

1986 No. 2090

SEA FISHERIES

CONSERVATION OF SEA FISH

The Sea Fishing (Enforcement of Community Conservation Measures) Order 1986

<i>Made</i> - - - - -	1st December 1986
<i>Laid before Parliament</i>	10th December 1986
<i>Coming into Operation</i>	1st January 1987

The Minister of Agriculture, Fisheries and Food and the Secretaries of State respectively concerned with sea fishing in Scotland, Wales and Northern Ireland, in exercise of the powers conferred on them 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:—

Title and commencement

1. This order may be cited as the Sea Fishing (Enforcement of Community Conservation Measures) Order 1986 and shall come into operation on 1st January 1987.

Interpretation

2. In this order, unless the context otherwise requires—

“the Council Regulation” means Council Regulation (EEC) No. 3094/86 laying down certain technical measures for the conservation of fishery resources(b);

“fish” includes crustacea, molluscs and parts of fish;

“specified Community provision” means a provision of the Council Regulation specified in column 1 of Schedule 1 to this order, as read with any qualifying words relating to that provision in that column.

Offences

3.—(1) Where there is, in respect of—

(a) any British fishing boat registered in the United Kingdom wherever it may be, or

(b) any other fishing boat which is within British fishery limits,

a contravention of, or failure to comply with, any specified Community provision, the master, the owner and the charterer (if any) shall each be guilty of an offence.

(a) 1981 c. 29.

(b) O.J. No. L288, 11.10.86, p. 1.

(2) Subject to paragraph (3) below, any person who, in the United Kingdom, lands, transports, stores, sells, displays or offers for sale—

- (a) any fish in contravention of article 5 of the Council Regulation, or
- (b) any salmon (*Salmo salar*) or sea trout (*Salmo trutta*) in contravention of article 6(1) of the Council Regulation,

shall be guilty of an offence.

(3) Paragraph (2) above shall not apply to a person who lands a fish, salmon or sea trout if that person is guilty of an offence under paragraph (1) above as respects the landing of that fish, salmon or sea trout.

Penalties

4.—(1) A person guilty of an offence under article 3(1) of this order shall be liable on a summary conviction—

- (a) to a fine not exceeding the amount specified in column 3 of Schedule 1 to this order in relation to the specified Community provision, the contravention of, or failure to comply with which, founded the offence; and
- (b) either—
 - (i) to a fine not exceeding the value of any fish in respect of which the offence was committed, or
 - (ii) to the forfeiture of any fish in respect of which the offence was committed; and
- (c) to the forfeiture of any net or other fishing gear in respect of which the offence was committed, or which was used in committing the offence, or which was used for catching any fish in respect of which the offence was committed.

(2) A person guilty of an offence under article 3(1) of this order shall be liable on conviction on indictment—

- (a) to a fine; and
- (b) to the forfeiture of any fish in respect of which the offence was committed; and
- (c) to the forfeiture of any net or other fishing gear in respect of which the offence was committed, or which was used in committing the offence, or which was used for catching any fish in respect of which the offence was committed.

(3) A person guilty of an offence under article 3(2) of this order shall be liable on summary conviction—

- (a) to a fine not exceeding £2,000; and
- (b) either—
 - (i) to a fine not exceeding the value of the fish in respect of which the offence was committed, or
 - (ii) to the forfeiture of the fish in respect of which the offence was committed.

(4) A person guilty of an offence under article 3(2) of this order shall be liable on conviction on indictment—

- (a) to a fine; and
- (b) to the forfeiture of the fish in respect of which the offence was committed.

Recovery of fines

5.—(1) Where a fine is imposed by a magistrates' court in England and Wales or Northern Ireland on the master, owner or charterer, or a member of the crew, of a fishing boat who is convicted by the court of an offence under article 3 of this order, the court may—

- (a) issue a warrant of distress against the boat and its gear and catch and any property of the person convicted for the purpose of levying the amount of the fine; and
- (b) order the boat to be detained for a period not exceeding three months from the date of the conviction or until the fine is paid or the amount of the fine is levied in pursuance of any such warrant, whichever occurs first.

(2) Where a fine is imposed by a sheriff in Scotland on the master, owner or charterer, or a member of the crew, of a fishing boat who is convicted by the sheriff of an offence under article 3 of this order, the sheriff may

- (a) issue a warrant for the poinding and sale of the boat and its gear and catch and any property of the person convicted; and
- (b) order the boat to be detained for a period not exceeding three months from the date of the conviction or until the fine is paid, whichever occurs first.

(3) Sections 77(1) and 78 of the Magistrates' Courts Act 1980^(a) (postponement of issue of, and defects in, warrants of distress) shall apply to a warrant of distress issued under this article in England and Wales as they apply to a warrant of distress issued under Part III of that Act.

(4) Article 114(2) of the Magistrates' Courts (Northern Ireland) Order 1981^(b) (postponement of issue of certain warrants) shall apply to a warrant of distress issued under this article in Northern Ireland as it applies to a warrant referred to in that article.

Powers of officers

6.—(1) For the purpose of enforcing article 3(1) of this order, a British sea-fishery officer—

- (a) may go on board any British fishing boat wherever it may be or any other fishing boat which is within British fishery limits;
- (b) may require any such boat to stop and do anything else to enable him to board it;
- (c) may require the attendance of the master of the boat or any other person on board;

^(a) 1980 c. 43.

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

- (d) may require any person on board to assist him in the performance of his functions;
 - (e) may take with him, to assist him in performing his functions, any other person and any equipment or materials; and
 - (f) may make any examination or inquiry which appears to him to be necessary and, without prejudice to the generality of the foregoing, he may in particular—
 - (i) examine any fish on the boat and the equipment of the boat, including the fishing gear;
 - (ii) require the production of any document relating to the boat or to its fishing operations or other operations ancillary to its fishing operations;
 - (iii) search the boat for any such document, and require any person on board the boat to do anything which appears to the officer to be necessary for facilitating the search; and
 - (iv) take copies of any such document.
- (2) If a British sea-fishery officer has reasonable grounds to suspect that an offence under article 3(1) of this order has been committed in respect of a boat that he has power to go on board under paragraph (1)(a) of this article, he may seize and detain any document produced to him or found on board the boat, and, if he has reasonable grounds to suspect that such an offence has been committed within British fishery limits, the officer—
- (a) may require the master to take, or may himself take, the boat and its crew to the port which appears to the officer to be the nearest convenient port; and
 - (b) may detain the boat in the port.
- (3) Nothing in paragraph (2) of this article shall permit any document required by law to be carried on board any boat to be seized or detained except while the boat is detained in a port.
- (4) If a British sea-fishery officer detains a boat, he shall serve on the master a notice stating that it is to be detained until the notice is withdrawn by the service on him of a further notice in writing signed by a British sea-fishery officer.
- (5) For the purpose of enforcing article 3 of this order, a British sea-fishery officer—
- (a) may enter at any reasonable time any premises (other than a dwelling) 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 sea fish;
 - (b) may search the premises for and examine any fish thereon;
 - (c) may require any person on the premises to produce any documents which are in his custody or possession relating to the catching, landing, trans-shipment, sale or disposal of sea fish;
 - (d) may take copies of any such document;

and, if he has reason to suspect that an offence under article 3 of this order has been committed, the officer—

(e) may search the premises for any such document and require any person on the premises to do anything which appears to the officer to be necessary for facilitating the search; and

(f) may seize and detain any such document produced to him or found on the premises.

(6) A British sea-fishery officer may seize—

(a) any fish in respect of which he has reasonable grounds to suspect that an offence under article 3 of this order has been committed; and

(b) any net or other fishing gear—

(i) in respect of which he has reasonable grounds to suspect that an offence under article 3(1) of this order has been committed, or

(ii) which he has reasonable grounds to suspect has been used in committing any such offence, or

(iii) which he has reasonable grounds to suspect has been used for catching any fish in respect of which any such offence has been committed.

(7) For the purpose of enforcing article 3 of this order in so far as it applies to undersized fish, any of the following officers, that is to say—

(a) any officer authorised by any of the Ministers,

(b) any officer of a market authority, acting within the limits of any market which that authority has power to regulate, and

(c) any fishery officer of a local fisheries committee acting within the district of the committee,

may, at all reasonable times, go on board any British fishing boat or enter any premises (other than a dwelling) used for carrying on any business in connection with the treatment, storage or sale of sea fish, may search for and examine any sea fish in any place, whether on board a fishing boat or elsewhere, and whether in a receptacle or not, and may seize any sea fish in respect of which he has reasonable grounds to suspect that an offence under article 3 of this order has been committed.

(8) With a view to enforcing article 3 of this order in so far as it relates to nets and other fishing gear, any fishery officer of a local fisheries committee may, within the district of the committee, go on board any British fishing boat and search for and examine all nets or other fishing gear and any fish carried in that boat, and may seize any net or other fishing gear in respect of which he has reasonable grounds to suspect that an offence under article 3 of this order has been committed.

(9) For the purpose of paragraph (7) of this article the district of a local fisheries committee shall be deemed to extend throughout the area of any council liable to pay, or contribute to the payment of, the expenses of the committee, except that the powers conferred by that paragraph on any fishery officer of a local fisheries committee shall not be exercisable in respect of any matter arising within the limits of any market under the control of the council of any district.

Obstruction of officers

7. 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 British sea-fishery officers by article 6(1) to (6) of this order;
- (b) without reasonable excuse prevents, or attempts to prevent, any other person from complying with any such requirement; or
- (c) assaults an officer who is exercising any of the powers conferred on him by article 6(1) to (8) of this order or intentionally obstructs any such officer in the exercise of any of those powers

shall be guilty of an offence and liable—

- (i) on summary conviction to a fine not exceeding £5,000; or
- (ii) on conviction on indictment to a fine.

Protection of officers

8. An officer shall not be liable in any civil or criminal proceedings for anything done in the purported exercise of the powers conferred on him by article 6 of this order if the court is satisfied that the act was done in good faith, that there were reasonable grounds for doing it and that it was done with reasonable skill and care.

Offences by bodies corporate

9. Where an offence under article 3 of this order committed by a body corporate is proved to have been committed with the consent or approval of any director, manager, secretary or other officer of the body corporate, he, as well as the body corporate, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly.

Proceedings

10.—(1) Proceedings for an offence under this order may be taken, and the offence may for all incidental purposes be treated as having been committed, in any place in the United Kingdom.

(2) A local fisheries committee may take proceedings in respect of any offence occurring within the district of the committee under—

- (a) article 3(1) of this order where the offence is founded on a contravention of, or failure to comply with, articles 2, 4, 5 and 9 of the Council Regulation; or
- (b) article 3(2)(a) of this order.

(3) For the purpose of paragraph (2) of this article the district of a local fisheries committee shall be deemed to extend throughout the area of any council liable to pay, or contribute to the payment of, the expenses of the committee, except that the powers conferred by that paragraph on the committee shall not be exercisable in respect of any matter arising within the limits of any market under the control of the council of any district.

Revocation

11. The orders specified in Schedule 2 to this order are hereby revoked.

In Witness whereof the Official Seal of the Minister of Agriculture, Fisheries and Food is hereunto affixed on 27th November 1986.



Michael Jopling,
Minister of Agriculture, Fisheries and Food.

John J. Mackay,
Parliamentary Under-Secretary of State,
Scottish Office.

26th November 1986.

Nicholas Edwards,
Secretary of State for Wales.

25th November 1986.

Tom King,
Secretary of State for Northern Ireland.

1st December 1986.

Article 4(1)

SCHEDULE 1

MAXIMUM FINES ON SUMMARY CONVICTION
(APART FROM FINES RELATED TO VALUE OF FISH)

Column 1	Column 2	Column 3
Provision of the Council Regulation	Subject Matter	Amount
1. Article 2(1) to (7), and (10)	Provisions relating to specified gear, mesh sizes, and composition of catches	£5,000
2. Article 4	Attachments to nets	£5,000
3. Article 5, in so far as it relates to trans-shipment into a vessel	Disposal of undersized fish	£50,000

Column 1	Column 2	Column 3
Provision of the Council Regulation	Subject Matter	Amount
4. Article 5, in so far as it relates to retention on board, trans-shipment from a vessel or landing	Disposal of undersized fish and prohibition on landing of lobster tails or claws	£2,000
5. Article 6, in so far as it relates to trans-shipment into a vessel	Disposal of salmon and sea trout	£50,000
6. Article 6, in so far as it relates to retention on board, trans-shipment from a vessel or landing	Disposal of salmon and sea trout	£5,000
7. Article 7(3)	Prohibition on retaining herring on board	£5,000
8. Article 8(1), as read with Article 8(2) and the first sentence of Article 8(3)	Prohibitions on retaining on board mackerel caught in specified waters in Western English Channel and South-East of Ireland	£5,000
9. Article 8(3), except the first sentence	Notification requirements	£2,000
10. Article 9(1) to (4), (8), (9) and (10)	Limitations on use of specified vessels or gear and prohibitions on retaining specified fish on board	£5,000
11. Article 10	Prohibition of processing operations on board	£2,000

SCHEDULE 2

Article 11

ORDERS REVOKED

Order	References
1. Sea Fishing (Enforcement of Community Conservation Measures) Order 1983	S.I. 1983/256
2. Sea Fishing (Enforcement of Community Conservation Measures) (Amendment) Order 1983	S.I. 1983/1818
3. Sea Fishing (Enforcement of Community Conservation Measures) (Amendment) Order 1984	S.I. 1984/1956
4. Sea Fishing (Enforcement of Community Conservation Measures) (Amendment) Order 1986	S.I. 1986/251

EXPLANATORY NOTE

(This Note is not part of the Order.)

This order, which replaces the Sea Fishing (Enforcement of Community Conservation Measures) Order 1983 as amended, makes provision for the enforcement of certain of the enforceable Community restrictions and obligations concerning technical measures for the conservation of fishery resources which are contained in Council Regulation (EEC) No. 3094/86 ("the Council Regulation").

Article 3 of the order creates offences in respect of breaches of the provisions of the Council Regulation referred to in column 1 (and briefly described in column 2) of Schedule 1 to the order and in sub-section (2) of that article (article 3). Penalties, which may include the forfeiture of fish, nets and other fishing gear, are specified for such offences (article 4).

The order confers powers of enforcement on British sea-fishery officers and on other officers (article 6). Provision is made for the punishment of anyone found guilty of obstructing or assaulting an officer (article 7).

The provisions of this order differ from those of the orders which it replaces in the following respects:—

- (a) the application of the order outside of British fishery limits is confined to British fishing boats registered in the United Kingdom;
- (b) additional penalties comprising the forfeiture of any net or other fishing gear in respect of which the offence was committed and the forfeiture of any fish in respect of which the offence was committed or alternatively, on summary conviction, an additional fine not exceeding the value of such fish may be imposed in all cases in which a person is found guilty of an offence founded on a breach of the restrictions and obligations referred to in Schedule 1 to the order;
- (c) a provision corresponding to section 12 of the Sea Fisheries Act 1968 (c. 77) is made for the enforcement of fines by way of the issue of a warrant of distress (in Scotland a warrant of poinding and sale) and a detaining order (article 5);
- (d) all the powers of enforcement officers are included in the text in place of references to other enactments (article 6).

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