WELSH STATUTORY INSTRUMENTS

2010 No. 269 (W.33)

SEA FISHERIES, WALES

CONSERVATION OF SEA FISH

The Scallop Fishing (Wales) (No.2) Order 2010

Made - - - -	*8 February 2010*
Laid before the National Assembly for Wales - -	*8 February 2010*
Coming into force - -	*1 March 2010*

The Welsh Ministers make the following Order in exercise of the powers conferred by sections 1, 3, 5, 5A, 15(3) and 20(1) of the Sea Fish (Conservation) Act 1967(**1**), now vested in them(**2**), and paragraph 1A of Schedule 2 to the European Communities Act 1972(**3**).

This Order makes provision for a purpose mentioned in section 2(2) of the European Communities Act 1972, and it appears to the Welsh Ministers that it is expedient for the reference in article 11 of this Order to Council Regulation (EC) No 850/98 for the conservation of fishery resources through technical measures for the protection of juvenile marine organisms(**4**) to be construed as a reference to that Regulation as amended from time to time.

(**1**) 1967 c. 84. Section 1 was substituted by the Fisheries Act 1981 (c. 29), section 19(1) and amended by the Merchant Shipping Act 1995 (c. 21), section 314(2) and 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), section 9 and Schedule 2, paragraph 16(1), the Inshore Fishing (Scotland) Act 1984 (c. 26), section 10(1) and Schedule 1 and S.I. 1999/1820, article 4 and Schedule 2, paragraph 43(1), (2) and (4). Section 5 was amended by the Fisheries Act 1981 (c. 29), section 22(1), (2) and (3) and amended by the Merchant Shipping Act 1995 (c. 21), section 314(2) and Schedule 13, paragraph 38(b) and S.I. 1999/1820, article 4 and Schedule 2, paragraph 43(1) and (2). Section 5A was inserted by the Environment Act 1995 (c. 25), section 103(1). Section 15(3) was substituted by the Sea Fisheries Act 1968 (c. 77), section 22(1) and Schedule 1, paragraph 38(3) and amended by the Fishery Limits Act 1976 (c. 86), section 9 and Schedule 2, paragraph 16(1) and S.I. 1999/1820, article 4 and Schedule 2, paragraph 43(1) and (2). See section 22(2) for definitions of "the Ministers"; section 22(2) was amended by the Fisheries Act 1981 (c. 29), sections 19(2)(d), 45(a), (b) and (c) and 46(2) and by S.I. 1999/1820, article 4 and Schedule 2, paragraph 43(1) and (12) and the Northern Ireland Constitution Act 1973 (c. 36), section 40 and Schedule 5, paragraph 8(1).

(**2**) By virtue of article 2 of and Schedule 1 to the National Assembly for Wales (Transfer of Functions) Order 1999 (S.I. 1999/672) the functions exercisable under sections 1, 3, 5, 5A, 15(3) and 20 of the 1967 Act were transferred to the National Assembly for Wales (as constituted under the Government of Wales Act 1998 (c. 38)) in so far as exercisable in relation to Wales (acting concurrently with any Minister of the Crown by whom they are exercisable in relation to section 15(3)). Those functions of the National Assembly for Wales were transferred to the Welsh Ministers by virtue of section 162 of and paragraph 30 of Schedule 11 to the Government of Wales Act 2006 (c. 32).

(**3**) 1972 c. 68. Section 2(2) was amended by section 27(1) of the Legislative and Regulatory Reform Act 2006 (c. 51) ("the 2006 Act"). Paragraph 1A of Schedule 2 was inserted by section 28 of the 2006 Act. The Welsh Ministers have been designated (S.I. 2005/2766) for the purposes of section 2(2) of the 1972 Act in relation to the common agricultural policy of the European Community.

(**4**) OJ No. L125, 27.4.1998, p. 1.

Title, commencement and application

1.—(1) The title of this Order is the Scallop Fishing (Wales) (No. 2) Order 2010.

(2) This Order applies in relation to Wales and comes into force on 1 March 2010.

Interpretation

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

"the Act" ("*y Ddeddf*") means the Sea Fish (Conservation) Act 1967;

"baselines" ("*gwaelodlinau*") means the baselines from which the breadth of the territorial sea is measured for the purposes of the Territorial Sea Act 1987(**5**);

"British fishing boat" ("*cwch pysgota Prydeinig*") means a fishing boat which is either registered in the United Kingdom under Part II of the Merchant Shipping Act 1995(**6**) or is owned wholly by persons qualified to own British ships for the purposes of that part of that Act;

"equivalent provision" ("*darpariaeth gyfatebol*") means a provision in any other order extending or applying to any part of the United Kingdom which has equivalent effect to a provision in this Order;

"scallop" ("*cregyn bylchog*") means shellfish of the species Pecten maximus;

"scallop dredge" ("*llusgrwyd cregyn bylchog*") includes 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;

"tow bar" ("*bar tynnu*") means any device or appliance which is capable of being used for the purpose of fixing or attaching a scallop dredge to a vessel for the purpose of enabling such a dredge to be towed by the vessel;

"Wales" ("*Cymru*") has the meaning given in section 158 of the Government of Wales Act 2006(**7**); and

"Welsh waters" ("*dyfroedd Cymru*") means sea areas within Wales.

Fishing restrictions

3. No British fishing boat is permitted, at any time, to fish for, take or kill scallops using a scallop dredge in Welsh waters, unless that boat's engine has a power output not exceeding 221 kilowatts.

4.—(1) Subject to paragraph (2), no person is to fish for, take or kill scallops in Welsh waters during the period 1 May to 31 October inclusive in each year by any means, including diving.

(2) In respect of the calendar year 2010 the period referred to in paragraph (1) is to commence on 1 June 2010.

Restrictions on number and use of scallop dredges

5. No British fishing boat is permitted, at any time, to fish for, take or kill scallops using a scallop dredge in any part of Welsh waters which lie within 1 nautical mile of baselines.

6. No British fishing boat is permitted, at any time, to fish for, take or kill scallops using a scallop dredge—

(**5**) 1987 c. 49.
(**6**) 1995 c. 21.
(**7**) 2006 c. 32.

(a) in any part of Welsh waters which lies beyond 1 nautical mile and within 3 nautical miles of baselines, unless that boat's overall length does not exceed 10 meters and it is towing no more than 6 scallop dredges in total;

(b) in any part of Welsh waters which lies beyond 3 nautical miles and within 6 nautical miles of baselines, unless that boat is towing no more than 8 scallop dredges in total; and

(c) in any part of Welsh waters which lies beyond 6 nautical miles and within 12 nautical miles of baselines, unless that boat is towing no more than 14 scallop dredges in total.

7. When not in use in accordance with the provisions of this Order all scallop dredges must be inboard, stowed and secured.

Restriction on size of tow bars

8.—(1) No British fishing boat is permitted, at any time, in any part of Welsh waters which lies beyond 1 nautical mile and within 3 nautical miles of baselines, to use a tow bar in connection with fishing for, taking or killing scallops, unless that tow bar–

(a) does not exceed 3 metres in length; and

(b) is not constructed in a way which enables more than 3 scallop dredges to be attached to it at the same time.

(2) No British fishing boat is permitted, at any time, in any part of Welsh waters which lies beyond 3 nautical miles and within 6 nautical miles of baselines, to use a tow bar in connection with fishing for, taking or killing scallops, unless that tow bar–

(a) does not exceed 4 metres in length; and

(b) is not constructed in a way which enables more than 4 scallop dredges to be attached to it at the same time.

(3) No British fishing boat is permitted, at any time, in any part of Welsh waters which lies beyond 6 nautical miles and within 12 nautical miles of baselines, to use a tow bar in connection with fishing for, taking or killing scallops, unless that tow bar–

(a) does not exceed 6.8 metres in length; and

(b) is not constructed in a way which enables more than 7 scallop dredges to be attached to it at the same time.

9. No British fishing boat is permitted at any time, in any part of Welsh waters to use any tow bar in connection with fishing for, taking or killing scallops, which exceeds 185 millimetres in external diameter.

Specification of scallop dredges

10.—(1) Subject to the provisions of this article, no British fishing boat is permitted to tow any scallop dredge within Welsh waters unless in relation to such a dredge—

(a) no part of its frame is greater than 85 centimetres wide;

(b) it includes a functioning, operational and moveable spring loaded tooth bar;

(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;

(e) the total weight of the dredge including all fittings does not exceed 150 kilograms;

(f) the number of belly rings in each row suspended from the belly bar does not exceed 7;

(g) the number of teeth on the tooth bar does not exceed 8; and

(h) each tooth on the tooth bar measures no more than 22 millimetres in diameter and 110 millimetres in length.

(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 the belly rings hang;

(c) a tooth bar is the bar to which are attached teeth, the ends of which point downwards and are intended to be in contact with the sea bed when the dredge is in operation;

(d) the diameter of a tooth is its maximum width measured in the direction of the line of the tooth bar; and

(e) the length of a tooth is the distance between the underside of the tooth bar and the tip of the tooth.

(3) Belly rings and the fastenings which attach them to each other and to the frame are not to be regarded as attachments for the purpose of paragraph (1)(c).

Minimum size of scallop

11.—(1) For the purposes of section 1(3) of the Act, the minimum size of scallop that may be carried by a British fishing boat in Welsh waters is 110 millimetres.

(2) For the purposes of paragraph (1), the size of a scallop is to 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(**8**) as amended from time to time.

Prohibition on dredging

12. Notwithstanding articles 3 to 11 of this Order fishing for, taking or killing of scallops by the use of a scallop dredge by British fishing boats is prohibited in the areas designated in the Schedule to this Order.

Powers of British sea-fishery officers

13.—(1) For the purposes of enforcing this Order or any equivalent provision, a British sea fishery officer may exercise the powers conferred by this article in relation to any fishing boat to which this Order applies in Welsh waters.

(2) The officer may go on board the boat, with or without persons assigned to assist in that officer's duties, and may require the boat to stop and do anything else which will facilitate boarding or disembarkation.

(3) The officer may require the attendance of the master and other persons on board the boat and may make any examination and inquiry as appears to the officer to be necessary for the purpose mentioned in paragraph (1), and in particular may—

(a) search for fish or fishing gear on the boat and 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 the officer to be necessary for facilitating the examination;

(**8**) OJ No. L125, 27.4.1998, p. 1.