measured for the purposes of the Territorial Sea Act 1987⁽⁵⁾;

“British fishing boat” (“*cwch pysgota Prydeinig*”) means a fishing boat which is either registered in the United Kingdom under Part II of the Merchant Shipping Act 1995⁽⁶⁾ or is owned wholly by persons qualified to own British ships for the purposes of that part of that Act;

“equivalent provision” (“*darpariaeth gyfatebol*”) means a provision in any other order extending or applying to any part of the United Kingdom which has equivalent effect to a provision in this Order;

“scallop” (“*cregyn bylchog*”) means shellfish of the species *Pecten maximus*;

“scallop dredge” (“*llusgrwyd cregyn bylchog*”) includes any 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 scallops;

“tow bar” (“*bar tynnu*”) means any device or appliance which is capable of being used for the purpose of fixing or attaching a scallop dredge to a vessel for the purpose of enabling such a dredge to be towed by the vessel;

“Wales” (“*Cymru*”) has the meaning given in section 158 of the Government of Wales Act 2006⁽⁷⁾; and

“Welsh waters” (“*dyfroedd Cymru*”) means sea areas within Wales.

Fishing restrictions

3. No British fishing boat is permitted, at any time, to fish for, take or kill scallops using a scallop dredge in Welsh waters, unless that boat’s engine has a power output not exceeding 221 kilowatts.

- 4.—(1) Subject to paragraph (2), no person is to fish for, take or kill scallops in Welsh waters during the period 1 May to 31 October inclusive in each year by any means, including diving.

- (2) In respect of the calendar year 2010 the period referred to in paragraph (1) is to commence on 1 June 2010.

Restrictions on number and use of scallop dredges

5. No British fishing boat is permitted, at any time, to fish for, take or kill scallops using a scallop dredge in any part of Welsh waters which lie within 1 nautical mile of baselines.

6. No British fishing boat is permitted, at any time, to fish for, take or kill scallops using a scallop dredge—

(5) 1987 c. 49.

(6) 1995 c. 21.

(7) 2006 c. 32.

- (a) in any part of Welsh waters which lies beyond 1 nautical mile and within 3 nautical miles of baselines, unless that boat's overall length does not exceed 10 meters and it is towing no more than 6 scallop dredges in total;
- (b) in any part of Welsh waters which lies beyond 3 nautical miles and within 6 nautical miles of baselines, unless that boat is towing no more than 8 scallop dredges in total; and
- (c) in any part of Welsh waters which lies beyond 6 nautical miles and within 12 nautical miles of baselines, unless that boat is towing no more than 14 scallop dredges in total.

7. When not in use in accordance with the provisions of this Order all scallop dredges must be inboard, stowed and secured.

Restriction on size of tow bars

8.—(1) No British fishing boat is permitted, at any time, in any part of Welsh waters which lies beyond 1 nautical mile and within 3 nautical miles of baselines, to use a tow bar in connection with fishing for, taking or killing scallops, unless that tow bar—

- (a) does not exceed 3 metres in length; and
- (b) is not constructed in a way which enables more than 3 scallop dredges to be attached to it at the same time.

(2) No British fishing boat is permitted, at any time, in any part of Welsh waters which lies beyond 3 nautical miles and within 6 nautical miles of baselines, to use a tow bar in connection with fishing for, taking or killing scallops, unless that tow bar—

- (a) does not exceed 4 metres in length; and
- (b) is not constructed in a way which enables more than 4 scallop dredges to be attached to it at the same time.

(3) No British fishing boat is permitted, at any time, in any part of Welsh waters which lies beyond 6 nautical miles and within 12 nautical miles of baselines, to use a tow bar in connection with fishing for, taking or killing scallops, unless that tow bar—

- (a) does not exceed 6.8 metres in length; and
- (b) is not constructed in a way which enables more than 7 scallop dredges to be attached to it at the same time.

9. No British fishing boat is permitted at any time, in any part of Welsh waters to use any tow bar in connection with fishing for, taking or killing scallops, which exceeds 185 millimetres in external diameter.

Specification of scallop dredges

10.—(1) Subject to the provisions of this article, no British fishing boat is permitted to tow any scallop dredge within Welsh waters unless in relation to such a dredge—

- (a) no part of its frame is greater than 85 centimetres wide;
- (b) it includes a functioning, operational and moveable spring loaded tooth bar;
- (c) it does not contain any attachments to the rear, top or inside of the dredge;
- (d) it does not contain a diving plate or any other similar device;
- (e) the total weight of the dredge including all fittings does not exceed 150 kilograms;
- (f) the number of belly rings in each row suspended from the belly bar does not exceed 7;
- (g) the number of teeth on the tooth bar does not exceed 8; and

- (h) each tooth on the tooth bar measures no more than 22 millimetres in diameter and 110 millimetres in length.
- (2) In this article—
- (a) a row of belly rings is a line of single interconnecting rings, where the ring at one end of the line hangs either from the belly bar or from the main structure of the dredge perpendicular to the belly bar;
 - (b) a belly bar is the bar attached to the frame of the dredge which runs parallel to the tooth bar and from which the belly rings hang;
 - (c) a tooth bar is the bar to which are attached teeth, the ends of which point downwards and are intended to be in contact with the sea bed when the dredge is in operation;
 - (d) the diameter of a tooth is its maximum width measured in the direction of the line of the tooth bar; and
 - (e) the length of a tooth is the distance between the underside of the tooth bar and the tip of the tooth.
- (3) Belly rings and the fastenings which attach them to each other and to the frame are not to be regarded as attachments for the purpose of paragraph (1)(c).

Minimum size of scallop

11.—(1) For the purposes of section 1(3) of the Act, the minimum size of scallop that may be carried by a British fishing boat in Welsh waters is 110 millimetres.

(2) For the purposes of paragraph (1), the size of a scallop is to be measured 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 juvenile marine organisms⁽⁸⁾ as amended from time to time.

Prohibition on dredging

12. Notwithstanding articles 3 to 11 of this Order fishing for, taking or killing of scallops by the use of a scallop dredge by British fishing boats is prohibited in the areas designated in the Schedule to this Order.

Powers of British sea-fishery officers

13.—(1) For the purposes of enforcing this Order or any equivalent provision, a British sea fishery officer may exercise the powers conferred by this article in relation to any fishing boat to which this Order applies in Welsh waters.

(2) The officer may go on board the boat, with or without persons assigned to assist in that officer's duties, and may require the boat to stop and do anything else which will facilitate boarding or disembarkation.

(3) The officer may require the attendance of the master and other persons on board the boat and may make any examination and inquiry as appears to the officer to be necessary for the purpose mentioned in paragraph (1), and in particular may—

- (a) search for fish or fishing gear on the boat and 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;

⁽⁸⁾ OJ No. L125, 27.4.1998, p. 1.

- (b) require any person on board the boat to produce any document in that person's custody or possession relating to the boat, to any fishing or ancillary operations or to persons on board;
 - (c) for the purpose of ascertaining whether the master, owner or charterer of the boat has committed an offence under the Act as read with this Order or any equivalent provision, 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;
 - (d) inspect and copy any such document produced or found on board the boat and, where any such document is kept by means of a computer, require it to be produced in a form in which it may be taken away; and
 - (e) where the boat is one in relation to which the officer has reason to suspect that an offence under this Order or an equivalent provision has been committed, subject to paragraph (4), seize and detain any such document produced or found on board the boat for the purpose of enabling the document to be used as evidence in proceedings for the offence.
- (4) Nothing in paragraph 3(e) permits 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.
- (5) Where it appears to a British sea-fishery officer that an offence under this Order or any equivalent provision has at any time been committed in relation to a fishing boat, the officer may—
- (a) take, or require the master of the boat to take, the boat and its crew to the port which appears to the officer be the nearest convenient port; and
 - (b) detain or require the master to detain the boat in the port.
- (6) A British sea-fishery officer who detains or requires the detention of a boat must serve on the master a written notice stating that the boat is, or is required to be, detained until the notice is withdrawn by the service on the master of a further written notice signed by a British sea-fishery officer.
- (7) In this article, "officer" ("*swyddog*") means British sea-fishery officer.

Revocation

14. The following Orders are revoked, namely—

- (a) the Prohibition of Fishing for Scallops (Wales) Order 2009⁽⁹⁾; and
- (b) the Scallop Fishing (Wales) Order 2010⁽¹⁰⁾.

8 February 2010

Elin Jones
Minister for Rural Affairs, one of the Welsh
Ministers.

⁽⁹⁾ S.I. 2009/2721 (W.232).
⁽¹⁰⁾ S.I. 2010/203 (W. 30).

SCHEDULE

Article 12

Prohibition on dredging

In the Schedule a group of two letters and five or six figures identifying or associated with any point represents the map co-ordinates of that point estimated to the nearest ten metres on the grid of the national reference system used by the Ordnance Survey on its maps and plans. All latitude and longitude co-ordinates given are in degrees, minutes and decimal fractions of a minute and are co-ordinates of the World Geodetic System.

Liverpool Bay

The area enclosed between the shoreline, the boundary between Welsh and English territorial waters and a line drawn between the following points:

where line of longitude 3°48.40 W crosses the shore at Llandudno to 53°24.82 N, 3°48.40 W, then to 53°24.82 N, 3°32.97 W to 53°27.07 N, 3°25.40 W to the line of latitude 53°27.07 N that crosses the boundary between Welsh and English territorial waters north of the Dee Estuary.

Menai, Anglesey and Conwy

All waters up to the mean high water mark in the area bounded by the following:

a line drawn from 53°21.6N, 4°15.02W to 53°22.18N, 3°46.54W to 53°19.60N, 3°46.54W;
and a line drawn north along the longitude line of 4°19. 58. W between Fort Belan and Abermenai Point.

North Llŷn Area

The area enclosed between the shoreline and a line drawn between points with the following co-ordinates:

52°56.909 N, 04°34.055 W to 52°59.858 N, 04°38.782 W to 52°55.455 N, 04°45.891 W to 52°52.928 N, 04° 41.878 W to 52°52.155 N, 04°43.359 W to 52°51.563 N, 04°42.372 W.

Pen Llŷn a'r Sarnau

The area enclosed between the shoreline and a line drawn between points with the following co-ordinates:

OS Grid Reference SH2964 4123 to 52°58.37N, 4°37.06W to 52°51.07N, 4°50.07W to 52°41.18N, 4°50.07W to 52°41.18N, 4°25.37W to 52°34.82N, 4°13.6W to 52°25.83N, 4°16.35W to 52°24.42N, 4°14.17W to SN5868 8401.

Cardigan Bay

The area enclosed between the shoreline and a line drawn between points with the following co-ordinates:

OS Grid Reference SN47874 64087 to 52°25.10 N, 4°23.80W to 52°20.09N, 4°39.04W to 52°13.00N, 4° 34.07W to 52°11.04N, 4°41.19W to 52°17.76N, 4°46.14W to 52°13.15N, 5°00.15W to OS Grid Reference SN10438 45534.

Pembrokeshire

The area of sea landward of a line drawn between the points with the following co-ordinates:

OS Grid Reference SM80320 32330 to 51°56.69N, 5°30.07W to 51°48.02N, 5°30.06W to 51°48.02N, 5° 45.06W to 51°38.52N, 5°45.06W to 51°38.53N, 5° 10.07W to 51°32.02N, 5°10.07W to 51°32.02N, 4° 48.07W to OS Grid Reference SS06267 96997.

Carmarthen Bay

The area of sea landward of a line drawn between the points with the following co-ordinates:

OS Grid Reference SS13336 99905 to 51 36.02N, 4° 42.06W to 51°36.02N, 4°27.06W to 51°30.03N, 4°27.03W to 51°30.02N, 4°10.07W to OS Grid Reference SS49771 84968.

North Anglesey

The area bounded by a line drawn between the points with the following coordinates:

53°35.19 N, 4°33.78 W to 53°36.41 N, 4°16.36 W to 53°33.20 N, 4°33.99 W to 53°31.57 N, 4°16.36 W.

West Anglesey

The area bounded by a line drawn between the points with the following coordinates:

53°24.21 N, 4°59.55 W to 53°19.09 N, 4°51.03 W to 53°17.27 N, 4°54.65 W to 53°22.19 N, 5°1.03 W.

EXPLANATORY NOTE

(This note is not part of the Order)

This Order, which applies in relation to Wales, regulates scallop fishing in “Welsh waters” and comes into force on 1 March 2010. For the purposes of the Order “Welsh waters” are defined as being those sea areas falling within “Wales” as defined by section 158 of the Government of Wales Act 2006.

Article 3 restricts the engine output capacity of British fishing boats which may use scallop dredges.

Article 4 provides for a closed season in respect of scallop fishing, being a period commencing on 1 June 2010, and on 1 May in each subsequent year, and ending on the 31 October.

Article 5 prohibits the use of scallop dredges at any time within one nautical mile of the baselines from which the breadth of the territorial sea is measured.

Article 6 provides limits as to the number of scallop dredges that may be used at any one time in the areas between 1 and 3 nautical miles, 3 to 6 nautical miles and 6 to 12 nautical miles off the Welsh coast.

Article 7 requires that, when not lawfully in use, all scallop dredges must be securely stored onboard the fishing boat.

Article 8 provides restrictions as to the size of the tow bars which may be used by British fishing boats in the areas between 1 and 3 nautical miles, 3 to 6 nautical miles and 6 to 12 nautical miles off the Welsh coast.

Article 9 provides for the maximum external diameter of tow bar which may be used.

Article 10 fixes the specification of scallop dredges which may be towed.

Article 11 fixes the minimum size of scallop which may be carried by a British fishing boat and the method to be used for measuring scallops.

Article 12 prohibits fishing for scallops by dredging within designated areas set out in the Schedule.

Article 13 provides for British sea fishery officers to have certain powers to board, search and detain British fishing boats and to inspect, copy and detain documents.

Article 14 revokes the Prohibition of Fishing for Scallops (Wales) Order 2009 and the Scallop Fishing (Wales) Order 2010.

The provisions contained in articles 2, 3, 6, 8, 9, 10 and 11 of this Order were notified in draft to the European Commission in accordance with the requirements of Article 8 of Directive [98/34/EC](#) of the European Parliament and of the Council laying down a procedure for the provision of information in the field of technical standards and regulations (OJ No L 204, 21.7.98, p.37) as amended by Directive [98/48/EC](#) of the European Parliament and of the Council (OJ No L 217, 5.8.98, p.18).

A regulatory impact assessment has been undertaken in respect of this Order and is available for inspection at the offices of the Welsh Assembly Government, Cathays Park, Cardiff, CF10 3NQ.