SCOTTISH STATUTORY INSTRUMENTS

2014 No. 2

SEA FISHERIES

CONSERVATION OF SEA FISH

The Sea Fish (Prohibited Methods of Fishing) (Firth of Clyde) Order 2014

Made - - - -	*7th January 2014*
Laid before the Scottish Parliament - - - -	*9th January 2014*
Coming into force - -	*14th February 2014*

The Scottish Ministers make the following Order in exercise of the powers conferred by sections 5(1)(a)(iii) and 15(3) of the Sea Fish (Conservation) Act 1967(**1**) and all other powers enabling them to do so.

Citation, commencement, cessation, effect and extent

1. (1) This Order may be cited as the Sea Fish (Prohibited Methods of Fishing) (Firth of Clyde) Order 2014 and comes into force on 14th February 2014.

(2) This Order remains in force until the end of 30th April 2015.

(3) The prohibition in article 3(1) has effect during the following periods:—

(a) from 14th February 2014 until the end of 30th April 2014; and

(b) from 14th February 2015 until the end of 30th April 2015.

(4) Subject to paragraph (5), this Order extends to Scotland and the Scottish zone only.

(**1**) 1967 c.84 ("the 1967 Act"); section 5(1) was substituted by the Marine and Coastal Access Act 2009 (c.23), section 198(2), which extends to Scotland by virtue of the Marine (Scotland) Act 2010 (asp 5) ("the 2010 Act"), section 158(1). Section 15(3) of the 1967 Act was substituted by the Sea Fisheries Act 1968 (c.77), section 22(5), Schedule 1, paragraph 38(3) and amended by the Fishery Limits Act 1976 (c.86), Schedule 2, paragraph 16(1) and the Scotland Act 1998 (Consequential Modifications) (No. 2) Order 1999 (S.I. 1999/1820), Schedule 2, paragraph 43(2)(b). Sections 5 and 15(3) of the 1967 Act are modified in relation to Scotland by section 22A(2), (6) and (10) of that Act. Section 22A was inserted by S.I. 1999/1820, Schedule 2, paragraph 43(13) and section 22A(6) was substituted by section 159(4) of the 2010 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). Section 22(2) of the 1967 Act, which contains a definition of "the Ministers" for the purposes of section 15(3), was amended by the Fisheries Act 1981 (c.29), sections 19(2)(d) and (3) and 45. The definition was modified in relation to Scotland by section 22A(12)(b) of the 1967 Act.

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

Interpretation

2. (1) In this Order—

"creel" means a basket, small cage, pot, receptacle or container with one or more openings or entrances, which may be baited and is placed on the seabed for the purpose of catching shellfish and crustacea;

"ICES statistical rectangle" followed by numerals with a letter is a reference to whichever of the statistical sub-areas and divisions of the International Council for the Exploration of the Sea(**2**) is identified therein by those numerals and that letter;

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

"scallop dredge" means an appliance with a rigid framed mouth which is towed through the water and is manufactured, adapted, used or intended for use for the purpose of fishing for king scallops of the species *Pecten maximus*;

"Scotland" and "the Scottish zone" have the same meaning as in section 126(1) of the Scotland Act 1998(**4**);

"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; and

"trawl" means a demersal trawl, Danish seine or similar towed net.

(2) For the purposes of this Order, a trawl is deemed to have been used for the purpose of fishing for Norway lobsters (*Nephrops norvegicus*) if the catch retained on board that boat meets the minimum percentage of target species specified for Norway lobster in respect of towed gears of mesh size range 80 to 99 millimetres in Annex I to Council Regulation (EC) No 850/98 for the conservation of fishery resources through technical measures for the protection of juveniles of marine organisms(**5**).

Prohibited methods of fishing

3. (1) Fishing for sea fish by any method, by any Scottish fishing boat or relevant British fishing boat, is prohibited in the area comprising that part of the Scottish zone contained within—

(a) that part of ICES statistical rectangle 39E4 which lies to the east of the peninsula of Kintyre and to the north of a straight line between 55°18′18″ north latitude, 05°38′50″ west longitude, and 55°00′30″ north latitude, 05°09′24″ west longitude; and

(b) that part of ICES statistical rectangle 39E4 which lies to the north of a straight line between 55°17′57″ north latitude, 05°47′54″ west longitude and 55°00′00″ north latitude, 05°21′00″ west longitude and to the south of a straight line between 55°18′18″

(**2**) Cmnd. 2586.
(**3**) 1995 c.21.
(**4**) 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).
(**5**) OJ L 125, 27.4.98, p.1, as last amended by Regulation (EU) No 227/2013 of the European Parliament and of the Council (OJ L 78, 20.3.13, p.1); Annex I was relevantly amended by Council Regulation (EC) No 308/1999 (OJ L 38, 12.2.99, p.6).

north latitude, 05°38′50″ west longitude and 55°00′30″ north latitude, 05°09′24″ west longitude(**6**).

(2) The prohibition in paragraph (1)(a) does not apply to any fishing boat that fishes with only—

(a) a scallop dredge;

(b) a creel; or

(c) a trawl used for fishing for Norway lobsters.

(3) The prohibition in paragraph (1)(b) does not apply to any fishing boat that fishes with only—

(a) a scallop dredge; or

(b) a creel.

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

4. (1) For the purpose of enforcing this Order, a British sea-fishery officer may exercise the powers conferred by this article in relation to—

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

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

(2) The officer may go on board the boat, with or without persons assigned to assist with the duties of the officer, and may require the boat to stop and do anything else which will 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 the officer to be necessary for the purpose mentioned in paragraph (1) 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 (or other ancillary) operations or to the persons on board, which is in the custody or possession of that person, and may take copies of any such document;

(c) for the purpose of ascertaining whether the master, the owner or the charterer (if any) of the boat has committed an offence under section 5(1) of the Sea Fish (Conservation) Act 1967, 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 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 the 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 (d) 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 contravention of this Order has at any time taken place, the officer may—

(**6**) These are co-ordinates of latitude and longitude according to the World Geodetic System 1984 ("WGS 84"). WGS84 is defined at paragraph 2.1 of the United States National Imagery and Mapping Agency Technical Report TR8350.2, third edition, amendment 1 of 3rd January 2000 entitled "Department of Defense World Geodetic System 1984" (http://earth-info.nga.mil/GandG/publications/tr8350.2/wgs84fin.pdf). International Council for the Exploration of the Seas (ICES) standardise the division of sea areas for statistical analysis. Each ICES statistical rectangle is '30 min latitude by 1 degree longitude' in size.

(a) take, or require the master of the boat in relation to which the contravention took place to 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.

(5) Where the officer detains or requires the detention of a boat under this article, the officer must serve notice in writing on the master stating that the boat is to be detained until the notice is withdrawn by the service on the master of a further notice in writing signed by a British sea-fishery officer.

Revocation

5. The Sea Fish (Prohibited Methods of Fishing) (Firth of Clyde) Order 2012(**7**) is revoked.

St Andrew's House,Edinburgh
7th January 2014

RICHARD LOCHHEAD
A member of the Scottish Government

(**7**) S.S.I. 2012/4.

EXPLANATORY NOTE

(This note is not part of the Order)

This Order prohibits, subject to certain exceptions, all methods of fishing within specified areas of the Firth of Clyde from 14th February until 30th April, during both 2014 and 2015 (articles 1(3) and 3(1)). It is made pursuant to Article 46 of Council Regulation (EC) No 850/98 for the conservation of fishery resources through technical measures for the protection of juveniles of marine organisms and it remains in force until the end of 30th April 2015 (article 1(2)).

The areas closed to fishing under this Order are shown on the illustrative map which accompanies this Note.

Area 1 on the illustrative map is defined in article 3(1)(a).

Area 2 on the illustrative map is defined in article 3(1)(b).

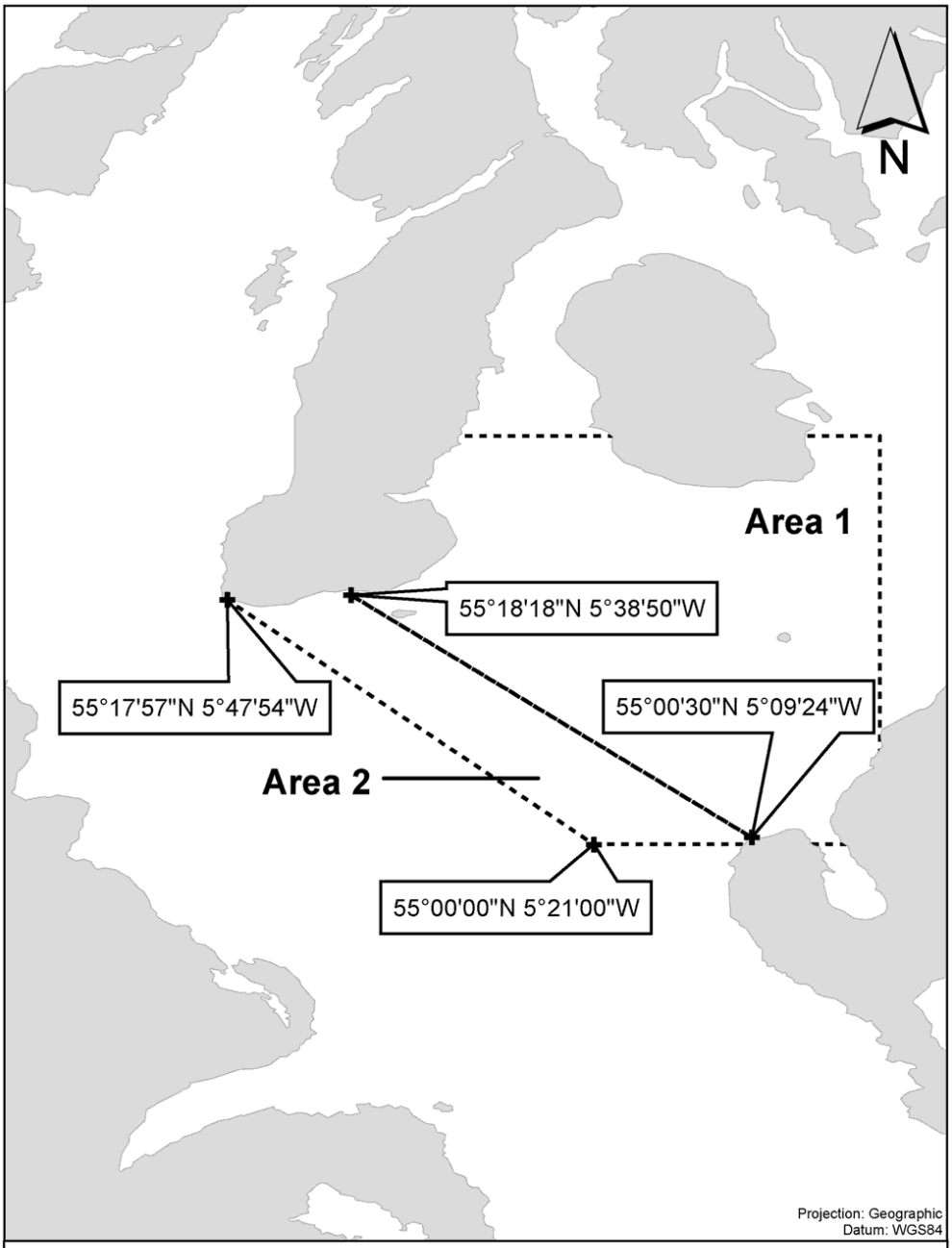
The Order applies only to Scottish fishing boats and relevant British fishing boats (article 3(1)). The prohibition does not apply to fishing boats that fish within the closed areas exclusively with scallop dredges, creels and (in relation to area 1 on the illustrative map) trawls used for fishing for Norway lobsters (article 3(2) and (3)).

The Order gives British sea-fishery officers powers to enforce the Order, including power to detain a vessel in port (article 4).

It is an offence under section 5(1) of the Sea Fish (Conservation) Act 1967 to use a fishing boat in contravention of a prohibition imposed by this Order. The penalties are fixed by section 11 of that Act. On summary conviction, the penalty is a fine not exceeding £50,000. On conviction on indictment, the penalty is an unlimited fine. In either case, the court may also order forfeiture of any fish in respect of which the offence was committed and of any net or other fishing gear used in committing the offence. On summary conviction, if the court does not order the forfeiture of fish, it may impose an additional fine not exceeding the value of the fish.

The Order revokes the Sea Fish (Prohibited Methods of Fishing) (Firth of Clyde) Order 2012 (article 5).

A Business and Regulatory Impact Assessment ("BRIA") has been prepared in relation to this Order and placed in the Scottish Parliament Information Centre. Copies of the BRIA are available from Marine Scotland, Victoria Quay, Leith, Edinburgh EH6 6QQ and on line at www.legislation.gov.uk.



ILLUSTRATIVE MAP REFERRED TO IN THE EXPLANATORY NOTE TO THE SEA FISH (PROHIBITED METHODS OF FISHING) (FIRTH OF CLYDE) ORDER 2014

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