SCOTTISH STATUTORY INSTRUMENTS

2009 No. 38

SEA FISHERIES

CONSERVATION OF SEA FISH

The Sea Fish (Prohibited Methods of Fishing) (Firth of Clyde) Order 2009

Made - - - -	*9th February 2009*
Laid before the Scottish Parliament	*9th February 2009*
Coming into force - -	*14th February 2009*

The Scottish Ministers make the following Order in exercise of the powers conferred by sections 5(1)(c) and 15(3) of the Sea Fish (Conservation) Act 1967(**a**) and all other powers enabling them to do so.

Citation, commencement, cessation and extent

1.—(1) This Order may be cited as the Sea Fish (Prohibited Methods of Fishing) (Firth of Clyde) Order 2009 and shall come into force on 14th February 2009.

(2) This Order shall remain in force until the end of 30th April 2009.

(3) Subject to paragraph (4), this Order extends to Scotland and the Scottish zone only.

(4) Insofar as it extends beyond Scotland and the Scottish zone, it does so only as a matter of Scots law.

(**a**) 1967 c.84; section 5(1) was substituted by the Fisheries Act 1981 (c.29), section 22(1); section 15(3) was substituted by the Sea Fisheries Act 1968 (c.77), section 22(5), Schedule 1, paragraph 38(3) and amended by the Fishery Limits Act 1976 (c.86), Schedule 2, paragraph 16(1). Relevant modifications are contained in the Scotland Act 1998 (Functions Exercisable in or as Regards Scotland) Order 1999 (S.I. 1999/1748), article 5 and the Scotland Act 1998 (Modification of Functions) Order 1999 (S.I. 1999/1756), articles 3, 5 and 6. The functions of the Secretary of State were transferred to the Scottish Ministers by virtue of section 53 of the Scotland Act 1998 (c.46). Section 22(2) which contains a definition of "the Ministers" for the purposes of sections 5 and 15(3) was amended by the Fisheries Act 1981, sections 19(2)(d), (3) and 45(b). The definition has effect in relation to Scotland with the modifications made by section 22A(12)(b) inserted by the Scotland Act 1998 (Consequential Modifications) (No. 2) Order 1999 (S.I. 1999/1820), Schedule 2, paragraph 43(13).

Interpretation

2.—(1) In this Order–

"the Council Regulation" means Council Regulation (EC) No. 850/98 of 30 March 1998 for the conservation of fishery resources through technical measures for the protection of juveniles of marine organisms(**a**);

"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 and crustacea;

"ICES statistical rectangle" followed by numerals with a letter shall be construed as a reference to whichever of the statistical sub-areas and divisions of the International Council for the Exploration of the Sea(**b**) is identified therein by those numerals and that letter;

"scallop dredge" means an 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 king scallops of the species *Pecten maximus*;

"Scotland" has the same meaning as in section 126(1) of the Scotland Act 1998(**c**); and

"trawl" means a demersal trawl, Danish seine or similar towed net.

(2) For the purposes of this Order a trawl shall be deemed to have been used for the purpose of fishing for Norway lobsters (*Nephrops norvegicus*) if the catch retained on board that boat meets the minimum percentage of target species specified for Norway lobster in respect of towed gears of mesh size range 80 to 99 millimetres in Annex I to the Council Regulation.

Prohibited methods of fishing

3.—(1) Subject to paragraphs (2) and (3), fishing for sea fish by any method, by any Scottish fishing boat or any relevant British fishing boat, within the area comprising that part of the Scottish zone contained within–

(a) that part of ICES statistical rectangle 39E4 which lies to the east of the peninsula of Kintyre and to the north of a straight line between 55°18'18" North, 05°38'50" West, and 55°00'30" North, 05°09'24" West; and

(b) that part of ICES statistical rectangle 39E4 which lies to the north of a straight line between 55°17'57" North, 05°47'54" West and 55°00'00" North, 05°21'00" West and to the south of a straight line between 55°18'18" North, 05°38'50" West and 55°00'30" North, 05°09'24" West,

is prohibited.

(2) The prohibition in paragraph (1)(a) shall not apply to any fishing boat that fishes with only–

(a) a scallop dredge;

(b) a creel; or

(c) a trawl used for fishing for Norway lobsters.

(3) The prohibition in paragraph (1)(b) shall not apply to any fishing boat that fishes with only–

(a) a scallop dredge; or

(b) a creel.

(**a**) O.J. No. L 125, 27.4.98, p.1. Council Regulation 850/98 was corrected by Corrigendum to Annex XII to that Regulation (O.J. No. L 318, 27.11.98, p.63) and was amended by Council Regulation (EC) No. 308/1999 (O.J. No. L 38, 12.2.99, p.6); Council Regulation (EC) No. 1459/1999 (O.J. No. L 168, 3.7.99, p.1); Council Regulation (EC) No. 2723/1999 (O.J. No. L 328, 22.12.99, p.9); Council Regulation (EC) No. 812/2000 (O.J. No. L 100, 20.4.00, p.3); Council Regulation (EC) No. 1298/2000 (O.J. No. L 148, 22.6.00, p.1); Council Regulation (EC) No. 724/2001 (O.J. No. L 102, 12.4.01, p.16); Council Regulation (EC) No. 973/2001 (O.J. No. L 137, 19.5.01, p.1); Council Regulation (EC) No. 602/2004 (O.J. No. L 97, 1.4.04, p.30); Council Regulation (EC) No. 1568/2005 (O.J. No. L 252, 28.9.05, p.2); and Council Regulation (EC) No. 2166/2005 (O.J. No. L 345, 28.12.05, p.5).

(**b**) Cmnd. 2586.

(**c**) 1998 c.46. The part of the internal waters and territorial sea of the United Kingdom which is adjacent to Scotland is determined by the Scottish Adjacent Waters Boundaries Order 1999 (S.I. 1999/1126).

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

4.—(1) For the purposes of the enforcement of this Order, a British sea-fishery officer may exercise in relation to–

(a) any Scottish fishing boat wherever it may be; and

(b) any relevant British fishing boat within the Scottish zone,

the powers conferred by this article.

(2) The officer may go on board the boat, with or without persons assigned to assist with the duties of the officer, and for that purpose may require the boat to stop and do anything else which will facilitate the boarding of 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–

(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 which appears 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 the custody or possession of that person and may take copies of any such document;

(c) for the purposes of ascertaining whether the master, owner or charterer of the boat has committed an offence under section 5(1) 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 which appears 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 seize and detain any such document produced to the officer or found on board for the purpose of enabling the document to be used as evidence in proceedings for the offence,

but nothing in sub-paragraph (d) shall permit any document required by law to be carried on board the boat to be seized and detained except while the boat is detained in a port.

(4) Where it appears to a British sea-fishery officer that a contravention of this Order has taken place the officer may–

(a) require the master of the boat in relation to which the contravention took place to take, or the officer may take, the boat and its crew to the port which appears to the officer to be the nearest convenient port; and

(b) detain or require the master to detain the boat in the port.

(5) Where the officer detains or requires the detention of a boat under this article the officer shall serve on the master a notice in writing stating that the boat will be or is required to be detained until the notice is withdrawn by the service on the master of a further notice in writing signed by a British sea-fishery officer.

Revocation

5. The Sea Fish (Prohibited Methods of Fishing) (Firth of Clyde) Order 2008(**a**) is revoked.

FRANK STRANG
A member of the staff of the Scottish Ministers

Pentland House,
Edinburgh
9th February 2009

(**a**) S.S.I. 2008/29.

EXPLANATORY NOTE

(This note is not part of the Order)

This Order prohibits, subject to certain exceptions, all methods of fishing within certain areas of the Firth of Clyde from 14th February to 30th April 2009. The Order is made pursuant to Article 46 of Council Regulation (EC) No. 850/98 of 30 March 1998 for the conservation of fishery resources through technical measures for the protection of juveniles of marine organisms. A map showing the areas closed to fishing under this Order is appended to this note for illustrative purposes only. The Order remains in force until the end of 30th April 2009 (article 1(2)).

Area 1 on the illustrative map is defined in article 3(1)(a).

Area 2 on the illustrative map is defined in article 3(1)(b).

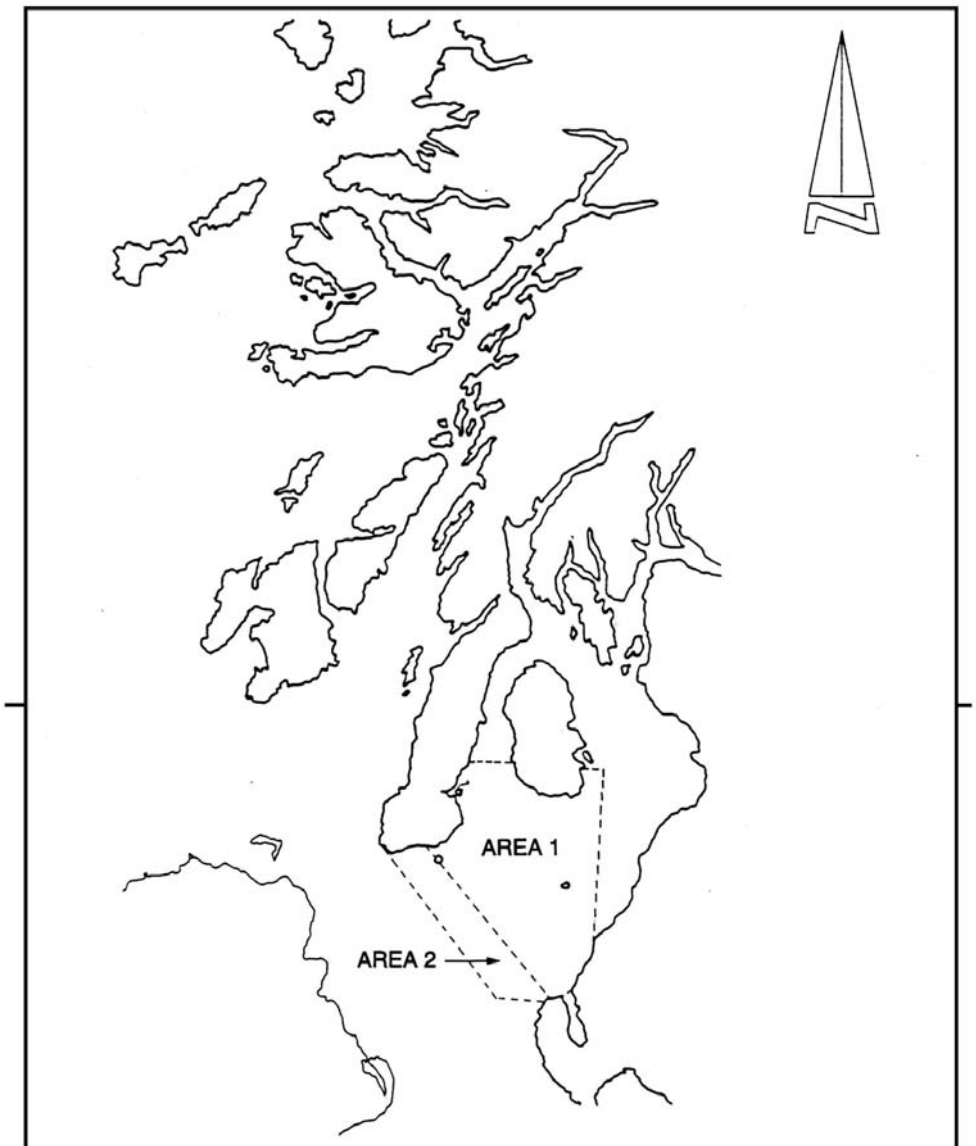
The prohibition does not apply to vessels fishing within the closed areas exclusively with scallop dredges, creels and (in relation to area 1 on the illustrative map) trawls used for fishing for Norway lobsters (article 3(2) and (3)).

The Order gives British sea-fishery officers powers to enforce the Order, including power to detain a vessel in port (article 4).

It is an offence under section 5(1) of the Sea Fish (Conservation) Act 1967 to use a fishing boat in contravention of a prohibition imposed by this Order. The penalties are fixed by section 11 of that Act. On summary conviction the penalty is a fine not exceeding £50,000. On conviction on indictment the penalty is an unlimited fine. In either case the court may also order forfeiture of any fish in respect of which the offence was committed and of any net or gear used in committing the offence. On summary conviction, if the court does not order the forfeiture of fish, it may impose an additional fine not exceeding the value of the fish.

The Order revokes the Sea Fish (Prohibited Methods of Fishing) (Firth of Clyde) Order 2008.

The Regulatory Impact Assessment relating to this Order is available from the Scottish Executive Environment and Rural Affairs Department, Pentland House, 47 Robb's Loan, Edinburgh, EH14 1TY.



Ref. No.	2618	A4	ILLUSTRATIVE MAP REFERRED TO IN THE EXPLANATORY NOTE TO THE SEA FISH (PROHIBITED METHODS OF FISHING) (FIRTH OF CLYDE) ORDER 2009
Plan No.	436		
Drawn	AIM		
Traced	SYG		
Date	2.2.2009.		

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