SCOTTISH STATUTORY INSTRUMENTS

1999 No. 194

SEA FISHERIES

SHELLFISH

The Shetland Islands Regulated Fishery (Scotland) Order 1999

Made - - - -	*20th December 1999*
Laid before the Scottish Parliament - - - -	*23rd December 1999*
Coming into force - -	*31st January 2000*

Whereas an application for an order under section 1 of the Sea Fisheries (Shellfish) Act 1967(**1**) was made to the Secretary of State, by the Shetland Shellfish Management Organisation;

And whereas the Secretary of State has prepared a draft Order and served a copy of it on the Organisation in accordance with paragraph 1 of Schedule 1 to that Act;

And whereas the Organisation caused printed copies of the draft Order to be published and circulated, and gave notice of the application, in accordance with paragraph 2 of Schedule 1;

And whereas objections were duly made with respect to the proposed Order which the Secretary of State considered to be neither frivolous nor irrelevant;

And whereas the Secretary of State appointed an inspector to make an inquiry concerning the subject matter of the proposed Order in accordance with paragraph 4 of Schedule 1;

And whereas the functions of the Secretary of State have transferred to the Scottish Ministers by virtue of section 53 of the Scotland Act 1998(**2**);

Now, therefore, the Scottish Ministers, after considering the objections and representations made with respect to the proposed Order and the report made by the inspector; in exercise of the powers conferred on them by section 1 of, as read with Schedule 1, to that Act, and of all other powers enabling them in that behalf, and with the consent of the Crown Estate Commissioners, hereby make the following Order:

(**1**) 1967 c. 83; section 1 was amended by the Sea Fisheries Act 1963 (c. 77), section 15(2), the Fishery Limits Act 1976 (c. 86), Schedule 2, paragraph 15, and the Sea Fisheries (Shellfish) (Amendment) Act 1997 (c. 3), section 1, and is to be read with the Sea Fisheries Act 1968, section 15(3) to (5); Schedule 1 was amended by the Sea Fisheries Act 1968, section 15(7). Scallops and queens were specified for the purpose of section 1 by the Shellfish (Specification of Molluscs) Regulations 1987 (S.I.1987/218), and crabs, whelks and razorshells were specified for the same purpose by The Shellfish (Specification of Molluscs and Crustaceans) (Scotland) Regulations 1999 S.S.I. 1999/139.

(**2**) 1998 c. 46. The Scottish Ministers are the "appropriate Minister" as defined in section 22(1) of the Sea Fisheries (Shellfish) Act 1967 as amended by the Scotland Act (Consequential Modifications) (No. 2) Order 1999 (S.I. 1999/1820), Schedule 2, paragraph 42(10)

Citation, commencement and extent

1.—(1) This Order may be cited as the Shetland Islands Regulated Fishery (Scotland) Order 1999 and shall come into force on 31st January 2000.

(2) This Order extends to Scotland only.

Interpretation

2. In this Order–

"the 1967 Act" means the Sea Fisheries (Shellfish) Act 1967;

"the fishery" means that part of the bed of the sea adjacent to the Shetland Islands which lies between the line of mean low water springs and a distance of six nautical miles measured from the baselines from which the breadth of the territorial sea is measured, and which is illustrated and shown coloured yellow on the relevant map;

"the fishing season" means the period of 12 months from 1st February in any year to 31st January of the following year, inclusive of both dates;

"the Organisation" means the Shetland Shellfish Management Organisation a company limited by guarantee and having its registered office at SFA, Shetland Seafood Centre, Stewart Building, Lerwick, Shetland, ZE1 OLL;

"the prescribed species" means oysters, mussels, cockles, clams, lobsters, scallops, queens, crabs, whelks and razorshells;

"the relevant map" means the map prepared in duplicate, each copy of which is signed by Ross Finnie, Minister for Rural Affairs, and marked "Map referred to in the Shetland Islands Regulated Fishery Order 1999" one such copy of which is deposited in the principal office of the Scottish Executive Rural Affairs Department at Pentland House, 47 Robb's Loan, Edinburgh, EH14 1TW and the other such copy of which is deposited in the place of business of the Organisation.

Rights of regulating a fishery

3. There is hereby conferred on the Organisation for a period of 10 years the right of regulating a fishery for the prescribed species with respect to the whole of the area of the fishery.

Power to impose restrictions and make regulations

4.—(1) The Organisation may, with the consent of the Scottish Ministers from time to time impose restrictions on, and make regulations respecting, the dredging, fishing for and taking of the prescribed species within the whole or any specified part of the fishery.

(2) Without prejudice to the generality of paragraph (1) above, regulations may be made under that paragraph for the purpose of–

(a) determining the size below which or above which it shall be unlawful to take any of the prescribed species from the fishery or to remove them from one part of the fishery to another; and

(b) determining the size or description of vessels, dredges and fishing instruments to be used in dredging, fishing for or taking any of the prescribed species.

(3) The production of a copy of any regulation purporting to be certified by Scottish Ministers shall be conclusive evidence of the existence of the regulation and of the due making of it.

Licensing of Fishing

5.—(1) No person shall dredge, fish for or take any of the prescribed species within the fishery except under the authority of a licence issued in that behalf, on application, by the Organisation and, subject to paragraph (4) below, a licence shall be valid for a period not exceeding 12 months specified therein.

(2) No person shall use a vessel for dredging, fishing for or taking any of the prescribed species within the fishery except under the authority of a licence issued under paragraph (1) above in which the vessel is named.

(3) The prohibitions in paragraphs (1) and (2) above shall not apply to any person–

(a) fishing for or taking, or

(b) using a vessel wholly to fish for or take,

any of the prescribed species within the fishery where none of those species caught or taken is to be sold, traded or otherwise exchanged for benefit.

(4) Subject to paragraph (10) below, a licence for dredging, fishing for or taking any of the prescribed species from a vessel shall be issued jointly to the applicant, who shall be the owner of the vessel, and his representative and shall be used only by those persons or, with the written authority of the Organisation and in accordance with any conditions contained in that authority, by a deputy nominated by them.

(5) No applicant who is the registered joint owner of a vessel shall be issued with a licence in accordance with paragraph (4) above to dredge, fish for or take any of the prescribed species from that vessel if, for the period in respect of which the application relates, the Organisation has–

(a) received from another joint owner an application for a licence, or

(b) granted to another joint owner a licence,

to dredge, fish for or take any of the prescribed species from that vessel.

(6) Subject to any directions given by the Scottish Ministers and the provisions of this Order, the Organisation may issue licences under paragraph (1) above in such numbers and to such persons as it may determine and in particular may, after consultation with such organisations as appear to it to be representative of interests likely to be substantially affected by a limitation on the number of licences issued, and such other persons as the Organisation thinks fit, place a limitation on the number of such licences which may be issued in any one fishing season having particular regard to scientific advice on the desirability of limiting the level of exploitation.

(7) Subject to any directions given by the Scottish Ministers and the provisions of this Order, licences issued under paragraph (1) above may authorise the dredging, fishing for or taking of any of the prescribed species at such times, in such manner and in such parts of the fishery as the Organisation may determine.

(8) Any person dredging, fishing for or taking any of the prescribed species under the authority of a licence issued under paragraph (1) above shall, when so requested by any officer authorised by the Organisation and after production by that officer of written evidence of his authority if so required, produce the licence and shall desist from dredging, fishing for or taking any of the prescribed species within the fishery until it is produced.

(9) Subject to paragraphs (4), (5) and (6) above and (10) below, an applicant for a licence for dredging, fishing for or taking any of the prescribed species from a vessel shall be entitled to have a licence issued to him if–

(a) in respect of licences for the first fishing season or part of that season after the coming into force of this Order, he was, as the owner of that vessel or of another vessel of similar size, capacity and fishing power to that vessel, engaged as a commercial activity, or as part of a