

**2009 No. 443**

**SEA FISHERIES**

**The Shetland Islands Regulated Fishery (Scotland) Order 2009**

*Made* - - - - *17th December 2009*

*Laid before the Scottish Parliament* *18th December 2009*

*Coming into force* - - *31st January 2010*

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 section 1(4) of the Sea Fisheries (Shellfish) Act 1967 they have consulted with and have obtained the consent of the Crown Estate Commissioners(c).

In accordance with paragraph 1 of Schedule 1 to that Act, they have prepared a draft of this Order and served a copy of it on the Shetland Shellfish Management Organisation.

In accordance with paragraph 2 of that Schedule, that Organisation caused the draft 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 2009 and comes into force on 31st January 2010.

(2) This Order extends to Scotland only.

**Interpretation**

2. In this Order—

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

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- (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; and by the Scotland Act 1998 (Consequential Modifications) (No. 2) Order 1999 (S.I. 1999/1820), article 4 and Schedule 21, paragraph 42(2)(a) and (b). Schedule 1 of the 1967 Act was amended by the 1968 Act, section 15(7). 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 of the Sea Fisheries Act 1968 was amended by the Police, Public Order and Criminal Justice (Scotland) Act 2006 (asp 10), section 98(3). These amendments modify the effect of sections 3(1), 4A(1) and 4B(1) of the Sea Fisheries (Shellfish) Act 1967 as regards Scotland.
- (c) The consent of the Crown Estate Commissioners is required in terms of section 1(4) of the Sea Fisheries (Shellfish) Act 1967, 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, as is the case here.

“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 2009”, one copy of which is deposited in the principal office of Marine Scotland, Pentland House, 47 Robb’s Loan, Edinburgh, EH14 1TW 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 2013.

### **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 shall be 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 shall be conclusive evidence of the restriction or existence of the regulation and of the due making of it.

### **Licensing of Fishing**

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

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(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).

(2) No person shall 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) above in which the vessel is named.

(3) The prohibitions in paragraphs (1) and (2) shall 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) Subject to paragraph (9), a licence for dredging, fishing for or taking any of the prescribed species from a vessel shall be issued jointly to the applicant, who shall be the owner of the vessel, and the applicant's representative and shall be used only by those persons or, with the written authority of the Organisation and in accordance with any conditions contained in that authority, by a deputy nominated by them.

(5) No applicant who is the registered joint owner of a vessel shall 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.

(6) Subject to any directions given by the Scottish Ministers and the provisions of this Order, the Organisation may issue licences under paragraph (1) in such numbers and to such persons as it may determine and in particular 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.

(7) 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 any of the prescribed species at such times, in such manner and in such parts of the fishery as the Organisation may determine.

(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 shall, when so requested by any officer authorised by the Organisation and after production by that officer of written evidence of his authority if so required, produce the licence and shall 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 (4) 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.—(1) Any person to whom the Organisation proposes to issue a licence under the provisions of article 5 of this Order shall pay to the Organisation before or upon receipt of the licence a toll in respect of a combined licence (which authorises the dredging, fishing for and taking of any of the prescribed species) of £150 per annum.

(2) The Organisation may from time to time, and with the consent of the Scottish Ministers, vary the toll payable under this article, and introduce separate tolls in respect of each of the prescribed species for which dredging, fishing for or taking is authorised<sup>(a)</sup>.

#### **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<sup>(b)</sup> 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.

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(a) Section 3(b) of the Sea Fisheries (Shellfish) Act 1967 (“the 1967 Act”) enables the grantee of the fishery ( in this case, the Organisation), to levy such toll as is provided for, and subject to any restrictions and exceptions, as are imposed under an order made in terms of section 1(1) of that Act. Section 15(4) of the Sea Fisheries Act 1968 provides that provision in an order under section 1(1) of the 1967 Act which imposes a toll is to be construed as conferring on, in this case the Organisation, power (with the consent of the Scottish Ministers) to vary any such toll so imposed.

(b) 2007 c.7. Section 15 was amended by paragraph 158 of Schedule 17 to the Communications Act 2003 (c.21).

## **Rights of the Crown**

**11.**—(1) Nothing in this Order or in any restriction imposed or regulation made by the Committee shall 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 herein contained 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.

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

St Andrew's House,  
Edinburgh  
17th December 2009

*RICHARD LOCHHEAD*  
A member of the Scottish Executive

## EXPLANATORY NOTE

*(This note is not part of the Regulations)*

This Order, made under section 1 of the Sea Fisheries (Shellfish) Act 1967 (“the Act”) 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”) on the bed of the sea adjacent to the Shetland Islands for a period of 3 years (article 2) until 31st January 2013.

The situation and extent of the area within which the right is conferred is illustrated on the map which is described in article 2 of the Order. 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, and for the variation of this toll with the consent of the Scottish Ministers.

Article 7 confers on the Organisation power to create reserves in the fishery for certain purposes.

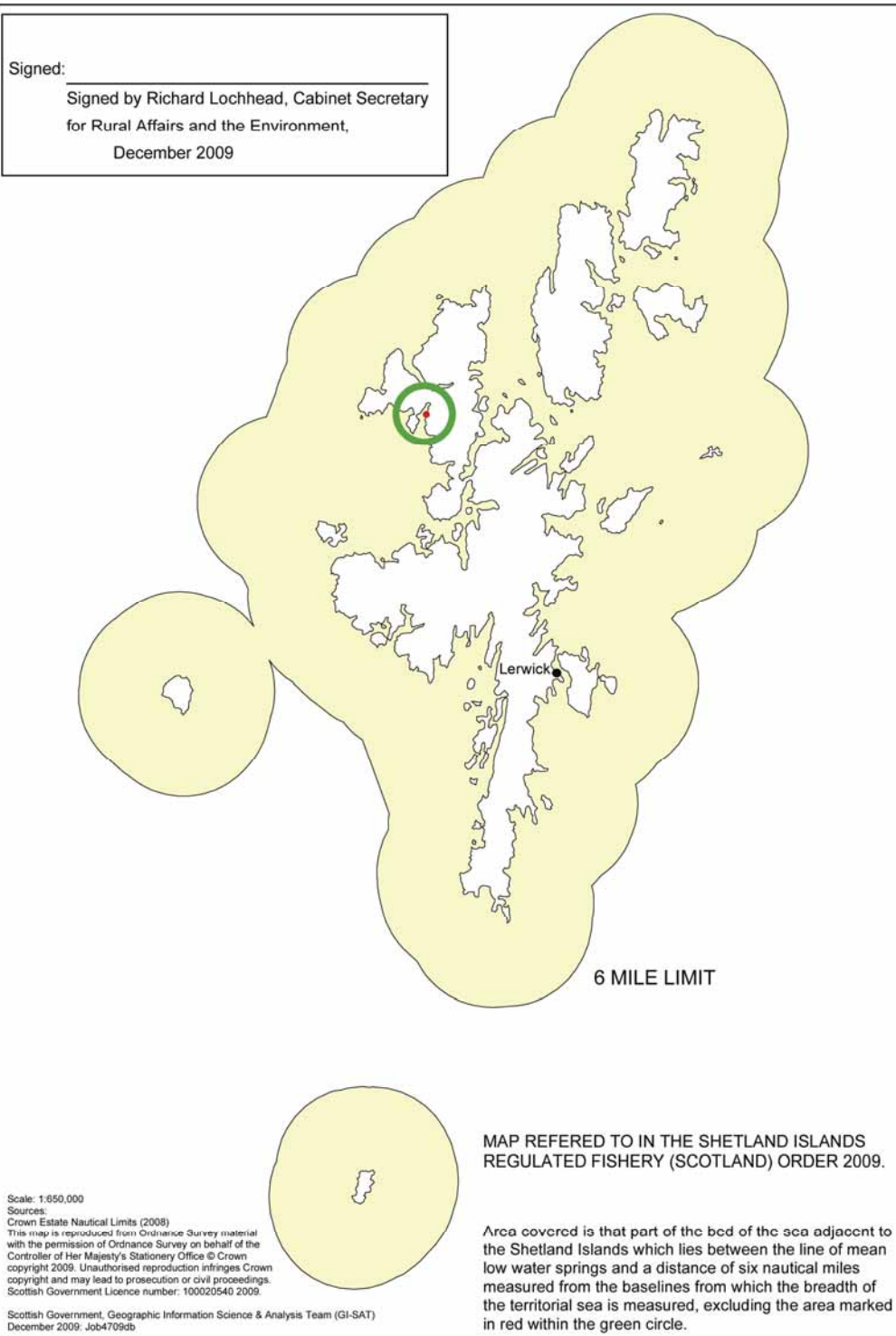
Article 8 gives the Organisation power to remove juvenile shellfish from one part of the fishery to another.

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 accounts of the Organisation relating to income and expenditure, and other information.

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

The Regulatory Impact Assessment relating to this Order is available from the Scottish Government’s Rural Directorate, Pentland House, 47 Robb’s Loan, Edinburgh, EH14 1TY.



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