

2007 No. 2554

SEA FISHERIES, ENGLAND

**The Sea Fishing (Prohibition on the Removal of Shark Fins)
Order 2007**

<i>Made</i>	- - - -	<i>1st September 2007</i>
<i>Laid before Parliament</i>		<i>5th September 2007</i>
<i>Coming into force</i>	- -	<i>1st October 2007</i>

The Secretary of State for Environment, Food and Rural Affairs and the Secretary of State concerned with the sea fishing industry in Northern Ireland, in exercise of the powers conferred by section 30(2) of the Fisheries Act 1981(a) and now vested in them(b), make the following Order:

Citation and commencement

1. This Order may be cited as the Sea Fishing (Prohibition on the Removal of Shark Fins) Order 2007 and comes into force on 1st October 2007.

Extent and application

2.—(1) This Order extends to England and Wales.

(2) This Order applies—

- (a) in England;
- (b) in relation to English and Welsh fishing boats wherever they are, except where they are in the sea adjacent to Wales out as far as the seaward boundary of the territorial sea(c); and

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- (a) 1981 c.29. See section 30(3) for the definitions of “enforceable Community restriction”, “enforceable Community obligation” and “the Ministers”, as modified by Schedule 2, paragraph 68(5) of the Scotland Act 1998 (Consequential Modifications) (No.2) Order 1999 (S.I. 1999/1820).
- (b) 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 section 30(2) of the 1981 Act to be exercised by the Ministers, concurrently with Scottish Ministers, in relation to: British fishing boats (other than Scottish ones) within the Scottish zone and Scottish fishing boats within British fishery limits but outside the Scottish zone. By virtue of article 2(a) of, and Schedule 1 to, the National Assembly for Wales (Transfer of Functions) Order 1999 (S.I. 1999/672) the functions exercisable under section 30(2) of the 1981 Act were transferred to the National Assembly in so far as exercisable in relation to Wales (defined in section 155(1) of the Government of Wales Act 1998 (c.38) as including “the sea adjacent to Wales out as far as the seaward boundary of the territorial sea”); in respect of waters beyond Wales these functions remain exercisable by the Ministers. By virtue of article 2(1) of the Transfer of Functions (Agriculture and Fisheries) Order 2000 (S.I. 2000/1812) any remaining functions of the Secretaries of State for Scotland and Wales under section 30(2) of the 1981 Act were transferred to the Minister of Agriculture, Fisheries and Food. The functions of the Minister of Agriculture, Fisheries and Food and one or more named Secretaries of State (however described) acting jointly were transferred to the Secretary of State for Environment, Food and Rural Affairs and one or more Secretaries of State acting jointly by virtue of article 2(5) of the Ministry of Agriculture, Fisheries and Food (Dissolution) Order 2002 (S.I. 2002/794). The Sea Fisheries (Northern Ireland) Order 2002 (S.I. 2002/790) Schedule 2 paragraph 3, provides that the function in section 30(2) of the 1981 Act is to be exercised concurrently by the Department for Agriculture and Rural Development insofar as it relates to sea fishing within the Northern Ireland zone and to Northern Ireland fishing boats outside that zone.
- (c) As referred to in section 158(1) of the Government of Wales Act 2006 (c.32).

- (c) in relation to other fishing boats within British fishery limits^(a) except where they are in—
 - (i) the Scottish zone;
 - (ii) the Northern Ireland zone;
 - (iii) the territorial sea adjacent to Wales out as far as the seaward boundary of the territorial sea; or
 - (iv) the territorial sea adjacent to the Isle of Man, Jersey^(b) or Guernsey.
- (3) For the purposes of this article—
- (a) “English fishing boat” means—
 - (i) a fishing boat registered under the Merchant Shipping Act 1995^(c) as to be treated as belonging to a port in England; or
 - (ii) a fishing boat, other than—
 - (aa) a Scottish fishing boat,
 - (bb) a Welsh fishing boat, or
 - (cc) a Northern Ireland fishing boat,
 which is owned wholly by persons qualified to own British ships for the purposes of Part II of that Act;
 - (b) “Northern Ireland fishing boat” means a fishing boat which is registered under the Merchant Shipping Act 1995 as to be treated as belonging to a port in Northern Ireland;
 - (c) “Northern Ireland zone” has the same meaning as in section 98 of the Northern Ireland Act 1998^(d);
 - (d) “Scottish fishing boat” means a fishing boat which is registered under the Merchant Shipping Act 1995 as to be treated as belonging to a port in Scotland;
 - (e) “Scottish zone” has the same meaning as in section 126(1) of the Scotland Act 1998^(e); and
 - (f) “Welsh fishing boat” means a fishing boat registered under the Merchant Shipping Act 1995 as to be treated as belonging to a port in Wales.

Interpretation

3.—(1) In this Order—

“the Regulation” means Council Regulation (EC) No 1185/2003 on the removal of fins of sharks on board vessels^(f);

“relevant offence” means—

- (a) an offence under article 4 of this Order; or
- (b) an offence under any provision in any other Order made for the purposes of implementing the Regulation in relation to any part of the United Kingdom which has equivalent effect to this Order proceedings in respect of which may be taken in England by virtue of section 30(2)(A) of the Fisheries Act 1981^(g) (referred to in this Order as an “equivalent provision”).

(2) Expressions in this Order which are not defined and which appear in the Regulation have the same meaning in this Order as they have for the purposes of the Regulation.

(a) As defined by section 1 of the Fishery Limits Act 1976 (c.86).

(b) See section 1(5) of the Territorial Sea Act 1987 (c.49) (as extended to Jersey by S.I. 1997/278, as amended by S.I. 2002/250, and to the Isle of Man by S.I. 1991/1722).

(c) 1995 c.21.

(d) 1998 c.47.

(e) 1998 c.46.

(f) OJ No L167, 04.07.2003, p. 1.

(g) Subsection 30(2A) was inserted by the Scotland Act 1998 (Consequential Modifications) (No.2) Order 1999, SI 1999/1820.

(3) Any information notified for the purpose of any provision of this Order must be treated as notified for the purposes of any provision in an Order to which paragraph (b) of the definition of “relevant offence” applies.

Offences

4.—(1) Where there is a contravention of, or failure to comply with, any of those Articles of the Regulation which are listed in column 1 of the Schedule, the master, the owner and the charterer (if any) of the boat in relation to which the contravention or failure occurred are each guilty of an offence.

(2) Without prejudice to paragraph (1), any person who contravenes or fails to comply with Article 3.2 of the Regulation is guilty of an offence.

(3) The theoretical correspondence between the weight of the fins and bodies for the purposes of Article 4.4 of the Regulation is 5% of the live weight of the shark catch.

Penalties

5.—(1) Any person found guilty of a relevant offence is liable—

- (a) on summary conviction to a fine not exceeding £50,000; and
- (b) on conviction on indictment, to a fine.

(2) The court by which a person is convicted of any relevant offence may also order the forfeiture of any fishing gear used in the course of, or in activities leading to, the commission of the offence and either—

- (a) order the forfeiture of any shark fins or remaining parts of sharks in relation to which the offence was committed; or
- (b) impose a fine not exceeding the value of the shark fins or remaining parts of sharks in relation to which the offence was committed.

Recovery of fines

6.—(1) Where a magistrates’ court imposes a fine on a person convicted of a relevant offence the court may—

- (a) issue a warrant of distress against—
 - (i) the boat involved in the commission of the offence;
 - (ii) its gear and catch; and
 - (iii) any property of the person convicted,for the purpose of levying the amount of the fine; and
- (b) order that the boat and its gear and catch be detained until—
 - (i) the expiry of a period not exceeding three months from the date of the conviction;
 - (ii) the fine is paid; or
 - (iii) 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^(a) (postponement of issue of, and defects in, warrants of distress) apply to a warrant of distress issued under this article as they apply to a warrant of distress issued under Part III of that Act.

(3) Where, in relation to a fine in respect of a relevant offence, an order under article 95 of the Magistrates’ Courts (Northern Ireland) Order 1981^(b) or section 222 of the Criminal Procedure

(a) 1980 c.43; section 78 was amended by sections 37 and 46 of the Criminal Justice Act 1982 (c.48).

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

(Scotland) Act 1995^(a) (both of which deal with transfer of fines from one jurisdiction to another) specifies a local justice area in England, this article shall apply as if the fine were imposed by a court within that local justice area.

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

7.—(1) For the purpose of enforcing this Order or any equivalent provision, any British sea-fishery officer may exercise the powers conferred by this article.

(2) 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.

(3) 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 mentioned in paragraph (1) 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 its fishing operations or other operations ancillary thereto or to the persons on board which is in that person's custody or possession;
- (c) for the purpose of ascertaining whether a relevant offence 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 and, where any such document is kept by means of a computer, require it to be produced in a form in which it may be taken away; and
- (e) where the boat is one in relation to which he has reason to suspect that a relevant 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 (e) 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 relevant offence has at any time been committed in relation to a fishing boat, he may—

- (a) require the master of the boat to take, or himself take, the boat and 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 shall serve on the master a notice in writing stating that the boat is (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

8.—(1) For the purposes of enforcing this Order or any equivalent provision, any 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 fish;

(a) 1995 c.46.

- (b) take with him such other persons as appear to him to be necessary to assist him and any equipment or materials;
- (c) examine any fish on the premises and require persons on the premises to do anything which appears to him to be necessary for facilitating the examination;
- (d) carry out at the premises such other inspections or tests as may reasonably be necessary;
- (e) require any person not to remove or cause to be removed any fish from the 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 his custody or possession relating to the catching, landing, transportation, transshipment, sale or disposal of any sea fish;
- (g) for the purpose of ascertaining whether any person on the premises has committed a relevant offence, search the premises for any such document and require any person on the premises to do anything which appears to him to be necessary for facilitating the search;
- (h) inspect and take copies of any such document produced to him or found on the premises;
- (i) require any appropriate or responsible person to render any such document on a computer system into a visible and legible form, including requiring it to be produced in a form in which it may be taken away; and
- (j) if he has a reason to suspect that a relevant offence has been committed, seize and detain any such document produced to him or found on the premises for the purpose of enabling the document to be used as evidence in proceedings for a relevant offence.

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

Warrants to enter premises

9.—(1) If a justice of the peace on sworn information in writing is satisfied that the circumstances in paragraph (2) apply, he may issue a warrant authorising a British sea-fishery officer to enter any premises, if necessary using reasonable force, and to take with him such persons as appear to be necessary.

(2) The circumstances are that—

- (a) there are reasonable grounds to believe that any documents or other items which a British sea-fishery officer has power under article 8 to inspect are on the premises;
- (b) the inspection of such documents or other items is likely to disclose evidence of the commission of a relevant offence; and
- (c) either—
 - (i) entry to the premises has been or is likely to be refused and notice of intention to apply for a warrant has been given to the occupier;
 - (ii) an application for entry, or the giving of notice, would defeat the object of the entry;
 - (iii) the premises are unoccupied; or
 - (iv) the occupier is temporarily absent and it might defeat the object of the entry to await his return.

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

10. A British sea-fishery officer may seize—

- (a) any shark fins or remaining parts of shark, including any receptacle containing them, in relation to which he suspects a relevant offence has been committed; and
- (b) any fishing gear which he has reasonable grounds to suspect has been used in the course of the commission of any such suspected offence.

Protection of officers

11. A British sea-fishery officer or a person assisting him is not liable in any civil or criminal proceedings for anything done or omitted to be done in the purported exercise of the powers conferred on him by this Order if the court is satisfied that—

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

Obstruction of officers

12.—(1) A person is guilty of an offence if—

- (a) without reasonable excuse, he fails to comply with any requirement imposed by a British sea-fishery officer under the powers conferred on him by this Order;
- (b) without reasonable excuse, he prevents, or attempts to prevent, any other person from complying with any such requirement;
- (c) he assaults or intentionally obstructs a British sea-fishery officer, or a person assisting the officer, while exercising any powers under this Order.

(2) A 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.

Provisions as to offences

13.—(1) If an offence under this Order committed by a body corporate is shown—

- (a) to have been committed with the consent or connivance of an officer; or
- (b) to be attributable to any neglect on his part,

the officer as well as the body corporate is guilty of the offence and liable to be proceeded against and punished accordingly.

(2) If the affairs of the body corporate are managed by its members, paragraph (1) applies in relation to the acts and defaults of a member in connection with his functions of management as if he were a director of the body.

(3) Where any relevant offence 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, he as well as the partnership shall be guilty of the offence and liable to be proceeded against and punished accordingly.

(4) Where any relevant offence committed by an unincorporated association 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.

(5) “Officer” in relation to a body corporate means a director, member of the committee of management, chief executive, manager, secretary or other similar officer of the body, or a person purporting to act in any such capacity.

Admissibility of documents in evidence

14.—(1) The Articles referred to in the following paragraphs are references to Articles of Council Regulation (EEC) 2847/1993 establishing a control system applicable to the common fisheries policy^(a).

(2) Any—

- (a) logbook kept under Article 6, 17.2 or 28c;
- (b) declaration submitted under Article 8.1, 9, 12, 17.2 or 28f;
- (c) effort report completed under paragraphs (b) and (c) of Article 19;
- (d) document drawn up under Article 13;
- (e) document containing required information received by a fisheries monitoring centre established under Article 3.7,

shall, in any proceedings in England for a relevant offence, be evidence of the matters stated in the logbook, declaration, effort report or document, as the case may be.

(3) The reference to “required information” in paragraph (2)(e) is to information communicated via a satellite-based vessel monitoring system established under Article 3.1 as to—

- (a) the identification of the fishing boat;
- (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.

29th August 2007

Phil Woolas
Minister of State
Department for Environment, Food and Rural Affairs

1st September 2007

Paul Goggins
Minister of State
Northern Ireland Office

(a) OJ No. L261, 20.10.93, p.1, as last amended by Council Regulation 1954/2003 of 4 November 2003.

SCHEDULE

Article 4

SPECIFIED COMMUNITY PROVISIONS, CONTRAVENTION OF WHICH CONSTITUTES AN OFFENCE

<i>Column 1</i>	<i>Column 2</i>
<i>Regulation Provision</i>	<i>Summary Description of Subject Matter</i>
1. Article 3.1	The prohibition on the removal or retention of shark fins on board vessels and the transshipment or landing of shark fins (unless permitted by a special fishing permit as specified in Article 4.1).
2. Article 3.2	The prohibition on the purchase, offer for sale or selling of shark fins which have been removed or retained on board or transhipped or landed in contravention of Article 3.1.
3. Article 4.3	Prohibition on the discard at sea of the remaining parts of a shark (except those parts resulting from basic processing operations) by those holding a special fishing permit as specified in Article 4.1.
4. Article 4.4	Prohibition on the retention of fins where the weight of the fins exceeds the theoretical weight of the fins that would correspond to the remaining parts of sharks retained on board, transhipped or landed by vessels holding a special fishing permit.
5. Article 5.1	Requirement on masters holding special fishing permits to keep records of the weight of shark fins and the remaining parts of sharks retained on board, transhipped or landed. Requirement on masters holding special fishing permits to keep logbook records, with valid landing, transshipment and sales documentation, where the shark catch is not landed as a whole.
6. Article 5.2	Requirements on those persons with special fishing permits wishing to land shark fins or remaining parts of sharks outside Community ports to notify relevant details to the authorities of their flag state and to the competent authorities of the State to be landed in at least 72 hours before estimated time of arrival at the port of landing.

EXPLANATORY NOTE

(This note is not part of the Order)

This Order makes provision for the enforcement of Community restrictions and other obligations relating to the removal of shark fins on board vessels as set out in Commission Regulation (EC) No. 1185/2003 on the removal of fins of sharks on board vessels (OJ No L167, 04.07.2003, p.1).

This Order applies to English and Welsh fishing boats wherever they are, except when they are within the territorial sea adjacent to Wales, and to all other boats in British fishery limits, excluding the Scottish zone, the Northern Ireland zone, the territorial sea adjacent to Wales and the territorial seas of the Isle of Man and the Channel Islands.

Article 4 of the Order creates offences in respect of breaches of those Articles of the Regulation referred to in column 1 of the Schedule to the Order. Penalties are specified for such offences in article 5. Provision is made for the recovery of fines in article 6.

The Order confers powers of enforcement on British sea-fishery officers (articles 7, 8 and 10). Article 9 allows a justice of the peace to issue warrants for entry to premises. Article 11 makes provision for the protection of British sea-fishery officers and their assistants and article 12 provides for offences and penalties should they be obstructed in the course of their investigations under this Order. Article 13 makes provision in respect of offences by bodies corporate, partnerships and unincorporated associations. Article 14 allows for the admissibility in evidence of records compiled for the purposes of Council Regulation (EEC) No. 2847/93 establishing a control system applicable to the common fisheries policy (OJ No L261, 20.10.93, p.1).

An Impact Assessment in relation to this Order has been prepared and placed in the library of each House of Parliament. Copies can be obtained from Defra, Sea Fisheries Conservation Division, Area 7B, 3-8 Whitehall Place, London SW1A 2HH.

£3.00

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