

Statutory Instrument 2000 No. 197

The Undersized Lobsters (Scotland) Order 2000

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SCOTTISH STATUTORY INSTRUMENTS

2000 No. 197

SEA FISHERIES

CONSERVATION OF SEA FISH

The Undersized Lobsters (Scotland) Order 2000

<i>Made</i>	<i>15th June 2000</i>
<i>Laid before the Scottish Parliament</i>	<i>16th June 2000</i>
<i>Coming into force</i>	<i>7th July 2000</i>

The Scottish Ministers, in exercise of the powers conferred on them by sections 1(1), (2), (3) and (6) and section 15(3) and section 20(1) of the Sea Fish (Conservation) Act 1967^[1] and of all other powers enabling them in that behalf, hereby make the following Order:

Citation and commencement

1. This Order may be cited as the Undersized Lobsters (Scotland) Order 2000 and shall come into force on 7th July 2000.

Interpretation

2. In this Order -

"the Act" means the Sea Fish (Conservation) Act 1967;

"lobster" means lobster of the species *Homarus gammarus*;

"size", in relation to a lobster, means the length of the carapace parallel to the midline, from the back of either eye socket to the distal edge of the carapace and shall be measured as shown in the Schedule to this Order; and

"equivalent technical conservation provision" means any Order extending to any other part of the United Kingdom made under section 1(3) of the Act in pursuance of article 46 of Council Regulation 850/98[2].

Prescribed minimum size for landing lobsters

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, being a fish of a smaller size as may be prescribed in relation to sea fish of that description), there is hereby prescribed as the minimum size for lobsters a size of 87 millimetres.

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

Prescribed minimum size for sale etc of lobsters

4. - (1) For the purposes of section 1(2) of the Act (which prohibits the sale, exposure or offer for sale or possession for the purpose of sale in Scotland of any sea fish of any description, being a fish of a smaller size as may be prescribed in relation to sea fish of that description), there is hereby prescribed as the minimum size for lobster a size of 87 millimetres.

(2) The sale, exposure or offer for sale or possession for the purpose of sale of lobsters which are landed from foreign fishing boats is exempted from the prohibitions imposed by section 1(2) of the Act as read with paragraph (1).

Prescribed minimum size for carriage of lobsters

5. - (1) For the purposes of section 1(3) of the Act (which prohibits the carriage on a Scottish fishing boat of sea fish of any description which are of less than the minimum size prescribed in relation to sea fish of that description), there is hereby prescribed as the minimum size for lobsters a size of 87 millimetres.

(2) The carrying by any relevant British fishing boat within the Scottish zone of lobsters of less than the minimum size prescribed in paragraph (1) is prohibited.

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

6. - (1) For the purposes of the enforcement of sections 1(1) and (2) of the Act as read with this Order and section 1(3) of the Act as read with this Order or any equivalent technical conservation provision, a British sea-fishery officer may exercise in relation to -

(a) any Scottish fishing boat wherever it may be; and

(b) any relevant British fishing boat within the Scottish zone,

the powers conferred by paragraphs (2) to (4) of this article.

(2) He may go on board the boat, with or without persons assigned to assist him with 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 appears to him to be necessary for the purpose mentioned in paragraph (1) above 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 sections 1(1) or (2) of the Act as read with this Order and section 1(3) of the Act as read with this Order or any equivalent technical conservation provision, 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) 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 a contravention of this Order or any equivalent technical conservation provision 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 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 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.

Revocation

7. The Undersized Lobsters Order 1993[3] is revoked.

JOHN HOME ROBERTSON

Authorised to sign by the Scottish Ministers

St Andrew's House, Edinburgh

15th June 2000

SCHEDULE

MEASUREMENT OF THE SIZE OF A LOBSTER

EXPLANATORY NOTE

(This note is not part of the Order)

This Order prescribes a minimum size for the landing of lobsters (*Homarus gammarus*) (article 3(1)). There is an exemption from the minimum landing size for the landing of lobsters from foreign fishing boats (article 3(2)).

The Order also prescribes a minimum size for the sale of lobsters (article 4(1)) and for the carriage of lobsters on a Scottish fishing boat anywhere, or relevant British fishing boat in the Scottish zone (article 5). There is an exemption from the minimum sale size for lobsters which are landed from foreign fishing boats (article 4(2)).

The Order also gives British sea-fishery officers further enforcement powers in relation to all Scottish fishing boats (wherever they may be) and relevant British fishing boats within the Scottish zone, but it does so only as a matter of Scots law (article 6). They already have powers under section 15(2) of the Sea Fish (Conservation) Act 1967 ("the 1967 Act"), as amended by the Fisheries Act 1981, to seize any fish in respect of which an offence has been or is being committed under section 1(3) of the 1967 Act.

Offences and penalties are prescribed respectively by section 1(7) and (8) and section 11 of the 1967 Act.

This Order revokes the Undersized Lobsters Order 1993, in so far as it relates to Scotland.

This Order is made in reliance on Article 46 of Council Regulation (EC) No. 850/98 (O.J. No. L125, 27.04.98, p.1), laying down certain technical measures for the conservation of fishery resources, which authorises Member States to take certain national measures for the conservation and management of local stocks.

A Regulatory Impact Assessment has been prepared and placed in the Scottish Parliament Information Centre. Copies can be obtained from SERAD, Sea Fisheries Division, Room 518, Pentland House, Robb's Loan, Edinburgh EH14 1TY.

Notes:

[1] 1967 (c.84) ("the 1967 Act"); section 1 was substituted by the Fisheries Act 1981 (c.29), section 19(1) and was amended by the Merchant Shipping Act 1988 (c.12), Schedule 6. 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). See section 22(2) for the definition of "the Ministers". Section 22(2)

was amended by the Fisheries Act 1981, section 19(2)(d) and 45(b) and (c). The functions of the Secretary of State were transferred to the Scottish Ministers by virtue of section 53 of the Scotland Act 1998 (c.46). Sections 1, 15(3), 20 and 22 of the 1967 Act were amended by the Scotland Act 1998 (Consequential Modifications) (No. 2) Order 1999 (S.I. 1999/1820), Schedule 2, paragraph 43.[back](#)

[2] O.J. 125 27.4.98 pl.[back](#)

[3] S.I. 1993/1178.[back](#)

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