

2004 No. 12

SEA FISHERIES, ENGLAND
CONSERVATION OF SEA FISH

The Scallop Fishing Order 2004

<i>Made</i> - - - - -	<i>8th January 2004</i>
<i>Laid before Parliament</i>	<i>9th January 2004</i>
<i>Coming into force</i> - -	<i>1st February 2004</i>

The Secretary of State for Environment, Food and Rural Affairs, in exercise of the powers conferred by section 1 of the Sea Fish (Conservation) Act 1967(a), and now vested in her, and she and the Secretary of State concerned with the sea fishing industry in Northern Ireland, in exercise of the powers conferred by sections 3, 15(3) and 20(1) of that Act, and now vested in them(b), make the following Order:

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- (a) 1967 c. 84, as extended to Guernsey by the Sea Fish (Conservation) (Channel Islands) Order 1981 (S.I. 1981/737), as modified by the Sea Fish (Conservation) (Channel Islands) (Amendment) Order 2001 (S.I. 2001/959). Section 1 was substituted by the Fisheries Act 1981 (c. 29), section 19(1) and then amended by the Merchant Shipping Act 1995 (c. 21), Schedule 13, paragraph 38(a) and the Scotland Act 1998 (Consequential Modifications) (No. 2) Order 1999 (S.I. 1999/1820), Schedule 2, paragraph 43(1), (2) and (3). Section 3 was amended by the Fishery Limits Act 1976 (c. 86), Schedule 2, paragraph 16(1), the Inshore Fishing (Scotland) Act 1984 (c. 26), Schedule 1 and S.I. 1999/1820, Schedule 2, paragraph 43(1), (2) and (4). 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) and S.I. 1999/1820, Schedule 2, paragraph 43(2)(b). See section 22(2)(a) for definitions of “the Ministers” for the purposes of sections 3 and 15(3); section 22(2) was amended by the Fisheries Act 1981 (c. 29), sections 19(2)(d) and 45(b) and (c) and by S.I. 1999/1820, Schedule 2, paragraph 43(12).
- (b) By virtue of article 2(a) of the National Assembly for Wales (Transfer of Functions) Order 1999 (S.I. 1999/672) the functions exercisable under sections 1, 3, 15(3) and 20(1) of the 1967 Act were transferred (concurrently in respect of the section 15(3) function) to the National Assembly in so far as exercisable in relation to Wales (defined in section 155(1) of the Government of Wales Act 1998 (c. 38) as including “the sea adjacent to Wales out as far as the seaward boundary of the territorial sea”); in respect of waters beyond Wales these functions remain exercisable by the Ministers. Section 53 of the Scotland Act 1998 (c. 46) as read with article 3(1) of and Schedule 1 to the Scotland Act 1998 (Concurrent Functions) Order 1999 (S.I. 1999/1592) provide for the functions exercisable under sections 1(3), (4) and (6), 3(1), (3) and (4) and 15(3) of the 1967 Act to be exercised by the Ministers, concurrently with Scottish Ministers, in relation to relevant British fishing boats within the Scottish zone, and Scottish fishing boats within British fishery limits but outside the Scottish zone. By virtue of article 2(1) of, and the Schedule to, the Transfer of Functions (Agriculture and Fisheries) Order 2000 (S.I. 2000/1812) any remaining functions of the Secretaries of State for Scotland and Wales under sections 1, 3 and 15(3) of the 1967 Act were transferred to the Minister of Agriculture, Fisheries and Food. By virtue of paragraph 2(1)(b) and 2(2)(b) of Schedule 1 to the Sea Fisheries (Northern Ireland) Order 2002 (S.I. 2002/790), an order under section 1(3) or 3 of the 1967 Act may make provision applying only to relevant British fishing boats other than Northern Ireland fishing boats. By virtue of paragraph 3(1)(a) and (b) of that Schedule the functions of the Ministers under section 1(3) (of making an order prescribing the minimum size of fish which may be carried on a Northern Ireland fishing boat or within the Northern Ireland zone) and 3 (of making an order requiring nets and other fishing gear carried in Northern Ireland fishing boats or in the Northern Ireland zone to comply with prescribed requirements) of the 1967 Act were transferred to the Department of Agriculture and Rural Development but, by virtue of paragraph 3(2), the Ministers retain a concurrent function to make an order in relation to British fishing boats, other than Northern Ireland fishing boats, within the Northern Ireland zone and in relation to Northern Ireland fishing boats within British fishery limits but outside the Northern Ireland zone. The functions of the Minister of Agriculture, Fisheries and Food and one or more named Secretaries of State (however described) acting jointly were transferred to the Secretary of State for Environment, Food and Rural Affairs and the one or more Secretaries of State acting jointly by virtue of article 2(5) of the Ministry of Agriculture, Fisheries and Food (Dissolution) Order 2002 (S.I. 2002/794).

Citation, commencement and extent

1.—(1) This Order may be cited as the Scallop Fishing Order 2004 and shall come into force on 1st February 2004.

(2) Subject to paragraph (3), this Order shall not form part of the law of Scotland or Northern Ireland.

(3) Nothing in paragraph (2) shall prejudice the effect of section 14 of the Act in relation to, or for purposes incidental to, any provision which creates an offence.

Interpretation

2.—(1) In this Order—

“the Act” means the Sea Fish (Conservation) Act 1967;

“baselines” has the same meaning as in the Territorial Sea Act 1987(a);

“British fishing boat” means a fishing boat which is either registered in the United Kingdom under Part II of the Merchant Shipping Act 1995(b) or is owned wholly by persons qualified to own British ships for the purposes of that part of that Act, and in relation to Guernsey includes other fishing boats within the relevant definition as extended by the Sea Fish (Conservation) (Channel Islands) Order 1981(c);

“equivalent order” means any other order made under sections 1, 3 or 15 of the Act creating prohibitions similar to any of those in articles 3, 4, 5 and 6 of this Order and extending or applying to any part of the United Kingdom;

“ICES” followed by a roman numeral, a letter and a description shall be construed as a reference to the statistical sub-area of the International Council for the Exploration of the Sea with the same numeral, letter and description identified in the Schedule;

“Northern Ireland fishing boat” means a 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 Northern Ireland as the port to which the vessel is to be treated as belonging;

“Northern Ireland zone” means the sea within British fishery limits which is adjacent to Northern Ireland;

“relevant British fishing boat” does not include a Northern Ireland fishing boat;

“scallop” means the species *Pecten maximus*;

“scallop dredge” means any appliance 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 scallops.

(2) In this Order—

(a) the term “within relevant British fishery limits” does not include—

- (i) the Northern Ireland zone;
- (ii) the territorial sea adjacent to Wales;
- (iii) the territorial sea adjacent to the Isle of Man; or
- (iv) the territorial sea adjacent to Jersey;

(b) any reference to any relevant British fishing boat “wherever it may be” does not include a fishing boat in the territorial sea adjacent to Wales.

General restriction on scallop dredges

3.—(1) No British fishing boat shall carry or tow a scallop dredge within relevant British fishery limits unless that dredge meets all of the following criteria—

- (a) its frame does not exceed 85 centimetres in width in any part;
- (b) it includes a functioning, operational and moveable spring loaded tooth bar and a belly bar;

(a) 1987 c. 49.

(b) 1995 c. 21.

(c) S.I. 1981/737, as modified by the Sea Fish (Conservation) (Channel Islands) (Amendment) Order 2001 (S.I. 2001/959).

- (c) it does not contain any attachments to the rear, top or inside of the dredge;
- (d) it does not contain a diving plate or any other similar device; and
- (e) the total weight of the dredge including all fittings does not exceed 150 kilogrammes.

(2) The prohibition in paragraph (1) does not apply to a fishing boat which does not retain any scallops on board and is—

- (a) in an area which is a production area for the purpose of the Food Safety (Fishery Products and Live Shellfish) (Hygiene) Regulations 1998(a); or
- (b) on a voyage in which it only fishes for and retains on board seed mussel for relaying into such a production area.

(3) In this article, belly rings, as described in article 4, and the fastenings which attach them to each other and to the frame do not count as attachments, and ‘tooth bar’ and ‘belly bar’ have the same meanings as in that article.

Specification of scallop dredges

4.—(1) No British fishing boat shall carry or tow a scallop dredge within relevant British fishery limits unless the dredge conforms to all of the following specifications—

- (a) where the dredge measures 80 centimetres or more in breadth, it shall not have—
 - (i) more than 8 rows of belly rings hanging from the belly bar;
 - (ii) more than 9 teeth on the tooth bar, where either—
 - (aa) the fishing boat in question is not in the relevant area; or
 - (bb) all of the teeth measure 12 millimetres or less;
 - (iii) more than 8 teeth on the tooth bar, where—
 - (aa) the fishing boat in question is in the relevant area; and
 - (bb) any of the teeth measure more than 12 millimetres;
- (b) where the dredge measures less than 80 centimetres in breadth, it shall not have—
 - (i) more than 6 rows of belly rings hanging from the belly bar; or
 - (ii) more than 6 teeth on the tooth bar;
- (c) it shall not contain more than 1 row of belly rings hanging from either side of the dredge perpendicular to the rings which hang from the belly bar;
- (d) each tooth on the tooth bar shall not measure more than—
 - (i) 22 millimetres where the dredge measures 80 centimetres or more in breadth; or
 - (ii) 12 millimetres where the dredge measures less than 80 centimetres in breadth.

(2) In this article—

- (a) a row of belly rings is a line of single interconnecting rings, where the ring at one end of the line hangs either from the belly bar or from the main structure of the dredge perpendicular to the belly bar;
- (b) a belly bar is the bar attached to the frame of the dredge which runs parallel to the tooth bar and from which most of the belly rings ultimately hang;
- (c) a tooth bar is the bar to which are attached teeth, the ends of which point downwards and are dragged along the sea bed when the dredge is towed;
- (d) the size of a tooth shall be its maximum width measured in the direction of the line of the tooth bar;
- (e) “the relevant area” means the part of ICES division VII a which is north of the line 52° 30’ N, and all of ICES division VII d.

Restriction on number of scallop dredges

5. No British fishing boat shall, at any one time, tow more than 8 scallop dredges on each side of the boat when within relevant British fishery limits in the sea adjacent to the United Kingdom out to a line drawn 6 nautical miles from baselines.

(a) S.I. 1998/994, to which there are amendments not relevant to this Order.

Carriage of undersized scallops

6. For the purposes of section 1(3) of the Act, the minimum size for scallops that may be carried by a British fishing boat in ICES division VII d is 110 millimetres.

Measurement of scallops

7. For the purposes of article 6, the size of a scallop shall be measured in accordance with paragraph 6 of Annex XIII to Council Regulation (EC) No 850/98 for the conservation of fishery resources through technical measures for the protection of juvenile marine organisms^(a) as last amended by Council Regulation (EC) No 973/2001^(b).

Powers of British sea-fishery officers

8.—(1) For the purposes of enforcing this Order or any equivalent order, a British sea fishery officer may exercise the powers conferred by this article in relation to—

- (a) any relevant British fishing boat wherever it may be; and
- (b) any other British fishing boat which is within relevant British fishery limits.

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

(3) 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 purpose of enforcing this Order or any equivalent order as read with the Act 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 him to be necessary for facilitating the examination; and
- (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 his custody or possession and may take copies of any such document;
- (c) for the purpose of ascertaining whether the master, owner or charterer of the boat has committed an offence under the Act as read with 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 him to be necessary for facilitating the search;
- (d) where the boat is one in relation to which he has reason to suspect that such an offence has been committed, may seize and detain any such document produced to him 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 (d) 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 a contravention of any provision of this Order has at any time taken place, he may—

- (a) require the master of the boat in relation to which the contravention took place to take, or himself take, the boat and its crew to the port which appears to him to be the nearest convenient port; and
- (b) 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 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 by a British sea-fishery officer.

(a) OJ No. L125, 27.4.1998, p. 1.

(b) OJ No. L137, 19.5.2001, p. 1.

Revocation

9. The Undersized Scallops (West Coast) Order 1984(a) is revoked in so far as it applies within relevant British Fishery limits.

7th January 2004

Ben Bradshaw
Parliamentary Under Secretary of State
Department for Environment, Food and Rural Affairs

8th January 2004

Paul Murphy
Secretary of State for Northern Ireland

(a) S.I. 1984/1522.

STATISTICAL SUB-AREAS AND DIVISIONS OF THE INTERNATIONAL
COUNCIL FOR THE EXPLORATION OF THE SEA**ICES statistical division VII a (Irish Sea)**

The waters bounded by a line beginning at a point on the west coast of Scotland at 55° 00' latitude; then due west to the coast of Northern Ireland; then in a southerly direction along the coasts of Northern Ireland and Ireland to a point on the south-east coast of Ireland at 52° 00' north latitude; then due east to the coast of Wales; then in a north-easterly and northerly direction along the coasts of Wales, England and Scotland to the point of beginning.

ICES statistical division VII d (Eastern Channel)

The waters bounded by a line beginning at a point on the west coast of France at 51° 00' north latitude; then due west to the coast of England; then in a westerly direction along the south coast of England to 2° 00' west longitude; then south to the coast of France at Cap de la Hague; then in a north-easterly direction along the coast of France to the point of beginning.

EXPLANATORY NOTE

(This note is not part of the Order)

This Order places restrictions on the use and carriage of scallop dredges, and applies to British fishing boats within relevant British fishery limits (as defined in article 2).

It prohibits the use or carriage of scallop dredges (as defined in article 2(1)) which do not conform to certain technical specifications (articles 3 and 4). However, the restrictions in article 3 do not apply to a dredge which falls within the definition of a scallop dredge, but which does not retain any scallops on board and either is in a shellfish production area (article 2(2)(a)) or on a voyage on which it only fishes for and retains seed mussel for relaying into a shellfish production area (article 2(2)(b)).

The Order also contains restrictions on the number of dredges which may be towed within 6 miles of the baselines within relevant British fishery limits (article 5) and, within ICES division VII d, bans the carriage of scallops which measure less than 110 millimetres (articles 6 and 7).

If a boat breaches the restrictions in articles 3, 4 or 5, the master, owner and charterer are each guilty of an offence and is liable to a fine not exceeding £5,000 on summary conviction and on conviction on indictment to a fine (sections 3(5) and 11(1)(b) of the Sea Fish (Conservation) Act 1967). The court may also impose an additional fine not exceeding the value of the fish caught with the net and order the net's forfeiture (section 11(2)-(3) of the 1967 Act).

If a boat breaches the restrictions in article 6, the master, owner and charterer is guilty of an offence and is liable to a fine not exceeding the statutory maximum and on conviction on indictment to a fine (sections 1(8) and 11(1)(c) of the Sea Fish (Conservation) Act 1967). The court may also impose an additional fine not exceeding the value of the fish in respect of which the offence was committed, or alternatively order the forfeiture of those fish (section 11(2)-(5) of the 1967 Act).

Additionally the Order confers powers of enforcement on British sea fishery officers for the purposes of enforcing this Order or any equivalent Order implementing similar prohibitions in relation to any categories of fishing boat (article 8) and revokes a previous order in so far as it applies within relevant British fishery limits (article 9).

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