

Welsh Statutory Instrument 2002 No. 676 (W.73)

The Lobsters and Crawfish (Prohibition of Fishing and Landing) (Wales) Order 2002

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STATUTORY INSTRUMENTS

2002 No. 676 (W.73)

SEA FISHERIES, WALES

CONSERVATION OF SEA FISH

The Lobsters and Crawfish (Prohibition of Fishing and Landing) (Wales) Order 2002

Made

12th March 2002

Coming into force

1st April 2002

The National Assembly for Wales, in exercise of the powers conferred on it by sections 5(1), 6(1) and 15(3) of the Sea Fish (Conservation) Act 1967[1] and of all other powers enabling it in that behalf[2], hereby makes the following Order:

Title, commencement and application

1. - (1) This Order is called the Lobsters and Crawfish (Prohibition of Fishing and Landing) (Wales) Order 2002 and comes into force on 1st April 2002.

(2) This Order applies in relation to Wales (as defined in section 155(1) of the Government of Wales Act 1998[3] only.

Interpretation

2. - (1) In this Order -

"crawfish" ("*cimwch coch*") means crawfish of the species *Palinurus elephas* and *Palinurus mauritanicus*;

"flap" ("*llabed*") in relation to the tail of a lobster or crawfish, means any part of the central three flaps of the tail fan of the lobster or crawfish including the telson with anus and left and right uropod immediately adjacent to the telson;

"lobster" ("*cimwch*") means lobster of the species *Homarus gammarus*;

"mutilated" ("*wedi'i lurgunio*") in relation to a lobster or crawfish, means a lobster or crawfish which is mutilated in such a manner as to obscure a V notch;

"V notch" means a marking in the shape of the letter "V" with a depth of at least 5mm cut into at least one of the inner uropods of the tail fan of any lobster or crawfish, with the apex of the letter "V" positioned inward from the edge of the flap.

(2) In this Order the term "any equivalent order" means any other order made under sections 5 or 6 of the Sea Fish (Conservation) Act 1967, applying to any part of the United Kingdom, which prohibits fishing for, or the landing in any part of the United Kingdom of:

- (i) a mutilated lobster,
- (ii) a mutilated crawfish,
- (iii) any lobster or crawfish bearing a V notch.

(3) For the purposes of this Order, "the territorial sea adjacent to Wales" shall be determined in accordance with the provisions of section 1 of the Territorial Sea Act 1987^[4] and with any provisions made or having effect as if made under that section. The boundary between those parts of the sea within the Severn and Dee Estuaries which are to be treated as being territorial seas adjacent to Wales, and those which are not, shall in each case be determined in accordance with Article 6 and Schedule 3 of the National Assembly for Wales (Transfer of Functions) Order 1999.

Fishing prohibition

3. - (1) This article applies to fishing for -

- (a) a mutilated lobster,
- (b) a mutilated crawfish, or
- (c) any lobster or crawfish bearing a V notch.

(2) Fishing by a relevant British fishing boat within the territorial sea adjacent to Wales is prohibited.

(3) Fishing by a Scottish fishing boat within the territorial sea adjacent to Wales is prohibited.

Landing prohibition

4. - (1) This article applies to -

- (a) a mutilated lobster,
- (b) a mutilated crawfish, or
- (c) any lobster or crawfish bearing a V notch;

that have been caught.

(2) The landing in Wales of any sea fish to which this article applies from a relevant British fishing boat or a Scottish fishing boat is prohibited.

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

5. - (1) For the purpose of the enforcement of sections 5 and 6 of the Sea Fish (Conservation) Act 1967, as read with this Order or any equivalent order, a British sea-fishery officer may exercise in relation to any relevant British fishing boat or Scottish fishing boat within the territorial sea adjacent to Wales the powers conferred by paragraphs (2) to (4) below.

(2) The officer may go on board the boat, with or without persons assigned to assist him or her in his or her duties, and for that purpose may require the boat to be stopped and do anything else that would facilitate the boarding of the boat.

(3) The officer 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 or her 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 the officer 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 relating to the persons on board, that is in that person's 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 5(1), 5(6) or 6(5) of the Sea Fish (Conservation) Act 1967^[5] as read with this Order or any equivalent order, may search the boat for any such document and may require any person on board the boat to do anything which appears to the officer to be necessary for facilitating the search; and
- (d) where the boat is one in relation to which the officer has reason to suspect that such an offence has been committed, may seize and detain any such document produced to him or her 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 order, has at any time taken place within British fishery limits the officer may -

(a) require the master of the boat in relation to which the contravention took place to take, or the officer may personally take, the boat and its crew to the port which appears to the officer 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 or she 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.

Signed on behalf of the National Assembly for Wales under section 66(1) of the Government of Wales Act 1998.

D. Elis-Thomas

The Presiding Officer of the National Assembly

12th March 2002

EXPLANATORY NOTE

(This note is not part of the Order)

This Order prohibits fishing for, and landing of, lobsters and crawfish bearing a V notch or mutilated in such a manner as to obscure a V notch by both relevant British fishing boats and Scottish fishing boats (articles 3 and 4). The Order applies to Wales and to the territorial sea adjacent to Wales.

The Order also gives British sea-fishery officers further enforcement powers in relation to relevant British fishing boats and Scottish fishing boats within Wales and the territorial sea adjacent to Wales (article 5). 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 sections 5(1) and (6) of the 1967 Act.

By virtue of respectively sections 5(1) and 6(5) of the 1967 Act it is an offence to fish for or land such lobsters or crawfish in contravention of this Order. Section 5(6) of that Act provides that any fish caught in contravention of the Order shall (subject to section 9 of the 1967 Act) be returned to the sea forthwith. Section 5(7) provides that where subsection (6) is not complied with the master, the owner and the charterer (if any) of the fishing boat shall each be guilty of an offence. Penalties are prescribed by section 11 of the 1967 Act, as amended by the Fisheries Act 1981 and the Criminal Justice Act 1991.

This Order is made in reliance on Article 46.1 of Council Regulation (EC) No. 850/98 (OJ No. L25, 27.4.98, p.1), for the conservation of fishery resources through technical measures for the protection of juveniles of marine organisms, which authorises Member States to take certain national measures for the conservation and management of stocks.

Notes:

[1] 1967, c.84. *See* section 22(2)(a) for the definition of "the Ministers", as amended by sections 19(2)(d) and 45(b) of the Fisheries Act 1981 (c.29). Section 5(1) was substituted by section 22(1) of the 1981 Act. 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). Sections 6(1) and 15(3) were amended by the Scotland Act 1998 (Consequential Modifications) (No. 2) Order 1999 (S.I. 1999/1820), Schedule 2, paragraph 43(2) and (6) respectively. Sections 5(1) and 6 were modified in their effect by section 33(1) of the 1981 Act.[back](#)

[2] By the National Assembly for Wales (Transfer of Functions) Order 1999 (S.I. 1999/672), all functions of a Minister of the Crown under this Act (except the functions of the Board of Trade in relation to section 8) were, so far as exercisable in relation to Wales, transferred to the National Assembly for Wales.[back](#)

[3] 1998 c.38.[back](#)

[4] 1987 c.47.[back](#)

[5] Section 5(6) was amended by the Fisheries Act 1981 (c.29), section 22(2). Section 6(5) was amended by section 23(3) of the 1981 Act. By virtue of section 5(7) of the 1967 Act where section 5(6) is not complied with in the case of any fishing boat, the master, the owner and the charterer (if any) are guilty of an offence under sub-section (6).[back](#)

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