

2005 No. 17

SEA FISHERIES, ENGLAND

CONSERVATION, ENGLAND

**The Incidental Catches of Cetaceans in Fisheries (England)
Order 2005**

<i>Made</i> - - - -	<i>10th January 2005</i>
<i>Laid before Parliament</i>	<i>11th January 2005</i>
<i>Coming into force</i> - -	<i>2nd February 2005</i>

The Secretary of State for Environment, Food and Rural Affairs and the Secretary of State concerned with sea fishing in Northern Ireland, in exercise of the powers conferred by section 30(2) of the Fisheries Act 1981(a) and now vested in them(b) make the following Order:

Citation and commencement

1.—(1) This Order may be cited as the Incidental Catches of Cetaceans in Fisheries (England) Order 2005 and shall come into force on 2nd February 2005.

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

(3) Nothing in paragraph (2) above shall be treated as prejudicing the effect of section 30(2A) of the Fisheries Act 1981(c) in relation to, or for purposes incidental to, any provision in this Order which creates an offence.

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- (a) 1981 c.29. See section 30(3) for the definitions of “enforceable Community restriction”, “enforceable Community obligation” and “the Ministers”.
- (b) Article 3(1) of and Schedule 1 to the Scotland Act 1998 (Concurrent Functions) Order 1999 (S.I. 1999/1592) provide for the functions exercisable under section 30(2) of the 1981 Act to be exercised by the Ministers, concurrently with Scottish Ministers, in relation to: British fishing boats (other than Scottish ones) within the Scottish zone; and Scottish fishing boats within British fishery limits but outside the Scottish zone. By virtue of article 2(a) of, and Schedule 1 to, the National Assembly for Wales (Transfer of Functions) Order 1999 (S.I. 1999/672) the functions exercisable under section 30(2) of the 1981 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”); in respect of waters beyond Wales these functions remain exercisable by the Ministers. The Government of Wales Act 1998, Schedule 3, paragraph 5 provides that any power of a Minister of the Crown transferred to the Assembly by virtue of S.I. 1999/672 should continue to be exercisable by the Minister who, but for that transfer, would have continued to hold that power for the purpose of implementing any Community obligation. By virtue of article 2(1) of 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 section 30(2) of the 1981 Act were transferred to the Minister of Agriculture, Fisheries and Food. By virtue of article 2(1) of 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 section 30(2) of the 1981 Act were transferred to the Minister of Agriculture, Fisheries and Food. 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).
- (c) Section 30(2A) was inserted by article 4 of and paragraph 68(5)(a) of Part I of Schedule 2 to the Scotland Act 1998 (Consequential Modifications) (No.2) Order 1999 (S.I. 1999/1820)

Interpretation

2.—(1) In this Order—

“the Council Regulation” means Council Regulation (EC) No. 812/2004(a) laying down measures concerning incidental catches of cetaceans in fisheries and amending Regulation (EC) No 88/98;

“equivalent provision” means any provision in any other Order made for the purposes of making provision for the administration and enforcement of the Council Regulation, extending to any part of the United Kingdom, which has equivalent effect to a provision in this Order, proceedings in respect of which may be commenced in any place in the United Kingdom by virtue of section 30(2A) of the Fisheries Act 1981;

“Northern Irish fishing boat” means a fishing boat which is registered in the register maintained under section 8 of the Merchant Shipping Act 1995 and whose entry in the register specifies a port in Northern Ireland as the port to which the boat is to be treated as belonging;

“the Northern Ireland zone” has the same meaning as in the Northern Ireland Act 1998(b);

“observer” means an independent person appointed in accordance with the Council Regulation;

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

“Scottish fishing boat” means a British fishing boat which is registered in the register maintained under section 8 of the Merchant Shipping Act 1995 and whose entry in the register specifies a port in Scotland as the port to which the boat is treated as belonging;

“the Scottish zone” has the same meaning as in section 126(1) of the Scotland Act 1998(c);

“specified Community provision” means a provision of the Council Regulation specified in column 1 of the Schedule to this Order; and

“Wales” has the same meaning as in section 155 of the Government of Wales Act 1998(d).

(2) In this Order the term “within relevant British fishery limits”(e) does not include—

- (a) the Scottish zone;
- (b) the Northern Ireland zone;
- (c) the territorial sea adjacent to Wales;
- (d) the territorial sea adjacent to the Isle of Man;
- (e) the territorial sea adjacent to Jersey; and
- (f) seas within British fishery limits adjacent to Guernsey, as defined by section 8 of the Fishery Limits Act 1976(f) as extended to Guernsey.

(3) Expressions in this Order which are not defined in the Order and which appear in the Council Regulation have the same meaning in this Order as they have for the purposes of the Council Regulation.

Admittance of observers on board vessels

3. For the purpose of Articles 4.1 and 5 of the Council Regulation observers shall, on request, be admitted on board relevant British fishing boats.

(a) OJ No. L150 30.04.04, p. 12, as amended by Corrigendum OJ No L185 24.05.04, p. 4

(b) 1998 c.47

(c) 1998 c.46; see section 126 and the Scottish Adjacent Waters Boundaries Order 1999 (S.I. 1999/1126).

(d) 1998 c.38

(e) As defined by section 1 of the Fishery Limits Act 1976 (c.86).

(f) 1976 c.86; see also article 2 and paragraph 3(c) of the Schedule to the Fisheries Limits Act (Guernsey) Order 1989 (S.I. 1989/2407).

Offences

4.—(1) Where there is in relation to—

- (a) any relevant British fishing boat wherever it may be, or
- (b) any other fishing boat which is within relevant British fishery limits,

a contravention of, or failure to comply with any specified Community provision, the master, the owner and the charterer (if any) shall be guilty of an offence.

(2) Where there is a contravention of, or failure to comply with article 3 of this Order, the master, the owner and the charterer (if any) shall be guilty of an offence.

Penalties

5.—(1) A person found guilty of an offence under article 4 shall be liable—

- (a) on summary conviction to a fine not exceeding the statutory maximum; and
- (b) on conviction on indictment, to a fine.

(2) A person found guilty of an offence under article 4 shall also be liable—

- (a) to the forfeiture of any net, acoustic device or other fishing gear in respect of which the offence was committed, or which was used in committing the offence, or which was used for catching any fish in respect of which the offence was committed; and
- (b) to the forfeiture of any fish in respect of which the offence was committed, or, on summary conviction only, to a fine not exceeding the value of any fish in respect of which the offence was committed.

Recovery of fines

6.—(1) Where a fine is imposed by a magistrates' court on the master, owner or charterer, or a member of the crew, of a fishing boat who is convicted by the court of an offence under article 4 or an offence under article 11, the court may—

- (a) issue a warrant of distress against the boat involved in the commission of the offence and its gear and catch and any property of the person convicted for the purpose of levying the amount of the fine; and
- (b) order that boat and its gear and catch to be detained for a period not exceeding three months from the date of the conviction or until the fine is paid or the amount of the fine is levied in pursuance of any such warrant, whichever occurs first.

(2) Sections 77(1) and 78 of the Magistrates' Courts Act 1980(a) (postponement of issue of, and defects in, warrants of distress) shall apply to a warrant of distress issued under this article in England as they apply to a warrant of distress issued under Part III of that Act.

(3) Where in relation to a fine in respect of a relevant offence an order under Article 95 of the Magistrates' Courts (Northern Ireland) Order 1981(b) or section 222 of the Criminal Procedure (Scotland) Act 1995(c) (both of which deal with transfer of fines from one jurisdiction to another) specifies a petty sessions area in England, this article shall apply as if the fine were imposed by a court within that petty sessions area or petty sessions district.

Powers of British sea-fishery officers in relation to fishing boats

7.—(1) For the purpose of enforcing the provisions of articles 3 or 4, or any equivalent provision, any British sea-fishery officer may exercise the powers conferred by paragraphs (2) to (4) below in relation to—

(a) 1980 c.43; section 78 was amended by sections 37 and 46 of the Criminal Justice Act 1982 (c.48).
(b) S.I. 1981/1675 (NI 26).
(c) 1995 c.46.

- (a) any relevant British fishing boat wherever it may be; and
- (b) any other fishing boat which is within relevant British fishery limits.

(2) He may go on board the boat, with or without persons assigned to assist him in his duties, and may require the boat to stop and do anything else which will facilitate either the boarding of, or the disembarkation from, 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 appears to him to be necessary for the purpose mentioned in paragraph (1) above and, in particular—

- (a) may search for fish or fishing gear on the boat and 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 any fishing operations or other operations ancillary thereto or to the persons on board) which is in that person's custody or possession;
- (c) for the purpose of ascertaining whether an offence under article 4 or any equivalent provision has been committed, 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;
- (d) may inspect and take copies of any such document produced to him or found on board 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 he has reason to suspect that an offence under article 4 or any equivalent provision 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 (e) above 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 an offence under article 4, or any equivalent provision, has at any time been committed in relation to a fishing boat, he may—

- (a) require the master of the boat in relation to which the offence took place to take, or may 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.

Powers of British sea-fishery officers on land

8.—(1) For the purpose of enforcing the provisions of article 4, or any equivalent provision, any British sea-fishery officer may in England—

- (a) enter and inspect at any reasonable time any premises used for carrying on any business in connection with the operation of fishing boats or activities connected therewith or ancillary thereto or with the treatment, storage or sale of fish;
- (b) take with him such other persons as appear to him to be necessary and any equipment or materials;
- (c) examine any fish on the premises and require persons on the premises to do anything which appears to him to be necessary for facilitating the examination;
- (d) carry out at such premises such other inspections or tests as may reasonably be necessary;

- (e) require any person not to remove or cause to be removed any fish from such premises for such a period as may be reasonably necessary for the purposes of establishing whether a relevant offence has at any time been committed;
- (f) require any person on the premises to produce any documents which are in that person's custody or possession relating to the catching, landing, transportation, trans-shipment, sale or disposal of any sea fish;
- (g) for the purpose of ascertaining whether any person on the premises has committed an offence under article 4, search the premises for any such document and require any person on the premises to do anything which appears to him to be necessary for facilitating the search including rendering all documents on computer systems into a visible and legible form;
- (h) inspect and take copies of any such document produced to him or found on the premises 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
- (i) if he has a reason to suspect that an offence under article 4 has been committed, seize and detain any such document produced to him or found on the premises for the purpose of enabling the document to be used as evidence in proceedings for the offence.

(2) The provisions of paragraph (1) above shall also apply in relation to any land used in connection with any of the activities described in paragraph (1) above, and in respect of any vehicle which a British sea-fishery officer has reasonable cause to believe is being used to transport fish or fisheries products, as they apply in relation to premises and, in the case of a vehicle, shall include power to require the vehicle to stop at any time and, if necessary, direct the vehicle to some other place to facilitate the inspection.

(3) If in England a justice of the peace on sworn information in writing is satisfied—

- (a) that there is reasonable ground to believe that any documents or other items which a British sea-fishery officer has power under this article to inspect are on any premises and that their inspection is likely to disclose evidence of the commission of a relevant offence; and
- (b) either—
 - (i) that admission to the premises has been or is likely to be refused and that notice of intention to apply for a warrant has been given to the occupier; or
 - (ii) that an application for admission or the giving of such notice would defeat the object of the entry, or that the premises are unoccupied, or that the occupier is temporarily absent and it might defeat the object of the entry to await his return,

the justice may by warrant signed by him, and valid for one month, authorise a British sea-fishery officer to enter the premises, if need be by reasonable force, and take with him such persons as appear to him to be necessary.

Powers of British sea-fishery officers to seize fish, acoustic devices and fishing gear

9.—(1) This article applies—

- (a) in England;
- (b) to any relevant British fishing boat wherever it may be; and
- (c) to any other fishing boat which is within relevant British fishery limits.

(2) Where this article applies, any British sea-fishery officer may seize—

- (a) any fish (including any receptacle which contains the fish) in respect of which he has reasonable grounds to suspect that an offence under article 4, or any equivalent provision, has been committed;
- (b) any net or other fishing gear which he has reasonable grounds to suspect has been used in the course of the commission of such an offence; and

- (c) any acoustic device which he has reasonable grounds to suspect is not in compliance with the specifications prescribed by the Council Regulation and has been used in the course of the commission of an offence.

Protection of officers

10. An officer, or a person assisting him by virtue of article 7(2) or 8(1)(b) or a warrant under article 8(3), shall not be liable in any civil or criminal proceedings for anything done in the purported exercise of the powers conferred on him by articles 6 to 9 if the court is satisfied that the act was done in good faith, that there were reasonable grounds for doing it and that it was done with reasonable skill and care.

Obstruction of officers

11.—(1) Any person who—

- (a) fails without reasonable excuse to comply with any requirement imposed by a British sea-fishery officer under the powers conferred on British sea-fishery officers by articles 7, 8 or 9;
- (b) without reasonable excuse prevents, or attempts to prevent, any other person from complying with any such requirement; or
- (c) assaults an officer, or a person assisting an officer, who is exercising any of the powers conferred on him by article 7, 8 or 9 or intentionally obstructs any such officer in the exercise of any of those powers,

shall be guilty of an offence.

(2) A person guilty of an offence under paragraph (1) is liable—

- (a) on summary conviction to a fine not exceeding the statutory maximum; or
- (b) on conviction on indictment to a fine.

Powers of other officers

12.—(1) For the purpose of enforcing this Order, any of the following officers—

- (a) any officer authorised by the Minister; or
- (b) any fishery officer of a local fisheries committee acting within any part of the district of the committee which lies in England,

may in England, exercise the powers as provided in articles 7, 8 and 9.

(2) The protection afforded by articles 10 and 11 of this Order shall extend to the enforcing officers as described at paragraph (1) above.

Proceedings

13. A local fisheries committee in England may take proceedings under this Order in respect of any offence occurring within any part of the district of the committee which lies in England.

Provisions as to offences

14.—(1) Where an offence under article 4, or any equivalent provision, committed by a body corporate is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, a director, manager, secretary or other similar officer of the body corporate, or a person purporting to act in any such capacity, he as well as the body corporate shall be guilty of the offence and liable to be proceeded against and punished accordingly.

(2) Where an offence under article 4, or any equivalent provision, committed by a partnership is proved to have been committed with the consent or connivance of, or to be attributable to any

neglect on the part of, a partner, he as well as the partnership shall be guilty of the offence and liable to be proceeded against and punished accordingly.

(3) Where an offence under article 4, or any equivalent provision, committed by an unincorporated association is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, any officer of the association or any member of its governing body, he as well as the association shall be guilty of the offence and liable to be proceeded against and punished accordingly.

Admissibility in evidence of logbooks and other documents

15.—(1) In this Order any record required to be compiled for the purposes of Council Regulation (EC) No 2847/93 shall, in any proceedings in England for an offence under article 4, be evidence of the matters stated therein.

(2) For the purposes of paragraph 1 above “record” includes the following—

- (a) logbook;
- (b) declaration;
- (c) effort report;
- (d) document; or
- (e) document containing required information received by fisheries monitoring centres.

(3) For the purpose of paragraph (2)(e) above, “required information” means—

- (a) a fishing boat’s identification;
- (b) the most recent geographical position of the fishing boat expressed in degrees and minutes of longitude and latitude; and
- (c) the date and time of the fixing of that position,

as communicated via a satellite-based vessel monitoring system established under Article 3.1 of Council Regulation (EC) No 2847/93.

8th January 2005

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

10th January 2005

Ian Pearson
Parliamentary Under Secretary of State
Northern Ireland Office

SCHEDULE

Articles 2(1) and 4

SPECIFIED COMMUNITY PROVISIONS AND MAXIMUM FINES ON SUMMARY CONVICTION

<i>Column1</i>	<i>Column2</i>	<i>Column 3</i>
Provision of the Council Regulation as read with the Annexes to that Regulation	Subject matter	Maximum fine on summary conviction
1. Article 2.1 and Annex 1	Acoustic devices to be used by relevant vessels in specified areas and for periods specified in Annex I.	£5,000
2. Article 2.2	Acoustic devices to be fully operational.	£5,000
3. Article 2.3	Fishing conducted in compliance with an authorisation granted in accordance with Article 2.3	£5,000
4. Article 3.1 and Annex II	Acoustic devices to comply with relevant technical specifications.	£5,000
5. Article 3.2	Fishing conducted in compliance with an authorisation granted in accordance with Article 3.2	£5,000

EXPLANATORY NOTE

(This note is not part of the Order)

This Order makes provision for the enforcement of Community restrictions and other obligations relating to sea fishing by vessels in certain areas as set out in Council Regulation (EC) No. 812/2004 (OJ No. L150, 30.04.04, p. 12, as amended by Corrigendum OJ No L185 24.05.04, p. 4). The Council regulation requires Member States to monitor the bycatch of cetaceans by the implementation of an observer scheme. It also requires certain vessels to deploy acoustic devices in relation to specified gear whilst fishing.

This Order comes into force on 2nd February 2005. It does not form part of the law of Scotland or Northern Ireland and does not apply in Wales.

Article 4 of the Order creates offences in respect of breaches of the specified provisions of the Council Regulation. Penalties are specified for such offences (article 5). Provision is made for the recovery of fines (article 6).

The Order confers powers of enforcement on British sea-fishery officers in relation to certain fishing boats, as well as on land in England, and in relation to the seizure of fish, acoustic devices and fishing gear (articles 7, 8, 9, and 10). Provision is made for the punishment of anyone found guilty of assaulting or obstructing an officer (article 11). The Order provides for the exercise of the powers contained in it by officers authorised by the Minister and officers of local fisheries committees (article 12). Proceedings under the Order may be brought by a local fisheries committee in respect of offences committed within any part of its district (article 13).

Article 14 makes provision in relation to offences committed by bodies corporate, partnerships and officers of unincorporated associations.

Article 15 allows for the admissibility in evidence of records compiled for the purposes of Council Regulation (EC) No 2847/93.

STATUTORY INSTRUMENTS

2005 No. 17

SEA FISHERIES, ENGLAND

CONSERVATION, ENGLAND

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Order 2005**

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