
STATUTORY INSTRUMENTS

2000 No. 1843

**The Sea Fishing (North-East Atlantic
Control Measures) Order 2000**

PART III

PROVISIONS FORMING PART OF THE LAW OF SCOTLAND

Offences

13.—(1) Where there is, in respect of any Scottish fishing boat wherever it may be, a contravention of, or failure to comply with, any specified Community measure, the master, the owner and the charterer (if any) shall each be guilty of an offence.

(2) Where there is, in respect of any Community fishing vessel, other than a Scottish fishing boat, which is within the Scottish zone, a contravention of, or failure to comply with Article 24 of the Council Regulation, the master, the owner and the charterer (if any) shall each be guilty of an offence.

(3) Where, in respect of—

(a) any Scottish fishing boat wherever it may be; or

(b) any relevant British fishing boat or foreign fishing boat which is within the Scottish zone, any person—

(i) moves, removes or interferes with an identification mark affixed to any part of fishing gear in accordance with Article 16.1(b); or

(ii) fails to comply with a requirement imposed by the competent authorities in the United Kingdom, or a duly authorised officer, to proceed to a designated port under Article 19.4,

of the Council Regulation, the master, the owner and the charterer (if any) shall each be guilty of an offence.

(4) Where in respect of any non-Contracting Party vessel, any person—

(a) transships fish to a Community fishing vessel within the Scottish zone; or

(b) lands in Scotland or transships within the Scottish zone regulated resources in breach of a notice in writing served under article 16(7) of this Order,

the master, the owner and the charterer (if any) shall each be guilty of an offence.

Penalties

14.—(1) A person found guilty of an offence under article 13(1) or (2) or (where proceedings are brought in Scotland by virtue of section 30(2A) of the Fisheries Act 1981) article 4(1) or (2) of this Order, shall be liable—

(a) on summary conviction to a fine not exceeding the amount specified in column 3 of the Schedule in relation to the specified Community measure, the contravention of, or failure to comply with, which founded the offence;

(b) on conviction on indictment to a fine.

(2) A person found guilty of an offence under article 13(3) or (4) or (where proceedings are brought in Scotland by virtue of section 30(2A) of the Fisheries Act 1981) article 4(3) or (4) of this Order, shall be liable—

(a) on summary conviction to a fine—

(i) in the case of an offence under article 4(3) or 13(3), not exceeding the statutory maximum;

(ii) in the case of an offence under article 4(4) or 13(4), not exceeding £50,000;

(b) on conviction on indictment to a fine.

(3) Subject to the following provisions of this article, the court by or before which a person is convicted of an offence founded on a contravention of, or failure to comply with, Article 4.1, 6.1, 9, 24 or 25.1 of the Council Regulation or article 13(3) or (4) or (where proceedings are brought in Scotland by virtue of section 30(2A) of the Fisheries Act 1981) article 4(3) or (4) of this Order, 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.

(4) Any person found guilty of an offence under this Order (including an offence under Part II in respect of which proceedings were brought in Scotland by virtue of section 30(2A) of the Fisheries Act 1981) 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.

(5) A person shall not be liable to a fine under paragraph (4) in respect of an offence if, under paragraph (3), the court orders the forfeiture of the fish in respect of which the offence was committed; and where a fine is imposed under paragraph (4) in respect of any offence, the court shall not have the power under paragraph (3) to order the forfeiture of the fish in respect of which the offence was committed.

(6) Subject to paragraph (5), any fine to which a person is liable under paragraph (4) in respect of an offence shall be in addition to any other penalty (whether pecuniary or otherwise) to which he is liable in respect of that offence under this article or under any other enactment.

Recovery of fines

15.—(1) Without prejudice to the provisions of section 221 of the Criminal Procedure (Scotland) Act 1995, where a court in Scotland has imposed a fine on any person in respect of an offence under article 13 or 19 or (where proceedings were brought in Scotland by virtue of section 30(2A) of the Fisheries Act 1981) article 4 or 10 of this Order 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 (which order may be extended by an order or orders of the same kind for a further period or periods of three months) unless the fine is paid or a warrant is issued under sub-paragraph (b); or

(b) 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) A court shall not issue a warrant under paragraph (1)(b) above 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.

(3) A warrant issued under paragraph (1)(b) above, 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 an offence under Part II or III of this Order a transfer of fine order under section 222 of the Criminal Procedure (Scotland) Act 1995, section 90 of the Magistrates' Courts Act 1980 or Article 95 of the Magistrates' Courts (Northern Ireland) Order 1981 specifies a court of summary jurisdiction in Scotland this article shall apply as if the fine were imposed by that court.

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

16.—(1) For the purpose of enforcing the provisions of the Scheme, the Council Regulation and this Order, a NEAFC inspector may, subject to Article 14.1 of the Council Regulation, exercise the powers conferred by paragraphs (3) to (5) of this article, in relation to any Scottish fishing boat within the Regulatory Area.

(2) For the purpose of enforcing the provisions of the Scheme, the Council Regulation and Parts II and III of this Order, a British sea-fishery officer may exercise the powers conferred by paragraphs (3) to (5) of this article—

- (a) in respect of any Scottish fishing boat wherever it may be; and
- (b) in respect of any relevant British fishing boat, any foreign fishing boat or any non-Contracting Party vessel which is within the Scottish zone.

(3) He may go on board the boat, with or without persons assigned to assist him in his duties, and may require the boat to stop and do anything else which will facilitate either the boarding of, or the disembarkation from, the boat.

(4) He may require the attendance of the master and other persons on board the boat and may make any examination and inquiry which appears to him to be necessary for the purposes mentioned in paragraphs (1) and (2) 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 him 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 his custody or possession;
- (c) for the purpose of ascertaining whether an infringement, a serious infringement or an offence under Part II or III of this Order 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 him to be necessary for facilitating the search;
- (d) may inspect and take copies of any such document produced to him 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 he has reason to suspect that an infringement, a serious infringement, or an offence under Part II or III of this Order has been committed, may seize and detain, or take copies of, any such document produced to him or found on board for the purpose of enabling the document to be used as evidence in any related proceedings for an offence;

but nothing in sub-paragraph (f) 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.

(5) Where it appears to him that an infringement, a serious infringement or an offence under Part II or III of this Order has at any time been committed, he may—

- (a) require the master of the boat in relation to which the infringement, serious infringement or offence took place to take or may himself take, the boat and its crew to a port in the United Kingdom which appears to him to be the nearest convenient port; and
- (b) detain or require the master to detain the boat in the port.

(6) Where a fishing boat is detained or required to be detained by a NEAFC inspector or British sea-fishery officer under paragraph (5)(b), he 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—

- (a) when the detention relates to a serious infringement, by a British sea-fishery officer who is a NEAFC inspector; or
- (b) in any other case, by a British sea-fishery officer.

(7) Where, in carrying out an inspection under Article 25 of the Council Regulation, a British sea-fishery officer is satisfied that a non-Contracting Party vessel is carrying on board regulated resources, he shall serve a notice in writing on the master of such vessel, or any person for the time being in charge of the vessel, prohibiting the landing in Scotland and the transhipment within the Scottish zone of such resources.

Powers of British sea-fishery officers to seize fish and fishing gear

17. In respect of any Scottish fishing boat wherever it may be, and any other fishing boat which is within the Scottish zone, any British sea-fishery officer may seize—

- (a) any fish (including any receptacle which contains the fish) in respect of which he has reasonable grounds to suspect that an infringement, a serious infringement or an offence under Part II or III of this Order has been committed; and
- (b) any net or other fishing gear which he has reasonable grounds to suspect has been used in the course of the commission of such an infringement, serious infringement or offence.

Protection of officers

18. A NEAFC inspector, a British sea-fishery officer or a person assisting him by virtue of article 16(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 on him by articles 16 and 17 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.

Obstruction of officers

19. 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 articles 16 and 17 of this Order;
- (b) without reasonable excuse prevents, or attempts to prevent, any other person from complying with any such requirement; or
- (c) assaults a British sea-fishery officer or anyone accompanying that officer who is exercising any of the powers conferred on him by articles 16 and 17 of this Order or intentionally obstructs any such officer or person 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 the statutory maximum; or
- (ii) on conviction on indictment to a fine.

Provisions as to offences

20.—(1) Where any offence under article 13 or (where proceedings are brought in Scotland by virtue of section 30(2A) of the Fisheries Act 1981) article 4 of this Order committed by a body corporate 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, he as well as the body corporate shall be guilty of the offence and liable to be proceeded against and punished accordingly.

(2) Where any offence under article 13 or (where proceedings are brought in Scotland by virtue of section 30(2A) of the Fisheries Act 1981) article 4 of this Order committed by 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 partner or partnership manager, he as well as the partnership shall be guilty of the offence and liable to be proceeded against and punished accordingly.

(3) Where any offence under article 13 or (where proceedings are brought in Scotland by virtue of section 30(2A) of the Fisheries Act 1981) article 4 of 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, he 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

21.—(1) Any—

- (a) logbook kept under Article 6, 17.2 or 28c of Regulation 2847/93;
- (b) declaration submitted under Article 8.1, 11, 12, 17.2 or 28f of Regulation 2847/93;
- (c) document drawn up under Article 9 or 13 of Regulation 2847/93;
- (d) document containing required information received by a fisheries monitoring centre established under Article 3.7 of Regulation 2847/93;
- (e) document required to be kept in accordance with Article 5.2 of the Council Regulation;
- (f) catch report submitted under Article 6.1 of the Council Regulation,

shall, in any proceedings for an offence, be received in evidence without being produced or sworn to by any witness and shall be sufficient evidence of the matters stated therein or appearing therefrom.

(2) For the purpose of paragraph (1), “required information” shall mean—

- (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.