
SCOTTISH STATUTORY INSTRUMENTS

2006 No. 57

SEA FISHERIES

SHELLFISH

The Solway Firth Regulated Fishery (Scotland) Order 2006

Made - - - - *10th February 2006*
Laid before the Scottish
Parliament - - - - *10th February 2006*
Coming into force - - *13th March 2006*

Whereas an application for an Order under section 1 of the Sea Fisheries (Shellfish) Act 1967⁽¹⁾ has been made to the Scottish Ministers by the Solway Shellfish Management Association;

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

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

And whereas objections and representations were duly made with respect to the proposed Order which the Scottish Ministers considered to be neither frivolous nor irrelevant and which were not withdrawn;

And whereas the Scottish Ministers appointed an inspector to make an inquiry concerning the subject matter of the proposed Order in accordance with paragraph 4 of that Schedule;

And whereas the Scottish Ministers have considered the objections and representations made with respect to the proposed Order and the report made by the inspector;

Now, therefore, the Scottish Ministers, in exercise of the powers conferred by section 1 of the Sea Fisheries (Shellfish) Act 1967 (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⁽²⁾), and of all other powers enabling them in that behalf, with the consent of the Crown Estate Commissioners⁽³⁾, hereby make the following Order:

(1) 1967 c. 83. 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; and 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). Schedule 1 was amended by the 1968 Act, section 15(7). 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 S.I. 1999/1820, Schedule 2, paragraph 42(10).

(2) 1968 c. 77.

(3) The consent of the Crown Estate Commissioners is required by the Sea Fisheries (Shellfish) Act 1967, section 1(4) where an order under section 1 of that Act is to be made with respect to any portion of the sea shore which belongs to Her Majesty in right of the Crown.

Citation, commencement and extent

1.—(1) This Order may be cited as the Solway Firth Regulated Fishery (Scotland) Order 2006 and shall come into force on 13th March 2006.

(2) This Order extends to Scotland only.

Interpretation

2. In this Order—

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

“the Association” means the Solway Shellfish Management Association, a company limited by guarantee (number SC211971) and having its registered office at Solway Heritage, Campbell House, The Crichton, Bankend Road, Dumfries, DG1 4ZB;

“the fishery” means those portions of the shore and bed of the sea, the estuaries and the tidal rivers which lie within the area bounded by the mean high-water mark of ordinary spring tides, by a straight line extending due east from the Isle of Whithorn at a point at 54°41'46" North latitude and 04°22'00" West longitude and by the line referred to in article 3(b)(i) of the Scottish Adjacent Waters Boundaries Order 1999(4);

“the fishing season” means the period of 12 months from 15th September in any year to 14th September in the following year, inclusive of both dates.

Right of regulating a fishery

3. The right of regulating a fishery for cockles with respect to the whole of the area of the fishery is hereby conferred on the Association until 14th September 2011.

Power to impose restrictions and make regulations

4.—(1) The Association 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 cockles 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 shall be unlawful to take cockles from the fishery or to remove them from one part of the fishery to another; and

(b) determining the number, size or description of vessels, vehicles, dredges and fishing instruments to be used in dredging, fishing for or taking cockles.

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

Licensing of Fishing

5.—(1) Subject to paragraph (3), no person shall dredge, fish for or take cockles within the fishery except under the authority of a licence issued, on application, by the Association.

(2) No person shall use a—

(a) vessel for dredging, fishing for or taking cockles within the fishery except under the authority of a licence issued under this article in which the vessel is named;

(4) S.I. 1999/1126.

- (b) vehicle for dredging, fishing for or taking cockles within the fishery except under the authority of a licence issued under this article in which the registered number of the vehicle is specified.
- (3) The prohibition in paragraph (1) shall not apply to any person taking up to 3 kilograms, in live weight, of cockles by hand in any period of 24 hours provided that such cockles are intended only for personal consumption.
- (4) A licence for dredging, fishing for or taking cockles–
- (a) from a vessel–
 - (i) shall be issued only to the applicant, who shall be the owner of the vessel; and
 - (ii) shall be used only by that person or, with the written authority of the Association and in accordance with any conditions contained in that authority, by a deputy nominated by that person;
 - (b) from or by means of a vehicle–
 - (i) shall be issued only to the applicant, who shall be the registered keeper of the vehicle; and
 - (ii) shall be used only by that person or, with the written authority of the Association and in accordance with any conditions contained in that authority, by a deputy nominated by that person;
 - (c) by hand (which shall include the use of any hand held fishing instruments or machines), shall be issued only to the applicant and shall be used only by that person.
- (5) No applicant who is the joint owner of a vessel shall be issued with a licence under this article to dredge, fish for or take cockles from that vessel if, for the period in respect of which the application relates, the Association 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 cockles from that vessel.
- (6) A licence shall be valid for a period not exceeding 12 months specified therein.
- (7) Subject to any directions given by the Scottish Ministers and the provisions of this Order the Association may–
- (a) issue licences under this article–
 - (i) in such numbers; and
 - (ii) to such persons,as it may determine; and
 - (b) in particular may, after consultation with–
 - (i) 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
 - (ii) such other persons as the Association 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) Subject to any directions given by the Scottish Ministers and the provisions of this Order, licences issued under this article may authorise the dredging, fishing for or taking of cockles at such times, in such manner and in such parts of the fishery as the Association may determine.

(9) Any person dredging, fishing for or taking cockles within the fishery (other than for personal consumption as permitted by paragraph (3)), shall, when so requested by any officer authorised by the Association and after production by that officer of written evidence of that officer's authority if so required, produce the relevant licence and shall desist from dredging, fishing for or taking cockles within the fishery until it is produced.

(10) In respect of—

(a) the first fishing season or part of that season after the coming into force of this Order, an applicant for a licence for dredging, fishing for or taking cockles—

(i) from a vessel shall, subject to paragraphs (4)(a), (5) and (7), be entitled to a licence if the applicant was, as the owner of that vessel or of another vessel of similar size, capacity and fishing power to that vessel, engaged as a commercial activity, or as part of a commercial activity, in dredging, fishing for or taking cockles from the vessel within the fishery at any time prior to 6th October 1992;

(ii) from or by means of a vehicle shall, subject to paragraphs (4)(b) and (7), be entitled to a licence if the applicant was, as the registered keeper of that vehicle or of another vehicle, engaged as a commercial activity, or as part of a commercial activity, in dredging, fishing for or taking cockles from or by means of the vehicle within the fishery at any time prior to 15th June 1995;

(iii) by hand shall, subject to paragraphs (4)(c) and (7), be entitled to a licence if the applicant was engaged as a commercial activity, or as part of a commercial activity, in dredging, fishing for or taking cockles by hand (including the use of any hand held fishing instrument or machines) within the fishery at any time prior to 1st January 2002; and

(b) all subsequent fishing seasons, an applicant for a licence for dredging, fishing for or taking cockles—

(i) from a vessel shall, subject to paragraphs (4)(a), (5), (7) and (11), be entitled to a licence if the applicant held a licence issued under this article in which that vessel (or another vessel of similar size, capacity and fishing power to that vessel) was named in respect of the immediately preceding fishing season;

(ii) from or by means of a vehicle shall, subject to paragraphs (4)(b), (7) and (11), be entitled to a licence if the applicant held a licence issued under this article in which that vehicle was specified in respect of the immediately preceding fishing season;

(iii) by hand shall, subject to paragraphs (4)(c), (7) and (11) be entitled to a licence if the applicant held a licence issued under this article in which that applicant was named in respect of the immediately preceding fishing season.

(11) At the discretion of the Association the entitlement described in paragraph (10) shall not apply if on at least two separate occasions within the period of 24 months immediately preceding the date of application for the licence the applicant has been convicted of a relevant offence or if during that period any licence held by the applicant under this Order has been cancelled by the Association under section 4(7) of the 1967 Act.

(12) In this article—

“registered keeper” means, in relation to a vehicle, the person in whose name the vehicle is registered under the Vehicle Excise and Registration Act 1994(5);

“registered number” in respect of a vehicle means the number indicated by the registration mark (within the meaning of section 23 of the Vehicle Excise and Registration Act 1994) assigned to the vehicle under that section; and

“relevant offence” means an offence under section 3(3) of the 1967 Act.

Toll payable

6.—(1) Any person to whom the Association proposes to issue a licence shall pay to the Association, before or upon receipt of the licence, a toll.

(2) In respect of a licence which authorises—

- (a) dredging, fishing for or taking cockles from a vessel the toll shall be £10,000 per fishing season or part thereof;
- (b) dredging, fishing for or taking cockles from or by means of a vehicle the toll shall be £10,000 per fishing season or part thereof;
- (c) dredging, fishing for or taking cockles by hand the toll shall be £300 per fishing season or part thereof.

(3) The Association may from time to time, with the consent of the Scottish Ministers, vary the toll payable under this article.

Royalty payable

7.—(1) Any person who, under the authority of a licence issued under article 5, dredges, fishes for or takes cockles shall pay to the Association a royalty of £50 per tonne, live weight, of cockles.

(2) The Association may from time to time, with the consent of the Scottish Ministers, vary the royalty payable under this article.

Power to create reserves

8. The Association 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 cockles;
- (b) cleansing and subsequent restocking with cockles and the protection of stock introduced;
- (c) the collection of spat of cockles; and
- (d) the deposit or re-laying of cockles 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 cockles.

Power to remove juvenile shellfish

9. For the purpose of cultivating the fishery any person authorised by the Association may remove any spat of cockles or small cockles from the fishery or from one part of the fishery to any other part at such times and in such quantities as the Association may direct.

Exemptions for scientific purposes

10. The Association may, by authority given in writing, exempt any person who is dredging, fishing for or taking cockles for scientific purposes from any provision of this Order or from any restriction imposed or regulation made under this Order.

Accounts of income and expenditure and other information

11. The Association shall—

- (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; and
- (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 Association relating to this Order and to the fishery and shall give to such person any information relating thereto as that person may require.

Rights of the Crown

12. 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, or 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 Commissioners.

St Andrew's House,
Edinburgh
10th February 2006

JOHN MASON
A member of the staff of the Scottish Ministers

EXPLANATORY NOTE

(This note is not part of the Order)

This Order, made under section 1 of the Sea Fisheries (Shellfish) Act 1967 (“the Act”) confers upon the Solway Shellfish Management Association Ltd. (“the Association”) the right of regulating a fishery for cockles in the area of the Solway Firth until 14th September 2011, the end of the fifth full fishing season following the coming into force of this Order.

The situation and extent of the area within which the right is conferred is defined in article 2 and is shown, for illustrative purposes only, on the map appended to this note.

Article 3 confers upon the Association the right of regulating the fishery.

Article 4 confers upon the Association the power, with the consent of the Scottish Ministers, to impose restrictions on and make regulations respecting dredging, fishing for and taking cockles.

Under article 5(1) and (2) it is prohibited to dredge, fish for or take cockles without a licence from the Association, or to use a vessel or vehicle for such activity except where the name of the vessel or the registered number of the vehicle is specified in such a licence.

Article 5(3) permits fishing for or taking of cockles for personal consumption, by hand, to a limit of 3kg live weight in any 24 hour period.

Article 5(4) provides that a licence shall be granted only to the person who applies for it and used only by that person or, in the case of a licence which refers to a vessel or vehicle, by a deputy nominated by the applicant and approved by the Association.

Article 5(5) prevents the issue of licences to more than one joint owner of a vessel.

Article 5(6) provides that a licence shall be valid for the period specified in the licence, and that this period shall not exceed 12 months.

Article 5(7) governs the circumstances in which the Association may limit the number of licences to be issued.

Article 5(8) permits licences to authorise the dredging, fishing for or taking of cockles at such times, in such manner and in such parts of the fishery as the Association may determine.

Article 5(9) provides that any person dredging, fishing for or taking cockles within the fishery (other than for personal consumption as permitted by paragraph (3) of that article) shall produce the relevant licence when demanded to do so by any officer authorised by the Association, and shall desist from dredging, fishing for or taking cockles until the licence is produced.

Article 5(10) makes provision entitling those who have historically worked in the Solway cockle fishery to licences, subject to availability (which may be limited under article 5(7)) and to their meeting the relevant criteria.

Article 5(11) makes provision for the removal of this entitlement where the applicant has, in the 24 months preceding his application, twice been convicted of a relevant offence or where, during that period, any licence held under the Order has been cancelled by the Association under section 4(7) of the Act.

Article 6 makes provision for the toll payable to the Association in respect of the issue of licences to dredge, fish for or take cockles, and for the variation of this toll with the consent of the Scottish Ministers.

Article 7 provides for a royalty to be paid to the Association in respect of cockles caught or taken, and for the variation of this royalty with the consent of the Scottish Ministers.

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Article 8 gives the Association power to create reserves in the fishery for certain purposes.

Article 9 gives the Association power to remove juvenile shellfish from one part of the fishery to another.

Article 10 makes provision for the Association to exempt any person from any of the provisions of the Order, for scientific purposes.

Article 11 makes provision in connection with accounts of the Association relating to income and expenditure and other information.

Article 12 makes provision in connection with the rights of the Crown.

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.

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