2002 No. 272

SEA FISHERIES

SHELLFISH

The Loch Caolisport Scallops Several Fishery (Scotland) Order 2002

Made	*6th June 2002*
Laid before the Scottish Parliament	*7th June 2002*
Coming into force	*1st July 2002*

Whereas an application for an Order under section 1 of the Sea Fisheries (Shellfish) Act 1967(**a**) has been made to the Scottish Ministers(**b**) by Ormsary Farmers;

And whereas the Scottish Ministers have prepared a draft Order and have served a copy of it on the applicant in accordance with paragraph 1 of Schedule 1 to that Act;

And whereas the applicant has caused printed copies of the draft Order to be published and circulated and has given notice of the application in accordance with paragraph 2 of that Schedule;

And whereas no objections have been received by the Scottish Ministers with respect to the draft Order under paragraph 3 of that Schedule;

Now therefore, the Scottish Ministers in exercise of the powers conferred by sections 1 and 7(4)(a)(iii) 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:

Citation and commencement

1. This Order may be cited as the Loch Caolisport Scallops Several Fishery (Scotland) Order 2002 and shall come into force on 1st July 2002.

Interpretation

2. In this Order–

"the applicant" means Ormsary Farmers, a limited partnership constituted under the Limited Partnerships Act 1907(**c**), having a place of business at Ormsary Estate Office, PO Box 7, Lochgilphead, Argyll, PA31 8JH;

(a) 1967 c.83; section 1 was amended by the Sea Fisheries Act 1968 (c.77), section 15(2) (and is to be read with section 15(3) to (6) of that Act), the Fishery Limits Act 1976 (c.86), section 9, Schedule 2, paragraph 15; the Sea Fisheries (Shellfish) (Amendment) Act 1997 (c.3), section 1; Schedule 1 was amended by the Sea Fisheries Act 1968, section 15(7). Scallops and queens were specified for the purposes of section 1 by the Shellfish (Specification of Molluscs) Regulations 1987 (S.I. 1987/218).

(b) The reference to the "appropriate Minister" in section 22(1) of the Sea Fisheries (Shellfish) Act 1967 is to be read as a reference to the Scottish Ministers by virtue of the Scotland Act 1998 (Consequential Modifications) (No. 2) Order 1999 (1999/1820), article 4 and Schedule 2, paragraph 42(10).

(c) 1907 c.24.

"creel" means a basket, small cage, pot, receptacle or container with one or more openings or entrances, which may be baited and is placed on the seabed for the purpose of catching shellfish;

"the grantee" means the applicant or such other person as is for the time being entitled to the right of several fishery conferred by this Order;

"the fishery" means the area of the bed of the sea at Loch Caolisport described in the Schedule to this Order.

Right of several fishery

3. Subject to the following provisions of this Order, there is hereby conferred on the applicant for a period of 15 years beginning on the date on which this Order comes into force, the right of several fishery for scallops with respect to the whole of the area of the fishery.

Restriction on harvesting

4. The right of several fishery conferred by article 3 above is subject to the restriction that the harvesting of scallops shall be carried out manually by divers.

Permitted fishing implements

5. For the purposes of section 7(4)(a)(iii) of the Sea Fisheries (Shellfish) Act 1967(**a**), a creel is specified as an implement of fishing the use of which is permitted within the fishery.

Assignation

6. The grantee shall not, without the prior written consent of the Scottish Ministers (which consent may be given in electronic form), assign or in any other way transfer the right of several fishery to any other person.

Marking of limits of fishery

7. The grantee shall cause to be clearly marked on the bed and on the surface of the sea the limits of the fishery and shall maintain the marks in position and in good repair.

Rights of the Crown

8. Nothing in this Order shall affect prejudicially any estate, right, power, privilege, authority or exemption of the Crown and in particular and without prejudice to the generality of the foregoing nothing herein contained shall authorise the applicant to take, use, enter upon or in any manner interfere with, any land, or interest in land, any rights of whatever description (including any portion of the shore or bed of the sea, or of any river, channel, creek, bay or estuary) belonging to Her Majesty in right of Her Crown and under the management of the Crown Estate.

ROSS FINNIE
A member of the Scottish Executive

St Andrew's House,
Edinburgh
6th June 2002

(a) Section 7(4)(a)(iii) was inserted by the Sea Fisheries (Shellfish) Amendment (Scotland) Act 2000 (asp 12).

Article 2

SCHEDULE

DESCRIPTION OF THE FISHERY

That part of the bed of the sea at Loch Caolisport extending to 40 hectares or thereby and bounded as follows:- on or towards the north north east by a straight line extending in a north-westerly direction for 413.964 metres or thereby from a point at 55º 55.480' north latitude and 5º 35.300' west longitude to a point at 55º 55.600' north latitude and 5º 35.635' west longitude; then on or towards the north west by a straight line extending in a south-westerly direction for 291.096 metres or thereby to a point at 55º 55.480' north latitude and 5º 35.815' west longitude; and continuing in a south-westerly direction following the line of mean low water springs to a point at 55º 55.385' north latitude and 5º 35.910' west longitude; then on or towards the south west by a straight line extending in a southerly direction for 879.229 metres to a point at 55º 54.940' north latitude and 5º 36.200' west longitude; then on or towards the south east by a line following the line of mean low water springs to the point of beginning.

EXPLANATORY NOTE

(This note is not part of the Order)

This Order, which extends to Scotland only, confers on Ormsary Farmers ("the applicant") for a period of 15 years the right of several fishery for scallops in part of the sea at Loch Caolisport (article 3). The part of Loch Caolisport to which the Order applies is described in the Schedule. The location of the area is also shown on an indicative map, a copy of which is available for inspection at the principal office of the Scottish Executive Environment and Rural Affairs Department at Pentland House, 47 Robb's Loan, Edinburgh EH14 1TW and at Ormsary Estate Office, PO Box 7, Lochgilphead, Argyll. A representation of the indicative plan is appended to this note for illustrative purposes.

By virtue of section 2 of the Sea Fisheries (Shellfish) Act 1967 and the grant of several fishery under this Order, the applicant has, within the limits of the fishery described in the Schedule the exclusive right to deposit, propagate, fish for and take scallops which, under section 7 of that Act, are the absolute property of the applicant.

The Order also provides that–

(a) the harvesting of scallops under the right of several fishery shall only be carried out manually by divers (article 4);

(b) creels are specified as an implement of fishing the use of which is permitted within the fishery (article 5);

(c) the assignation or other transfer of the right of several fishery is prohibited without the prior consent of Scottish Ministers (article 6);

(d) the limits of the fishery require to be clearly marked on the bed and surface of the sea and maintained in good position and repair (article 7); and

(e) nothing in the Order shall prejudicially affect the rights of the Crown (article 8).

ISBN 0-11-061449-6

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£1.75

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under the authority and superintendence of Carol Tullo, the Queen's Printer for Scotland
200 06/02 19593