

Statutory Instrument 2000 No. 1843

The Sea Fishing (North-East Atlantic Control Measures) Order 2000

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STATUTORY INSTRUMENTS

2000 No. 1843

SEA FISHERIES

The Sea Fishing (North-East Atlantic Control Measures) Order 2000

<i>Made</i>	<i>13th July 2000</i>
<i>Laid before Parliament</i>	<i>14th July 2000</i>
<i>Coming into force</i>	<i>24th July 2000</i>

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SCHEDULE:

Maximum fines on summary conviction (apart from fines related to value of fish).

The Minister of Agriculture, Fisheries and Food and the Secretaries of State respectively concerned with sea fishing in Scotland, Wales and Northern Ireland, in exercise of the powers conferred on them by section 30(2) of the Fisheries Act 1981[1] and of all other powers enabling them in that behalf, hereby make the following Order:

PART I

INTRODUCTORY AND GENERAL

Title, commencement and extent

1. - (1) This Order may be cited as the Sea Fishing (North-East Atlantic Control Measures) Order 2000 and shall come into force on 24th July 2000.

(2) Subject to paragraph (3) -

(a) Part II of this Order shall form part of the law of England and Wales and of Northern Ireland only;

(b) Part III shall form part of the law of Scotland only.

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

Interpretation

2. - (1) In this Order -

"British fishing boat" means a fishing boat which is registered in the United Kingdom under Part II of the Merchant Shipping Act 1995[3] or is owned wholly by persons qualified to own British ships for the purposes of that part of that Act;

"the Council Regulation" means Council Regulation (EC) No. 2791/1999 laying down certain control measures applicable in the area covered by the Convention on future multilateral cooperation in the north-east Atlantic fisheries[4]; which is to be read with Commission Regulation (EC) No. 1085/2000 laying down detailed rules for the application of control measures applicable in the area covered by the Convention on Future Multilateral Cooperation in the North-East Atlantic Fisheries[5];

"duly authorised inspector" has the meaning given by Article 2.9 of the Council Regulation;

"foreign fishing boat" means a fishing boat which is not a British fishing boat and which flies the flag either of a State which is a Contracting Party to the NEAFC Convention or of a Member State of the European Community;

"infringement" has the meaning given by Article 2.7 of the Council Regulation;

"NEAFC Convention" has the meaning given by the First Recital of the Council Regulation;

"NEAFC inspector" has the meaning given by Article 2.5 of the Council Regulation and shall include a British sea-fishery officer assigned to the Scheme under Article 3 of this Order;

"non-Contracting Party vessel" has the meaning given by Article 2.10 of the Council Regulation;

"regulated resources" has the meaning given by Article 2.3 of the Council Regulation;

"Regulation 2847/93" means Council Regulation (EEC) No 2847/93 establishing a control system applicable to the common fisheries policy[6];

"Regulatory Area" has the meaning given by Article 2.1 of the Council Regulation;

"relevant British fishing boat" means a British fishing boat which is not a Scottish fishing boat;

"the Scheme" has the meaning given by the Third Recital of the Council Regulation;

"Scottish fishing boat" means a fishing vessel 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 vessel is to be treated as belonging;

"Scottish zone" has the same meaning as in the Scotland Act 1998[7];

"serious infringement" has the meaning given by Article 2.8 of the Council Regulation;

"specified Community measure" means a provision of the Council Regulation which is specified in column 1 of the Schedule, as read with any qualifying words relating to that provision in that column;

any any other expression used in the Council Regulation has the same meaning in this Order as in that Regulation.

(2) In this Order -

(a) the term "within relevant British fishery limits" does not include -

(i) the Scottish zone;

(ii) the territorial sea adjacent to the Isle of Man;

(iii) the territorial sea adjacent to the Bailiwick of Jersey; and

(iv) seas within British fishery limits adjacent to Guernsey, as defined by section 8 of the Fishery Limits Act 1976[8];

(b) any reference to a document, logbook or declaration includes, in addition to a document, logbook or declaration in writing -

(i) any map, plan, graph or drawing;

(ii) any photograph;

(iii) any data, howsoever reproduced, communicated via a satellite-based vessel monitoring system established under Article 3.1 of Regulation 2847/93,

(iv) any disk, tape, sound track or other device in which sounds or other data (not being visual images) are recorded so as to be capable (with or without the aid of some other equipment) of being reproduced therefrom; and

(v) any film (including microfilm), negative, tape, disk or other device in which one or more visual images are recorded so as to be capable (as aforesaid) of being reproduced therefrom.

(3) Any reference in this Order -

(a) to "the Schedule" is a reference to the Schedule to this Order; and

(b) to a Community instrument is a reference to that instrument and any amendment of such instrument in force on the date this Order is made.

(4) Column 2 of the Schedule (which provides in relation to each specified Community measure an indication of the subject matter of the provision) shall not be read as limiting the scope of any specified Community measure and shall be disregarded in relation to any question arising as to the construction of this Order.

Assignment of British sea-fishery officers to the Scheme

3. - (1) Any British sea-fishery officer may be assigned to the Scheme in accordance with this article (and such assignment shall accordingly constitute that officer a NEAFC inspector for the purposes of the Scheme and the Council Regulation).

(2) For the purposes of any provisions relating to NEAFC inspectors in Part II of this Order such assignment shall be made by the Minister of Agriculture, Fisheries and Food; but that Minister may authorise the Scottish Ministers in writing to make such assignments on his behalf and any assignments made by those Ministers under any such authorisation shall have effect accordingly.

(3) For the purposes of any provisions relating to NEAFC inspectors in Part III of this Order such assignment shall be made by the Scottish Ministers.

PART II

PROVISIONS FORMING PART OF THE LAW OF ENGLAND AND WALES AND OF NORTHERN IRELAND

Offences

4. - (1) Where there is, in respect of any relevant British fishing boat wherever it may be, a contravention of, or failure to comply with, any specified Community measure,

the master, the owner and the charterer (if any) shall each be guilty of an offence.

(2) Where there is, in respect of any Community fishing vessel, other than a relevant British fishing boat, which is within relevant British fishery limits, a contravention of, or failure to comply with Article 24 of the Council Regulation, the master, the owner and the charterer (if any) shall each be guilty of an offence.

(3) Where, in respect of -

(a) any relevant British fishing boat wherever it may be; or

(b) any Scottish fishing boat or foreign fishing boat which is within relevant British fishery limits,

any person -

(i) moves, removes or interferes with an identification mark affixed to any part of fishing gear in accordance with Article 16.1(b); or

(ii) fails to comply with a requirement imposed by the competent authorities in the United Kingdom, or a duly authorised officer, to proceed to a designated port under Article 19.4,

of the Council Regulation, the master, the owner and the charterer (if any) shall each be guilty of an offence.

(4) Where in respect of any non-Contracting Party vessel, any person -

(a) tranships fish to a Community fishing vessel within relevant British fishery limits; or

(b) lands in England, Wales or Northern Ireland or tranships within relevant British fishery limits regulated resources in breach of a notice in writing served under article 7(9) of this Order,

the master, the owner and the charterer (if any) shall each be guilty of an offence.

Penalties

5. - (1) A person found guilty of an offence under article 4(1) or (2) or (where proceedings are brought in England, Wales or Northern Ireland by virtue of section 30(2A) of the Fisheries Act 1981) article 13(1) or (2) of this Order, shall be liable -

(a) on summary conviction to a fine not exceeding the amount specified in column 3 of the Schedule in relation to the specified Community measure, the contravention of, or failure to comply with, which founded the offence;

(b) on conviction on indictment to a fine.

(2) A person found guilty of an offence under article 4(3) or (4) or (where proceedings are brought in England, Wales or Northern Ireland by virtue of section

30(2A) of the Fisheries Act 1981) article 13(3) or (4) of this Order, shall be liable -

(a) on summary conviction to a fine -

(i) in the case of an offence under article 4(3) or 13(3), not exceeding the statutory maximum,

(ii) in the case of an offence under article 4(4) or 13(4), not exceeding £50,000;

(b) on conviction on indictment to a fine.

(3) Subject to the following provisions of this article, the court by or before which a person is convicted of an offence founded on a contravention of, or failure to comply with, Article 4.1, 6.1, 9, 24 or 25.1 of the Council Regulation or article 4(3) or (4) or (where proceedings are brought in England, Wales or Northern Ireland by virtue of section 30(2A) of the Fisheries Act 1981) article 13(3) or (4) of this Order, may order the forfeiture of:

(a) any fish in respect of which the offence was committed; and

(b) any net or other fishing gear used in committing the offence.

(4) Any person found guilty of an offence under this Order (including an offence under Part III in respect of which proceedings were brought in England, Wales or Northern Ireland by virtue of section 30(2A) of the Fisheries Act 1981) shall, subject to the following provisions of this article, be liable on summary conviction to a fine not exceeding the value of the fish in respect of which the offence was committed.

(5) A person shall not be liable to a fine under paragraph (4) in respect of an offence if, under paragraph (3), the court orders the forfeiture of the fish in respect of which the offence was committed; and where a fine is imposed under paragraph (4) in respect of any offence, the court shall not have power under paragraph (3) to order the forfeiture of the fish in respect of which the offence was committed.

(6) Subject to paragraph (5), any fine to which a person is liable under paragraph (4) in respect of an offence shall be in addition to any other penalty (whether pecuniary or otherwise) to which he is liable in respect of that offence under this article or under any other enactment.

Recovery of fines

6. - (1) Without prejudice to any other powers of a magistrates' court in respect of the recovery of fines, where a fine is imposed by a magistrates' court in England, Wales or Northern Ireland on any person in respect of an offence under article 4 or 10 or (where proceedings were brought in England, Wales or Northern Ireland by virtue of section 30(2A) of the Fisheries Act 1981) article 13 or 19 of this Order, 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 such 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[9] (postponement of issue of, and defects in, warrants of distress) shall apply to a warrant of distress issued under this article in England or Wales as they apply to a warrant of distress issued under Part III of that Act.

(3) Articles 114(2) and 154 of the Magistrates' Courts (Northern Ireland) Order 1981[10] (postponement of issue of certain warrants and objections as to want of form or variance between complaint etc. and evidence adduced) shall apply to a warrant of distress issued under this article in Northern Ireland as it applies to a warrant referred to in those articles of that Order.

(4) Where in relation to a fine in respect of an offence under Part II or III of this Order a transfer of fine order under section 90 of the Magistrates' Courts Act 1980, Article 95 of the Magistrates' Courts (Northern Ireland) Order 1981 or section 222 of the Criminal Procedure (Scotland) Act 1995[11] specifies a petty sessions area in England and Wales or a petty sessions district in Northern Ireland this article shall apply as if the fine were imposed by a court within that petty sessions area or petty sessions district.

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

7. - (1) For the purpose of enforcing the provisions of the Scheme, the Council Regulation and this Order, a NEAFC inspector may, subject to Article 14.1 of the Council Regulation, exercise the powers conferred by paragraphs (4) to (6) of this article, in relation to any relevant British fishing boat within the Regulatory Area.

(2) For the purpose of enforcing the provisions of the Scheme and the Council Regulation, a British sea-fishery officer who is a NEAFC inspector may, subject to Article 14.1 of the Council Regulation, exercise the powers conferred by paragraphs (4) and (5) of this article, in relation to any foreign fishing boat within the Regulatory Area.

(3) For the purpose of enforcing the provisions of the Scheme, the Council Regulation and Parts II and III of this Order, a British sea-fishery officer may exercise the powers conferred by paragraphs (4) to (6) of this article -

(a) in respect of any relevant British fishing boat wherever it may be; and

(b) in respect of any Scottish fishing boat, any foreign fishing boat or any non-Contracting Party vessel which is within relevant British fishery limits.

(4) 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.

(5) 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 purposes mentioned in paragraphs (1), (2) and (3) of this article 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 his custody or possession;

(c) for the purpose of ascertaining whether an infringement, a serious infringement or an offence under Part II or III of this Order 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;

(e) without prejudice to sub-paragraphs (c) and (d), may require the master and any person for the time being in charge of the boat to render all such documents on a computer system into a visible and legible form, including requiring any such document to be produced in a form in which it may be taken away; and

(f) where the boat is one in relation to which he has reason to suspect that an infringement, a serious infringement, or an offence under Part II or III of this Order has been committed, may seize and detain, or take copies of, any such document produced to him or found on board for the purpose of enabling the document to be used as evidence in any related proceedings for an offence;

but nothing in sub-paragraph (f) 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.

(6) Where it appears to him that an infringement, a serious infringement or an offence under Part II or III of this Order has at any time been committed, he may -

(a) require the master of the boat in relation to which the infringement, serious infringement or offence took place to take or may himself take, the boat and its crew to a port in the United Kingdom which appears to him to be the nearest convenient port; and

(b) detain or require the master to detain the boat in the port.

(7) Where a fishing boat is detained or required to be detained by a NEAFC inspector or British sea-fishery officer under paragraph (6)(b), 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 -

(a) when the detention relates to a serious infringement, by a British sea-fishery officer who is a NEAFC inspector; or

(b) in any other case, by a British sea-fishery officer.

(8) Where it appears to a British sea-fishery officer who is a NEAFC inspector that an infringement or serious infringement has at any time been committed in the

Regulatory Area, he may in relation to a foreign fishing boat require the master to re-route the vessel in such direction, or to such destination, as the flag State of the fishing boat may request.

(9) Where, in carrying out an inspection under Article 25 of the Council Regulation, a British sea-fishery officer is satisfied that a non-Contracting Party vessel is carrying on board regulated resources, he shall serve a notice in writing on the master of such vessel, or any person for the time being in charge of the vessel, prohibiting the landing in England, Wales and Northern Ireland and the transhipment within relevant British fishery limits of such resources.

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

8. In respect of any relevant British fishing boat wherever it may be, and any other fishing boat which is within relevant British fishery limits, 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 infringement, a serious infringement or an offence under Part II or III of this Order has been committed; and

(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 infringement, serious infringement or offence.

Protection of officers

9. A NEAFC inspector, a British sea-fishery officer or a person assisting him by virtue of article 7(4) of this Order 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 7 and 8 of this Order 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

10. 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 and 8 of this Order;

(b) without reasonable excuse prevents, or attempts to prevent, any other person from complying with any such requirement; or

(c) assaults a British sea-fishery officer or anyone accompanying that officer who is exercising any of the powers conferred on him by articles 7 and 8 of this Order or intentionally obstructs any such officer or person in the exercise of any of those powers,

shall be guilty of an offence and liable -

(i) on summary conviction to a fine not exceeding the statutory maximum; or

(ii) on conviction on indictment to a fine.

Provisions as to offences

11. - (1) Where any offence under article 4 or (where proceedings are brought in England, Wales or Northern Ireland by virtue of section 30(2A) of the Fisheries Act 1981) article 13 of this Order 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 any offence under article 4 or (where proceedings are brought in England, Wales or Northern Ireland by virtue of section 30(2A) of the Fisheries Act 1981) article 13 of this Order 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 or partnership manager, he as well as the partnership shall be guilty of the offence and liable to be proceeded against and punished accordingly.

(3) Where any offence under article 4 or (where proceedings are brought in England, Wales or Northern Ireland by virtue of section 30(2A) of the Fisheries Act 1981) article 13 of this Order committed by an unincorporated association (other than 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, 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

12. - (1) Any -

- (a) logbook kept under Article 6, 17.2 or 28c of Regulation 2847/93;**
- (b) declaration submitted under Article 8.1, 11, 12, 17.2 or 28f of Regulation 2847/93;**
- (c) document drawn up under Article 9 or 13 of Regulation 2847/93;**
- (d) document containing required information received by a fisheries monitoring centre established under Article 3.7 of Regulation 2847/93;**
- (e) document required to be kept in accordance with Article 5.2 of the Council Regulation;**
- (f) catch report submitted under Article 6.1 of the Council Regulation,**

shall, in any proceedings for an offence, be evidence of the matters stated therein.

(2) For the purpose of paragraph (1), "required information" shall mean -

- (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 Regulation 2847/93.

PART III

PROVISIONS FORMING PART OF THE LAW OF SCOTLAND

Offences

13. - (1) Where there is, in respect of any Scottish fishing boat wherever it may be, a contravention of, or failure to comply with, any specified Community measure, the master, the owner and the charterer (if any) shall each be guilty of an offence.

(2) Where there is, in respect of any Community fishing vessel, other than a Scottish fishing boat, which is within the Scottish zone, a contravention of, or failure to comply with Article 24 of the Council Regulation, the master, the owner and the charterer (if any) shall each be guilty of an offence.

(3) Where, in respect of -

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

(b) any relevant British fishing boat or foreign fishing boat which is within the Scottish zone,

any person -

(i) moves, removes or interferes with an identification mark affixed to any part of fishing gear in accordance with Article 16.1(b); or

(ii) fails to comply with a requirement imposed by the competent authorities in the United Kingdom, or a duly authorised officer, to proceed to a designated port under Article 19.4,

of the Council Regulation, the master, the owner and the charterer (if any) shall each be guilty of an offence.

(4) Where in respect of any non-Contracting Party vessel, any person -

(a) tranships fish to a Community fishing vessel within the Scottish zone; or

(b) lands in Scotland or tranships within the Scottish zone regulated resources in breach of a notice in writing served under article 16(7) of this Order,

the master, the owner and the charterer (if any) shall each be guilty of an offence.

Penalties

14. - (1) A person found guilty of an offence under article 13(1) or (2) or (where proceedings are brought in Scotland by virtue of section 30(2A) of the Fisheries Act 1981) article 4(1) or (2) of this Order, shall be liable -

(a) on summary conviction to a fine not exceeding the amount specified in column 3 of the Schedule in relation to the specified Community measure, the contravention of, or failure to comply with, which founded the offence;

(b) on conviction on indictment to a fine.

(2) A person found guilty of an offence under article 13(3) or (4) or (where proceedings are brought in Scotland by virtue of section 30(2A) of the Fisheries Act 1981) article 4(3) or (4) of this Order, shall be liable -

(a) on summary conviction to a fine -

(i) in the case of an offence under article 4(3) or 13(3), not exceeding the statutory maximum;

(ii) in the case of an offence under article 4(4) or 13(4), not exceeding £50,000;

(b) on conviction on indictment to a fine.

(3) Subject to the following provisions of this article, the court by or before which a person is convicted of an offence founded on a contravention of, or failure to comply with, Article 4.1, 6.1, 9, 24 or 25.1 of the Council Regulation or article 13(3) or (4) or (where proceedings are brought in Scotland by virtue of section 30(2A) of the Fisheries Act 1981) article 4(3) or (4) of this Order, may order the forfeiture of:

(a) any fish in respect of which the offence was committed; and

(b) any net or other fishing gear used in committing the offence.

(4) Any person found guilty of an offence under this Order (including an offence under Part II in respect of which proceedings were brought in Scotland by virtue of section 30(2A) of the Fisheries Act 1981) shall, subject to the following provisions of this article, be liable on summary conviction to a fine not exceeding the value of the fish in respect of which the offence was committed.

(5) A person shall not be liable to a fine under paragraph (4) in respect of an offence if, under paragraph (3), the court orders the forfeiture of the fish in respect of which the offence was committed; and where a fine is imposed under paragraph (4) in respect of any offence, the court shall not have the power under paragraph (3) to order the forfeiture of the fish in respect of which the offence was committed.

(6) Subject to paragraph (5), any fine to which a person is liable under paragraph (4) in respect of an offence shall be in addition to any other penalty (whether pecuniary or otherwise) to which he is liable in respect of that offence under this article or under any other enactment.

Recovery of fines

15. - (1) Without prejudice to the provisions of section 221 of the Criminal Procedure (Scotland) Act 1995, where a court in Scotland has imposed a fine on any person in respect of an offence under article 13 or 19 or (where proceedings were brought in Scotland by virtue of section 30(2A) of the Fisheries Act 1981) article 4 or 10 of this

Order that court may for the purposes of recovering the fine -

(a) order any boat involved in the commission of the offence and its gear and catch to be detained for a period not exceeding three months (which order may be extended by an order or orders of the same kind for a further period or periods of three months) unless the fine is paid or a warrant is issued under subparagraph (b); or

(b) at any time after the imposition of the fine issue a warrant for the arrestment and sale of any such boat, its gear and catch.

(2) A court shall not issue a warrant under paragraph (1)(b) above without first affording the owner of the boat, gear or catch liable to be included in the warrant an opportunity to be heard on the issue of such warrant.

(3) A warrant issued under paragraph (1)(b) above, whatever the amount of the fine imposed, may be executed in the same manner as if the proceedings were on an extract decree of the sheriff in a summary cause.

(4) Where in relation to a fine in respect of an offence under Part II or III of this Order a transfer of fine order under section 222 of the Criminal Procedure (Scotland) Act 1995, section 90 of the Magistrates' Courts Act 1980 or Article 95 of the Magistrates' Courts (Northern Ireland) Order 1981 specifies a court of summary jurisdiction in Scotland this article shall apply as if the fine were imposed by that court.

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

16. - (1) For the purpose of enforcing the provisions of the Scheme, the Council Regulation and this Order, a NEAFC inspector may, subject to Article 14.1 of the Council Regulation, exercise the powers conferred by paragraphs (3) to (5) of this article, in relation to any Scottish fishing boat within the Regulatory Area.

(2) For the purpose of enforcing the provisions of the Scheme, the Council Regulation and Parts II and III of this Order, a British sea-fishery officer may exercise the powers conferred by paragraphs (3) to (5) of this article -

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

(b) in respect of any relevant British fishing boat, any foreign fishing boat or any non-Contracting Party vessel which is within the Scottish zone.

(3) 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.

(4) 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 purposes mentioned in paragraphs (1) and (2) of this article 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 his custody or possession;

(c) for the purpose of ascertaining whether an infringement, a serious infringement or an offence under Part II or III of this Order 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;

(e) without prejudice to sub-paragraphs (c) and (d), may require the master and any person for the time being in charge of the boat to render all such documents on a computer system into a visible and legible form, including requiring any such document to be produced in a form in which it may be taken away; and

(f) where the boat is one in relation to which he has reason to suspect that an infringement, a serious infringement, or an offence under Part II or III of this Order has been committed, may seize and detain, or take copies of, any such document produced to him or found on board for the purpose of enabling the document to be used as evidence in any related proceedings for an offence;

but nothing in sub-paragraph (f) 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.

(5) Where it appears to him that an infringement, a serious infringement or an offence under Part II or III of this Order has at any time been committed, he may -

(a) require the master of the boat in relation to which the infringement, serious infringement or offence took place to take or may himself take, the boat and its crew to a port in the United Kingdom which appears to him to be the nearest convenient port; and

(b) detain or require the master to detain the boat in the port.

(6) Where a fishing boat is detained or required to be detained by a NEAFC inspector or British sea-fishery officer under paragraph (5)(b), 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 -

(a) when the detention relates to a serious infringement, by a British sea-fishery officer who is a NEAFC inspector; or

(b) in any other case, by a British sea-fishery officer.

(7) Where, in carrying out an inspection under Article 25 of the Council Regulation, a British sea-fishery officer is satisfied that a non-Contracting Party vessel is carrying on board regulated resources, he shall serve a notice in writing on the master of such

vessel, or any person for the time being in charge of the vessel, prohibiting the landing in Scotland and the transhipment within the Scottish zone of such resources.

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

17. In respect of any Scottish fishing boat wherever it may be, and any other fishing boat which is within the Scottish zone, 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 infringement, a serious infringement or an offence under Part II or III of this Order has been committed; and

(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 infringement, serious infringement or offence.

Protection of officers

18. A NEAFC inspector, a British sea-fishery officer or a person assisting him by virtue of article 16(3) of this Order 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 16 and 17 of this Order 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

19. 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 16 and 17 of this Order;

(b) without reasonable excuse prevents, or attempts to prevent, any other person from complying with any such requirement; or

(c) assaults a British sea-fishery officer or anyone accompanying that officer who is exercising any of the powers conferred on him by articles 16 and 17 of this Order or intentionally obstructs any such officer or person in the exercise of any of those powers,

shall be guilty of an offence and liable -

(i) on summary conviction to a fine not exceeding the statutory maximum; or

(ii) on conviction on indictment to a fine.

Provisions as to offences

20. - (1) Where any offence under article 13 or (where proceedings are brought in Scotland by virtue of section 30(2A) of the Fisheries Act 1981) article 4 of this Order 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 any offence under article 13 or (where proceedings are brought in Scotland by virtue of section 30(2A) of the Fisheries Act 1981) article 4 of this Order 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 or partnership manager, he as well as the partnership shall be guilty of the offence and liable to be proceeded against and punished accordingly.

(3) Where any offence under article 13 or (where proceedings are brought in Scotland by virtue of section 30(2A) of the Fisheries Act 1981) article 4 of this Order committed by an unincorporated association (other than 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, 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

21. - (1) Any -

- (a) logbook kept under Article 6, 17.2 or 28c of Regulation 2847/93;**
- (b) declaration submitted under Article 8.1, 11, 12, 17.2 or 28f of Regulation 2847/93;**
- (c) document drawn up under Article 9 or 13 of Regulation 2847/93;**
- (d) document containing required information received by a fisheries monitoring centre established under Article 3.7 of Regulation 2847/93;**
- (e) document required to be kept in accordance with Article 5.2 of the Council Regulation;**
- (f) catch report submitted under Article 6.1 of the Council Regulation,**

shall, in any proceedings for an offence, be received in evidence without being produced or sworn to by any witness and shall be sufficient evidence of the matters stated therein or appearing therefrom.

(2) For the purpose of paragraph (1), "required information" shall mean -

- (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 Regulation 2847/93.

Elliot Morley

Parliamentary Secretary, Ministry of Agriculture, Fisheries and Food

12th July 2000

Brian Wilson
under Secretary of State for Scotland

13th July 2000

Paul Murphy
Secretary of State for Wales

13th July 2000

Peter Mandelson
Secretary of State for Northern Ireland

13th July 2000

SCHEDULE

Articles 2(1), 5(1) and 14(1)

MAXIMUM FINES ON SUMMARY CONVICTION [APART FROM FINES RELATED TO VALUE OF FISH]

<i>Column 1</i>	<i>Column 2</i>	<i>Column 3</i>
<i>Community Provision</i>	<i>Subject matter</i>	<i>Maximum fine on summary conviction</i>
Part I		
1. Article 4.1	Prohibition on fishing for, keeping on board, transhipping or landing fishery resources from the Regulatory Area without a special fishing permit issued by flag Member State. Requirement to comply with conditions set out in any such permit.	£50,000
2. Article 5.1	Requirement for masters of Community fishing vessels, in addition to the information specified in Article 6 of Regulation 2847/93, to enter in their logbook each entry into and departure from the Regulatory Area.	£50,000
3. Article 6.1, as read with Commission Regulation (EC) No 1085/2000[12]	Requirement for masters of Community fishing vessels to send to the competent authorities in their flag member State a catch report. Reports of catch of regulated resources shall include and be submitted as follows: (a) the quantities held on board when entering the Regulatory Area - reports to be submitted between	£50,000

	<p>12 and 6 hours in advance of each entry into the Regulatory Area;</p> <p>(b) weekly catches - to be transmitted no later than the end of the seventh day following entry into the Regulatory Area or, when fishing trips take longer than seven days, at the latest on Monday for catches taken in the Regulatory Area during the preceding week ending at midnight on Sunday;</p> <p>(c) quantities held on board when leaving the Regulatory Area, including, where appropriate, the number of fishing days and catches taken in the Regulatory Area - reports to be submitted between 8 and 6 hours in advance of each departure from the Regulatory Area;</p> <p>(d) quantities loaded and unloaded for each transshipment of fish during stay in the Regulatory Area - to be submitted no later than 24 hours after completion of transshipment.</p>	
4. Article 9	Prohibition on Community fishing vessels from engaging in transshipment activities in the Regulatory Area without prior authorisation from the competent authorities in the Member State whose flag they are flying and in which they are registered.	£50,000
5. Article 15	<p>Requirement on masters of Community fishing vessels which are being boarded and inspected to: - (a) facilitate safe and effective boarding;</p> <p>(b) cooperate with and assist in inspection conducted in accordance with the Council Regulation, and not to obstruct, intimidate or interfere with NEAFC inspectors in the performance of their duties and shall ensure their safety;</p> <p>(c) permit NEAFC inspectors to communicate with the authorities of the flag state and the inspecting state;</p> <p>(d) provide access to relevant areas, decks, rooms of vessel, catches (processed or not), net and other gear, equipment and any relevant documents;</p> <p>(e) provide NEAFC inspectors with reasonable facilities, including, where appropriate, food and accommodation where they remain on board in accordance with Article 18(3) of the Council Regulation;</p> <p>(f) facilitate safe disembarkation by NEAFC inspectors.</p>	The statutory maximum
6. Article 24	Prohibition on receiving transshipments of fish from non-Contracting Party vessels.	£50,000
7. Article 25.1	Prohibition on landing and/or transshipment of catches, after having entered a designated port within the meaning	£50,000

	of Article 28(e)(2) of Regulation 2847/93, before completion of inspection by competent authorities.	
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EXPLANATORY NOTE

(This note is not part of the Order)

This Order makes provision for the enforcement of restrictions and obligations contained in Council Regulation (EC) No. 2791/99 (OJ No. L337, 30.12.99, p.1), for laying down certain control measures applicable in the area covered by the Convention on future multilateral cooperation in the North-East Atlantic fisheries ("the Council Regulation"). The Council Regulation in particular implements two recommendations of the North-East Atlantic Fisheries Commission establishing a scheme of control and enforcement applicable to fishing vessels in the Regulatory Area.

The Regulatory Area referred to in the Order is defined in Article 2.1 of the Council Regulation as "those waters of the Convention Areas as defined in Article 1(1) of the . . . Convention [on future multilateral cooperation in the North-East Atlantic fisheries ("the NEAFC Convention")], which lie beyond the waters under the jurisdiction of NEAFC Contracting Parties". Article 1(1) of the NEAFC Convention defines the Convention Areas as:

" the waters:

(a) within those parts of the Atlantic and Arctic Oceans and their dependent seas which lie north of 36° north latitude and between 42° west longitude and 51° east longitude, but excluding:

(i) the Baltic Sea and the Belts lying to the south and east of lines drawn from Hasenore Head to Gniben Point, from Korshage to Spodsbjerg and from Gilbjerg Head to the Kullen, and

(ii) the Mediterranean Sea and its dependent seas as far as the point of intersection of the parallel of 36° latitude and the meridian of 5° 36' west longitude,

(b) within that part of the Atlantic Ocean north of 59° north latitude and between 44° west longitude and 42° west longitude."

Part I of the Order (articles 1 to 3) extends to the whole of the United Kingdom; Part II of the Order (articles 4 to 12) extends to England, Wales and Northern Ireland only; and Part III of the Order (articles 13 to 21) extends to Scotland only (article 1).

Articles 4 and 13 of the Order create offences in respect of: breaches of the provisions of the Council Regulation referred to in column 1 (and briefly described in column 2) of the Schedule to the Order and the provisions of the Council Regulation referred to in paragraphs (2) and (3) of those articles; and, in relation to non-Contracting Party vessels, transshipments to Community fishing vessels and breaches of notices served on non-Contracting Party vessels prohibiting landing or transshipment (paragraphs 4(4) and 13(4)). Penalties, which may include the forfeiture of fish, nets and other fishing gear, are specified for such offences (articles 5 and 14). The statutory maximum penalty referred to in the Order is currently £5,000.

The Order confers power on the Minister of Agriculture, Fisheries and Food and the Scottish Ministers to assign British sea-fishery officers to be NEAFC inspectors (article 3). The Order also confers powers of enforcement on: NEAFC inspectors in respect of relevant British fishing boats and Scottish fishing boats in the Regulatory Area; British sea-fishery officers who are NEAFC inspectors in respect of foreign fishing boats, flying the flag of a state which is a Member State of the European Community or a Contracting Party to the NEAFC Convention, in the Regulatory Area; and British sea-fishery officers in respect of relevant British fishing boats or Scottish fishing boats wherever they may be and other fishing boats which are within relevant British fishery limits or the Scottish zone (articles 7 and 16). Powers to seize fish and fishing gear are also conferred on British sea-fishery officers in respect of relevant British fishing boats or Scottish fishing boats wherever they may be and other fishing boats which are within relevant British fishery limits or the Scottish zone (articles 8 and 17). Provision is made for the punishment of anyone found guilty of obstructing or assaulting a British sea-fishery officer (articles 10 and 19).

The Order provides powers for the recovery of fines imposed by a magistrates' court in England, Wales or Northern Ireland (article 6) or by a court in Scotland (article 15).

Articles 9, 11, 12, 18, 20 and 21 contain ancillary provisions.

Notes:

[1] 1981 c. 29. See section 30(3) for the definitions of "enforceable Community restriction", "enforceable Community obligation" and "the Ministers". In so far as this Order extends to Scotland, the power under section 30(2) of the 1981 Act remains exercisable by the Ministers by virtue of section 57(1) of the Scotland Act 1988 (c. 46); and in so far as it applies to Wales that power remains exercisable by virtue of Schedule 3, paragraph 5 of the Government of Wales Act 1998 (c. 38).[back](#)

[2] Section 30(2A) was inserted by the Scotland Act 1998 (Consequential Modifications) (No. 2) Order 1999[back](#)

[3] 1995 c. 21.[back](#)

[4] OJ No. L337, 30.12.99, p. 1.[back](#)

[5] OJ No. L128, 29.5.2000, p. 1.[back](#)

[6] OJ No. L261, 20.10.93, p.1, as last amended by Council Regulation (EC) No. 2846/98 (OJ No. L358, 31.12.98, p. 5).[back](#)

[7] 1998 c. 46; see section 126 and the Scottish Adjacent Waters Boundaries Order 1999 (S.I. 1999/1126).[back](#)

[8] 1976 c. 86; as modified by paragraph 3(c) of the Schedule to the Fishery Limits Act 1976 (Guernsey) Order 1989[back](#)

[9] 1980 c. 43; the maximum fines in section 78 were converted to levels on the standard scale by sections 37 and 46 of the Criminal Justice Act 1982 (c. 48).[back](#)

[10] S.I. 1981/1675 (NI 26).[back](#)

[11] 1996 c. 46.[back](#)

[12] 1981 c. 29. See section 30(3) for the definitions of "enforceable Community restriction", "enforceable Community obligation" and "the Ministers". In so far as

this Order extends to Scotland, the power under section 30(2) of the 1981 Act remains exercisable by the Ministers by virtue of section 57(1) of the Scotland Act 1988 (c. 46); and in so far as it applies to Wales that power remains exercisable by virtue of Schedule 3, paragraph 5 of the Government of Wales Act 1998 (c. 38).[back](#)

ISBN 0 11 099608 9