STATUTORY INSTRUMENTS

1981 No. 1165

SEA FISHERIES

The Sea Fishing (Enforcement of Community Conservation Measures) Order 1981

Made - - - -	*3rd August* 1981
Laid before Parliament	*13th August* 1981
Coming into Operation	*3rd September* 1981

The Minister of Agriculture, Fisheries and Food and the Secretaries of State respectively concerned with sea fishing in Scotland, Wales and Northern Ireland, in exercise of the power conferred on them by section 30(2) of the Fisheries Act 1981(**a**) and of all their other enabling powers, hereby make the following order:—

Citation and commencement

1. This order may be cited as the Sea Fishing (Enforcement of Community Conservation Measures) Order 1981 and shall come into operation on 3rd September 1981.

Interpretation

2. In this order "the Council Regulation" means Council Regulation (EEC) No 2527/80 laying down technical measures for the conservation of fishery resources (**b**), as amended.

Offences and penalties

3.—(1) Where there is, in respect of any fishing boat which is in any waters adjacent to the United Kingdom and within British fishery limits or any British fishing boat registered in the United Kingdom wherever it may be, a contravention of, or failure to comply with, any provision of the Council Regulation specified in column 1 of the Schedule to this order, the master, the owner and the charterer (if any) shall each be guilty of an offence and liable—

(*a*) on summary conviction to a fine not exceeding the maximum specified in column 3 of that Schedule opposite the reference to that provision in column 1; or

(*b*) on conviction on indictment to a fine.

(2) Subject to the following provisions of this article, the court by or before which a person is convicted of an offence under paragraph (1) above may—

(*a*) in the case of an offence founded on a contravention of, or failure to comply with, article 11 or 12 of the Council Regulation, order the

(**a**) 1981 c. 29.

(**b**) OJ No. L258, 1.10.80, p. 1, amended by Council Regulation (EEC) No. 1741/81, OJ No. L172, 30.6.81, p. 52.

forfeiture of any fish in respect of which the offence was committed;

(*b*) in the case of an offence founded on a contravention of, or failure to comply with, article 2(1), 3(1) paragraph 1, (3) or (4), 4(1), 5, 7 or 14 of the Council Regulation, order the forfeiture of the net or other fishing gear in respect of which the offence was committed;

(*c*) in the case of an offence founded on a contravention of, or failure to comply with, article 8, 9 or 10(2) of the Council Regulation, order the forfeiture of any fish in respect of which the offence was committed and of any net or other fishing gear used in committing the offence.

(3) Any person guilty of an offence under paragraph (1) above shall be liable on summary conviction to a fine not exceeding the value of the fish in respect of which the offence was committed or, in the case of an offence founded on a contravention of, or failure to comply with, article 2(1), 3(1) paragraph 1, (3) or (4), 4(1), 5, 7 or 14 of the Council Regulation, the fish caught with the net or other fishing gear in respect of which the offence was committed.

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

(5) Subject to paragraph (4) above, any fine to which a person is liable under paragraph (3) above in respect of an offence shall be in addition to any other penalty (whether pecuniary or otherwise) to which he is liable in respect of that offence under this article or under any other enactment.

Sale of undersized fish

4. Any person who, in the United Kingdom, transports, sells or holds in possession, displays or offers for sale any undersized fish in contravention of article 11 of the Council Regulation shall be guilty of an offence and liable—

(*a*) on summary conviction to a fine not exceeding £1,000; or

(*b*) on conviction on indictment to a fine.

Sale of salmon

5. Any person who, in the United Kingdom, transports, sells or holds in possession, displays or offers for sale any salmon in contravention of article 12 of the Council Regulation shall be guilty of an offence and liable—

(*a*) on summary conviction to a fine not exceeding £1,000; or

(*b*) on conviction on indictment to a fine.

Enforcement

6.—(1) Any British sea-fishery officer may seize—

(*a*) any fish in repect of which an offence founded on a contravention of, or failure to comply with, article 8, 9, 10(2), 11 or 12 of the Council Regulation has been or is being committed;

(*b*) any net or other fishing gear in respect of which an offence founded on a contravention of, or failure to comply with, article 2(1), 3(1) paragraph 1, (3) or (4), 4(1), 5, 7, 8, 9, 10(2) or 14 of the Council Regulation has been or is being committed.

(2) The provisons of section 15(2A) of the Sea Fish (Conservation) Act 1967(**a**) (powers of British sea-fishery officers for enforcement of that Act) shall have effect in relation to the enforcement of this order as they have effect in relation to the enforcement of that Act and, for the purpose of the enforcement of this order, every British sea-fishery officer may exercise in relation to any fishing boat in any waters adjacent to the United Kingdom and within British fishery limits, and any British fishing boat registered in the United Kingdom wherever it may be, any of the powers of a British sea-fishery officer under section 8(2) to (4) of the Sea Fisheries Act 1968(**b**) (general powers of British sea-fishery officers).

(3) A British sea-fishery officer shall not be liable in any civil or criminal proceedings for anything done in purported exercise of the powers conferred on him by virtue of paragraph (1) or (2) above if the court is satisfied that the act was done in good faith and that there were reasonable grounds for doing it.

(4) Any person who on any vessel within British fishery limits or on any premises within the United Kingdom—

(*a*) fails without reasonable excuse to comply with any requirement imposed, or to answer any question asked, by a British sea-fishery officer under the powers conferred on him by virtue of paragraph (1) or (2) above;

(*b*) prevents, or attempts to prevent, any other person from complying with any such requirement or answering any such question, or

(*c*) assaults any such officer while exercising any of the powers conferred on him by virtue of paragraph (1) or (2) above or wilfully obstructs any such officer in the exercise of any of those powers

shall be guilty of an offence, and liable—

(i) on summary conviction to a fine not exceeding £5,000; or

(ii) on conviction on indictment to a fine.

(5) The provisions of section 16(1) of the said Act of 1967(**c**) (enforcement of orders relating to size limits for fish) shall have effect in relation to the enforcement of this order as they have effect in relation to the enforcement of an order made under section 1 of that Act and of section 2 thereof.

(6) Any person who assaults an officer who is exercising any of the powers conferred on him by virtue of paragraph (5) above or wilfully obstructs an officer in the exercise of any of those powers shall be guilty of an offence and liable—

(*a*) on summary conviction to a fine not exceeding £1,000; or

(*b*) on conviction on indictment to a fine.

(7) An officer shall not be liable in any civil or criminal proceedings for anything done in the purported exercise of the powers conferred on him by virtue of paragraph (5) above if the court is satisfied that the act was done in good faith and that there were reasonable grounds for doing it.

(8) With a view to enforcing any provision of this order relating to nets and other fishing gear, any fishery officer of a local fisheries committee may, within the district of the committee, go on board any British fishing boat registered in

(**a**) 1967 c. 84; subsection (2A) is inserted by the Fisheries Act 1981 (c. 29), section 25(2).

(**b**) Subsection (3) is amended by the Fisheries Act 1981, section 26(2), and subsection (4) by section 26(3) of that Act.

(**c**) Subsection (1) is amended by the Fisheries Act 1981, section 25(3).

the United Kingdom and search for and examine all nets or other fishing gear carried in that boat, and may seize any net or other fishing gear in respect of which a contravention of any such provision has been, or is being committed.

Provisions as to offences and proceedings

7.—(1) Where any offence under article 3(1), 4 or 5 above committed by a body corporate is proved to have been committed with the consent or approval of any director, manager, secretary or other officer of the body corporate, he, as well as the body corporate, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly.

(2) A local fisheries committee may take proceedings in respect of any offence under article 3(1) above occurring within the district of the committee.

(3) Section 13(2) of the said Act of 1967(**a**) shall apply in relation to determining the extent of the district of any local fisheries committee for the purposes of paragraph (2) above.

(4) Subject to paragraph (2) above, proceedings for an offence under the provisions of this order may be taken, and the offence may for all incidental purposes be treated as having been committed, in any place in the United Kingdom.

In Witness whereof the Official Seal of the Minister of Agriculture, Fisheries and Food is hereunto affixed on 3rd August 1981.

(L.S.)

Peter Walker,
Minister of Agriculture,
Fisheries and Food.

28th July 1981.

George Younger,
Secretary of State for Scotland.

27th July 1981.

Nicholas Edwards,
Secretary of State for Wales.

30th July 1981.

Humphrey Atkins,
Secretary of State for Northern Ireland.

(**a**) Subsection (2) is amended by the Local Government Act 1972 (c. 70), section 179(3).

SCHEDULE

(Article 3(1))

PENALTIES

Column 1	Column 2	Column 3
Provision of the Council Regulation	Subject matter	Penalty
1. Article 2(1)	General provisions relating to mesh size of nets	£5,000
2. Article 3(1) paragraph 1, (3) or (4)	Small meshed nets	£5,000
3. Article 4(1)	Nets authorised to be used when fishing for nephrops	£5,000
4. Article 5	Nets authorised to be used when fishing for hake	£5,000
5. Article 7	Attachments to nets	£5,000
6. Article 8	By-catches with small meshed nets	£5,000
7. Article 9	Special provisions on by-catches	£5,000
8. Article 10(2)	Disposal of prohibited by-catches	£5,000
9. Article 11	Minimum fish sizes	£1,000
10. Article 12	Prohibition on carrying or landing of salmon	£5,000
11. Article 14	Limitation on the use of specified gear or vessels	£5,000
12. Article 16	Prohibition of certain processing operations at sea	£1,000

EXPLANATORY NOTE

(This Note is not part of the Order.)

This order, which is made under section 30(2) of the Fisheries Act 1981, makes provision for the enforcement of certain of the enforceable Community restrictions or other obligations relation to sea fishing set out in Council Regulation (EEC) No 2527/80 (OJ No. L258, 1.10.80, p. 1). The provisions in question—

(*a*) specify the minimum sizes of mesh permitted for general fishery operations in particular regions (article 2(1));

(*b*) permit the use of small meshed nets for particular fishery operations in specified areas (article 3(1) paragraph 1, (3) and (4));

(*c*) authorise the use of specified nets when fishing for nephrops in certain areas (article 4(1));

(*d*) specify the minimum size of mesh permitted to be used when fishing for hake (article 5);

(*e*) lay down rules relating to attachments to nets (article 7);

(*f*) impose general by-catch limitations in connection with the use of small mesh nets (article 8);

(*g*) impose particular by-catch limitations in connection with the use of authorised nets for fishing for nephrops and hake (article 9);

(*h*) require prohibited by-catches to be returned to the sea (article 10(2));

(*i*) prohibit the carrying, landing or sale of fish below a permitted minimum size (article 11);

(*j*) prohibit the carrying, landing or sale of salmon taken in specified waters (article 12);

(*k*) limit the use of purse seine nets and beam trawls (article 14);

(*l*) prohibit the carrying out at sea of processing operations other than those authorised (article 16).

For the purpose of enforcing these provisions the order confers on British sea-fishery officers powers to enter business premises, to go on board fishing boats, to examine documents and to seize fish and fishing gear. Provision is also made for the prosecution of offenders and for the punishment of anyone found guilty of obstructing or assaulting a British sea-fishery officer. The maximum penalties specified for such offences, and for offences relating to the provisions of the Council Regulation listed above, correspond to the penalties imposed for equivalent offences by virtue of the Sea Fish (Conservation) Act 1967, as amended by the Fisheries Act 1981.

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