WELSH STATUTORY INSTRUMENTS

# 2006 No. 1796 (W.191)

# SEA FISHERIES, WALES

## The Sea Fishing (Northern Hake Stock) (Wales) Order 2006

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| *Made - - - -* | *5 July 2006* |
| *Coming into force - -* | *7 July 2006* |

The National Assembly for Wales, in exercise of the powers conferred by section 30(2) of the Fisheries Act 1981(**1**), makes the following Order:

### Title, application and commencement

**1.**—(1) The title of this Order is the Sea Fishing (Northern Hake Stock) (Wales) Order 2006 and it comes into force on 7 July 2006.

(2) This Order applies in relation to Wales.

(3) Nothing in paragraph (2) prejudices the effect of section 30(2A) of the Fisheries Act 1981 in relation to, or for purposes incidental to, any provision which creates an offence.

### Interpretation

**2.**—(1) In this Order—

"equivalent provision" ("*darpariaeth gyfatebol*") means any provision, in any other Order made for the purposes of implementing Regulation 811/04 in relation to any part of the United Kingdom, which has equivalent effect to a provision in this Order, proceedings in respect of which may be taken in Wales by virtue of section 30(2A) of the Fisheries Act 1981;

"the hake recovery zone" ("*y parth adfer cegdduon*") means the area defined in Article 1 of Regulation 811/04;

"logbook" ("*llyfr lòg*") means the same as in Article 6 of Regulation 2847/93 as amplified by Regulation 2807/83, and any reference to a document or logbook includes any—

(a) map, plan, graph, drawing or diary;

(b) photograph;

(c) data, howsoever reproduced, communicated via a satellite-based vessel monitoring system established under Article 3.1 of Regulation 2847/93;

(**1**) 1981 c. 29. By virtue of article 2(a) of, and Schedule 1 to, the National Assembly for Wales (Transfer of Functions) Order 1999 (S.I.1999/672) the functions exercisable under section 30(2) of the 1981 Act were transferred to the National Assembly for Wales.

(d) disk, tape, sound track or other device in which sounds or other data (not being visual images) are recorded so as to be capable (with or without the aid of some other equipment) of being reproduced; and

(e) film (including microfilm), negative, tape, disk or other device in which one or more visual images are recorded so as to be capable of being reproduced;

"northern hake" ("*cegdduon gogleddol*") means hake taken from the hake recovery zone;

"person in charge" ("*person â gofal*"), in relation to a fishing boat, means the owner, master or charterer, if any, of the fishing boat or the agent or any of them;

"Regulation 2807/83" ("*Rheoliad 2807/83*") means Council Regulation (EEC) No. 2807/83 laying down detailed rules for recording information on Member States' catches of fish, as amended at the date this Order is made(**2**);

"Regulation 2847/93" ("*Rheoliad 2847/93*") means Council Regulation (EEC) No. 2847/93 establishing a control system applicable to the Common Fisheries Policy, as amended at the date this Order is made(**3**);

"Regulation 811/04" ("*Rheoliad 811/04*") means Council Regulation (EC) No. 811/2004 establishing measures for the recovery of northern hake stock, as amended at the date this Order is made(**4**); and

"Wales" ("*Cymru*") has the same meaning as in section 155(1) and (2) of the Government of Wales Act 1998(**5**).

(2) Any information provided to any authority for the purposes of any provision of this Order may be treated as also provided for the purposes of any equivalent provision.

(3) Expressions in this Order which are not defined in paragraph (1) above and which appear in Regulation 811/04 have the same meaning in this Order as they have in that Regulation.

**Recording and accounting of time spent in the areas**

**3.** The person in charge of a fishing boat who fails to record and account for in their logbook time spent in the hake recovery zone in accordance with Articles 19e and 19k of Regulation 2847/93 as applied by Article 7 of Regulation 811/2004 is guilty of an offence.

**Prior Notification**

**4.**—(1) The person in charge of any fishing boat to which Article 8 of Regulation 811/04 applies, which enters a port in Wales without providing the information called for by that Article, is guilty of an offence.

(2) A British sea-fishery officer may, by written or oral direction to the person in charge of any fishing boat to which Article 8(2) of Regulation 811/04 applies and which is landing at a port in Wales, require that the discharge referred to in Article 8(2) of Regulation 811/04 does not commence until authorised by a British sea-fishery officer.

(3) The person in charge of a fishing boat from which a discharge is made in contravention of any requirement under paragraph (2) is guilty of an offence.

(4) The person in charge of any fishing boat to which Article 8(3) of Regulation 811/04 applies who fails to provide information as required by that Article is guilty of an offence.

(**2**) OJ No. L276, 10.10.1983, p.1; the last amending instrument is Commission Regulation (EC) No 1804/2005 (OJ No. L290, 4.11.2005, p.10).
(**3**) OJ No. L261, 20.10.1993, p.1; the last amending instrument is Council Regulation (EC) No 768/2005 (OJ No. L128, 21.5.2005, p.1)
(**4**) OJ No. L150, 30.4.2004, p.1. Corrigendum: L185, 27.5.2004, p.1.
(**5**) 1998 c. 38.

(5) For the purposes of paragraph (1) and (4), the information is to be provided to the National Assembly for Wales.

**Landing hake at designated ports**

**5.**—(1) The person in charge of any fishing boat which lands northern hake in Wales in contravention of Article 9 of Regulation 811/04 is guilty of an offence.

(2) If northern hake is first landed from a fishing boat in a port within Wales designated as specified in paragraph (4) and—

(a) the requirement to weigh a representative sample, as specified in Article 12 of Regulation 811/04, applies to that landing, and

(b) paragraph (3) does not apply to the landing,

the controller for the purposes of that Article is a British sea-fishery officer.

(3) If northern hake is landed from a fishing boat in a port within Wales designated as specified in paragraph (4) and—

(a) the requirement to weigh a representative sample, as specified by Article 12 of Regulation 811/04, applies to that landing;

(b) the fishing boat is party to an arrangement, made among fishing boats using the port, with a person or organisation to act as their controller for the purposes of that Article; and

(c) details of the arrangement, and the fishing boats which are party to it, have been notified to the National Assembly for Wales,

the controller for the purposes of that Article is that person or organisation.

(4) For landings in Wales, the ports, and where applicable the landing locations within them listed in the UK licence are designated for the purposes of Article 9 of Regulation 811/04.

**Recording information on catches of fish**

**6.** The person in charge of a fishing boat in respect of which the 8% margin of tolerance referred to in Article 10 of Regulation 811/04 is exceeded, is guilty of an offence.

**Mixing of Species**

**7.** A person in charge of any fishing boat on which northern hake is stowed or retained in contravention of Article 11 of Regulation 811/04, is guilty of an offence.

**Transport of hake**

**8.** Where any quantities of northern hake are transported in contravention of Article 12(2) of Regulation 811/04, the owner or hirer of, and the person responsible for, the vehicle used to transport the hake is guilty of an offence.

**Penalties and defence**

**9.**—(1) A person guilty of an offence under articles 3, 4, 5, 6, 7 or 8 of this Order or under any equivalent provision will be liable—

(a) on summary conviction to a fine not exceeding £50,000; and

(b) on conviction on indictment to a fine.

(2) The court by or before which a person is convicted of an offence under article 4, 5, 6, 7 or 8 of this Order or under any equivalent provision may, subject to paragraph (4), also order forfeiture of:

(a) any fish in respect of which the offence was committed; and

(b) except in the case of an offence under article 8 or any equivalent provision, any fishing gear used in the course of, or in activities leading to, the commission of the offence.

(3) Any person found guilty of an offence under article 4, 5, 6, 7, or 8 of this Order or under any equivalent provision will, subject to paragraph (4), also be liable on summary conviction to a fine not exceeding the value of the fish in respect of which the offence was committed.

(4) A person will not be liable to a fine under paragraph (3) in respect of such an offence if, under paragraph (2), the court orders the forfeiture of the fish in respect of which that offence was committed; and where a fine is imposed under paragraph (3) in respect of any offence, the court will not have the power under paragraph (2) to order forfeiture of the fish in respect of which the offence was committed.

(5) References in this article to fish in respect of which an offence was committed include fish caught at any time in the period during which the offence was committed.

**Recovery of fines**

**10.**—(1) Where a fine is imposed by a magistrates' court on a person in charge of a fishing boat who is convicted by the court of an offence under this Order or any equivalent provision, the court may—

(a) issue a warrant of distress against the boat involved in the commission of the offence and its fishing gear and catch and any property of the person convicted for the purpose of levying the amount of the fine; and

(b) order the boat and its gear and catch to be detained for a period not exceeding three months from the date of conviction or until the fine is paid or the amount of the fine is levied in pursuance of any such warrant, whichever occurs first.

(2) Sections 77(1) and 78 of the Magistrates Courts Act 1980(**6**) (postponement of issue of, and defects in, warrants of distress) apply to a warrant of distress issued under this article as they apply to a warrant of distress issued under Part III of that Act.

(3) Where, in relation to a fine in respect of an offence under this Order or any equivalent provision, an order under Article 95 of the Magistrate's Courts (Northern Ireland) Order 1981(**7**) or section 222 of the Criminal Procedure (Scotland) Act 1995(**8**) (both of which deal with transfer of fines from one jurisdiction to another) specifies a local justice area in Wales, this article applies as if the fine were imposed by a court within that local justice area.

**Powers of British sea-fishery officers in relation to fishing boats**

**11.**—(1) For the purpose of enforcing articles 3 to 8 of this Order or any equivalent provisions, or to operate or facilitate the operation of any monitoring deriving from Article 13 of Regulation 811/04, any British sea-fishery officer may exercise the powers conferred by this article in relation to any fishing boat in Wales.

(2) The officer may go on board the boat, with or without persons assigned to assist with his or her duties, 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 the officer to be necessary for the purpose mentioned in paragraph (1) and, in particular—

(**6**) 1980 c. 43. Section 78 was amended by the Criminal Justice Act 1982 (c. 48), sections 37 and 46, and the Courts Act 2003 (c. 39), section 109(1) and Schedule 8 paragraph 219(a).
(**7**) S.I. 1981/1675 (NI 26).
(**8**) 1995 c. 46.