

2007 No. 809

SEA FISHERIES, ENGLAND
CONSERVATION OF SEA FISH

The Undersized Bass Order 2007

Made - - - - - *10th March 2007*
Laid before Parliament *15th March 2007*
Coming into force - - *6th April 2007*

The Secretary of State for Environment, Food and Rural Affairs makes this Order in exercise of the powers conferred by—

- (a) section 1(1), (2) and (6) of the Sea Fish (Conservation) Act 1967(a); and
- (b) sections 1(3) and (6), 3(1) and (2), 15(3)(b) and 20(1) of that Act, acting jointly with the Secretary of State for Northern Ireland(c).

Title, extent and commencement

1.—(1) This Order—

- (a) may be cited as the Undersized Bass Order 2007;
- (b) subject to paragraph (2), does not form part of the law of Scotland or Northern Ireland; and
- (c) comes into force on 6th April 2007.

(2) Nothing in paragraph (1)(b) prejudices the effect of section 14 of the Act in relation to, or for purposes incidental to, any provision that creates an offence.

(a) 1967 c. 84.

(b) Section 15(3) was substituted by the Sea Fisheries Act 1968 (c. 77) Schedule 1, paragraph 38(3) and amended by the Fishery Limits Act 1976 (c. 86) Schedule 2, paragraph 16(1) and S.I. 1999/1820, Schedule 2, paragraph 43(2)(b).

(c) See section 22(2) of the Sea Fish (Conservation) Act 1967 for definitions of “the Ministers” for the purposes of sections 1, 3 and 15(3). This section was amended by the Fisheries Act 1981, sections 19, 45 and 46 and by S.I. 1999/1820, paragraph 43(12) of Schedule 2. By virtue of article 2(a) of the National Assembly for Wales (Transfer of Functions) Order 1999 (S.I. 1999/672), functions exercisable under the 1967 Act were transferred (concurrently in respect section 15(3)) to the National Assembly in so far as exercisable in relation to Wales. Section 53 of the Scotland Act 1998 (c. 46), as read with article 3(1) of, and Schedule 1 to, the Scotland Act 1998 (Concurrent Functions) Order 1999 (S.I. 1999/1592) provide for the functions exercisable under sections 1(3) and (6), 3(1) and 15(3) of the 1967 Act to be exercised by the Ministers, concurrently with Scottish Ministers, in relation to relevant British fishing boats within the Scottish zone and Scottish fishing boats within British fishery limits outside the Scottish zone. Any remaining functions of the Secretaries of State for Scotland and Wales were transferred to the Minister of Agriculture, Fisheries and Food by article 2(1) of, and the Schedule to, the Transfer of Functions (Agriculture and Fisheries) Order 2000 (S.I. 2000/1812). By virtue of paragraph 3(1)(a) and (b) of Schedule 1 to the Sea Fisheries (Northern Ireland) Order 2002 (S.I. 2002/790), the functions of the Ministers under sections 1(3) and 3 of the 1967 Act were transferred to the Department of Agriculture and Rural Development, but, by virtue of paragraph 3(2), Ministers retain a concurrent function to make an order in relation to British fishing boats, other than Northern Ireland fishing boats, within the Northern Ireland zone and in relation to Northern Ireland fishing boats within British fishery limits but outside the Northern Ireland zone. The functions of the Minister of Agriculture, Fisheries and Food and a named Secretary of State acting jointly were transferred to the Secretary of State for Environment, Food and Rural Affairs and the named Secretary of State acting jointly by article 2(5) of the Ministry of Agriculture, Fisheries and Food (Dissolution) Order 2002 (S.I. 2002/794).

Interpretation

2.—(1) In this Order—

“the Act” means the Sea Fish (Conservation) Act 1967;

“bass” means fish of the species *Dicentrarchus labrax*;

“Isle of Man, Jersey or Guernsey fishing boat” means any fishing boat registered in the Isle of Man, Jersey or Guernsey respectively;

“Northern Ireland fishing boat” means any fishing boat registered under the Merchant Shipping Act 1995(a) as belonging to a port in Northern Ireland;

“Northern Ireland zone” means the sea within British fishery limits which is adjacent to Northern Ireland.

(2) Any reference, other than a reference in article 9, to “British fishery limits” excludes the sea adjacent to Wales out as far as the seaward boundary of the territorial sea.

Prohibition on landing and sale etc. of undersized bass

3. For the purposes of section 1(1) and (2) of the Act, in its application in England, the size prescribed for bass is 40 centimetres, from the tip of the snout to the end of the tail fin.

Exemption from prohibition on landing

4. The prohibition in section 1(1) of the Act, as read with this Order, does not apply to bass that is—

- (a) landed by a foreign fishing boat, other than an Isle of Man, Jersey or Guernsey fishing boat; or
- (b) farmed commercially.

Exemptions from prohibition on sale etc. of undersized bass

5. The prohibition in section 1(2) of the Act, as read with this Order, does not apply to bass that is—

- (a) landed or caught by a foreign fishing boat, other than an Isle of Man, Jersey or Guernsey fishing boat; or
- (b) farmed commercially.

Prohibition on carrying undersized bass

6. For the purposes of section 1(3) of the Act in its application to any—

- (a) relevant British fishing boat;
- (b) Scottish fishing boat; or
- (c) Isle of Man, Jersey or Guernsey fishing boat,

in British fishery limits, the size prescribed for bass is 40 centimetres, from the tip of the snout to the end of the tail fin.

Mesh sizes

7.—(1) For the purposes of section 3(1) of the Act in its application to any—

- (a) relevant British fishing boat registered in the United Kingdom; or
- (b) Isle of Man, Jersey or Guernsey fishing boat,

that is fishing for bass in British fishery limits, the mesh size of any enmeshing gear, including any gill, tangle, drift or trammel net, carried in that boat must be not less than 100 millimetres.

(2) Any boat that has a by-catch of bass of more than 10% of the total catch by weight is to be treated as fishing for bass within the meaning of this article.

(a) 1995 c.21.

Exemptions from prohibition on carrying undersized bass etc.

8. Articles 6 and 7 do not apply to any Scottish fishing boat, Northern Ireland fishing boat or Isle of Man, Jersey or Guernsey fishing boat in—

- (a) the Northern Ireland zone;
- (b) the Scottish zone; or
- (c) the territorial sea adjacent to the Isle of Man, Jersey(a) or Guernsey.

Powers of British sea-fishery officers

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

- (a) in relation to any fishing boat subject to the provisions of this Order in any waters adjacent to the United Kingdom and within relevant British fishery limits; and
- (b) in relation to any relevant British fishing boat anywhere outside those limits.

(2) Paragraph (1) does not apply to a Northern Ireland fishing boat in the Northern Ireland zone or anywhere outside British fishery limits.

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

(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 purpose of enforcing this Order and, in particular—

- (a) may examine any fish on the boat and the equipment of the boat, including the fishing gear, and require persons on board the boat to do anything which appears to him to be necessary for facilitating the examination;
- (b) may require any person on board the boat to produce any document relating to the boat, to its fishing operations or other operations ancillary thereto or to the persons on board, which is in his custody or possession and may take copies of any such document;
- (c) for the purpose of ascertaining whether the master, owner or charterer of the boat has committed an offence under section 1(1), (2) or (3) or section 3(1) of the Act as read with this Order, may search the boat for any such document and may require any person on board the boat to do anything which appears to him to be necessary for facilitating the search; and
- (d) where the boat is one in relation to which he has reason to suspect that such an offence has been committed, may seize and detain any such document produced to him or found on board for the purpose of enabling the document to be used as evidence in proceedings for the offence,

but nothing in sub-paragraph (d) shall permit any document required by law to be carried on board the boat to be seized and detained except while the boat is detained in a port.

(5) Where it appears to a British sea-fishery officer that a contravention of any provisions of this Order has at any time taken place, he may—

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

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

(a) See section 1 of the Territorial Sea Act 1987 (c. 49), as extended to Jersey by the Territorial Sea Act 1987 (Jersey) Order 1997 (S.I. 1997/278), as amended by S.I. 2002/250 and to the Isle of Man by the Territorial Sea Act 1987 (Isle of Man) Order 1991(S.I. 1991/1722).

Revocation

10. The Undersized Bass Order 1989(a) is revoked in relation to England.

8th March 2007

Ben Bradshaw
Minister of State
Department for Environment, Food and Rural Affairs

10th March 2007

David Cairns
Parliamentary Under Secretary of State
Northern Ireland Office

(a) S.I. 1989/1285.

EXPLANATORY NOTE

(This note is not part of the Order)

Article 3 of this Order prescribes, in accordance with section 1(1) and (2) of the Sea Fish (Conservation) Act 1967 (c. 84), a minimum size of 40 centimetres for bass that can be landed or sold in England. Articles 4 and 5 exempt foreign fishing vessels (except Isle of Man, Jersey or Guernsey fishing boats) and fish that are farmed commercially from the prohibitions on landing and selling bass under 40 centimetres.

Articles 6 to 8—

- (a) prescribe a minimum size of 40 centimetres for bass that can be carried on relevant British fishing boats, Isle of Man, Jersey or Guernsey fishing boats, and Scottish fishing boats in certain British fishery limits; and
- (b) provide that any enmeshing gear carried on any relevant British fishing boat, any Isle of Man, Jersey or Guernsey fishing boat or any Scottish fishing boat that is fishing for bass in certain British fishery limits must have a mesh size of no less than 100 millimetres.

Article 9 sets out the powers of British sea-fishery officers in respect of this Order, in addition to their powers under the Sea Fish (Conservation) Act 1967.

This Order was notified in draft to the European Commission in accordance with Directive 98/34/EC (OJ No L 204, 21.7.1998, p.37), as amended by Directive 98/48/EC (OJ No L 217, 5.8.1998, p.18).

A full regulatory impact assessment of the effect that this instrument will have on the costs of business and the voluntary sector is available from Defra Resource Centre, Lower Ground Floor, Ergon House, 17 Smith Square, London SW1P 3JR and is annexed to the Explanatory Memorandum which is available alongside the instrument on the Office of Public Sector Information website.