



Marine and Coastal Access Act 2009

2009 CHAPTER 23

PART 7

FISHERIES

CHAPTER 3

MIGRATORY AND FRESHWATER FISH

Taking fish etc

215 Prohibited implements

- (1) In the [Salmon and Freshwater Fisheries Act 1975 \(c. 51\)](#), section 1 (prohibited implements) is amended as follows.
- (2) In subsection (1), in paragraph (a)—
 - (a) in sub-paragraph (iv) after “gaff,” insert “tailer,”;
 - (b) for “salmon, trout or freshwater fish” substitute “salmon, trout, eels, lampreys, smelt, shad, freshwater fish and any specified fish in any waters”.
- (3) In that subsection, in paragraph (b), for “salmon, trout or freshwater fish” substitute “any such fish in any waters”.
- (4) In that subsection, in paragraph (c), for “any salmon, trout or freshwater fish” substitute “any such fish in any waters”.
- (5) After that subsection insert—
 - “(1A) In this section “specified fish” means fish of such description as may be specified for the purposes of this section by order under section 40A below.
 - (1B) The appropriate national authority may by order amend subsection (1)(a) above so as to—

Status: This is the original version (as it was originally enacted).

- (a) add any instrument to it; or
- (b) remove any instrument for the time being specified in it.”

(6) After subsection (3) insert—

“(3A) References in this section to any waters include waters adjoining the coast of England and Wales to a distance of six nautical miles measured from the baselines from which the breadth of the territorial sea is measured.”

(7) The following are omitted—

- (a) in subsection (1), the words “Subject to subsection (4) below,”;
- (b) subsection (4).

216 Roe etc

(1) Section 2 of the [Salmon and Freshwater Fisheries Act 1975 \(c. 51\)](#) (roe, spawning and unclean fish, etc) is amended as follows.

(2) In subsection (1)—

- (a) for “salmon, trout or freshwater fish” substitute “salmon, trout, eels, lampreys, smelt, shad, freshwater fish or any specified fish in any waters”;
- (b) in paragraph (b), for “any roe of salmon or trout” substitute “any fish roe”.

(3) In subsection (2)—

- (a) after “subsections (3)” insert “, (3A)”;
- (b) in paragraph (a), for “salmon, trout or freshwater fish” substitute “salmon, trout, lamprey, smelt, shad, freshwater fish or specified fish in any waters”;
- (c) in paragraph (b), for “any salmon, trout or freshwater fish” substitute “any such fish”.

(4) After subsection (3) insert—

“(3A) Subsection (2) above does not apply where a person takes an immature freshwater fish in circumstances prescribed by byelaws.”

(5) In subsection (5), for “salmon, trout or freshwater fish” substitute “fish of any description”.

(6) After that subsection insert—

“(6) In this section “specified fish” means fish of such description as may be specified for the purposes of this section by order under section 40A below.

(7) Subsection (3A) of section 1 above applies for the purposes of this section.”

217 Licences to fish

(1) In section 25 of the [Salmon and Freshwater Fisheries Act 1975](#) (licences to fish), for subsection (1) substitute—

“(1) The Agency shall by means of a system of licensing regulate fishing by licensable means of fishing for—

- (a) salmon, trout, eels, lampreys, smelt and freshwater fish; and
- (b) fish of such other description as may be specified for the purposes of this section by order under section 40A below.

Status: This is the original version (as it was originally enacted).

- (1A) In this Act “licensable means of fishing” means any of the following—
- (a) rod and line;
 - (b) an historic installation;
 - (c) such other means of fishing as the appropriate national authority may by order specify.
- (1B) In this Act “historic installation” means any of the following—
- (a) a fixed engine certified in pursuance of the Salmon Fishery Act 1865 to be a privileged fixed engine;
 - (b) a fixed engine which was in use for taking salmon or migratory trout during the open season of 1861, in pursuance of an ancient right or mode of fishing as lawfully exercised during that open season, by virtue of any grant or charter or immemorial usage;
 - (c) a fishing weir or fishing mill dam which was lawfully in use on 6th August 1861 by virtue of a grant or charter or immemorial usage.”
- (2) In that section, in subsection (2), after “area or areas” insert “(or in waters of such description or descriptions)”.
- (3) In that section, in subsection (4), the words from “gaff” to “tailer or” are omitted.
- (4) In that section, subsections (5) and (6) are omitted.
- (5) In that section, at the end insert—
- “(10) For the purposes of this Part, the Agency may permit a person to take fish of any description in circumstances where he would for those purposes otherwise require a fishing licence.
- (11) Permission under subsection (10) above—
- (a) must be in writing;
 - (b) may be given generally or specifically;
 - (c) may be given subject to conditions.”
- (6) In Schedule 2 to that Act (licences)—
- (a) in paragraph 11, the words from “together” to the end are omitted;
 - (b) paragraph 12 is omitted.
- (7) In that Schedule, after paragraph 14 insert—

“Historic installations

- 14A (1) Where a fishing licence is granted in respect of an historic installation, the Agency may at any time, subject to this paragraph, impose conditions on its use pursuant to the licence.
- (2) Conditions under sub-paragraph (1) above are to be imposed by notice in writing to the person holding the licence.
- (3) A notice under sub-paragraph (1) above may be varied or revoked by a further such notice.

Status: This is the original version (as it was originally enacted).

- (4) The Agency may only impose conditions under sub-paragraph (1) above where it considers that it is necessary to do so for the protection of any fishery.”

218 Limitation of licences

- (1) Section 26 of the [Salmon and Freshwater Fisheries Act 1975 \(c. 51\)](#) (limitation of fishing licences) is amended as follows.

- (2) In subsection (1)—

- (a) at the beginning insert “Subject to this section”;
- (b) in paragraph (a), for the words from “to be issued” to “rod and line” substitute “of any description to be issued pursuant to section 25 above in any year in relation to that area or those areas”.

- (3) After that subsection insert—

“(1A) The Agency may only make an order under subsection (1) above in relation to licences for fishing for fish of any description if it is satisfied that it is necessary to do so for the purposes of—

- (a) maintaining, improving or developing fisheries of any fish referred to in section 25(1) above; or
- (b) protecting the marine or aquatic environment from significant harm.

(1B) The Agency may not make an order under subsection (1) above in relation to licences for fishing for fish by—

- (a) rod and line; or
- (b) an historic installation.”

- (4) In subsection (3), for “shall cause” substitute “may cause”.

- (5) For subsections (4) and (5) substitute—

“(4) If it appears to the Agency that an order under this section would prevent a person from fishing in circumstances where that person is wholly dependent on the fishing for his livelihood, the Agency may pay that person such amount by way of compensation as it considers appropriate.”

219 Authorisation to fish

- (1) In the [Salmon and Freshwater Fisheries Act 1975 \(c. 51\)](#), in the heading to Part 4, after “Fishing licences” insert “and authorisations”.

- (2) After section 27 of that Act insert—

“27A Authorisation of fishing otherwise than by licensable means

- (1) The Agency may authorise a person to use any means, other than a licensable means of fishing, to fish for—

- (a) salmon, trout, eels, lampreys, smelt and freshwater fish; and
- (b) fish of such other description as may be specified for the purposes of this section by order under section 40A below.

Status: This is the original version (as it was originally enacted).

- (2) An application for an authorisation under this section must be in such form as the Agency may specify.
- (3) An authorisation under this section must be in writing, but subject to that may be in such form as the Agency may determine.
- (4) An authorisation under this section—
 - (a) must be granted for a specified period of time;
 - (b) may be granted to more than one person;
 - (c) may be limited as to the waters in respect of which it is granted;
 - (d) may be subject to conditions.
- (5) The Agency may at any time, on application or on its own initiative—
 - (a) amend an authorisation under this section;
 - (b) revoke an authorisation under this section.
- (6) In determining whether to grant, amend or revoke an authorisation the Agency must consider the effect of doing so on—
 - (a) fisheries in the area to which the authorisation relates; and
 - (b) the aquatic or marine environment in that area.
- (7) An authorisation under this section granted to a body corporate—
 - (a) may, if the authorisation so specifies, apply in relation to any individual acting on behalf of that body (as well as to the body corporate); or
 - (b) may, if the authorisation so specifies, apply only in relation to individuals named in the authorisation when acting on behalf of the body (as well as to the body corporate).
- (8) The Agency may charge a fee for the grant of an authorisation under this section.
- (9) Where the Agency determines standard fees for the grant of authorisations of particular descriptions, it must publish them.
- (10) Where—
 - (a) the Agency has determined a standard fee for the grant of an authorisation of a particular description, but
 - (b) the Agency considers, in any case, that special circumstances apply to the grant of an authorisation of that description,it may charge a fee of another amount.

27B Unauthorised fishing etc

- (1) A person is guilty of an offence if, by any means other than a licensable means of fishing, he fishes for or takes any fish in circumstances where—
 - (a) the fishing or taking may be authorised under section 27A above, but
 - (b) he is not authorised to fish for or take the fish under that section (or is so authorised but the fishing or taking is in breach of any condition of his authorisation).

Status: This is the original version (as it was originally enacted).

(2) A person is guilty of an offence if he has an instrument in his possession, other than an instrument which is a licensable means of fishing, with intent to use it to fish for or take fish in circumstances where—

- (a) the fishing or taking may be authorised under section 27A above, but
- (b) he is not authorised to fish for or take the fish under that section (or is so authorised but the fishing or taking would be in breach of any condition of an authorisation under that section)."

(3) In Schedule 4 to that Act (offences), in the table in paragraph 1(2), at the end insert—

“Section 27B	Unauthorised fishing etc	(a) Summarily	A fine not exceeding £50,000.
		(b) On indictment	A fine.”

220 Enforcement

(1) Part 5 of the [Salmon and Freshwater Fisheries Act 1975 \(c. 51\)](#) (administration and enforcement) is amended as follows.

(2) In section 31 (powers of search), in subsection (1)—

- (a) in paragraph (b), the words “in contravention of this Act” are omitted;
- (b) in paragraph (c)(i), the words “which has been caught in contravention of this Act” are omitted;
- (c) in paragraph (d) after “fish” insert “(or a sample of any fish)”;
- (d) after paragraph (d) insert—

“(e) may disable or destroy any dam, fishing weir, fishing mill dam or fixed engine which he has reasonable cause to suspect of having operated or been used, or of being likely to be used, in contravention of this Act.”

(3) In section 32 (power to enter lands), subsection (1)(ii) and the preceding “or” are omitted.

(4) In section 33 (orders and warrants to enter suspected premises), in subsection (2), for the words from “seize” to the end substitute—

- “(a) seize any illegal net or other instrument, or any net or other instrument suspected to have been illegally used, that may be found on the premises;
- (b) seize any fish suspected to have been illegally taken or sold that may be found on the premises; or
- (c) disable or destroy any dam, fishing weir, fishing mill dam or fixed engine suspected to have operated or been used illegally that may be found on the premises.”

(5) In that section, in subsection (3), for “one week” substitute “three months”.

(6) In section 34 (power to apprehend persons fishing illegally etc)—

- (a) in the heading, the words “at night” are omitted;
- (b) the words from “between the end” to “following morning” are omitted.

(7) In section 35 (power to require production of fishing licences), in subsection (1)—

- (a) for “being about to” substitute “intending to”;
 - (b) for “to have within the preceding half hour” substitute “of having recently”;
 - (c) after “in any area,” insert “in circumstances where the fishing would require a licence or authorisation under this Act or a licence under section 16 of the Wildlife and Countryside Act 1981,”.
- (8) In that section, subsection (2) is omitted.
- (9) In Schedule 4 (offences), in paragraph 1(2), in the fourth column of the table, in the entry relating to section 5(1), for “The prescribed sum” substitute “£50,000”.

221 Power to specify fish

- (1) After section 40 of the [Salmon and Freshwater Fisheries Act 1975 \(c. 51\)](#) insert—

“40A Power to specify fish

The appropriate national authority may by order specify fish of any description for the purposes of any or all of the following—

- (a) section 1, 2, 25 or 27A above;
 - (b) section 32 of the Salmon Act 1986;
 - (c) paragraph 6 of Schedule 25 to the Water Resources Act 1991;
 - (d) section 6(6) of the Environment Act 1995.”
- (2) In section 41 of that Act (interpretation), in subsection (1), after the definition of “the Agency” insert—
- ““the appropriate national authority” means—
- (a) the Secretary of State, except in relation to Wales (within the meaning of the Government of Wales Act 2006);
 - (b) in relation to Wales (within that meaning), the Welsh Ministers;”.

222 Order-making powers: supplementary

After section 40A of the [Salmon and Freshwater Fisheries Act 1975](#) (as inserted by section 221 above) insert—

“40B Orders: supplementary

- (1) An order under section 1, 25 or 40A above may make different provision for different purposes (and, in particular, different provision in relation to different areas or waters).
- (2) Such an order is to be made by statutory instrument.
- (3) A statutory instrument containing such an order is subject to annulment in pursuance of a resolution of—
 - (a) either House of Parliament, in the case of an order made by the Secretary of State;
 - (b) the National Assembly for Wales, in the case of an order made by the Welsh Ministers.”

Status: This is the original version (as it was originally enacted).

223 Definitions relating to fish

- (1) In section 41 of the [Salmon and Freshwater Fisheries Act 1975](#) (interpretation), subsection (1) is amended as follows.
- (2) For the definition of “eels” substitute—

““eels” means any fish of the species *Anguilla anguilla*, and includes elvers and the fry of eels;”.
- (3) After that definition insert—

““fish” includes crustaceans and molluscs;”.
- (4) After the definition of “foreshore” insert—

““freshwater crayfish” means any freshwater decapod crustacean of the Families Astacidae, Cambaridae or Parastacidae;”.
- (5) For the definition of “freshwater fish” substitute—

““freshwater fish” means any fish habitually living in fresh water, exclusive of—

 - (a) salmon, trout, eels, lampreys, smelt and any other fish of a kind which migrates from fresh to salt water, or from salt to fresh water, in order to spawn;
 - (b) any kind of crustacean other than freshwater crayfish and Chinese mitten crabs (*Eriocheir sinensis*); and
 - (c) any kind of mollusc;”.
 - (6) After the definition of “screen” insert—

““smelt” means any fish of the species *Osmerus eperlanus*;”.