

2013 No. 189

SEA FISHERIES

**The Sea Fishing (Illegal, Unreported and Unregulated Fishing)
(Scotland) Order 2013**

<i>Made</i> - - - -	<i>30th May 2013</i>
<i>Laid before the Scottish Parliament</i>	<i>31st May 2013</i>
<i>Coming into force</i> - -	<i>29th June 2013</i>

The Scottish Ministers make the following Order in exercise of the powers conferred by section 30(2) of the Fisheries Act 1981(a) and section 2(2) of, and paragraph 1A of Schedule 2 to, the European Communities Act 1972(b) and all other powers enabling them to do so.

This Order makes provision for a purpose mentioned in section 2(2) of the European Communities Act 1972 and it appears to the Scottish Ministers that it is expedient for any reference to—

- (a) Article 8, 14, 16, 17 or 18 of, and the Annexes to, Council Regulation (EC) No 1005/2008 establishing a Community system to prevent, deter and eliminate illegal, unreported and unregulated fishing, amending Regulations (EEC) No 2847/93, (EC) No 1936/2001 and (EC) No 601/2004 and repealing Regulations (EC) No 1093/94 and (EC) No 1447/1999(c);
- (b) Article 3 or 20 of, and the Annexes to, Commission Regulation (EC) No 1010/2009 laying down detailed rules for the implementation of Council Regulation (EC) No 1005/2008 establishing a Community system to prevent, deter and eliminate illegal, unreported and unregulated fishing(d); and

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- (a) 1981 c.29 (“the 1981 Act”); 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, in or as regards Scotland, were transferred to the Scottish Ministers by virtue of section 53 of the Scotland Act 1998 (c.46). See section 30(3) of the 1981 Act for definitions of “enforceable Community restriction”, “enforceable EU obligation” and “the Ministers”. Section 30 of the 1981 Act has effect in relation to Scotland as modified by section 30(5) of that Act, inserted by the Scotland Act 1998 (Consequential Modifications) (No. 2) Order 1999 (S.I. 1999/1820), Schedule 2, paragraph 68(5)(b) and amended by the Aquaculture and Fisheries (Scotland) Act 2007 (asp 12), Schedule 1, paragraph 4.
 - (b) 1972 c.68. Section 2(2) was amended by the Scotland Act 1998 (c.46) (“the 1998 Act”), Schedule 8, paragraph 15(3) (which was amended by section 27(4) of the Legislative and Regulatory Reform Act 2006 (c.51) (“the 2006 Act”). Section 2(2) was also amended by section 27(1)(a) of the 2006 Act and by the European Union (Amendment) Act 2008 (c.7) (“the 2008 Act”), Schedule, Part 1. The functions conferred upon the Minister of the Crown under section 2(2), insofar as within devolved competence, were transferred to the Scottish Ministers by virtue of section 53 of the 1998 Act. The powers in section 2(2) are exercised as regards article 8 of this Order. Paragraph 1A was inserted by section 28 of the 2006 Act and amended by the 2008 Act, Schedule, Part 1.
 - (c) OJ L 286, 29.10.2008, p.1. Council Regulation (EC) No 1005/2008 was amended by Commission Regulation (EC) No 1010/2009 (OJ L 280, 27.10.2009, p.5), Commission Regulation (EU) No 86/2010 (OJ L 26, 30.1.2010, p.1) and Commission Regulation (EU) No 202/2011 (OJ L 57, 2.3.2011, p.10).
 - (d) OJ L 280, 27.10.2009, p.5. Commission Regulation (EC) No 1010/2009 was amended by Commission Regulation (EU) No 86/2010 (OJ L 26, 30.1.2010, p.1), Commission Regulation (EU) No 395/2010 (OJ L 115, 8.5.2010, p.1), Commission Regulation (EU) No 202/2011 (OJ L 57, 2.3.2011, p.10) and Commission Regulation (EU) No 1222/2011 (OJ L 314, 29.11.2011, p.2).

- (c) Article 14, 15, 21, 23, 62, 63, 66, 67 or 68 of Council Regulation (EC) No 1224/2009 establishing a Community control system for ensuring compliance with the rules of the common fisheries policy, amending Regulations (EC) No 847/96, (EC) No 2371/2002, (EC) No 811/2004, (EC) No 768/2005, (EC) No 2115/2005, (EC) No 2166/2005, (EC) No 388/2006, (EC) No 509/2007, (EC) No 676/2007, (EC) No 1098/2007, (EC) No 1300/2008, (EC) No 1342/2008 and repealing Regulations (EEC) No 2847/93, (EC) No 1627/94 and (EC) No 1966/2006(a),

to be construed as references to those Articles or, as the case may be, to those Annexes, as amended from time to time.

Citation, commencement, extent and application

1.—(1) This Order may be cited as the Sea Fishing (Illegal, Unreported and Unregulated Fishing) (Scotland) Order 2013 and comes into force on 29th June 2013.

(2) This Order extends to Scotland and the Scottish zone only and insofar as it extends beyond Scotland and the Scottish zone it does so only as a matter of Scots law.

(3) Nothing in paragraph (2) is to be treated as prejudicing the effect of section 30(2A) of the Fisheries Act 1981(b) in the rest of the United Kingdom in relation to, or for the purposes incidental to, any provision which creates an offence.

(4) This Order applies—

- (a) in relation to Scottish fishing boats, wherever they are; and
- (b) to other fishing boats within the Scottish zone.

(5) In paragraph (4)(a), a “Scottish fishing boat” means a fishing vessel which is registered in the register maintained under section 8 of the Merchant Shipping Act 1995(c), and whose entry in the register specifies a port in Scotland as the port to which the vessel is to be treated as belonging.

Interpretation

2.—(1) In this Order—

“authorised officer” means a person authorised in writing by a local authority or the Scottish Ministers for the purposes of this Order;

“British sea-fishery officer” has the same meaning as in section 7 of the Sea Fisheries Act 1968(d);

“Commission Regulation” means Commission Regulation (EC) No 1010/2009 laying down detailed rules for the implementation of Council Regulation (EC) No 1005/2008 establishing a Community system to prevent, deter and eliminate illegal, unreported and unregulated fishing;

“the Commissioners” means the Commissioners for Her Majesty’s Revenue and Customs;

“controlled consignment” means a consignment prohibited from movement under article 4;

“Council Regulation” means Council Regulation (EC) No 1005/2008 establishing a Community system to prevent, deter and eliminate illegal, unreported and unregulated fishing, amending Regulations (EEC) No 2847/93, (EC) No 1936/2001 and (EC) No 601/2004 and repealing Regulations (EC) No 1093/94 and (EC) No 1447/1999;

“Council Regulation 1224/2009” means Council Regulation (EC) No 1224/2009 establishing a Community control system for ensuring compliance with the rules of the common fisheries

(a) OJ L 343, 22.12.2009, p.1.

(b) Section 30(2A) was inserted by the Scotland Act 1998 (Consequential Modifications) (No. 2) Order 1999 (S.I. 1999/1820), Schedule 2, paragraph 68(5)(a).

(c) 1995 c.21.

(d) 1968 c.77; section 7 is relevantly amended by the Scotland Act 1998 (Consequential Modifications) (No. 2) Order 1999 (S.I. 1999/1820), Schedule 2, paragraph 48(3); the 1981 Act, section 46; and the Marine and Coastal Access Act 2009 (c.23), section 239 and Schedule 22, Part 6.

policy, amending Regulations (EC) No 847/96, (EC) No 2371/2002, (EC) No 811/2004, (EC) No 768/2005, (EC) No 2115/2005, (EC) No 2166/2005, (EC) No 388/2006, (EC) No 509/2007, (EC) No 676/2007, (EC) No 1098/2007, (EC) No 1300/2008, (EC) No 1342/2008 and repealing Regulations (EEC) No 2847/93, (EC) No 1627/94 and (EC) No 1966/2006;

“equivalent provision” means any provision in any other Order extending 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 Scotland by virtue of section 30(2A) of the Fisheries Act 1981;

“EU fishing boat” means a Community fishing vessel as defined in Article 2(6) of the Council Regulation;

“fishery products” are those products described in Article 2(8) of the Council Regulation with the exception of the products listed in Annex I of that Regulation;

“fishing logbook” has the same meaning as in Articles 14 and 15 of Council Regulation 1224/2009 and for the purposes of this Order any reference to a fishing logbook, declaration or document includes, in addition to a fishing logbook, declaration or document in writing, any related—

- (a) map, plan, graph or drawing;
- (b) photograph;
- (c) data, however reproduced, communicated via a satellite-based vessel monitoring system established under Article 9 of Council Regulation 1224/2009;
- (d) data, however reproduced, communicated to a fisheries monitoring centre established under Article 9(7) of Council Regulation 1224/2009;
- (e) disk, tape, sound track or other device on 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
- (f) film (including microfilm), negative, tape, disk or other device on which one or more visual images are recorded so as to be capable (with or without the aid of some other equipment) of being reproduced;

“local authority” means a council constituted under section 2 of the Local Government etc. (Scotland) Act 1994(a);

“Scotland” and “the Scottish zone” have the same meanings assigned to those terms by section 126(1) of the Scotland Act 1998(b); and

“third country fishing boat” means a fishing boat which is not an EU fishing boat.

(2) Expressions used in this Order that appear or are referred to in the Council Regulation or the Commission Regulation, and which are not defined in this article, have the same meaning in this Order as in those Regulations.

(3) Any reference to-

- (a) Article 8, 14, 16, 17 or 18 of, or any Annex to, the Council Regulation;
- (b) Article 3 or 20 of, or any Annex to, the Commission Regulation; or
- (c) Article 14, 15, 21, 23, 62, 63, 66, 67 or 68 of Council Regulation 1224/2009,

is a reference to that Article or, as the case may be, Annex as amended from time to time.

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

(a) 1994 c.39.

(b) 1998 c.46. The sea within British fishery limits (that is, the limits set by or under section 1 of the Fishery Limits Act 1976 (c.86)) which is adjacent to Scotland is determined by the Scottish Adjacent Waters Boundaries Order 1999 (S.I. 1999/1126).

Competent authority

3.—(1) The Scottish Ministers are the competent authority for the purposes of the Council Regulation and the Commission Regulation.

(2) In the case of fishery products imported into Scotland, the local authority is also the competent authority for the purposes of the provisions referred to in paragraph (3).

(3) The provisions are—

- (a) Article 12(2) of the Council Regulation (receipt of catch certificates);
- (b) Article 14(1) and (2) of the Council Regulation (receipt of catch certificates, documentation and statements describing consignments where fishery products have been processed in a third country or have come via a third country);
- (c) Article 16(1) and (2) of the Council Regulation (checking catch certificates and receiving information from approved economic operators);
- (d) Article 17(2) of the Council Regulation and Article 20 of the Commission Regulation (verifications); and
- (e) Article 18(1), (2) and (3) of the Council Regulation (refusal of importation).

Control on movement

4.—(1) An authorised officer may prohibit the movement of a consignment of fishery products from the place of import while a verification takes place pursuant to Article 17 of the Council Regulation or Article 20 of the Commission Regulation.

(2) An authorised officer who has prohibited the movement of a consignment must, as soon as possible after the prohibition, give a written notice to the importer or the person who appears to the officer to be in charge of the consignment.

(3) The notice must—

- (a) describe the consignment;
- (b) state that it may not be moved without the written consent of an authorised officer under article 5;
- (c) specify the relevant provision of the Council Regulation or Commission Regulation in respect of which the authorised officer has reason to believe that there has been a failure to comply; and
- (d) specify what steps, if any, must be taken to demonstrate compliance with that provision, and the time by which such steps must be taken.

(4) If the person to whom the authorised officer has given a notice under this article does not appear to the officer to be the importer or an agent, contractor or employee of the importer, the authorised officer must take reasonable steps to bring the contents of the notice to the attention of such a person as soon as practicable following the giving of the notice.

(5) Where the authorised officer is satisfied that—

- (a) a verification pursuant to Article 17 of the Council Regulation or Article 20 of the Commission Regulation has been completed;
- (b) the steps specified under paragraph (3)(d) have been fulfilled within the specified time frame; and
- (c) there has been no breach of the Council Regulation or Commission Regulation,

the officer must revoke the notice issued under this article.

(6) A notice served under this article may be revoked under paragraph (5) by service of a further notice signed by an authorised officer.

Consent to movement

5.—(1) An authorised officer may give written consent to the movement of a controlled consignment.

(2) Before giving such consent, an authorised officer may require the importer to give a written undertaking to the effect that the consignment is to—

- (a) be moved to a place specified by an authorised officer; and
- (b) not be moved from that place without the written consent of an authorised officer.

(3) Any consent given under this article must—

- (a) describe the controlled consignment to which it relates;
- (b) specify the place to which the controlled consignment is to be moved; and
- (c) state that the consignment continues to be controlled.

(4) Where such consent has been given and the consignment has been moved to the place specified under paragraph (3)(b), the prohibition on movement under article 4 applies to it at such place as it applied at the place of import.

Refusal of importation

6.—(1) The competent authority must refuse importation or permission to use transshipment facilities where a pre-landing or pre-transshipment declaration has not been submitted in accordance with Article 8 of the Council Regulation and Article 3 of, and Annexes IIIA and IIIB to, the Commission Regulation.

(2) In the event that the competent authority refuses the importation of fishery products pursuant to Article 18(1) or (2) of the Council Regulation, the authorised officer may seize any fishery products, including any receptacle which contains the fishery products.

(3) Any fishery product which is seized under paragraph (2) may be sold, disposed of or destroyed by the competent authority in any manner it thinks fit where—

- (a) it has notified the importer of its intention to sell, dispose of or destroy the fishery product; and
- (b) either no appeal is made under article 7(1) in relation to a decision to give notice under sub-paragraph (a) and the period specified in article 7(2)(b) has elapsed or such appeal having been made—
 - (i) the appeal has been withdrawn; or
 - (ii) the sheriff dismisses the appeal.

Right of appeal

7.—(1) Where the competent authority has decided—

- (a) to refuse importation or permission to use transshipment facilities pursuant to article 6(1);
- (b) to refuse importation pursuant to Article 18(1) or (2) of the Council Regulation;
- (c) to seize any fishery product or receptacle under article 6(2); or
- (d) to give notice under article 6(3)(a),

the importer may appeal against the competent authority's decision to the sheriff.

(2) An appeal must be made—

- (a) by way of summary application; and
- (b) within the period of 28 days beginning with the day on which—
 - (i) the relevant decision mentioned in paragraph (1)(a) or (b) was taken;
 - (ii) the seizure under article 6(2) was made; or
 - (iii) the notification under article 6(3)(a) was given.

- (3) On cause shown, the sheriff may allow an appeal against a decision mentioned in paragraph (1)(a), (b) or (c) to be made after the period mentioned in paragraph (2)(b) has expired.
- (4) For the purposes of an appeal, the sheriff may—
- (a) require the competent authority to give reasons for its decision;
 - (b) hear evidence by or on behalf of a party to the appeal; or
 - (c) consider any evidence or other information relevant to the appeal (whether or not available when the decision was taken).
- (5) The competent authority may be a party to an appeal.
- (6) In an appeal, the sheriff may—
- (a) uphold, vary or quash the decision (wholly or partly); or
 - (b) remit the matter to the competent authority for reconsideration of its decision.
- (7) The sheriff may vary or quash the decision as referred to in paragraph (6)(a) only if satisfied that the competent authority, in arriving at it—
- (a) erred in law;
 - (b) relied on an incorrect material fact;
 - (c) acted contrary to natural justice; or
 - (d) exercised its discretion in an unreasonable manner.
- (8) If remitting a case under paragraph (6)(b) above, the sheriff may—
- (a) specify a date by which the competent authority is to reconsider its decision;
 - (b) modify any procedural steps in relation to the matter that the competent authority would otherwise require to take by virtue of an enactment (including this Order and anything comprised in, or an instrument made under, an Act of the Scottish Parliament).
- (9) In disposing of the appeal, the sheriff may make such order as to the expenses of the appeal as the sheriff thinks proper.
- (10) The decision of the sheriff is final.
- (11) Pending the determination of an appeal under this article any fishery product which is seized under article 6(2) must be kept in storage under the control of the competent authority and the cost of the storage must be borne by the importer.

Fees relating to third country imports

8. The local authority may charge an importer a consignment fee to recover any expenses reasonably incurred by it in carrying out its functions under article 3(2) or 4 in respect of any consignment.

Offences

9.—(1) It is an offence for the person in charge of a third country fishing boat to enter port without authorisation under Article 7 of the Council Regulation.

(2) It is an offence for the person in charge of a fishing boat to conduct a transshipment with a third country fishing boat contrary to Article 4(3) of the Council Regulation.

(3) It is an offence for a person to import fishery products without a validated catch certificate in accordance with Article 12 of the Council Regulation.

(4) It is an offence for a person to import fishery products obtained from IUU fishing.

(5) It is an offence for a person in charge of a fishing boat to engage in directed fishing for a stock which is subject to a moratorium or for which fishing is prohibited under Article 3(1)(d), as read with Articles 42(1) and 44(1), of the Council Regulation.

(6) It is an offence for a person in charge of a fishing boat to tranship fishery products to or from, participate in joint fishing operations with, support or re-supply, a boat that—

- (a) has engaged in IUU fishing;
- (b) is on the Community IUU vessel list; or
- (c) is on an IUU vessel list of a regional fisheries management organisation referred to in Article 30 of the Council Regulation.

(7) It is an offence for a person in charge of an EU fishing boat to engage in fish processing operations with a boat that is on the Community IUU vessel list.

(8) In relation to a fishing boat on the Community IUU vessel list, it is an offence for a person—

- (a) to enter into an agreement to operate or beneficially own it;
- (b) to furnish it with any supplies, gear or people, except as necessary in the case of *force majeure* or distress; or
- (c) to engage in employment on it.

(9) It is an offence for a person to conduct business directly connected to IUU fishing, within the meaning of Article 42(1)(b) of the Council Regulation.

(10) It is an offence for a person to purchase a third country fishing boat flying the flag of a non-cooperating third country.

(11) It is an offence for a person in charge of an EU fishing boat to enter into an agreement to purchase fishing quota authorising fishing in a non-cooperating third country.

(12) It is an offence for a person in charge of a fishing boat to participate in joint fishing operations with a boat flying the flag of a non-cooperating third country.

(13) It is an offence for a person to falsify, or use falsified, documents, within the meaning of Article 42(1)(c) of the Council Regulation.

(14) It is an offence for a person, knowing a consignment to be a controlled consignment, to move it or cause it to be moved otherwise than in accordance with the written consent of an authorised officer.

(15) It is an offence for a person to disclose information received from the Commissioners contrary to article 19(3).

(16) In paragraphs (1), (2), (5), (6), (7), (11) and (12), the “person in charge” of a fishing boat means the owner, master, charterer (if any) or agent acting for such owner, master or charterer.

Penalties

10.—(1) A person convicted of an offence under article 9(1) to (14) or 17(1), or under an equivalent provision, is liable—

- (a) on summary conviction, to a fine not exceeding £50,000; or
- (b) on conviction on indictment, to a fine.

(2) A person convicted of an offence under article 9(15) is liable—

- (a) on summary conviction, to a fine not exceeding the statutory maximum, to imprisonment for a term not exceeding twelve months or to both; or
- (b) on conviction on indictment, to imprisonment for a term not exceeding two years, to a fine or to both.

(3) The court which convicts a person of an offence under article 9(1) to (14), or under an equivalent provision, may order the forfeiture of—

- (a) any fishery product in respect of which the offence was committed; and
- (b) any net or other fishing gear in respect of which the offence was committed, or which was used in committing the offence, or which was used for catching any fishery product in respect of which the offence was committed.

(4) Any person convicted of an offence under article 9(1) to (14), or under an equivalent provision, subject to the following provisions of this article, is liable on summary conviction to a fine not exceeding the value of any fishery product in respect of which the offence was committed.

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

(6) Subject to paragraph (5), any fine to which a person is liable under paragraph (4) is in addition to any other penalty (whether pecuniary or otherwise) to which that person is liable in respect of that offence under this article or under an equivalent provision.

Recovery of fines

11.—(1) Without prejudice to section 221 of the Criminal Procedure (Scotland) Act 1995(a), where a sheriff court imposes a fine on a person convicted of an offence under this Order or under an equivalent provision, that court may for the purpose of recovering the fine—

- (a) order any boat involved in the commission of the offence and its gear and catch to be detained for a period not exceeding 3 months from the date—
 - (i) of the conviction or until the fine is paid;
 - (ii) the order is renewed for a further period (not exceeding 3 months); or
 - (iii) on which a warrant is issued under sub-paragraph (b),whichever first occurs; or
- (b) subject to paragraph (2), at any time after the imposition of the fine, issue a warrant for the arrestment and sale of any such boat, its gear and catch.

(2) The court must not issue a warrant under paragraph (1)(b) without first affording the owner of the boat, gear or catch liable to be included in the warrant an opportunity to be heard on the issue of such warrant.

(3) A warrant issued under paragraph (1)(b), whatever the amount of the fine imposed, may be executed in the same manner as if the proceedings were on an extract decree of the sheriff in a summary cause.

(4) Where in relation to a fine in respect of an offence under this Order or under an equivalent provision, a transfer of fine order under section 222 of the Criminal Procedure (Scotland) Act 1995(b), section 90 of the Magistrates' Courts Act 1980(c) or article 95 of the Magistrates' Courts (Northern Ireland) Order 1981(d) specifies a court of summary jurisdiction in Scotland this article shall apply as if the fine were a fine imposed by that court.

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

12.—(1) For the purpose of enforcing this Order or an equivalent provision, a British sea-fishery officer has the powers set out in this article in relation to any fishing boat to which this Order applies.

(2) A British sea-fishery officer may go on board the boat, with or without persons assigned to assist in that officer's duties, and may require it to stop and do anything else which will facilitate either the boarding of, or the disembarkation from, the boat.

(a) 1995 c.46; section 221 is amended by the Bankruptcy and Diligence etc. (Scotland) Act 2007 (asp 3), schedule 5, paragraph 23(a) and (b).

(b) 1995 c.46; section 222 is amended by the Criminal Proceedings etc. (Reform) (Scotland) Act 2007 (asp 6), schedule 1, paragraph 20(3).

(c) 1980 c.43; section 90 is amended by the Criminal Justice and Public Order Act 1994 (c.33), section 47(2) and the Collection of Fines (Final Scheme) Order 2006 (S.I. 2006/1737), article 50.

(d) S.I. 1981/1675 (NI 26).

(3) A British sea-fishery officer may require the attendance of the master and other persons on board and may make any examination and inquiry as appears to the officer to be necessary for the purpose mentioned in paragraph (1), and in particular may—

- (a) search for fishery products or fishing gear on the boat and examine any such products on the boat and the equipment of the boat, including the fishing gear, and require persons on board to do anything which appears to the officer to be necessary for facilitating the examination;
- (b) require any person on board to produce any document in that person's custody or possession relating to the boat, to any fishing or ancillary operations or to persons on board;
- (c) for the purpose of ascertaining whether an offence under this Order or an equivalent provision has been committed, search the boat for any such document and may require any person on board to do anything which appears to the officer to be necessary for facilitating the search;
- (d) inspect, take copies of and retain in the possession of that officer while any search, examination or inspection provided for under this article is being carried out, any such document produced or found on board;
- (e) require any appropriate person to render any such document on a computer system into a visible and legible form, including requiring it to be produced in a form in which it may be taken away from the boat; and
- (f) where the boat is one in relation to which the officer has reason to suspect that an offence under this Order or an equivalent provision has been committed, subject to paragraph (4), seize and detain any such document produced or found on board for the purpose of enabling it to be used as evidence in proceedings in connection with any offence under this Order or an equivalent provision.

(4) Nothing in paragraph (3)(f) permits any document required by law to be carried on board the boat to be seized and detained except whilst the boat is detained in port.

(5) Where it appears to a British sea-fishery officer that an offence under this Order or an equivalent provision has at any time been committed in relation to a fishing boat, the officer may—

- (a) take, or require the master of the boat to 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.

(6) A British sea-fishery officer who detains or requires the detention of a boat must serve on the master a written notice stating that the boat is, or is required to be, detained until the notice is withdrawn by the service on the master of a further written notice signed by a British sea-fishery officer.

Powers of British sea-fishery officers on land

13.—(1) For the purpose of enforcing this Order or an equivalent provision, a British sea-fishery officer may—

- (a) enter and inspect at any reasonable time any premises used for carrying on any business in connection with the operation of fishing boats (or any connected or ancillary activities) or with the importation, processing, treatment, storage, weighing or sale of fishery products;
- (b) take with the officer such other persons as appear to the officer to be necessary and any equipment or materials;
- (c) examine any fishery product on the premises and require persons on the premises to do anything which appears to the officer to be necessary for facilitating the examination;
- (d) carry out at the premises such other inspections or tests as may reasonably be necessary, including inspections and tests relating to equipment used to weigh any fishery product;

- (e) require any person not to remove or cause to be removed any fishery product from the premises for such period as may be reasonably necessary for the purposes of establishing whether an offence under this Order or an equivalent provision has been committed;
- (f) require any person on the premises to produce any documents in that person's custody or possession relating to the importation, processing, catching, landing, weighing, transportation, transhipment, sale or disposal of any fishery product or to the entry to, or exit from, any port or harbour by any fishing boat;
- (g) for the purpose of ascertaining whether any person present has committed an offence under this Order or an equivalent provision, search the premises for any such document and require any person present to do anything which appears to the officer to be necessary for facilitating the search;
- (h) inspect and take copies of any such document produced or found on the premises;
- (i) require any appropriate or responsible person to render any such document on a computer system into a visible and legible form, including requiring it to be produced in a form in which it may be taken away; and
- (j) if the officer has reason to suspect that an offence under this Order or an equivalent provision has been committed, seize and detain any such document produced or found on the premises for the purpose of enabling it to be used as evidence in proceedings in connection with any offence under this Order or an equivalent provision.

(2) The provisions of paragraph (1) also apply in relation to any land used in connection with any of the activities described in paragraph (1), or in respect of any vehicle which a British sea-fishery officer has reasonable cause to believe is being used to transport fishery products, as they apply in relation to premises and, in the case of a vehicle, include power to require the vehicle to stop at any time and, if necessary, direct the vehicle to some other place to facilitate the inspection.

Warrants to enter premises

14.—(1) A sheriff who by information on oath is satisfied that the circumstances in paragraph (2) apply may by signed warrant, valid for a period of no more than one month, authorise a British sea-fishery officer to enter any premises, if necessary using reasonable force, and to take with that officer such persons as appear to be necessary.

- (2) The circumstances are that—
- (a) there are reasonable grounds to believe that any documents or other items which a British sea-fishery officer has power under article 13 to inspect are on the premises;
 - (b) the inspection of such documents or other items is likely to disclose evidence of the commission of an offence under this Order or an equivalent provision; and
 - (c) either—
 - (i) entry to the premises has been, or is likely to be, refused and notice of intention to apply for a warrant has been given to the occupier;
 - (ii) an application for entry, or the giving of notice, would defeat the object of the entry;
 - (iii) the premises are unoccupied; or
 - (iv) the occupier is temporarily absent and it would defeat the object of the entry to await that person's return.

Powers of British sea-fishery officers to seize fishery products and fishing gear

- 15.** A British sea-fishery officer may seize—
- (a) any fishery product, including any receptacle which contains the fishery product, in respect of which the officer has reasonable grounds to suspect that an offence under this Order or an equivalent provision has been committed; and

- (b) any net or other fishing gear which the officer has reasonable grounds to suspect has been used in the commission of such offence.

Protection of officers

16.—(1) An officer is not liable in any civil or criminal proceedings for anything done or omitted to be done in the purported exercise of any of the powers conferred by articles 4 to 6 or 12 to 15 or in carrying out checks and verifications under the Council Regulation or the Commission Regulation if the court is satisfied that—

- (a) the officer acted in good faith;
 - (b) there were reasonable grounds for so acting; and
 - (c) the officer acted with reasonable skill and care.
- (2) In paragraph (1), “officer” means—
- (a) an authorised officer;
 - (b) a British sea-fishery officer; or
 - (c) a person assisting a British sea-fishery officer by virtue of—
 - (i) article 12(2) or 13(1)(b); or
 - (ii) a warrant issued under article 14(1).

Obstruction of officers

17.—(1) A person commits an offence if that person—

- (a) fails without reasonable excuse to comply with any requirement imposed by an officer under the powers conferred by this Order;
 - (b) without reasonable excuse, prevents, or attempts to prevent, any other person from complying with any such requirement;
 - (c) conceals, tampers with or disposes of evidence relating to an investigation;
 - (d) assaults an officer who is exercising any of the powers conferred by this Order; or
 - (e) obstructs an officer in the exercise of any of the powers conferred by this Order.
- (2) In paragraph (1), “officer” has the same meaning as set out in article 16(2).

Offences by bodies corporate

18.—(1) Where—

- (a) an offence under this Order or an equivalent provision has been committed by a body corporate or a Scottish partnership or other unincorporated association; and
- (b) it is proved that the offence was committed with the consent or connivance of, or was attributable to any neglect on the part of—
 - (i) a relevant individual; or
 - (ii) an individual purporting to act in the capacity of a relevant individual,

the individual as well as the body corporate, Scottish partnership or unincorporated association commits an offence and is liable to be proceeded against and punished accordingly.

(2) In paragraph (1), “relevant individual” means—

- (a) in relation to a body corporate—
 - (i) a director, manager, secretary or other similar officer of the body;
 - (ii) where the affairs of the body are managed by its members, a member;
- (b) in relation to a Scottish partnership, a partner; or
- (c) in relation to an unincorporated association other than a Scottish partnership, a person who is concerned in the management or control of the association.

Exchange of information

19.—(1) The Scottish Ministers, the Commissioners or any local authority may exchange information for the purpose of this Order and may divulge information to the enforcement authorities of England, Wales and Northern Ireland for the purposes of this Order or the equivalent provision in those jurisdictions.

(2) Paragraph (1) is without prejudice to any other power of the Scottish Ministers, the Commissioners or the local authority to disclose information.

(3) No person, including a servant of the Crown, may disclose any information received from the Commissioners under paragraph (1) if—

- (a) the information relates to a person whose identity—
 - (i) is specified in the disclosure; or
 - (ii) can be deduced from the disclosure;
- (b) the disclosure is for a purpose other than the purposes specified in paragraph (1); and
- (c) the Commissioners have not given their prior consent to its disclosure.

Obtaining samples and analysis

20.—(1) An authorised officer may, for the purposes of ascertaining whether any offence under this Order or an equivalent provision has been committed, purchase or take a sample of any fishery product.

(2) An authorised officer who considers that the sample should be analysed, examined or tested, must submit it for that purpose to the public analyst for the area in which it was obtained (or, if the office of the public analyst for the area is vacant, to the public analyst for some other area).

(3) The public analyst must—

- (a) ensure that the sample is analysed, examined or tested as soon as practicable; and
- (b) give the person who submitted the sample a certificate specifying the result.

(4) In any proceedings, the production by one of the parties—

- (a) of a document purporting to be a certificate under paragraph (3)(b); or
- (b) of a document supplied to the party by the other party as being a copy of such a certificate,

is evidence of the facts stated in it unless, in a case falling within sub-paragraph (a), the other party requires that the public analyst be called as a witness.

(5) In any such proceedings, if a person charged intends to produce a certificate of a public analyst or require, under paragraph (4), the public analyst to be called as a witness, written notice of the intention together with a copy of the certificate (if appropriate) must be given to the other party at least three clear days before the trial.

(6) If such notice is not given, the court may adjourn the proceedings on such terms as it thinks fit.

(7) In this Order, “public analyst” has the same meaning as in section 27 of the Food Safety Act 1990(a).

Admissibility of documents in evidence

21.—(1) Any—

- (a) declaration submitted under Article 8(1) of the Council Regulation;

(a) 1990 c.16. Section 27(2) was amended by the Food Standards Act 1999 (c.28), section 40(1) and Schedule 5, paragraphs 7 and 8. There are further amendments not relevant to this Order.

- (b) document containing required information received by a fisheries monitoring centre established under Article 9(7) of Council Regulation 1224/2009;
- (c) fishing logbook kept under Article 14, or sent under Article 15, of Council Regulation 1224/2009;
- (d) declaration submitted under Article 21, or sent under Article 22, of Council Regulation 1224/2009;
- (e) declaration submitted under Article 23, or sent under Article 24, of Council Regulation 1224/2009;
- (f) sales note submitted under Article 62, or sent under Article 63, of Council Regulation 1224/2009;
- (g) declaration submitted under Article 66, or sent under Article 67, of Council Regulation 1224/2009; or
- (h) document drawn up under Article 68 of Council Regulation 1224/2009,

is, in any proceedings for an offence under this Order or an equivalent provision, to be received in evidence without being produced or sworn to by any witness and is, unless the contrary is shown, conclusive evidence as to the matters stated therein.

(2) For the purpose of paragraph (1)(b), “required information” means data relating to—

- (a) a fishing boat’s identification;
- (b) a fishing boat’s course and speed;
- (c) the most recent geographical position of the fishing boat expressed in degrees and minutes of longitude and latitude; and
- (d) the date and time of the fixing of that position,

as communicated via a satellite-based vessel monitoring system established under Article 9 of Council Regulation 1224/2009.

(3) Expressions used in this article that appear or are referred to in Council Regulation 1224/2009 have the same meaning in this article as in that Regulation.

RICHARD LOCHHEAD
A member of the Scottish Government

St Andrew’s House,
Edinburgh
30th May 2013

EXPLANATORY NOTE

(This note is not part of the Order)

This Order makes provision for the enforcement of Council Regulation (EC) No 1005/2008 (OJ L 286, 29.10.2008, p.1) (“the Council Regulation”) and Commission Regulation (EC) No 1010/2009 (OJ L 280, 27.10.2009, p.5) (“the Commission Regulation”) establishing restrictions and obligations relating to illegal, unreported and unregulated fishing.

This Order applies to Scottish fishing boats, wherever they are, and to other fishing boats within the Scottish zone (article 1).

Article 3(1) designates the Scottish Ministers as the competent authority for the purposes of the Council and the Commission Regulations. Article 3(2) also designates the local authority as the competent authority for the purposes of the provisions of the Council and the Commission Regulations referred to in article 3(3) relating to the checking of catch certificates and subsequent verifications and refusal of importation etc.

Article 4 provides for controls on movement of consignments of fishery products while verifications are carried out pursuant to Article 17 of the Council Regulation or Article 20 of the Commission Regulation (which can include a request for assistance from the flag state of the vessel to ensure the accuracy of the information contained within, or the validity of, the catch certificate).

Article 5 permits movement of such consignments under certain circumstances.

Article 6(1) provides for the refusal of importation or permission to use transshipment facilities in circumstances where a landing or transshipment declaration has not been submitted in accordance with Article 8 of the Council Regulation or Article 3 of the Commission Regulation. Article 6(2) and (3) provides for the seizure and sale, disposal or destruction of fishery products upon refusal of importation in the circumstances set out in Article 18(1) or (2) of the Council Regulation.

Article 7 provides for a right of appeal to the sheriff in circumstances where importation or permission to use transshipment facilities is refused or the competent authority seizes the fishery products or decides to sell, dispose of or destroy the fishery products.

Article 8 provides that the local authority may charge a fee in respect of each consignment reflecting the recovery of expenses it has reasonably incurred. The powers in section 2(2) of the European Communities Act 1972 are exercised as regards this Article.

Article 9 provides that certain activities are an offence which are punishable either by a summary conviction or on indictment.

Article 10 provides penalties for the offences under the Order and an equivalent provision (as defined in the Order).

Article 11 provides powers for the sheriff court in the recovery of fines imposed in respect of an offence under this Order or under an equivalent provision.

Articles 12 to 15 provide for powers of British sea-fishery officers in the enforcement of this Order or an equivalent provision.

Article 16 provides protection from civil or criminal liability to authorised officers, British sea-fishery officers and persons assisting British sea-fishery officers when exercising powers under certain specified provisions of the Order or in carrying out checks and verifications under the Council Regulation or the Commission Regulation under certain circumstances.

Article 17 provides that a person commits an offence if that person obstructs such authorised officers, British sea-fishery officers or persons assisting British sea-fishery officers in the exercise of their powers conferred by the Order.

Articles 18 to 21 make provision about offences committed by bodies corporate, exchange of information, obtaining samples and admissibility of documents in evidence.

A Business and Regulatory Impact Assessment in relation to this Order has been prepared and placed in the Scottish Parliament Information Centre. Copies can be obtained from the Scottish Government Marine Directorate, Victoria Quay, Edinburgh EH6 6QQ.