

2004 No. 2567

SEA FISHERIES, ENGLAND

CONSERVATION OF SEA FISH

**The Fal and Helford (Prohibition of Scallop Dredging) Order
2004**

<i>Made</i> - - - -	<i>29th September 2004</i>
<i>Laid before Parliament</i>	<i>30th September 2004</i>
<i>Coming into force</i> - -	<i>21st October 2004</i>

The Secretary of State for Environment, Food and Rural Affairs and the Secretary of State concerned with the sea fishing industry in Northern Ireland in exercise of the powers conferred by sections 3 and 15(3) of the Sea Fish (Conservation) Act 1967(a), and now vested in them(b), make the following Order:

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- (a) 1967 c.84. Section 3 was amended by the Fishery Limits Act 1976 (c.86), Schedule 2, paragraph 16(1), the Inshore Fishing (Scotland) Act 1984 (c. 26), Schedule 1 and the Scotland Act 1998 (Consequential Modifications) (No. 2) Order 1999 (S.I. 1999/1820), Schedule 2, paragraph 43(1), (2) and (4). Section 15(3) was substituted by the Sea Fisheries Act 1968 (c. 77), Schedule 1, paragraph 38(3) and amended by the Fishery Limits Act 1976 (c. 86), Schedule 2, paragraph 16(1) and S.I. 1999/1820, Schedule 2, paragraph 43(2)(b). See section 22(2)(a) for definitions of "the Ministers" for the purposes of sections 3 and 15(3); section 22(2) was amended by the Fisheries Act 1981 (c.29), sections 19(2)(d) and 45(b) and (c) and by S.I. 1999/1820, Schedule 2, paragraph 43(12).
- (b) By virtue of article 2(a) and 2(b) of, and Schedule 1 to, the National Assembly for Wales (Transfer of Functions) Order 1999 (S.I. 1999/672) the functions exercisable under sections 3 and 15(3) of the 1967 Act were transferred to the National Assembly in so far as exercisable in relation to Wales (defined in section 155(1) of the Government of Wales Act 1998 (c. 38) as including "the sea adjacent to Wales out as far as the seaward boundary of the territorial sea"); by virtue of those provisions, the transferred functions under section 15(3) remained concurrently exercisable by the Ministers as well as the Assembly, while in respect of waters beyond Wales the functions under section 3 remain exercisable solely by the Ministers. Section 53 of the Scotland Act 1998 (c.46) as read with article 3(1) of, and Schedule 1 to, the Scotland Act 1998 (Concurrent Functions) Order 1999 (S.I. 1999/1592) provides for the functions under sections 3(1), (3) and (4) and 15(3) of the 1967 Act to be transferred to the Scottish Ministers in so far as it applies in or as regards Scotland, but to be exercisable by the Ministers, concurrently with Scottish Ministers, in relation to relevant British fishing boats within the Scottish zone, and Scottish fishing boats within British fishery limits but outside the Scottish zone. By virtue of article 2(1) of, and the Schedule to, the Transfer of Functions (Agriculture and Fisheries) Order 2000 (S.I. 2000/1812) any remaining functions of the Secretaries of State for Scotland and Wales under sections 3 and 15(3) of the 1967 Act were transferred to the Minister of Agriculture, Fisheries and Food. By virtue of paragraphs 3(1)(b) and (m) of Schedule 1 to the Sea Fisheries (Northern Ireland) Order 2002 (S.I. 2002/790), the functions of the Ministers under sections 3 (of making an order requiring nets and other fishing gear carried in Northern Ireland fishing boats or in the Northern Ireland zone to comply with prescribed requirements) and 15(3) (of making an order conferring on British sea-fishery officers powers relating to fishing boats in the Northern Ireland zone or any Northern Ireland fishing boats outside that zone) of the 1967 Act were transferred to the Department of Agriculture and Rural Development. However, by virtue of paragraph 3(2), the Ministers retain a concurrent function to make an order in relation to British fishing boats, other than Northern Ireland fishing boats, within the Northern Ireland zone and to Northern Ireland fishing boats within British fishery limits but outside the Northern Ireland zone. The functions of the Minister of Agriculture, Fisheries and Food and one or more named Secretaries of State (however described) acting jointly were transferred to the Secretary of State for Environment, Food and Rural Affairs and the one or more Secretaries of State acting jointly by virtue of article 2(5) of the Ministry of Agriculture, Fisheries and Food (Dissolution) Order 2002 (S.I. 2002/794).

Citation, commencement and extent

1.—(1) This Order may be cited as the Fal and Helford (Prohibition of Scallop Dredging) Order 2004, shall come into force on 21st October 2004 and shall cease to be in force at the end of 20th April 2005.

(2) Subject to paragraph (3), this Order shall not form part of the law of Scotland or Northern Ireland.

(3) Paragraph (2) shall not prejudice the effect of section 14 of the Sea Fish (Conservation) Act 1967 in relation to, or for purposes incidental to, any provision which creates an offence.

Interpretation

2.—(1) In this Order—

“Northern Ireland zone” has the same meaning as in the Northern Ireland Act(a);

“scallop dredge” means 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;

“the specified areas” means the areas upstream of lines drawn—

- (a) across the Helford River, on a bearing of 195° true from Mawnan Shear to a point on the opposite shore; and
- (b) across the River Fal (Carrick Roads), from the southernmost extremity of Pendennis Point to the lighthouse at St Anthony Head.

(2) In this Order—

(a) the term “relevant British fishery limits” does not include—

- (i) the Northern Ireland zone;
- (ii) the territorial sea adjacent to Wales;
- (iii) the territorial sea adjacent to the Isle of Man;
- (iv) the territorial sea adjacent to the Bailiwick of Jersey; and
- (v) seas within British fishery limits adjacent to Guernsey, as defined by section 8 of the Fishery Limits Act 1976(b) as extended to Guernsey.

(b) the term “relevant British fishing boat” does not include a vessel whose entry in the register maintained under section 8 of the Merchant Shipping Act 1995(c) specifies a port in Northern Ireland as the port to which the vessel is to be treated as belonging.

Prohibition on deploying a scallop dredge

3. No fishing boat shall deploy a scallop dredge in any part of the specified areas.

Prohibition on carrying a scallop dredge

4. No fishing boat shall carry a scallop dredge in any part of the specified areas unless every part of the dredge is totally inboard the boat.

Powers of British sea-fishery officers

5.—(1) For the purposes of enforcing this Order, a British sea fishery officer may exercise the powers conferred by this article in relation to—

- (a) any fishing boat within relevant British fishery limits; and

(a) 1998 c. 47.

(b) 1976 c.86; see also paragraph 3(c) of the Schedule to the Fishery Limits Act (Guernsey) Order 1989 (S.I. 1989/2407).

(c) 1995 c. 21.

(b) any relevant British fishing boat wherever it may be, other than in the territorial sea adjacent to Wales.

(2) He may go on board the boat, with or without persons assigned to assist him in his duties, and for that purpose may require the boat to stop and do anything else which will facilitate the boarding of the boat.

(3) He may require the attendance of the master and other persons on board the boat and may make any examination and inquiry which appear to him to be necessary for the purpose of enforcing this Order 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 him 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 his custody or possession and may take copies of any such document;
- (c) for the purpose of ascertaining whether the master, owner or charterer of the boat has committed an offence under section 3(5) 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 him to be necessary for facilitating the search; and
- (d) where the boat is one in relation to which he has reason to suspect that such an offence has been committed, may seize and detain any such document produced to him 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 any provision of this Order has at any time taken place, he may—

- (a) require the master of the boat in relation to which the contravention took place to take, or himself take, the boat and its crew to the port which appears to him to be the nearest convenient port; and
- (b) detain or require the master to detain the boat in the port;

and where such an officer detains or requires the detention of a boat he 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.

29th September 2004

Ben Bradshaw
Parliamentary Under Secretary of State
Department for Environment, Food and Rural Affairs

29th September 2004

Ian Pearson
Parliamentary Under Secretary of State
Northern Ireland Office

EXPLANATORY NOTE

(This note is not part of the Order)

This Order prohibits for a further six months the deployment of scallop dredges in the estuaries of the Rivers Fal and Helford (article 3). The carriage of scallop dredges within the restricted area is also prohibited unless all parts of the dredge are completely inboard the boat (article 4).

The Order comes into force on 21st October 2004 and expires 6 months later (article 1(1)).

If any boat contravenes any restriction under this Order, the master, owner and charterer is guilty of an offence and is liable to a fine not exceeding £5,000 on summary conviction and on conviction on indictment to a fine (sections 3(5) and 11(1)(b) of the Sea Fish (Conservation) Act 1967). The court may also impose an additional fine not exceeding the value of the fish caught with the scallop dredge or order the dredge's forfeiture (section 11(2)–(3) of the 1967 Act).

Additionally the Order confers powers of enforcement on British sea fishery officers for the purposes of enforcing this Order. These powers may be exercised in relation to any fishing boat within relevant British fishery limits, and in relation to a relevant British fishing boat wherever it may be (article 5).

Powers to board vessels and to search for, examine and seize fishing gear for the enforcement of this Order are conferred on an officer of a local fisheries committee by virtue of section 17 of the 1967 Act. The area in which the prohibition applies corresponds with the area in which the Environment Agency has powers of a local fisheries committee by virtue of the order establishing the Cornwall Sea Fisheries District and Committee, made by the Board of Trade on 28th March 1890, as amended (in particular by the Cornwall Sea Fisheries District (Variation) Order 1980 (S.I. 1980/805)).

Expiry of the predecessor Order, the Fal and Helford (Prohibition of Scallop Dredging) Order 2003 (S.I. 2003/2513), takes place at the end of 20th October 2004, and this Order is, apart from duration, dates and an editorial alteration in article 5(3), the same as its predecessor.

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