

**2012 No. 63**

**SEA FISHERIES**

**CONSERVATION OF SEA FISH**

**The Sharks, Skates and Rays (Prohibition of Fishing, Trans-shipment and Landing) (Scotland) Order 2012**

*Made* - - - - *28th February 2012*

*Laid before the Scottish Parliament* *1st March 2012*

*Coming into force* - - *30th March 2012*

The Scottish Ministers make the following Order in exercise of the powers conferred by sections 5(1)(a)(iii), 6(1), (1A) and (2)(b) and 15(3) of the Sea Fish (Conservation) Act 1967(a) and all other powers enabling them to do so.

**Citation, commencement and extent**

1.—(1) This Order may be cited as the Sharks, Skates and Rays (Prohibition of Fishing, Trans-shipment and Landing) (Scotland) Order 2012 and comes into force on 30th March 2012.

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

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

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(a) 1967 c.84 (“the 1967 Act”); section 5(1) was substituted by section 198(2) of the Marine and Coastal Access Act 2009 (c.23), which extends to Scotland by virtue of section 158(1) of the Marine (Scotland) Act 2010 (asp 5) (“the 2010 Act”). Section 6(1) of the 1967 Act was amended by paragraph 43(6)(a) of Schedule 2 to the Scotland Act 1998 (Consequential Modifications) (No. 2) Order 1999 (S.I. 1999/1820). Section 6(1A) of the 1967 Act was inserted by section 23(2) of the Fisheries Act 1981 (c.29) (“the 1981 Act”) and amended by paragraph 43(2)(b) of Schedule 2 to S.I. 1999/1820. Section 15(3) of the 1967 Act was substituted by paragraph 38(3) of Schedule 1 to the Sea Fisheries Act 1968 (c.77) and amended by paragraph 16(1) of Schedule 2 to the Fishery Limits Act 1976 (c.86) and paragraph 43(2)(b) of Schedule 2 to S.I. 1999/1820. Sections 5, 6 and 15(3) of the 1967 Act are modified in relation to Scotland by section 22A(2), (6), (7) and (10) of that Act. Section 22A was inserted by paragraph 43(13) of Schedule 2 to S.I. 1999/1820 and section 22A(6) was substituted by section 159(4) of the 2010 Act. Relevant modifications are contained in article 5 of the Scotland Act 1998 (Functions Exercisable in or as Regards Scotland) Order 1999 (S.I. 1999/1748) and articles 3, 5 and 6 of the Scotland Act 1998 (Modification of Functions) Order 1999 (S.I. 1999/1756). 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 sections 6(1) and (1A) and 15(3), was amended by sections 19(2)(d) and 45 of the 1981 Act and paragraph 43(12) of Schedule 2 to S.I. 1999/1820. The definition was modified in relation to Scotland by section 22A(12)(b) of the 1967 Act.

## Interpretation

### 2. In this Order—

“EU fishing boat” means a Community fishing vessel as defined in Article 3(d) of Council Regulation (EC) No 2371/2002 on the conservation and sustainable exploitation of fisheries resources under the Common Fisheries Policy(a), other than a Scottish fishing boat and a relevant British fishing boat;

“fishing boat” means a vessel of whatever size, and in whatever way propelled, which is for the time being employed in sea fishing;

“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(b) or is owned wholly by persons qualified to own British ships for the purposes of that Part of that Act;

“Scotland” and “the Scottish zone” have the same meaning as in section 126(1) of the Scotland Act 1998(c);

“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;

“third country fishing boat” means a third country fishing vessel as defined in Article 2(o) of Council Regulation (EC) No 1006/2008 concerning authorisations for fishing activities of Community fishing vessels outside Community waters and the access of third country vessels to Community waters, amending Regulations (EEC) No 2847/93 and (EC) No 1627/94 and repealing Regulation (EC) No 3317/94(d);

“tope” means the species *Galeorhinus galeus*;

“vessel” includes any ship or boat or any other description of vessel used in navigation.

## Application

### 3.—(1) Article 4 applies to—

- (a) Scottish fishing boats; and
- (b) relevant British fishing boats.

### (2) Articles 5 to 7 apply to—

- (a) Scottish fishing boats;
- (b) relevant British fishing boats; and
- (c) any other fishing boat or vessel (other than an EU fishing boat or third country fishing boat), whose master, owner or charterer (if any) is a person established in the United Kingdom within the meaning of Article 10(a) of Council Regulation (EC) No 2371/2002 on the conservation and sustainable exploitation of fisheries resources under the Common Fisheries Policy(e).

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(a) OJ L 358, 31.12.2002, p.59, as last amended by Council Regulation (EC) No 1224/2009 (OJ L 343, 22.12.2009, p.1).

(b) 1995 c.21.

(c) 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).

(d) OJ L 286, 29.10.2008, p.33.

(e) Article 10 permits a Member State to take measures for the conservation and management of stocks in its own waters, subject to certain conditions. (For the purpose of interpreting Article 10(a), “fishing vessel” is defined in Article 3(c) of Council Regulation (EC) No 2371/2002.)

### **Prohibition of fishing for tope**

4. Fishing for tope, other than by rod and line or hand-line, by a boat to which this article applies, is prohibited in the Scottish zone.

### **Prohibition of trans-shipment of tope**

5. The trans-shipment of tope caught by rod and line or hand-line (wherever caught), into or from a boat or vessel to which this article applies, is prohibited in the Scottish zone.

### **Prohibition of landing tope**

6. The landing of tope (wherever caught), from a boat or vessel to which this article applies, is prohibited in Scotland.

### **Prohibition of landing specified species of shark, skate and ray**

7.—(1) The landing of any specified species caught by rod and line or hand-line (wherever caught), from a boat or vessel to which this article applies, is prohibited in Scotland.

(2) In paragraph (1), “specified species” means a species of shark, skate and ray specified in the Schedule.

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

8.—(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;
- (b) any relevant British fishing boat within the Scottish zone; and
- (c) any other fishing boat to which articles 5 to 7 apply, within the Scottish zone.

(2) The officer may go on board the boat, with or without persons assigned to assist with the officer’s duties, 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 boat’s equipment, including 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), 5(6), 6(5) or 6(5A) of the Sea Fish (Conservation) Act 1967(a), 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

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(a) Section 5(6) was amended by section 22(2)(b) of the 1981 Act and paragraph 3(4) of Schedule 15 to the Marine and Coastal Access Act 2009 (“the 2009 Act”) (which extends to Scotland by virtue of section 158(1) of the 2010 Act). Section 5(6) should be read with sub-sections (6A) (inserted by paragraph 3(5) of Schedule 15 to the 2009 Act) and (7). Section 6(5) was amended, and section 6(5A) was inserted, by section 23(3) of the 1981 Act.

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—

- (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.

St Andrew's House,  
Edinburgh  
28th February 2012

*RICHARD LOCHHEAD*  
A member of the Scottish Executive

## SCHEDULE

Article 7(2)

### THE SPECIES OF SHARK, SKATE AND RAY THAT ARE PROHIBITED FROM BEING LANDED

<i>Species</i>	<i>Latin name</i>
Angel shark	<i>Squatina squatina</i>
Common skate	<i>Dipturus batis</i>
White skate	<i>Rostroraja alba</i>
Porbeagle	<i>Lamna nasus</i>
Spurdog	<i>Squalus acanthias</i>
Knifetooth dogfish	<i>Scymnodon ringens</i>
Sailfin roughshark (Sharpback shark)	<i>Oxynotus paradoxus</i>
Greater lanternshark	<i>Etmopterus princeps</i>
Undulate ray	<i>Raja undulata</i>
Leafscale gulper shark	<i>Centrophorus squamosus</i>
Portuguese dogfish	<i>Centroscymnus coelolepis</i>
Blackmouth catshark (Blackmouth dogfish)	<i>Galeus melastomus</i>
Longnose velvet dogfish	<i>Centroscymnus crepidater</i>
Black dogfish	<i>Centroscyllium fabricii</i>
Greenland shark	<i>Somniosus microcephalus</i>
Six-gilled shark	<i>Hexanchus griseus</i>
Velvet belly	<i>Etmopterus spinax</i>
Deep-water catsharks	<i>Apristurus spp.</i>
Frilled shark	<i>Chlamydoselachus anguineus</i>
Birdbeak dogfish	<i>Deania calcea</i>
Kitefin shark	<i>Dalatias licha</i>

## EXPLANATORY NOTE

*(This note is not part of the Order)*

This Order provides for conservation measures for sharks, skates and rays in Scottish waters, pursuant to Article 10 of Council Regulation (EC) No 2371/2002 on the conservation and sustainable exploitation of fisheries resources under the Common Fisheries Policy (“the Council Regulation”).

This Order—

- (a) applies to Scottish fishing boats, relevant British fishing boats and, in relation to articles 5 to 7, to any other fishing boat or vessel (except an EU fishing boat or third country fishing boat), whose master, owner or charterer (if any) is a person established in the United Kingdom within the meaning of Article 10(a) of the Council Regulation (article 3);
- (b) prohibits fishing for tope, other than by rod and line or hand-line, by any such boat in the Scottish zone (article 4);
- (c) prohibits the trans-shipment of tope, caught by rod and line or hand-line (wherever caught), into or from any such boat or vessel in the Scottish zone (article 5);
- (d) prohibits the landing of tope (wherever caught) from any such boat or vessel in Scotland (article 6);
- (e) prohibits the landing of specified species of shark, skate and ray, caught by rod and line or hand-line (wherever caught), from any such boat or vessel in Scotland (article 7 and the Schedule);
- (f) gives British sea-fishery officers powers to enforce the Order (including power to detain a fishing boat in port), in addition to their powers under section 15 of the Sea Fish (Conservation) Act 1967 (article 8).

Contravention of a prohibition imposed by this Order is an offence under section 5(1), 5(6), 6(5) or 6(5A) of the Sea Fish (Conservation) Act 1967. Section 11 of that Act prescribes the penalties—

- (a) a fine not exceeding £50,000 on summary conviction; or
- (b) an unlimited fine on conviction on indictment.

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.

No Business and Regulatory Impact Assessment has been prepared for this Order, as it has no impact on the cost of business.

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SCOTTISH STATUTORY INSTRUMENTS

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