

2006 No. 505

SEA FISHERIES

The Sea Fishing (Northern Hake Stock) (Scotland) Order 2006

Made - - - - *11th October 2006*

Laid before the Scottish Parliament *12th October 2006*

Coming into force - - *14th November 2006*

The Scottish Ministers, in exercise of the powers conferred by section 30(2) of the Fisheries Act 1981(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 Sea Fishing (Northern Hake Stock) (Scotland) Order 2006 and shall come into force on 14th November 2006.

(2) Subject to paragraph (3), this Order shall extend to Scotland and the Scottish zone, and insofar as it extends beyond Scotland and the Scottish zone, it does so only as a matter of Scots law.

(3) Nothing in paragraph (2) shall be treated as prejudicing the effect of section 30(2A)(b) 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.

Interpretation

2.—(1) In this Order—

“British fishing boat” means a fishing boat which is registered in the United Kingdom under Part II of the Merchant Shipping Act 1995(c) or is owned wholly by persons qualified to own British ships for the purposes of that Part of that Act;

“Community fishing boat” means a fishing boat flying the flag of and registered in a Member State of the European Community other than a British fishing boat;

“equivalent provision” means any provision in any other order made under section 30(2) of the Fisheries Act 1981 for the purposes of implementing Regulation 811/2004, extending to any part of the United Kingdom which has equivalent effect to a specified provision in this Order, proceedings in respect of which, by virtue of section 30(2A) of the Fisheries Act 1981, may be commenced in any place in the United Kingdom;

“fishery product” includes fish;

(a) 1981 c.29; 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 (Modifications 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). See section 30(3) for a definition of “the Ministers”. Section 30(2) has effect in relation to Scotland as modified by section 30(5). Section 30(5) was inserted by the Scotland Act 1998 (Consequential Modifications) (No. 2) Order (S.I. 1999/1820), Schedule 2, paragraph 68.

(b) Section 30(2A) was inserted by the Scotland Act 1998 (Consequential Modifications) (No. 2) Order 1999 (S.I. 1999/1820), Schedule 2, paragraph 68.

(c) 1995 c.21.

“hake recovery zone” means the geographical area specified in Article 1 of Regulation 811/04;

“northern hake” means hake taken from the hake recovery zone;

“person in charge” in relation to a relevant fishing boat or a Community fishing boat, means the owner, master or charterer or the agent of the owner, master or charterer;

“Regulation 2807/83” means Commission Regulation (EEC) 2807/1983 which lays down detailed rules for recording information on Member States’ catches of fish(a);

“Regulation 2847/93” means Council Regulation (EEC) 2847/1993 which establishes a control system applicable to the common fisheries policy(b);

“Regulation 811/2004” means Council Regulation (EC) No. 811/2004 establishing measures for the recovery of northern hake stock(c);

“relevant fishing boat” means–

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

(b) any other British fishing boat which is within the Scottish zone,

licensed under section 4 of the Sea Fish (Conservation) Act 1967(d);

“relevant offence” means an offence under this Order or under any equivalent provision;

“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

“Scottish zone” has the same meaning as in section 126(1) of the Scotland Act 1998(e).

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

(a) any map, plan, graph or drawing;

(b) any photograph;

(c) any data, howsoever reproduced, communicated via a satellite-based vessel monitoring system established under Article 3.1 of Regulation 2847/93;

(d) any disk, tape, sound track or other device in 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 therefrom; and

(e) any film (including microfilm), negative, tape, disk or other device in which one or more visual images are recorded so as to be capable (as aforesaid) of being reproduced therefrom.

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

(4) Expressions in this Order which are not defined in paragraph(1) and which appear in Regulation 811/2004 have the same meaning in this Order as they have in that Regulation.

(a) O.J. L 276, 10.10.83, p1; the last amending instrument is Commission Regulation (EC) No. 2005/1804 (O.J. No. L 290, 04.11.05, p.10).

(b) O.J. No. L 261, 20.10.93, p.1; the last amending instrument is Council Regulation (EC) No. 2005/768 (O.J. No. L 128, 21.05.05, p.1).

(c) O.J. No. L 150, 30.4.04, p.1. as amended by Corrigendum O.J. No. L 185, 27.5.2004, p.1.

(d) 1967 c.84. Section 4 was amended by the Fishery Limits Act 1976 (c.86), section 3, the Fisheries Act 1981 (c.29), section 20 and the Sea Fish (Conservation) Act 1992 (c.60), section 1 and has effect in relation to Scotland as modified by section 22A inserted by the Scotland Act 1998 (Consequential Modifications) (No. 2) Order 1999 (S.I. 1999/1820), Schedule 2, paragraph 43(13).

(e) 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).

Recording and accounting of time spent in the hake recovery zone

3. A person in charge of a relevant fishing boat or a Community fishing boat within the Scottish zone who fails to record and account for in that boat's logbook time spent in the hake recovery zone in accordance with Article 19e of Regulation 2847/93 as applied by Article 7 of Regulation 811/2004 (recording and accounting of time spent in areas) is guilty of an offence.

Mixing of species and separate stowage of northern hake

4. A person in charge of a relevant fishing boat or a Community fishing boat within the Scottish zone which fails to comply with the obligations imposed by Article 11 of Regulation 811/2004 (separate stowage) is guilty of an offence.

Transportation of northern hake

5. Where any quantities of northern hake are transported in contravention of Article 12(2) of Regulation 811/2004 (transport), the owner or hirer of, and the person responsible for, the vehicle used to transport the northern hake is guilty of an offence.

Landing of northern hake where prior notification is required

6.—(1) The competent authority for the purposes of Article 8 of Regulation 811/2004 (prior notification) is the Scottish Ministers.

(2) Where there is in respect of a relevant fishing boat or a Community fishing boat entering a port or landing location in Scotland, a failure to comply with Article 8(1), or with a requirement given under Article 8(2), of Regulation 811/2004 the master, the representative of the master, the owner and the charterer (if any) are guilty of an offence.

(3) Where there is in respect of a relevant fishing boat a failure to comply with Article 8(3) of Regulation 811/2004 the master, the representative of the master, the owner and the charterer (if any) are guilty of an offence.

Landing of northern hake at a designated port

7.—(1) A person in charge of a relevant fishing boat which lands northern hake or a Community fishing boat which lands northern hake within Scotland in contravention of Article 9 of Regulation 811/2004 (designated ports) as read with paragraph (3) of this article is guilty of an offence.

(2) If northern hake is first landed in a port designated as specified in paragraph (4) within the United Kingdom an appropriate sample of at least 20% of all landings including 2 tonnes or more of northern hake shall be weighed in the presence of a British sea-fishery officer prior to being offered for first sale, unless the following requirements are met—

- (a) the boat is party to an arrangement made among vessels using the ports with a person or organisation to act as its controller for the purposes of Article 12 of Regulation 811/2004; and
- (b) details of the arrangement, and the vessels which are party to it, have been approved by the Scottish Ministers.

(3) A person in charge of a relevant fishing boat or a Community fishing boat who fails to comply with a requirement to weigh northern hake imposed in respect of that boat by a British sea-fishery officer or a person or organisation acting as a controller for the purpose of Article 12 of Regulation 811/2004 is guilty of an offence.

(4) For landings in the United Kingdom the ports, and where applicable the landing locations within them, designated for the purposes of Article 9 of Regulation 811/2004 are the ports specified in the Schedule to the Sea Fishing (Restriction on Days at Sea) (Scotland) Order 2006(a).

(a) S.S.I. 2006/341.

Recording information on catches of fish

8. A person in charge of a relevant fishing boat or a Community fishing boat in respect of which the 8% margin of tolerance referred to in Article 10 of Regulation 811/2004 is exceeded, is guilty of an offence.

Amendment of the Sea Fishing (Restriction on Days at Sea) (Scotland) Order 2006

9. In article 4(4) of the Sea Fishing (Restriction on Days at Sea) (Scotland) Order 2006(a), for “the determined number of days” where it second occurs, substitute “the basic number”.

Penalties

10.—(1) A person guilty of an offence under this Order, or under any equivalent provision shall be liable—

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

(2) The court by or before which a person is convicted of an offence under articles 3 to 8, or under an equivalent provision may order the forfeiture of—

- (a) any fish in respect of which the offence was committed; and
- (b) any net or other fishing gear used in committing the offence.

(3) Any person found guilty of an offence under articles 3 to 8, or under any equivalent provision shall, subject to the following provisions of this article, be 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 shall not be 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 shall 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) shall be 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 any other enactment.

Recovery of fines

11.—(1) Without prejudice to the provisions of section 221 of the Criminal Procedure (Scotland) Act 1995(b), where a court has imposed a fine on any person in respect of a relevant offence, that court may for the purposes 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 three months from the date—
 - (i) of the conviction or until the fine is paid;
 - (ii) the order is renewed for a further period (not exceeding three 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 shall 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.

(a) S.S.I. 2006/341.
(b) 1995 c.46.

(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 a relevant offence a transfer of fine order under section 222 of the Criminal Procedure (Scotland) Act 1995, section 90 of the Magistrates' Courts Act 1980(a) or Article 95 of the Magistrates' Courts (Northern Ireland) Order 1981(b) specifies a court of summary jurisdiction in Scotland, this article shall apply as if the fine were a fine imposed by that court.

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

12.—(1) For the purpose of enforcing articles 3 to 8 of this Order or any equivalent provisions, any British sea-fishery officer may exercise the powers conferred by this article in relation to—

- (a) a Scottish fishing boat wherever it may be; or
- (b) any other fishing boat which is within the Scottish Zone.

(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 may require the boat to stop and do anything else which will facilitate either the boarding of, or the disembarkation from, 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 that officer to be necessary for the purpose mentioned in paragraph (1) of this article 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 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 any fishing operations or other operations ancillary thereto or to the persons on board which is in custody or possession of that person;
- (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 that officer to be necessary for facilitating the search;
- (d) may inspect and take copies of any such document produced to that officer or found on board;
- (e) without prejudice to sub-paragraphs (c) and (d), may require the master and any person for the time being in charge of the boat to render all such documents on a computer system into a visible and legible form, including requiring any such document to be produced in a form in which it may be taken away; and
- (f) where the boat is one in relation to which the officer has reason to suspect that a relevant 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 (f) 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 an offence under this Order or any equivalent provision has at any time been committed, that officer—

- (a) may require the master of the boat in relation to which the offence took place to take, or that officer may take, the boat and its crew to the port which appears to that officer to be the nearest convenient port; and

(a) 1980 c.43.

(b) S.I. 1981/1675.

(b) may 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 that 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.

Powers of British sea-fishery officers on land

13.—(1) For the purpose of enforcing articles 3 to 8 of this Order or any equivalent provisions, 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;
- (b) take with that officer such other persons as appear to that 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, trans-shipment, sale or disposal of any fish or to the entry to, or exit from, any port or harbour by any fishing vessel;
- (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 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 to that officer 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 that 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 purpose of enabling the document to be used as evidence in proceedings for the 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 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, 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.

(3) If a sheriff, by information on oath, is satisfied—

- (a) 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) 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;

- (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 might 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 one month, authorise a British sea-fishery officer to enter the premises, if need be by 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

14.—(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 an offence under article 3 to 8 has been committed; and
- (b) any net or other fishing gear which the officer has reasonable grounds to suspect has been used in the course of the commission of such an offence.

Protection of officers

15. A British sea-fishery officer or a person assisting such an officer by virtue of article 12(2) or 13(1)(b) or an authorisation under article 13(3) of this Order shall not be liable in any civil or criminal proceedings for anything done in the purported exercise of the powers conferred by articles 12 and 13 of this Order if the court is satisfied—

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

Obstruction of officers

16.—(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 articles 12 to 14 of this Order;
- (b) without reasonable excuse prevents, or attempts to prevent, any other person from complying with any such requirement; or
- (c) intentionally obstructs any such officer in the exercise of any of those powers,

is guilty of an offence.

(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

17.—(1) Where any offence under this Order committed by a body corporate or 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 director, manager, secretary or other similar officer of the body corporate,

or a person purporting to act in any such capacity, (or in the case of a partnership, a partner or a person who was purporting to act as such) that person as well as the body corporate or the partnership, as the case may be, shall be guilty of the offence and liable to be proceeded against and punished accordingly.

(2) Where the affairs of a body corporate are managed by its members, the provisions of paragraph (1) shall apply in relation to acts and defaults of a member in connection with the member's functions of management as if the member were a director of the body corporate.

(3) Where any offence under this Order committed by an unincorporated association (other than 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, any officer of the association or any member of its governing body, that person as well as the association shall be guilty of the offence and liable to be proceeded against and punished accordingly.

Admissibility in evidence of logbooks and other documents

18.—(1) Any—

- (a) logbook kept under Article 6, 17.2 or 28c;
- (b) declaration submitted under Article 8.1, 11, 12, 17.2 or 28f;
- (c) effort report completed under Articles 19b and 19c;
- (d) document drawn up under Article 9 or 13;
- (e) document containing required information received by a fisheries monitoring centre established under Article 3.7,

of Regulation 2847/93 shall, in any proceedings in Scotland for an offence under this Order or any equivalent provision, be received in evidence without being produced or sworn to by any witness and shall, unless the contrary is shown, be conclusive evidence as to the matters stated therein.

(2) For the purpose of paragraph (1)(e), “required information” means—

- (a) a fishing boat's identification;
- (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,

as communicated via a satellite-based vessel monitoring system established under Article 3.1 of Regulation 2847/93.

ROSS FINNIE
A member of the Scottish Executive

St Andrew's House,
Edinburgh
11th October 2006

EXPLANATORY NOTE

(This note is not part of the Order)

This Order provides for the enforcement in Scotland of the monitoring, inspection and surveillance provisions in Council Regulation 811/2004 (“the Council Regulation”) which establishes a recovery plan for the northern hake stock which inhabits the hake recovery zone as defined in Article 1 of the Council Regulation.

The Order creates offences in respect of contraventions by certain persons of provisions of the Council Regulation concerning recording and accounting of time spent in the hake recovery zone, mixing of species, transportation of northern hake, the landing of northern hake where prior notification is required, the landing of northern hake at a designated port and the recording of information on catches of fish (articles 3 to 8).

By virtue of article 7(4) the ports named in the Schedule to the Sea Fishing (Restriction on Days at Sea) Order 2006 are designated for the purposes of Article 9 of the Council Regulation.

The Order makes a minor amendment to the Sea Fishing (Restriction on Days at Sea) (Scotland) Order 2006 (article 9).

The Order provides for penalties (article 10) and for the recovery of fines imposed in respect of a relevant offence as defined in the Order (article 11).

For the purposes of enforcing articles 3 to 8 of the Order powers are conferred on British sea-fishery officers to enter premises, to go on board fishing boats, to stop and search vehicles transporting fish, to examine fish, to require the production of documents, to search for and seize documents, to take a boat to the nearest convenient port and to seize fish and fishing gear (articles 12 to 14).

Provision is made for the protection of British sea-fishery officers in the exercise of their powers under the Order (article 15) and for an offence of obstructing such officers (article 16).

Provision is made in relation to offences committed by a body corporate, a partnership or an unincorporated association (article 17) and in relation to the admissibility in evidence of logbooks and other documents (article 18).

A Regulatory Impact Assessment in the relation to this Order has been prepared and placed in SPICE. Copies can be obtained from the Scottish Executive Environment and Rural Affairs Department, Robb’s Loan, Edinburgh, EH14 1TY.

2006 No. 505

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The Sea Fishing (Northern Hake Stock) (Scotland) Order 2006

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