

2003 No. 371

SEA FISHERIES

The Prohibition of Fishing for Scallops (Scotland) Order
2003

Made 23rd July 2003

Laid before the Scottish Parliament 25th July 2003

Coming into force 22nd September 2003

The Scottish Ministers, in exercise of the powers conferred by sections 5 and 15(3) of the Sea Fish (Conservation) Act 1967(a) and of all other powers enabling them in that behalf, hereby make the following Order:

Citation, commencement and extent

1.—(1) This Order may be cited as the Prohibition of Fishing for Scallops (Scotland) Order 2003 and shall come into force on 22nd September 2003.

(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.

Interpretation

2.—(1) In this Order—

“French dredge” means a dredge with a rigid fixed tooth bar which is towed through the water and which incorporates paravanes, diving plates, pressure plates, water deflecting plates or any similar devices;

“king scallops” means scallops of the species *Pecten maximus*;

“scallop dredge” means a dredge 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;

“Scottish inshore waters” has the same meaning as in section 9(1) of the Inshore Fishing (Scotland) Act 1984(b);

“Scotland” has the same meaning as in section 126(1) of the Scotland Act 1998(c);

(a) 1967 c.84; section 5(1) was substituted by the Fisheries Act 1981 (c.29), section 22(1); 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). 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 were transferred to the Scottish Ministers by virtue of section 53 of the Scotland Act 1998 (c.46). Section 22(2) which contains a definition of “the Ministers” for the purposes of sections 5 and 15(3) was amended by the Fisheries Act 1981, sections 19(2)(a) and 45(b). The definition has effect in relation to Scotland with the modifications made by section 22A(12)(b) inserted by the Scotland Act 1998 (Consequential Modifications) (No. 2) Order 1999 (S.I. 1999/1820), Schedule 2, paragraph 43(13).

(b) 1984 c.26.

(c) 1998 c.46.

“the territorial sea of the United Kingdom adjacent to Scotland” means that part of the territorial sea of the United Kingdom within the boundaries described in article 3 of, and Schedule 1 to, the Scottish Adjacent Waters Boundaries Order 1999(a).

(2) For the purposes of this Order, other than article 4(a), a fishing boat is deemed to have been fishing for king scallops if the catch retained on board that boat includes at least 20 per cent by weight king scallops.

Prohibition of fishing for king scallops by means of dredge to which obstruction attached

3. Fishing for king scallops by a Scottish fishing boat or by any relevant British fishing boat by means of a—

- (a) French dredge; or
- (b) scallop dredge,

to which anything has been attached which obstructs in whole or in part the rings or netting on any part of the dredge is prohibited in the Scottish zone.

Prohibition of fishing for king scallops – French dredges

4. Fishing for king scallops by a Scottish fishing boat or by any relevant British fishing boat by means of a French dredge is prohibited—

- (a) in Scottish inshore waters; and
- (b) in any other part of the Scottish zone, where more than 6 French dredges are towed from each side of the fishing boat.

Prohibition of fishing for king scallops – scallop dredges

5. Fishing for king scallops by a Scottish fishing boat or by any relevant British fishing boat by means of a scallop dredge is prohibited—

- (a) in Scottish inshore waters, where more than 8 scallop dredges are towed from each side of the fishing boat;
- (b) in any other part of the territorial sea of the United Kingdom adjacent to Scotland, where more than 10 scallop dredges are towed from each side of the fishing boat; and
- (c) in any other part of the Scottish zone, where more than 14 scallop dredges are towed from each side of the fishing boat.

Powers of British sea-fishery officers

6.—(1) For the purpose of enforcing the provisions of this Order a British sea-fishery officer may exercise in relation to—

- (a) any Scottish fishing boat wherever it may be; and
- (b) any relevant British fishing boat in the Scottish zone,

the powers set out in this article.

(2) The officer may go on board the boat, with or without persons assigned to assist the officer in the duties of that officer, and for that purpose 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) above 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 operations or other operations ancillary thereto or to the persons on board which is in the custody or possession of that person and may take copies of any such document;

(a) S.I. 1999/1126.

- (c) for the purpose of ascertaining whether the master, owner or charterer of the boat has contravened 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 a contravention 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 relating to the contravention,

but nothing in sub-paragraph (d) above 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 the officer that a contravention of this Order has at any time taken place within the Scottish zone, the officer may—

- (a) require the master of the boat in relation to which the contravention 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 the officer detains or requires the detention of a boat, the officer shall 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.

ALLAN WILSON

Authorised to sign on behalf of the Scottish Ministers

St Andrew's House,
Edinburgh
23rd July 2003

EXPLANATORY NOTE

(This note is not part of the Order)

This Order, which forms part of the law of Scotland only, introduces measures for the conservation of king scallops.

Fishing for king scallops by a Scottish fishing boat or relevant British fishing boat by means of a French dredge or scallop dredge to which anything has been attached which obstructs the rings or netting on any part of the dredge is prohibited in the Scottish zone (article 3).

Fishing for king scallops by means of a French dredge by any Scottish or relevant British fishing boat is prohibited completely in Scottish inshore waters and is prohibited elsewhere in the Scottish zone except in accordance with article 4.

Fishing for king scallops by means of a scallop dredge by a Scottish fishing boat or a relevant British fishing boat in the Scottish zone is prohibited except in accordance with article 5.

Article 6 sets out the powers of British sea-fishery officers to enforce this Order.

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 gear used in committing the offence. On summary conviction, if the court does not order the forfeiture of fish, it must impose a fine not exceeding the value of the fish.

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