WELSH STATUTORY INSTRUMENTS

2008 No. 1438 (W.150)

SEA FISHERIES, WALES

The Tope (Prohibition of Fishing) (Wales) Order 2008

Made - - - -	*4 June 2008*
Laid before the National Assembly for Wales - -	*6 June 2008*
Coming into force - -	*1 July 2008*

The Welsh Ministers, in exercise of the powers conferred by sections 5(1), 5(6), 6(1), 6(1A) and 15(3) of the Sea Fish (Conservation) Act 1967(**1**), and now vested in them (**2**), make the following Order :

Title, commencement and application

1.—(1) The title of this Order is the Tope (Prohibition of Fishing) (Wales) Order 2008 and it comes into force on 1 July 2008.

(2) Subject to the provisions of this article, this Order applies in relation to Wales.

(3) This Order does not apply to fishing vessels—

(a) within the meaning of Article 3(c) of Council Regulation (EC) 2371/2002 on the conservation and sustainable exploitation of fisheries resources under the Common Fisheries Policy(**3**), which are registered in another member State; or

(b) registered in a third country.

(**1**) 1967 c. 84. Section 5(1) was substituted by the Fisheries Act 1981 (c. 29), section 22(1). Section 5(6) was amended by the Fisheries Act 1981, section 22(2). Section 6(1) was amended by S.I.1999/1820, article 4, Schedule 2, Part I, paragraph 43(1), (6)(a). Section 6(1A) was inserted by the Fisheries Act 1981, section 23(2) and amended by S.I. 1999/1820, article 4, Schedule 2, Part I, paragraph 43(1), (2)(b). Section 15(3) was substituted by the Sea Fisheries Act 1968 (c. 77), section 22(1), Schedule 1, Part II and amended by the Fishery Limits Act 1976 (c. 86) section 9(1), Schedule 2, paragraph 16(1) and further amended by S.I. 1999/1820, article 4, Schedule 2, Part I, paragraph 43(1), (2)(b). *See* section 22(2) of the 1967 Act for definitions of "the Ministers" for the purposes of sections 5, 6 and 15(3) of that Act; section 22(2) was amended by the Fisheries Act 1981, sections 19(2)(d) and 45(a), (b) and (c) and 46(2), Schedule 5, Part II and by S.I. 1999/1820, Article 4, Schedule 2, paragraph 43(1), (12) and Part IV and by the Northern Ireland Constitution Act 1973, section 40, Schedule 5, paragraph 8(1).

(**2**) 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 5, 6 and 15 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 the Secretary of State 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**) OJNo. L358, 31.12.2002, p.59, as last amended by Council Regulation (EC) 865/2007 (OJ No. L192, 24.07.2007, p.1). Article 10 permits measures, applying to vessels flying a member State's own flag, for the management and conservation of stocks, subject to certain conditions.

Interpretation

2. In this Order —

"tope" ("*ci glas*") means the species *Galeorhinus galeus*; and

"Wales" ("*Cymru*") has the meaning given by section 158(1) of the Government of Wales Act 2006(**4**).

Fishing prohibition

3.—(1) Fishing for tope (other than by rod and line) is prohibited.

(2) If tope are taken on board, they may be retained provided that the total liveweight does not exceed 45 kilogrammes per day.

(3) In paragraph (2), "liveweight" means the weight of the gutted carcasses of tope multiplied by a factor of 1.125.

Trans-shipment prohibition

4. The trans-shipment of tope is prohibited.

Landing prohibition

5. No person may land in Wales —

(a) tope caught by rod and line, or

(b) beheaded tope.

Powers of British sea-fishery officers

6.—(1) For the purposes of enforcing this Order, an officer may exercise the following powers.

(2) An officer may go on board a fishing boat, with or without persons assigned to assist in the exercise of the officer's duties, and for that purpose may require the boat to stop and do anything else which will facilitate the boarding of the boat.

(3) An officer may require the attendance of the master and other persons on board the boat and may make any examination or inquiry appearing to the officer to be necessary for the purpose of enforcing this Order 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 appearing to the officer 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 its fishing operations or other operations ancillary thereto or to the persons on board, which is in that person's 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 section 5 or 6 of the Sea Fish (Conservation) Act 1967 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 appearing to the officer to be necessary for facilitating the search; and

(d) where the boat is one in relation to which the officer has reason to suspect that such an offence has been committed, may subject to paragraph (4) seize and detain any such

(**4**) 2006 c. 32.