SCOTTISH STATUTORY INSTRUMENTS

2005 No. 330

SEA FISHERIES

The Prevention and Monitoring of Cetacean Bycatch (Scotland) Order 2005

Made - - - -	*8th June 2005*
Laid before the Scottish Parliament - - - -	*9th June 2005*
Coming into force - -	*1st July 2005*

The Scottish Ministers, in exercise of the powers conferred by section 30(2) of the Fisheries Act 1981(**1**) 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 Prevention and Monitoring of Cetacean Bycatch (Scotland) Order 2005 and shall come into force on 1st July 2005.

(2) Subject to paragraph (3), this Order extends 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) of the Fisheries Act 1981(**2**) 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–

"Community control measure" means a provision of the Council Regulation specified in Column 1 of the Schedule;

(**1**) 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 (Modification 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) of the 1981 Act 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 1999 (S.I. 1999/1820), Schedule 2, paragraph 68(5)(b).

(**2**) Section 30(2A) was inserted by the Scotland Act 1998 (Consequential Modifications) (No. 2) Order 1999, Schedule 2, paragraph 68(5)(a).

"the Council Regulation" means Council Regulation (EC) No. 812/2004(**3**) laying down measures concerning incidental catches of cetaceans in fisheries and amending Regulation (EC) No. 88/98;

"equivalent provision" means any provision in any other order made under section 30(2) of the Fisheries Act 1981 for the purposes of implementing the Council Regulation, extending to any part of the United Kingdom which has equivalent effect to a 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;

"observer" means an independent person appointed by the Scottish Ministers in accordance with Article 5 of the Council Regulation;

"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(**4**) and whose entry in the register specifies a port in Scotland as the port to which the vessel is to be treated as belonging;

"Scottish zone" has the same meaning as in section 126(1) of the Scotland Act 1998(**5**).

(2) In this Order any reference to a logbook, declaration or document includes, in addition to a logbook, declaration or document in writing–

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

(b) any photograph,

(c) any data, however reproduced, communicated via a satellite-based vessel monitoring system established under Article 3.1 of Council Regulation (EEC) No. 2847/93(**6**);

(d) any disk, tape, sound track or other device in which sounds or other data (not being visual aids) 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 reference in this Order–

(a) to a numbered article is a reference to the article so numbered in this Order; and

(b) to the Schedule is a reference to the Schedule to this Order.

(4) Column 2 of the Schedule (which provides in relation to each Community control measure an indication of the subject matter of the measure) shall not be read as limiting the scope of any Community control measure and shall be disregarded in relation to any question arising as to the construction of this Order.

(**3**) O.J. No. L 150, 30.04.04, p.12, as amended by Corrigendum O.J. No. L 185, 24.05.04, p.4.
(**4**) 1995 c. 21.
(**5**) 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).
(**6**) O.J. No. L 261, 20.10.93, p.1. Council Regulation (EEC) No. 2847/93 establishing a control system applicable to the common fisheries policy was corrected by Corrigendum, O.J. No. L 302, 15.12.95, p.45 (95/528/EC) and by Corrigendum, O.J. No. L 105, 22.4.99, p.32, (2846/98/EC) and was amended by Council Regulation (EC) No. 2870/95 (O.J. No. L 301, 14.12.95, p.1), Council Decision 95/528/EC (O.J. No. L 301, 14.12.95, p.35), Council Regulation (EC) No. 2489/96 (O.J. No. L 338, 28.12.96, p.12), Council Regulation (EC) No. 686/97 (O.J. No. L 102, 19.4.97, p.1), Council Regulation (EC) No. 2205 (O.J. No. L 304, 7.11.97, p.1), Council Regulation (EC) No. 2635/97 (O.J. No. L 356, 31.12.97, p.14), Council Regulation (EC) No. 2846/98 (O.J. No. L 358, 31.12.98, p.5), and Council Regulation (EC) No. 806/03 (O.J. No. L 122, 16.5.03, p.1).

Admittance of observers on board vessels

3.—(1) For the purpose of the obligations contained in Article 5 of the Council Regulation an observer shall, on request, be admitted on board–

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

(b) any other fishing boat in the Scottish zone.

(2) Any person who–

(a) fails without reasonable excuse to allow an observer to board a Scottish fishing boat (wherever it may be), or any other fishing boat in the Scottish zone; or

(b) obstructs any observer from carrying out any functions of an observer for the purposes of monitoring schemes for incidental catches of cetaceans under Article 4 of the Council Regulation,

shall be guilty of an offence.

Offences

4.—(1) Subject to paragraph (2), where there is, in respect of–

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

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

a contravention of, or failure to comply with, a Community control measure the persons specified in the appropriate entry in Column 4 of the Schedule shall each be guilty of an offence.

(2) A person carrying out fishing operations in accordance with Article 2.3 or Article 3.2 of the Council Regulation shall not be guilty of an offence.

Penalties

5.—(1) A person guilty of an offence under article 3(2), or 4(1), or any equivalent provision extending to any other part of the United Kingdom proceedings in respect of which were brought in Scotland by virtue of section 30(2A) of the Fisheries Act 1981, shall be liable–

(a) on summary conviction to a fine not exceeding the statutory maximum; or

(b) on conviction on indictment to a fine.

(2) A person guilty of an offence under article 4(1), or any equivalent provision shall also be liable–

(a) 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; and

(b) to the forfeiture of any fishery product in respect of which the offence was committed, or, on summary conviction only, to a fine not exceeding the value of any such product in respect of which the offence was committed.

Recovery of fines

6.—(1) Without prejudice to the provisions of section 221 of the Criminal Procedure (Scotland) Act 1995(**7**), 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 of the conviction or until

(**7**) 1995 c. 46.

the fine is paid, the order is renewed for a further such period or 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.

(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(**8**) or article 95 of the Magistrates' Courts (Northern Ireland) Order 1981(**9**) 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

7.—(1) For the purposes of enforcement of articles 3(2) or 4(1) or any equivalent provision, a British sea fishery officer may exercise in relation to–

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

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

the powers conferred by paragraphs (2) to (4) of this article.

(2) The officer may go on board the boat, with or without persons assigned to assist with 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 purposes of enforcement mentioned in paragraph (1) to which this article applies and, in particular–

(a) may search for fishery products or fishing gear on the boat and may examine any such products on board 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 the 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) inspect, take copies of and retain in the possession of that officer while that officer completes any search, examination or inspection provided for under this article, any such document produced to that officer or found on board;

(e) may require the master or any person for the time being in charge of the boat to render all such documents on a computer system into visible and legible form and to produce them in a form in which they may be taken away; and

(**8**) 1980 c. 43.
(**9**) S.I. 1981/1675 (N.I. 26).

(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 that 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) 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.

(4) Where it appears to a British sea fishery officer that a relevant offence has at any time been committed, that officer may–

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

8.—(1) For the purpose of enforcing the provisions of articles 3(2) or 4(1) or any equivalent provision, 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 fishery products;

(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, transhipment, sale or disposal of any fishery product;

(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 documents on a computer system into a visible and legible form and to produce them in a form in which they may be taken away; and

(j) if the officer has reason to suspect that a relevant offence has been committed, seize and detain any such document produced to that officer or found on the premises for the purpose of enabling the document to be used in proceedings for the offence.