

2010 No. 100

SEA FISHERIES

The Sea Fishing (Transitional EU Technical Conservation Measures) (Scotland) Order 2010

Made - - - - *11th March 2010*

Laid before the Scottish Parliament *12th March 2010*

Coming into force - - *17th April 2010*

The Scottish Ministers make the following Order in exercise of the powers conferred by section 30(2) of the Fisheries Act 1981(a), paragraph 1A of Schedule 2 to the European Communities Act 1972(b) and all other powers enabling them to do so.

This Order makes provision for a purpose mentioned in section 2(2) of the European Communities Act 1972(c) and it appears to the Scottish Ministers that it is expedient for any reference to Council Regulation (EC) No. 43/2009 to be construed as a reference to that Regulation as amended from time to time.

Citation, commencement and extent

1.—(1) This Order may be cited as the Sea Fishing (Transitional EU Technical Conservation Measures) (Scotland) Order 2010 and comes into force on 17th April 2010.

(2) Subject to paragraph (3), this Order extends to Scotland and the Scottish zone only.

(3) Insofar as it extends beyond Scotland and the Scottish zone, it does so only as a matter of Scots law.

(4) Nothing in paragraph (2) is to be treated as prejudicing the effect of section 30(2A)(d) of the Fisheries Act 1981 in the rest of the United Kingdom in relation to, or for purposes incidental to, any provision which creates an offence.

-
- (a) 1981 c.29 (“the 1981 Act”); relevant modifications are contained in the Scotland Act 1998 (Functions Exercisable in or as Regards Scotland) Order 1999 (S.I. 1999/1748), article 5 and the Scotland Act 1998 (Modification of Functions) Order 1999 (S.I. 1999/1756), articles 3, 5 and 6. The functions of the Secretary of State, in or as regards Scotland, were transferred to the Scottish Ministers by virtue of section 53 of the Scotland Act 1998 (c.46). See section 30(3) of the 1981 Act for definitions of “enforceable Community restriction”, “enforceable Community obligation” and “the Ministers”. Section 30 of the 1981 Act has effect in relation to Scotland as modified by section 30(5) of that Act, inserted by the Scotland Act 1998 (Consequential Modifications) (No. 2) Order 1999 (S.I. 1999/1820), Schedule 2, paragraph 68(5)(b).
- (b) 1972 c.68. Paragraph 1A of Schedule 2 was inserted by the Legislative and Regulatory Reform Act 2006 (c.51), section 28 and amended by Part 1 of the Schedule to the European Union (Amendment) Act 2008 (c.7).
- (c) Section 2(2) was amended by the Scotland Act 1998 (c.46), Schedule 8, paragraph 15(3), which was amended by the Legislative and Regulatory Reform Act 2006 (c.51) (“the 2006 Act”), section 27(4). Section 2(2) was also amended by section 27(1)(a) of the 2006 Act and Part 1 of the Schedule to the European Union (Amendment) Act 2008 (c.7).
- (d) Section 30(2A) was inserted by the Scotland Act 1998 (Consequential Modifications) (No. 2) Order 1999 (S.I. 1999/1820), Schedule 2, paragraph 68(5)(a).

Interpretation

2.—(1) In this Order—

“British sea-fishery officer” has the same meaning as in section 7 of the Sea Fisheries Act 1968(a);

“equivalent provision” means any provision in any other Order made under section 30(2) of the Fisheries Act 1981 for the purpose of implementing an EU technical conservation measure, which extends to any part of the United Kingdom and 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;

“EU technical conservation measure” means a provision of Annex III to the Council Regulation specified in column 1 of Schedule 1, as read with any qualifying words relating to the provision in that column;

“fishery product” includes fish;

“ICES” followed by a roman numeral with or without a letter is to be construed as a reference to whichever of the statistical sub-areas and divisions of the International Council for the Exploration of the Sea(b) is identified therein by that roman numeral or that roman numeral and letter as the case may be;

“logbook” has the same meaning as in Article 6 of Regulation 2847/93 (as read with Regulation 2807/83) and for the purposes of this Order, any reference to a logbook, declaration or document includes, in addition to a logbook, declaration or document in writing any—

- (a) map, plan, graph or drawing;
- (b) photograph;
- (c) data, however reproduced, communicated via a satellite-based vessel monitoring system established under Article 9 of Regulation 1224/2009;
- (d) data, however reproduced, communicated to a fisheries monitoring centre established under Article 9(7) of Regulation 1224/2009;
- (e) disk, tape, sound track or other device on 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; and
- (f) film (including microfilm), negative, tape, disk or other device on which one or more visual images are recorded so as to be capable (with or without the aid of some other equipment) of being reproduced;

“person in charge” means the master, owner or charterer or the agent of the master, owner or charterer;

“Regulation 2807/83” means Commission Regulation (EEC) 2807/83 of 22 September 1983 laying down detailed rules for recording information on Member States’ catches of fish(c);

(a) 1968 c.77; section 7 is relevantly amended by the Scotland Act 1998 (Consequential Modifications) (No. 2) Order 1999 (S.I. 1999/1820), Schedule 2, paragraph 48(3); the Fisheries Act 1981 (c.29), section 46; and the Marine and Coastal Access Act 2009 (c.23), section 239 and Schedule 22, Part 6.

(b) Cmnd. 2586.

(c) O.J. No. L 276, 10.10.83, p.1 as corrected by a Corrigendum published in O.J. No. L 353, 15.12.83, p.21 and as amended by Act of Accession of Spain and Portugal, O.J. No. L 302, 15.11.85, p.23; Commission Regulation (EEC) No. 473/89, O.J. No. L 53, 25.2.89, p.34; Act of Accession of Austria, Sweden and Finland, O.J. No. C241, 29.8.94, p.21 (adapted by Council Decision 95/1/EC, Euratom, ECSC, O.J. No. L 1, 1.1.95, p.1); Commission Regulation (EEC) No. 2945/95, O.J. No. L 308, 21.12.95, p.18; Commission Regulation (EC) No. 395/98, O.J. No. L 50, 20.2.98, p.17; Commission Regulation (EC) No. 1488/98, O.J. No. L 196, 14.7.98, p.3; Commission Regulation (EC) No. 2737/1999, O.J. No. L 328, 22.12.99, p.54 (corrected by two Corrigenda, published in O.J. No. L 12, 18.1.00, p.36 and O.J. No. L 29, 4.2.00, p.38); Commission Regulation (EC) No. 1965/2001, O.J. No. L 268, 9.10.01, p.23; Commission Regulation (EC) No. 1804/2005, O.J. No. L 290, 4.11.05, p.10 and Commission Regulation (EC) No. 409/2009, O.J. No. L 123, 19.5.09, p.78.

“Regulation 2847/93” means Council Regulation (EEC) No. 2847/93 of 12 October 1993 establishing a control system applicable to the common fisheries policy(a);

“Regulation 1224/2009” means Council Regulation (EC) No. 1224/2009 of 20 November 2009 establishing a Community control system for ensuring compliance with the rules of the common fisheries policy, amending Regulations (EC) No. 847/96, (EC) No. 2371/2002, (EC) No. 811/2004, (EC) No. 768/2005, (EC) No. 2115/2005, (EC) No. 2166/2005, (EC) No. 388/2006, (EC) No. 509/2007, (EC) No. 676/2007, (EC) No. 1098/2007, (EC) No. 1300/2008, (EC) No. 1342/2008 and repealing Regulations (EEC) No. 2847/93, (EC) No. 1627/94 and (EC) No. 1966/2006(b);

“Regulation 1288/2009” means Council Regulation (EC) No. 1288/2009 of 27 November 2009 establishing transitional technical measures from 1 January 2010 to 30 June 2011(c);

“relevant offence” means an offence under article 3 of this Order, or under any equivalent provision;

“Scotland” and “the Scottish zone” have the same meanings assigned to those terms by section 126(1) of the Scotland Act 1998(d);

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

“the Council Regulation” means Council Regulation (EC) No. 43/2009 of 16 January 2009 fixing for 2009 the fishing opportunities and associated conditions for certain fish stocks and groups of fish stocks, applicable in Community waters and, for Community vessels, in waters where catch limitations are required(f), as amended from time to time.

(2) In this Order, any reference to a—

- (a) numbered article is a reference to the article so numbered in this Order;
- (b) numbered paragraph is, except where specified as a numbered paragraph of an Annex to the Council Regulation, a reference to the paragraph so numbered in the article in which it appears in this Order;
- (c) numbered Schedule is a reference to the Schedule to this Order so numbered; and
- (d) numbered Annex (or paragraph thereof) is, except where otherwise indicated, a reference to the Annex (or paragraph thereof) so numbered in the Council Regulation.

(3) Column 2 of Schedule 1 (which provides an indication of the subject matter of each EU technical conservation measure) is not to be read as limiting the scope of any EU technical

-
- (a) O.J. No. L 261, 20.10.93, p.1 as amended by Council Regulation (EC) No. 2870/95, O.J. No. L 301, 14.12.95, p.1; Council Decision 95/528/EC, O.J. No. L 301, 14.12.95, p.35 (corrected by a Corrigendum published in O.J. No. L 302, 15.12.95, p.45); Council Regulation (EC) No. 2489/96, O.J. No. L 338, 28.12.96, p.12; Council Regulation (EC) No. 686/97, O.J. No. L 102, 19.4.97, p.1; Council Regulation (EC) No. 2205/97, O.J. No. L 304, 7.11.97, p.1; Council Regulation (EC) No. 2635/97, O.J. No. L 356, 31.12.97, p.14; Council Regulation (EC) No. 2846/98, O.J. No. L 358, 31.12.98, p.5 (corrected by a Corrigendum published in O.J. No. L 105, 22.4.99, p.32); Council Regulation (EC) No. 806/2003, O.J. No. L 122, 16.5.03, p.1; Council Regulation (EC) No. 1954/2003, O.J. No. L 289, 7.11.03, p.1; Council Regulation (EC) No. 768/2005, O.J. No. L 128, 21.5.05, p.1; Council Regulation (EC) No. 1967/2006, O.J. No. L 409, 30.12.06, p.11 (corrected by a Corrigendum published in O.J. No. L 36, 8.2.07, p.6); Council Regulation (EC) No. 1098/2007, O.J. No. L 248, 22.9.07, p.1; Council Regulation (EC) No. 1005/2008, O.J. No. L 286, 29.10.08, p.1; Council Regulation (EC) No. 1006/2008, O.J. No. L 286, 29.10.08, p.33 and as read with Article 20, and modified by Articles 28 and 29, of Council Regulation (EC) No. 1342/2008, O.J. No. L 348, 24.12.08, p.20. With the exception of certain provisions, including Articles 6, 8, 11 and 13, Regulation 2847/93 has been repealed by Article 122(1) of Council Regulation (EC) No. 1224/2009, O.J. No. L 343, 22.12.09, p.1.
 - (b) O.J. No. L 343, 22.12.09, p.1. Regulation 1224/2009 replaces Regulation 2847/93, although some of its provisions come into force in stages (either on specific dates or pending implementation of EU detailed rules).
 - (c) O.J. No. L 347, 24.12.09, p.6.
 - (d) 1998 c.46. The sea within British fishery limits (that is, the limits set by or under section 1 of the Fishery Limits Act 1976 (c.86)) which is adjacent to Scotland is determined by the Scottish Adjacent Waters Boundaries Order 1999 (S.I. 1999/1126).
 - (e) 1995 c.21.
 - (f) O.J. No. L 22, 26.1.09, p.1 as amended by Council Regulation (EC) No. 302/2009, O.J. No. L 96, 15.4.09, p.1; Commission Regulation (EC) No. 517/2009, O.J. No. L 155, 18.6.09, p.9; Commission Regulation (EC) No. 593/2009, O.J. No. L 178, 9.7.09, p.12; Commission Regulation (EC) No. 709/2009, O.J. No. L 204, 6.8.09, p.12; Council Regulation (EC) No. 753/2009, O.J. No. L 214, 19.8.09, p.1 and Council Regulation (EC) No. 1288/2009, O.J. No. L 347, 24.12.09, p.6.

conservation measure and is to be disregarded in relation to any question arising as to the construction of this Order.

(4) Any information provided to any authority for the purposes of any provision of this Order is to be treated as also provided for the purposes of any equivalent provision.

(5) Expressions used in this Order that appear or are referred to in the Council Regulation, and which are not defined in this Order, have the same meaning in this Order as in that Regulation.

Offences

3.—(1) Where there is, in respect of any—

- (a) Scottish fishing boat wherever it may be; or
- (b) any other fishing boat within the Scottish zone,

a contravention of, or failure to comply with, any EU technical conservation measure, the person in charge of the fishing boat is guilty of an offence.

(2) The ports specified in Schedule 2 are ports designated for the purpose of paragraph 9.10 of Annex III.

Penalties

4.—(1) A person guilty of a relevant offence is liable—

- (a) on summary conviction, to a fine not exceeding the amount specified in column 3 of Schedule 1 in relation to the EU technical conservation measure the contravention of which, or failure to comply with which, constituted the offence; and
- (b) on conviction on indictment, to a fine.

(2) The court which convicts a person of a relevant offence may order the forfeiture of—

- (a) any fish in respect of which the offence was committed; and
- (b) any net 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.

(3) Any person found guilty of a relevant offence, subject to the following provisions of this article, is liable on summary conviction to a fine not exceeding the value of the fish in respect of which the offence was committed.

(4) A person is not liable to a fine under paragraph (3) in respect of such an offence if, under paragraph (2), the court orders the forfeiture of the fish in respect of which that offence was committed; and where a fine is imposed under paragraph (3) in respect of any offence, the court does not have power under paragraph (2) to order the forfeiture of the fish in respect of which the offence was committed.

(5) Subject to paragraph (4), any fine to which a person is liable under paragraph (3) is in addition to any other penalty (whether pecuniary or otherwise) to which that person is liable in respect of that offence under this article or under an equivalent provision.

Recovery of fines

5.—(1) Without prejudice to section 221 of the Criminal Procedure (Scotland) Act 1995^(a), where a court has imposed a fine on any person in respect of an offence under this Order, that court may for the purpose 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 3 months from the date—

(a) 1995 c.46; section 221 is amended by the Bankruptcy and Diligence etc. (Scotland) Act 2007 asp 3, schedule 5, paragraph 23.

- (i) of the conviction or until the fine is paid;
 - (ii) the order is renewed for a further period (not exceeding 3 months); or
 - (iii) on which a warrant is issued under sub-paragraph (b),
- whichever first occurs; or

(b) subject to paragraph (2), 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) The court must not issue a warrant under paragraph (1)(b) 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), 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 this Order a transfer of fine order under section 222 of the Criminal Procedure (Scotland) Act 1995(a), section 90 of the Magistrates' Courts Act 1980(b) or article 95 of the Magistrates' Courts (Northern Ireland) Order 1981(c) specifies a court of summary jurisdiction in Scotland, this article applies as if the fine were a fine imposed by that court.

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

6.—(1) For the purpose of enforcing article 3, or any equivalent provision made for the purpose of implementing an EU technical conservation measure, a British sea-fishery officer may exercise, in relation to any—

- (a) Scottish fishing boat wherever it may be; or
- (b) any other fishing boat within the Scottish zone,

the powers conferred by paragraphs (2), (3) and (4).

(2) A British sea-fishery officer may go on board the boat, with or without persons assigned to assist in the duties of that officer, 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) A British sea-fishery 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 that officer to be necessary for the purposes of enforcement referred to in paragraph (1) and, in particular, may—

- (a) search for fishery products or fishing gear on the boat and may examine any such products 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 that officer to be necessary for facilitating the examination;
- (b) require any person on board the boat to produce any document relating to the boat, to any fishing operations ancillary thereto or to the persons on board which is in the custody or possession of that person;
- (c) for the purpose of ascertaining whether a relevant offence has been committed, search the boat for any such document and may require any person on board the boat to do anything which appears to that officer to be necessary for facilitating the search;
- (d) inspect, take copies of and retain in the possession of that officer while any search, examination or inspection provided for under this article is being carried out, any such document produced to that officer or found on board;

(a) 1995 c.46; section 222 is amended by the Criminal Proceedings etc. (Reform) (Scotland) Act 2007 asp 6, schedule 1, paragraph 20(3).

(b) 1980 c.43; section 90 is amended by the Criminal Justice and Public Order Act 1994 (c.33), section 47(2) and the Collection of Fines (Final Scheme) Order 2006 (S.I. 2006/1737), article 50.

(c) S.I. 1981/1675 (NI 26).

- (e) require the master or any person for the time being in charge of the boat to render all such documents on a computer system into visible and legible form and to produce them in a form in which they may be taken away; and
- (f) where the boat is one in relation to which that officer has reason to suspect that a relevant offence has been committed, seize and detain any such document produced to that officer 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 (f) permits 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 relevant offence has at any time been committed the officer may—

- (a) require the master of the boat in relation to which the offence took place to take, or the officer may 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 the officer must serve notice in writing on the master 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

7.—(1) For the purpose of enforcing a relevant offence a British sea-fishery officer may—

- (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 fishery products;
- (b) take with the officer such other persons as appear to the officer to be necessary and any equipment or materials;
- (c) examine any fishery product on the premises and require persons on the premises to do anything which appears to that officer 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 fishery product 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 the custody or possession of that person relating to the catching, landing, transportation, transhipment, sale or disposal of any fishery product;
- (g) for the purpose of ascertaining whether a relevant offence has been committed, search the premises for any such document and may require any person on the premises to do anything which appears to that officer to be necessary for facilitating the search;
- (h) inspect and take copies of any such document produced or found on the premises;
- (i) require any appropriate or responsible person to render any such documents on a computer system into a visible and legible form and to produce them in a form in which they may be taken away; and
- (j) if the officer has reason to suspect that a relevant offence has been committed, seize and detain any such document produced or found on the premises, for the purposes of enabling the document to be used as evidence in proceedings for the offence.

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

- (3) If the sheriff by information on oath is—
- (a) satisfied that there are reasonable grounds 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) also satisfied 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
 - (iii) that the premises are unoccupied or the occupier is temporarily absent and it would defeat the object of the entry to await the return of the occupier,

the sheriff may by signed warrant, valid for a period of no more than 1 month, authorise a British sea-fishery officer to enter the premises, if need be by using reasonable force, accompanied by such persons as appear to the officer to be necessary.

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

8.—(1) Any British sea-fishery officer may seize—

- (a) in Scotland or in the Scottish zone; or
- (b) on a Scottish fishing boat wherever it may be,

any fishery product (including any receptacle which contains such product) and any net or other fishing gear to which this article applies.

(2) This article applies to—

- (a) any fishery product (including any receptacle which contains such product), in respect of which the officer has reasonable grounds to suspect that a relevant offence has been committed; and
- (b) any net or other fishing gear which the officer has reasonable grounds to suspect has been used in the commission of such offence.

(3) For the purpose of paragraph 9.8 of Annex III, the Scottish Ministers are the competent authority.

Protection of officers

9. A British sea-fishery officer, or a person assisting such an officer by virtue of article 6(2) or 7(1)(b) or (3), is not liable in any civil or criminal proceedings for anything done in the purported exercise of the powers conferred by article 6, 7 or 8 if the court is satisfied that—

- (a) the act was done in good faith;
- (b) there were reasonable grounds for doing it; and
- (c) it was done with reasonable skill and care.

Obstruction of officers

10.—(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 such officers by article 6 or 7;
- (b) without reasonable excuse prevents, or attempts to prevent, any other person from complying with such requirement;
- (c) conceals, tampers with or disposes of evidence relating to an investigation;
- (d) assaults an officer who is exercising any of the powers conferred by this Order; or

(e) obstructs any such officer in the exercise of the powers conferred by article 6, 7 or 8,
is guilty of an offence.

(2) Any 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.

Offences by bodies corporate

11.—(1) Where an offence under this Order is committed—

- (a) by a body corporate, and it is proved to have been committed with the consent or connivance of, or to have been attributable to any neglect on the part of any—
 - (i) director, manager, secretary or similar officer of the body corporate; or
 - (ii) person purporting to act in any such capacity;
- (b) by a Scottish partnership, and it is proved to have been committed with the consent or connivance of, or to have been attributable to any neglect on the part of any—
 - (i) partner; or
 - (ii) person purporting to act in that capacity; or
- (c) by an unincorporated association (other than a Scottish partnership), and it is proved to have been committed with the consent or connivance of, or to have been attributable to any neglect on the part of any—
 - (i) officer of the association or any member of its governing body; or
 - (ii) person purporting to act in any such capacity,

that person (as well as the body corporate, Scottish partnership or, as the case may be, unincorporated association) is guilty of the offence and is liable to be proceeded against and punished accordingly.

(2) For the purposes of this Order, “director”, in relation to a body corporate whose affairs are managed by its members, means a member of the body corporate.

Admissibility in evidence of logbooks and other documents

12.—(1) Any—

- (a) logbook kept under Article 6 of Regulation 2847/93^(a) or sent under Article 15 of Regulation 1224/2009^(b);
- (b) declaration submitted under Article 8(1) of Regulation 2847/93 or sent under Article 24 of Regulation 1224/2009;
- (c) declaration submitted under Article 11 of Regulation 2847/93 or sent under Article 22 of Regulation 1224/2009;
- (d) document drawn up under Article 13 of Regulation 2847/93;
- (e) declaration submitted under Article 66 of Regulation 1224/2009;
- (f) sales note submitted under Article 62 of Regulation 1224/2009; or
- (g) document containing required information received by a fisheries monitoring centre established under Article 9(7) of Regulation 1224/2009,

is, in any proceedings for a relevant offence, to be received in evidence without being produced or sworn to by any witness and is, unless the contrary is shown, conclusive evidence as to the matters stated therein.

(a) O.J. No. L 261, 20.10.93, p.1.

(b) O.J. No. L 343, 22.12.09, p.1.

- (2) For the purpose of paragraph (1)(g), “required information” means data relating to—
- (a) a fishing boat’s identification;
 - (b) a fishing boat’s course and speed;
 - (c) the most recent geographical position of the fishing boat expressed in degrees and minutes of longitude and latitude; and
 - (d) the date and time of the fixing of that position,

as communicated via a satellite-based vessel monitoring system established under Article 9 of Regulation 1224/2009.

Revocation

13. The following are revoked—

- (a) the Sea Fishing (Enforcement of Community Quota and Third Country Fishing Measures and Restriction on Days at Sea) (Scotland) Order 2009(a); and
- (b) the Sea Fishing (Enforcement of Community Quota and Third Country Fishing Measures and Restriction on Days at Sea) (Scotland) Amendment Order 2009(b).

RICHARD LOCHHEAD
A member of the Scottish Executive

St Andrew’s House,
Edinburgh
11th March 2010

(a) S.S.I. 2009/317, amended by S.S.I. 2009/338.
(b) S.S.I. 2009/338.

SCHEDULE 1

Articles 2(1) and (3) and 4(1)

EU TECHNICAL CONSERVATION MEASURES (MAXIMUM FINES ON SUMMARY CONVICTION)

<i>Column 1 Provision(s) of Annex III to the Council Regulation</i>	<i>Column 2 Subject matter</i>	<i>Column 3 Maximum fine on summary conviction</i>
1. paragraph 1	Prohibition on landing or retaining on board herring caught in EU waters of ICES zone IIa in the periods of 1st January to 28th February and 16th May to 31st December.	The statutory maximum
2. paragraph 2 and Appendix 1	Requirements as to mesh sizes, target species and catch percentages applicable to towed gears used in the Skagerrak and Kattegat.	The statutory maximum
3. paragraph 4	Prohibition on landing or retaining on board sandeels caught in certain waters within ICES zone IV.	£50,000
4. paragraph 5	Prohibition on fishing (except with longlines) in the Rockall Haddock Box in ICES zone VI.	£50,000
5. paragraph 5b	Prohibition, subject to specified exceptions, on high grading in all ICES zones.	£50,000
6. paragraph 6.1, as read with paragraphs 6.3, 6.4, 6.5 and 6.6	Prohibition, subject to specified exceptions, on fishing activity in certain waters within ICES zone VIa until 30th June 2011.	£50,000
7. paragraph 6.2, as read with paragraphs 6.3 and 6.4	Prohibition on fishing activity in certain waters within ICES zones VIIf and g during the period of 1st February to 31st March.	£50,000
8. paragraphs 7.2 and 7.3, as read with paragraph 7.1	Requirement to record specific information in a logbook when entering and exiting certain waters within ICES zone VIa during the	£50,000

<i>Column 1 Provision(s) of Annex III to the Council Regulation</i>	<i>Column 2 Subject matter</i>	<i>Column 3 Maximum fine on summary conviction</i>
	period of 1st March to 31st May.	
9. paragraph 7.4, as read with paragraph 7.1	Prohibition on retaining on board more than 6 tonnes of blue ling per fishing trip in certain waters within ICES zone VIa during the period of 1st March to 31st May.	£50,000
10. paragraph 7.6	Prohibition on the use of bottom trawls, longlines and gillnets in certain waters during the period of 15th February to 15th April in 2010 and 2011.	£50,000
11. paragraph 8.1, as read with paragraphs 8.2 and 8.3	Prohibition, subject to specified exceptions, on the use of any demersal trawl, seine or similar towed net, gillnet, trammel net, tangle net or similar static net, or any fishing gear incorporating hooks, in certain waters within ICES zone VIIa during the period of 14th February to 30th April.	£50,000
12. paragraph 9.3, as read with paragraphs 9.1, 9.2 and 9.4	Prohibition, subject to specified exceptions, on the use of gillnets, entangling nets and trammel nets in certain waters, within specified ICES zones, where the charted depth is greater than 200 metres.	£50,000
13. paragraph 9.5, as read with paragraph 9.4(a) and (b)	Requirement that only one type of gear described in paragraph 9.4(a) and (b) of Annex III is carried aboard a vessel at any one time.	£50,000
14. paragraph 9.6	Requirement to hold a special fixed net fishing permit when deploying gillnets or entangling nets in certain waters, within specified ICES zones, where charted depth is greater than 200 metres.	£50,000

<i>Column 1 Provision(s) of Annex III to the Council Regulation</i>	<i>Column 2 Subject matter</i>	<i>Column 3 Maximum fine on summary conviction</i>
15. paragraphs 9.7 and 9.9	Requirements to record specific information in a logbook where a special fixed net fishing permit is held.	£50,000
16. paragraph 9.10, as read with paragraph 9.6	Requirement to land in designated ports where a special fixed net fishing permit is held.	£50,000
17. paragraph 9.11, as read with paragraph 9.4(b)	Requirement that the quantity of sharks retained on board must not exceed 5% by live weight of the total catch retained on board.	£50,000
18. paragraphs 15.1 and 15.2	Prohibition on bottom trawling and fishing with static gear (including bottom set gillnets and longlines) in certain waters.	£50,000
19. paragraphs 15.3 to, and including, 15.8	Requirements as to authorisation, VMS-reporting, notification and mesh sizes applicable to pelagic vessels fishing in a protected area for corals specified in paragraph 15.2.	£50,000
20. paragraph 15.10	Requirements to cease fishing and move position/location where more than 60kg of live coral and/or 800kg of live sponge per gear set is caught in certain waters within the NEAFC Regulatory Area.	£50,000
21. paragraph 16	Required minimum size for short-necked clam (<i>Ruditapes philippinarum</i>).	The statutory maximum
22. paragraph 20	Required minimum size for octopus (<i>Octopus vulgaris</i>) and prohibitions relating to octopus weighing under 450 grammes (gutted) caught in certain waters.	The statutory maximum

SCHEDULE 2

Article 3(2)

DESIGNATED PORTS

<i>Port</i>	<i>Location within port (where applicable)</i>
ENGLAND AND WALES	
North Shields	
Whitby	Fish quay
Scarborough	West Pier
Humberside (Hull and Grimsby)	Hull – North side of Albert Dock & William Wright Dock Grimsby – Fish Dock, Market Quay
Lowestoft	Waveney Dock
Shoreham	Within the confines of the harbour
Plymouth	Sutton Harbour, New Fish Market
Brixham	
Newlyn	
Milford Haven	
Holyhead	Fish Dock
Whitehaven	North Harbour on the Old North Wall Quay next to the Ice Plant and on the North Wall Quay next to the Fish Handling Facility building
Fleetwood	Wyre Fish Dock
SCOTLAND	
Eyemouth	
Pittenweem	
Aberdeen	Palmerston Quay & Commercial Quay
Peterhead	Peterhead Harbour excluding Peterhead Bay Harbour
Fraserburgh	
Buckie	
Lerwick	All piers, quays and docks within harbour limits excluding those in Dales Voe
Scalloway	
Kirkwall	
Scrabster	
Kinlochbervie	All quays lying to the North of the ice factory quay
Lochinver	
Ullapool	
Stornoway	
Portree	
Mallaig	
Oban	
Campbeltown	
Troon	
Cullivoe	
NORTHERN IRELAND	
Ardglass	
Portavogie	
Kilkeel	

EXPLANATORY NOTE

(This note is not part of the Order)

This Order provides for the enforcement of Annex III to Council Regulation (EC) No. 43/2009 fixing for 2009 the fishing opportunities and associated conditions for certain fish stocks and groups of fish stocks, applicable in Community waters and, for Community vessels, in waters where catch limitations are required (“the Council Regulation”). The restrictions and obligations contained in Annex III to the Council Regulation are extended and amended by Council Regulation (EC) No. 1288/2009 establishing transitional technical measures from 1 January 2010 to 30 June 2011.

The Order applies to Scottish fishing boats, wherever they may be, and to other fishing boats within the Scottish zone. It makes it an offence to contravene, or fail to comply with, the provisions of Annex III to the Council Regulation referred to in column 1 (and briefly described in column 2) of Schedule 1 (EU technical conservation measures) to the Order (article 3).

The Order provides penalties for a relevant offence (as defined in the Order) (article 4) and for the recovery of fines imposed in respect of a relevant offence or an offence under article 10 of the Order (article 5).

For the purpose of enforcing article 3 of the Order, or any equivalent provision, the Order confers on British sea-fishery officers powers to: go on board fishing boats; search for and examine fishery products and equipment; require the production of documents; search for and seize documents; take a boat to the nearest convenient port; enter and inspect premises; stop and search vehicles transporting fish, and seize fish and fishing gear (articles 6 to 8).

The Order provides for the protection of British sea-fishery officers in the exercise of their powers under the Order (article 9). It creates offences of, and provides penalties for, obstructing such officers (article 10).

The Order makes provision in relation to offences committed by a body corporate, a partnership or an unincorporated association (article 11) and in relation to the admissibility in evidence of logbooks and other documents (article 12).

The Order revokes the Sea Fishing (Enforcement of Community Quota and Third Country Fishing Measures and Restriction on Days at Sea) (Scotland) Order 2009 (S.S.I. 2009/317) and the Sea Fishing (Enforcement of Community Quota and Third Country Fishing Measures and Restriction on Days at Sea) (Scotland) Amendment Order 2009 (S.S.I. 2009/338) (article 13).

A Regulatory Impact Assessment in the relation to this Order has been prepared and placed in SPICE. Copies can be obtained from Marine Scotland, Robb’s Loan, Edinburgh, EH14 1TY.

© Crown Copyright 2010

Printed in the UK by The Stationery Office Limited under the authority and superintendence of Carol Tullo, the Queen’s Printer for Scotland.

2010 No. 100

SEA FISHERIES

The Sea Fishing (Transitional EU Technical Conservation
Measures) (Scotland) Order 2010