

EXECUTIVE NOTE TO
THE SHARKS, SKATES AND RAYS (PROHIBITION OF FISHING, TRANS-
SHIPMENT AND LANDING) (SCOTLAND) ORDER 2012

SSI 2012/63

1. This Order was made 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. It is subject to the negative procedure.

Policy Objectives

2. The purpose of this Order is to conserve vulnerable species of shark, skate and ray that are found in Scottish waters. Because the conservation of these species is a matter of exclusive EU competence, the Scottish Ministers make this Order by the power provided in Article 10 of Council Regulation (EC) No 2371/2002¹ (“the CFP Regulation”). Sharks, skates and rays are particularly vulnerable to fishing pressure as they grow slowly and have a relatively low reproductive rate. Some 50% of UK shark species are listed as threatened and populations continue to decline. Currently, EU legislation only protects these species from commercial fishing pressure (not recreational fishing pressure). Sharks, skates and rays are prized species for recreational fishermen, and this Order is a precautionary measure to strengthen the conservation of these species by preventing their landing for trophy value or personal consumption. On the basis that sharks, skates and rays have high survivability rates when caught and returned to the sea, the ‘catch and release’ approach will continue to be permitted. This Order provides solely for “stricter” conservation measures: measures that are consistent with, but which go beyond, EU law. The EU regulatory measures that apply to the commercial sector for the conservation of sharks, skates and rays are enforced, in or as regards Scotland, by other means (detailed below).

3. In particular, this Order has two main aims. Firstly, to protect tope (*Galeorhinus galeus*) stocks in Scottish waters. EU legislation² requires tope caught as a by-catch by longline in certain waters (including parts of the Scottish zone) to be promptly released unharmed. However, despite tope being classified as “vulnerable” on the World Conservation Union’s red list, EU legislation does not prohibit or restrict fishing for tope by any other method. Tope is a long-lived species, which grows slowly, matures late and has a relatively low reproductive rate. This makes tope populations very susceptible to fishing pressure.

4. The Order prohibits fishing for tope, other than by rod and line and hand-line, in the Scottish zone. This prohibition applies to commercial fishing boats. The exception for fishing by rod and line and hand-line permits recreational fishing for tope. However, the Order prohibits tope caught by rod and line and hand-line (wherever caught) from being trans-shipped in the Scottish zone and landed in Scotland. This is to ensure that recreational catches of tope are promptly released to the sea unharmed, since they cannot lawfully be

¹ Council Regulation (EC) No 2371/2002 on the conservation and sustainable exploitation of fisheries resources under the Common Fisheries Policy (OJ L 358, 31.12.2002, p. 59).

² Article 5 of, and Annex I (Part B) to, Council Regulation (EU) No 43/2012 fixing for 2012 the fishing opportunities available to EU vessels for certain fish stocks and groups of fish stocks which are not subject to international negotiations or agreements (OJ L 25, 27.01.2012, p. 1 – see pp. 37-38).

landed in Scotland or trans-shipped in the Scottish zone to be landed elsewhere. These prohibitions will have little impact on the recreational sector, as the majority of sea anglers practise this “catch and release” method of fishing for tope. They are intended to deter a minority of sea anglers from catching and killing this vulnerable species, either for personal consumption or as a sporting trophy. To ensure the maximum level of protection, and avoid any enforcement gap, the prohibition of landing tope in Scotland applies to all tope, regardless of where and how it is caught. Accordingly, it covers the landing of any commercial by-catch of tope caught in waters outside the Scottish zone.

5. Tope protection orders are already in force in England and Wales. These were made in response to fears of a directed commercial tope fishery developing. While there is no evidence of a directed tope fishery developing in Scottish waters, it is always a possibility in the future and therefore this Order acts as a precautionary measure. It will bring Scottish policy in line with England and Wales, and prevent the possibility of commercial British fishing boats targeting tope in Scottish waters as a result of the ban in English and Welsh waters. However, the prohibition of fishing for tope in the Scottish zone is stricter than the equivalent in the English and Welsh Orders in that there is no commercial by-catch provision in the Scottish Order. On the basis that tope has a high survival rate, this Order ensures that any tope caught as a by-catch is returned to the sea unharmed, to reproduce and allow the population to increase.

6. Although tope is of fairly low commercial value, it can be targeted for fins as well as meat, and is highly prized by recreational sea anglers. The Scottish Government has already legislated¹ for a total ban on removal of shark fins at sea in relation to Scottish fishing boats, and has advocated for a change in EU legislation which would see an unqualified prohibition on removal of shark fins at sea apply in all EU waters and to all EU fishing boats (wherever they are). This Order will strengthen that commitment and prevent these vulnerable sharks from being targeted in Scottish waters.

7. The second policy aim is to ensure equality between the recreational sea angling sector and the commercial sector in relation to other species of shark, skate and ray. The Order prohibits the landing in Scotland of any specified species of shark, skate and ray caught by rod and line and hand-line (wherever caught). The Schedule to the Order specifies those species which are found in Scottish waters and are prohibited from being landed in Scotland. (The English and Welsh Orders mentioned above simply provide for the conservation of tope.)

8. EU legislation² already prevents EU commercial fishing boats from landing these species, by either expressly prohibiting their landing or fixing a zero TAC. The latter effectively means that EU commercial fishing boats have no quota to lawfully catch and land these species (subject to certain by-catch allowances). This Order imposes an equivalent landing ban on the recreational sector in Scotland.

¹ S.S.I. 2007/39, as amended by S.S.I 2009/413.

² Articles 5 and 12 of, and Annex I (Part B) to, Council Regulation (EU) No 43/2012; Article 13 of Council Regulation (EU) No 44/2012 fixing for 2012 the fishing opportunities available in EU waters and, to EU vessels, in certain non-EU waters for certain fish stocks and groups of fish stocks which are subject to international negotiations or agreements (OJ L 25, 27.1.2012, p. 55), and Article 3 of, and the Annex to, Council Regulation (EU) No 1225/2010 fixing for 2011 and 2012 the fishing opportunities for EU vessels for fish stocks of certain deep-sea fish species (OJ L 336, 21.12.2010, p. 1).

9. Whereas that EU legislation also prohibits EU commercial fishing boats from fishing for these species of shark, skate and ray, this Order does not prevent recreational fishing for these species. Instead, the landing prohibition aims to reduce mortality rates so far as possible, by ensuring that recreational catches of these species are promptly returned to the sea unharmed. As with tope, the majority of sea anglers practise the “catch and release” method of fishing for these species, on the basis that these species also have a high survival rate and this method of fishing does not threaten their conservation. Indeed, the Scottish Government recognizes the valuable information that can be gained from tagging programmes. Such programmes run by the recreational sea angling community involve tagging and collecting valuable data on sharks, skates and rays before returning them to the sea. It is in sea anglers’ interests to conserve the species for the long term sustainability of this type of recreational fishing (whether for sport, tourism or pleasure). Whilst EU legislation¹ currently prohibits the marketing of recreational catches, this Order prohibits the landing of these species for personal consumption or as sporting trophies.

10. Detailed information to assist fishers with species identification is available on the Shark Trust’s website, which can be accessed using the following web-links: <http://www.sharktrust.org/content.asp?did=34697> for sharks; and <http://www.sharktrust.org/content.asp?did=35248> for skates and rays.

Application

11. As this Order provides solely for “stricter” conservation measures, pursuant to Article 10 of the CFP Regulation, its application is restricted to national fishing boats or persons established in the UK (as required by that Article). The Order applies only to: (a) Scottish fishing boats and relevant British fishing boats (i.e. commercial fishing boats, which may also be chartered by sea anglers for recreational (rod and line/hand-line) fishing); and (b) in relation to articles 5 to 7, any other fishing boat or vessel (except a fishing boat registered in either another Member State of the EU or a third country), whose master, owner or charterer (if any) is a person established in the United Kingdom within the meaning of Article 10(a) of the CFP Regulation.

12. The latter will cover kayaks and small (unregistered) pleasure boats, etc., that are used, operated, owned or chartered by either a person resident in the United Kingdom or a company or partnership, etc., whose principal place of business is in the United Kingdom.

Enforcement of this Order and corresponding EU conservation measures

13. Contravention of a prohibition in this Order is a criminal offence under section 5(1), 5(6), 6(5) or 6(5A) of the Sea Fish (Conservation) Act 1967. The penalty for any such offence is either a fine not exceeding £50,000 on summary conviction, or, an unlimited fine on conviction on indictment. (Under section 11 of that Act, the court also has certain forfeiture powers and the power to impose an additional fine in certain circumstances.)

14. The EU regulatory measures (i.e. prohibitions and restricted fishing opportunities) that apply to the commercial sector for the conservation of sharks, skates and rays are

¹ Article 55(2) of Council Regulation (EC) No 1224/2009 establishing a Community control system for ensuring compliance with the rules of the common fisheries policy (OJ L 343, 22.12.2009, p. 1.). This will be enforced , in or as regards Scotland, by an S.S.I that is scheduled to come into force later this year.

enforced against: (a) Scottish fishing boats (wherever they are), by licence condition, breach of which is a criminal offence under section 4(6) of the Sea Fish (Conservation) Act 1967; and (b) any other fishing boat in the Scottish zone, by the offence provision in section 30(1) of the Fisheries Act 1981. Both of these criminal offences attract the same penalties as apply to any contravention of this Order.

Consultation

15. There is no requirement to consult on this Order, however, the Scottish Government has worked closely with sea anglers on its development. Members of the sea angling community were instrumental in calling for this legislation to be introduced and they are very supportive. The vast majority of sea anglers are strong supporters of shark, skate and ray conservation and already choose not to land these species, favouring the catch and release method.

16. There are few implications for the majority of commercial fishermen. Informal consultation with the commercial industry has revealed that it is content with the proposals.

Impact Assessments

17. This instrument has no regulatory impact on business, therefore a Business Regulatory Impact Assessment has not been prepared. The instrument will have positive effects on the marine environment.

Financial Effects

18. This instrument has no financial effects on the Scottish Government, local government or on business.

19. Enforcement will be achieved under the existing provision for Marine Scotland Compliance.