

2012 No. 348

SEA FISHERIES

The Shetland Islands Regulated Fishery (Scotland) Order 2012

Made - - - - *13th December 2012*

Laid before the Scottish Parliament *17th December 2012*

Coming into force - - *1st February 2013*

The Scottish Ministers make the following Order in exercise of the powers conferred by section 1 of the Sea Fisheries (Shellfish) Act 1967(a) (as read with sections 3 and 4 of, and Schedule 1 to, that Act and with section 15(3) to (5) of the Sea Fisheries Act 1968(b)) and all other powers enabling them to do so.

In accordance with paragraphs 1, 3 and 6 of Schedule 1 to the Sea Fisheries (Shellfish) Act 1967, they have prepared a draft of this Order, served a copy of it on the Shetland Shellfish Management Organisation, considered representations made in writing in respect of the draft of this Order and had regard to the powers and duties of the Crown Estate Commissioners under the Crown Estate Act 1961(c).

In accordance with paragraph 2 of that Schedule, the Shetland Shellfish Management Organisation caused a draft of this Order to be published and circulated and gave notice of the application.

Citation, commencement and extent

1.—(1) This Order may be cited as the Shetland Islands Regulated Fishery (Scotland) Order 2012 and comes into force on 1st February 2013.

(2) This Order extends to Scotland only.

(a) 1967 c.83 (“the 1967 Act”). Section 1 was amended by the Sea Fisheries Act 1968 (c.77) (“the 1968 Act”), section 15(2); the Fishery Limits Act 1976 (c.86), section 9 and Schedule 2, paragraph 15; the Sea Fisheries (Shellfish) (Amendment) Act 1997 (c.3), section 1; the Scotland Act 1998 (Consequential Modifications) (No. 2) Order 1999 (S.I. 1999/1820), article 4 and Schedule 2, paragraph 42(2)(a) and (b); and the Marine (Scotland) Act 2010 (asp 5) (“the 2010 Act”), sections 160(1) and (2) and 161(2). Section 3 was amended by the Aquaculture and Fisheries (Scotland) Act 2007 (asp 12) (“the 2007 Act”), section 32(1) and the 2010 Act, section 161(1)(a) to (c). Section 4 was amended by the 2007 Act, section 32(2) and the 2010 Act, section 161(1)(h). Schedule 1 to the 1967 Act was amended by the 1968 Act, section 15(7) and by the 2010 Act, sections 160(3), 161(1)(g) and (h) and 161(5). The reference to the “appropriate Minister” in section 22(1) of the 1967 Act is to be read as a reference to the Scottish Ministers by virtue of S.I. 1999/1820, Schedule 2, paragraph 42(10).

(b) 1968 c.77. Section 15 was amended by the Police, Public Order and Criminal Justice (Scotland) Act 2006 (asp 10), section 98(3), which amendments modify the effect of sections 3(1), 4A(1) and 4B(1) of the 1967 Act as regards Scotland; and the 2010 Act, schedule 4, Part 3, paragraph 10.

(c) 1961 c.55. Paragraph 6(2) of Schedule 1 to the 1967 Act was inserted by the 2010 Act, section 160(3), and requires the Scottish Ministers to have regard to the powers and duties of the Crown Estate Commissioners under the Crown Estate Act 1961 where a proposed Order under section 1 of the 1967 Act relates to any portion of the sea shore which belongs to Her Majesty in right of the Crown, as is the case here. “Sea shore” is described in section 1(1) of the 1967 Act, as read with section 1(1A).

Interpretation

2. In this Order—

“the 1967 Act” means the Sea Fisheries (Shellfish) Act 1967;

“the fishery” means that part of the bed of the sea adjacent to the Shetland Islands which lies between the line of mean low water springs and a distance of six nautical miles measured from the baselines from which the breadth of the territorial sea is measured and which is illustrated and shown coloured yellow on the relevant map, with the exception of that part of the bed of the sea at Ura Firth extending to 19.888 hectares or thereby described in the Schedule to the Ura Firth, Shetland Scallops Several Fishery Order 2004(a) and which is illustrated and shown marked in red within the green circle on the relevant map;

“fishing season” means the period of 12 months from 1st February in any year to 31st January in the following year, inclusive of both dates;

“the Organisation” means the Shetland Shellfish Management Organisation, a company limited by guarantee and having its registered office at SFA, Shetland Seafood Centre, Stewart Building, Lerwick, Shetland, ZE1 OLL;

“the prescribed species” means oysters, mussels, cockles, clams, lobsters, scallops, queens, crabs, whelks and razorshells(b); and

“the relevant map” means the map prepared in duplicate, each copy of which is signed by Richard Lochhead, Cabinet Secretary for Rural Affairs and the Environment, and marked “Map referred to in the Shetland Islands Regulated Fishery (Scotland) Order 2012”, one copy of which is deposited in the principal office of Marine Scotland, Victoria Quay, Leith, Edinburgh, EH6 6QQ and the other of which is deposited in the place of business of the Organisation.

Rights of regulating a fishery

3. The right of regulating a fishery for the prescribed species with respect to the whole of the area of the fishery is hereby conferred on the Organisation until 31st January 2028.

Power to impose restrictions and make regulations

4.—(1) The Organisation may, with the consent of the Scottish Ministers, from time to time impose restrictions on, and make regulations respecting, the dredging, fishing for and taking of the prescribed species within the whole or any specified part of the fishery.

(2) Without prejudice to the generality of paragraph (1), regulations may be made under that paragraph for the purpose of—

- (a) determining the size below which or above which it is unlawful to take any of the prescribed species from the fishery or to remove them from one part of the fishery to another; and
- (b) determining the size or description of vessels, dredges and fishing instruments to be used in dredging, fishing for or taking any of the prescribed species.

(3) The production of a copy of any restriction or regulation purporting to be certified by the Scottish Ministers is conclusive evidence of the restriction or existence of the regulation and of the making of it.

(a) S.S.I. 2004/5.

(b) Section 1(1) of the Sea Fisheries (Shellfish) Act 1967 provides that the shellfish that may be regulated under an order made in terms of that section are oysters, mussels, cockles, clams, lobsters and any other molluscs or crustaceans of a kind specified in regulations. Scallops and queens were specified for the purposes of section 1 by the Shellfish (Specification of Molluscs) Regulations 1987 (S.I. 1987/218), and crabs, whelks and razorshells were specified for that purpose by the Shellfish (Specification of Molluscs and Crustaceans) (Scotland) Regulations 1999 (S.S.I. 1999/139).

Licensing of fishing

5.—(1) No person may dredge, fish for or take any of the prescribed species within the fishery except under the authority of a licence issued, on application, by the Organisation and, subject to paragraphs (4) and (5), a licence is valid for the period, not exceeding 12 months, specified therein.

(2) No person may use a vessel for dredging, fishing for or taking any of the prescribed species within the fishery except under the authority of a licence issued under paragraph (1) in which the vessel is named.

(3) The prohibitions in paragraphs (1) and (2) do not apply to any person—

- (a) fishing for or taking; or
- (b) using a vessel wholly to fish for or take,

any of the prescribed species within the fishery where none of those species caught or taken is to be sold, traded or otherwise exchanged for benefit.

(4) A person who is the owner of a vessel may apply for, and be issued with, a licence for dredging, fishing for or taking any of the prescribed species from a vessel.

(5) A licence for dredging, fishing for or taking of any of the prescribed species from a vessel, in addition to authorising the applicant, may also authorise—

- (a) subject to paragraph (9), a person nominated by the applicant as the applicant's representative; or
- (b) with the written authority of the Organisation and in accordance with any conditions contained in that authority, a person nominated by the applicant or the applicant's representative as a deputy,

to dredge, fish for or take any of the prescribed species from that vessel.

(6) No applicant who is the registered joint owner of a vessel may be issued with a licence in accordance with paragraph (4) to dredge, fish for or take any of the prescribed species from that vessel if, for the period in respect of which the application relates, the Organisation has—

- (a) received from another joint owner an application for a licence; or
- (b) granted to another joint owner a licence,

to dredge, fish for or take any of the prescribed species from that vessel.

(7) The Organisation may, after consultation with such organisations as appear to it to be representative of interests likely to be substantially affected by a limitation on the number of licences issued, and such other persons as the Organisation thinks fit, place a limitation on the number of such licences which may be issued in any one fishing season having particular regard to scientific advice on the desirability of limiting the level of exploitation.

(8) Any person dredging, fishing for or taking any of the prescribed species within the fishery under the authority of a licence issued under this article must, when so requested by any officer authorised by the Organisation and after production by that officer of written evidence of the officer's authority if so required, produce the licence and must desist from dredging, fishing for or taking any of the prescribed species within the fishery until it is produced.

(9) At the discretion of the Organisation, no person may be named on a licence in accordance with paragraph (5)(a) as the representative of an applicant if on at least two separate occasions within the period of 24 months immediately preceding the date of application for the licence that person has been convicted of an offence under section 3(3) of the 1967 Act.

Tolls payable for fishing

6. Any applicant to whom the Organisation proposes to issue a licence under the provisions of article 5 must pay to the Organisation before or upon receipt of the licence a toll in respect of the licence of £250 per annum.

Power to create reserves

7. The Organisation may from time to time designate and mark out as reserves such parts of the fishery as it thinks necessary for—

- (a) experimental, management or scientific purposes, including the control of pests or diseases of any of the prescribed species;
- (b) cleansing and subsequent restocking with any of the prescribed species and the protection of stock introduced;
- (c) the collection of spat of any of the prescribed species; and
- (d) the deposit or re-laying of any of the prescribed species for the purposes of cleansing before their removal from the fishery,

and may use such reserves for their designated purposes and prohibit their use for any other purpose connected with or ancillary to dredging, fishing for or taking any of the prescribed species.

Power to remove juvenile shellfish

8. For the purpose of cultivating the fishery, any person authorised by the Organisation may remove any spat or small shellfish of the prescribed species from the fishery or from one part of the fishery to any other part at such times and in such quantities as the Organisation may direct.

Exemptions for scientific purposes

9.—(1) The Organisation may, by authority given in writing, exempt any person who is dredging, fishing for or taking any of the prescribed species for scientific purposes from any provision of this Order or from any restriction imposed or regulation made under this Order.

(2) A reference in this article to anything done in writing includes a reference to an electronic communication, as defined in section 15 of the Electronic Communications Act 2000(a), which has been recorded and is consequently capable of being reproduced.

Accounts of income and expenditure and other information

10. The Organisation must—

- (a) render to the Scottish Ministers annual accounts of its income and expenditure under this Order;
- (b) furnish to the Scottish Ministers all other information required by them with reference to this Order and to the fishery in such form and at such times as they may require;
- (c) allow any person authorised by the Scottish Ministers in that behalf to inspect the fishery and all books of account and other documents in the possession of the Organisation relating to this Order and to the fishery and the Organisation must give to such person any information relating thereto as that person may require.

Rights of the Crown

11.—(1) Nothing in this Order or in any restriction imposed or regulation made by the Organisation may affect prejudicially any estate, right, power, privilege or exemption of the Crown and in particular and without prejudice to the generality of the foregoing, nothing in this Order authorises the Organisation 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 the Crown and under the management of the Crown Estate Commissioners without the consent in writing of those Commissioners.

(a) 2000 c.7. Section 15 was amended by paragraph 158 of Schedule 17 to the Communications Act 2003 (c.21).

(2) A consent under paragraph (1) may be given unconditionally or subject to such conditions and upon such terms as are considered necessary or appropriate.

St Andrew's House,
Edinburgh
13th December 2012

RICHARD LOCHHEAD
A member of the Scottish Government

EXPLANATORY NOTE

(This note is not part of the Order)

This Order confers on the Shetland Shellfish Management Organisation (“the Organisation”) the right of regulating a fishery for oysters, mussels, cockles, clams, lobsters, scallops, queens, crabs, whelks and razorshells (“the prescribed species”, defined in article 2) on the bed of the sea adjacent to the Shetland Islands for a period of 15 years until 31st January 2028 (article 3).

The situation and extent of the area within which the right is conferred is illustrated on the map which is described in article 2. A representation of the map, for illustrative purposes only, is appended to this Note.

Article 4 confers on the Organisation the power, with the consent of the Scottish Ministers, to impose restrictions on and make regulations respecting dredging, fishing for and taking the prescribed species. Under article 5 it is prohibited to dredge, fish for or take any of the prescribed species without a licence from the Organisation.

Article 6 makes provision for the toll payable to the Organisation in respect of the issue of licences for dredging, fishing for or taking any of the prescribed species.

Article 7 confers on the Organisation power to create reserves in the fishery for certain purposes and article 8 gives the Organisation power to remove juvenile shellfish from one part of the fishery to another.

Article 9 makes provision for the Organisation to exempt any person from the provisions of the Order, for scientific purposes.

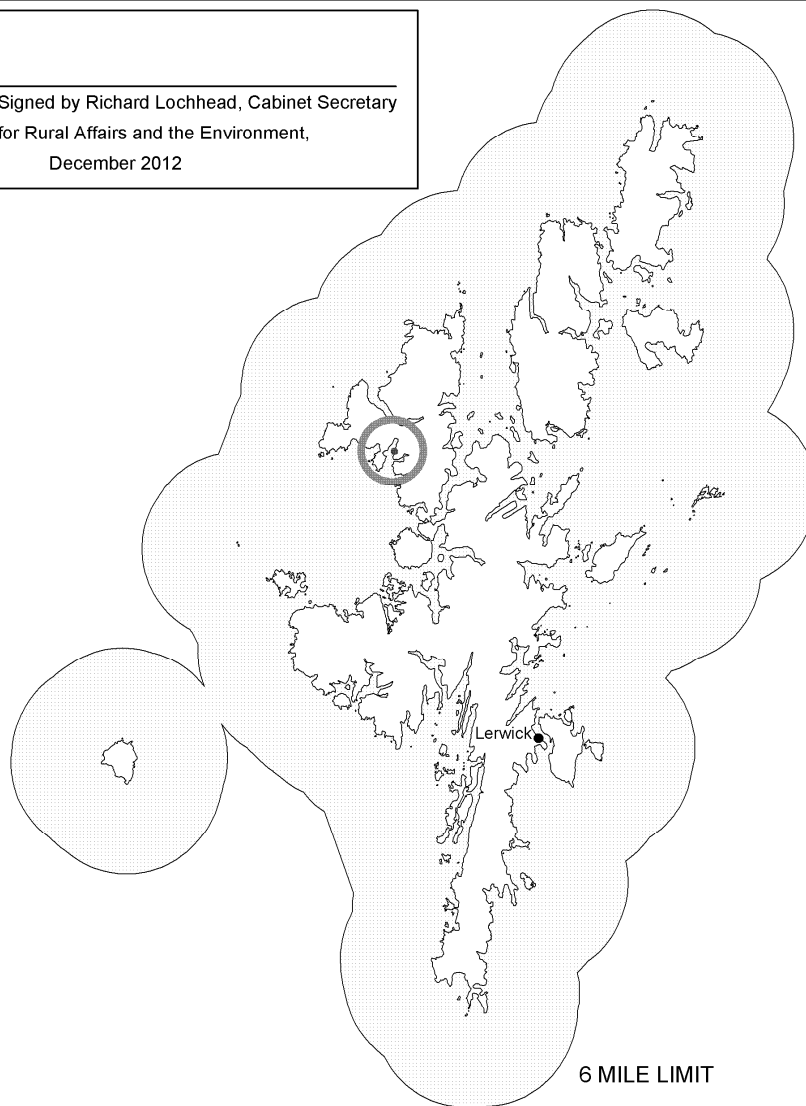
Article 10 makes provision in connection with the accounts of the Organisation relating to income and expenditure, and other information.

Article 11 makes provision in connection with the rights of the Crown.

A Business and Regulatory Impact Assessment (“BRIA”) has been prepared in relation to this Order and placed in the Scottish Parliament Information Centre. Copies of the BRIA are available from Marine Scotland, Victoria Quay, Leith, Edinburgh, EH6 6QQ and on line at www.legislation.gov.uk.

Signed:

Signed by Richard Lochhead, Cabinet Secretary
for Rural Affairs and the Environment,
December 2012



MAP REFERED TO IN THE SHETLAND ISLANDS
REGULATED FISHERY (SCOTLAND) ORDER 2012.

Area covered is that part of the bed of the sea adjacent to the Shetland Islands which lies between the line of mean low water springs and a distance of six nautical miles measured from the baselines from which the breadth of the territorial sea is measured, excluding the area marked in red within the green circle.

Scale: 1:650,000

Sources:

Nautical Limits - Scottish Government
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