

2004 No. 3397

**SEA FISHERIES, ENGLAND**

**RESTRICTION OF SEA FISHING**

**The South-west Territorial Waters (Prohibition of Pair Trawling)  
Order 2004**

<i>Made</i> - - - -	<i>22nd December 2004</i>
<i>Laid before Parliament</i>	<i>23rd December 2004</i>
<i>Coming into force</i> - -	<i>24th December 2004</i>

The Secretary of State for Environment, Food and Rural Affairs and the Secretary of State concerned with the sea fishing industry in Northern Ireland, in exercise of the powers conferred by sections 3, 5(1), 5A, and 15(3) of the Sea Fish (Conservation) Act 1967(a), and now vested in them(b), make the following Order:

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- (a) 1967 c.84, as extended to Guernsey by the Sea Fish (Conservation) (Channel Islands) Order 1981 (S.I. 1981/737), as modified by the Sea Fish (Conservation) (Channel Islands) (Amendment) Order 2001 (S.I. 2001/959). Section 1 was substituted by the Fisheries Act 1981 (c. 29), section 19(1) and the Merchant Shipping Act 1995 (c. 21), Schedule 13, paragraph 38(a) and the Scotland Act 1998 (Consequential Modifications) (No. 2) Order 1999 (S.I. 1999/1820), Schedule 2, paragraph 43(1), (2) and (3). Section 3 was amended by the Fishery Limits Act 1976 (c.86), Schedule 2, paragraph 16(1), the Inshore Fishing (Scotland) Act 1984 (c. 26), Schedule 1 and S.I. 1999/1820, Schedule 2, paragraph 43(1), (2) and (4). Section 5(1) was amended by the Fisheries Act 1981, section 22(1). Section 5A was inserted by the Environment Act 1995, section 103(1). Section 15(3) was substituted by the Sea Fisheries Act 1968 (c. 77), Schedule 1, paragraph 38(3) and amended by the Fishery Limits Act 1976 (c. 86), Schedule 2, paragraph 16(1) and S.I. 1999/1820, Schedule 2, paragraph 43(2)(b). See section 22(2)(a) for definitions of “the Ministers” for the purposes of sections 3 and 15(3); section 22(2) was amended by the Fisheries Act 1981 (c. 29), sections 19(2)(d) and 45(b) and (c) and by S.I. 1999/1820, Schedule 2, paragraph 43(12).
- (b) By virtue of article 2(a) of the National Assembly for Wales (Transfer of Functions) Order 1999 (S.I. 1999/672) the functions exercisable under sections 1 and 3 of the 1967 Act were transferred to the National Assembly in so far as exercisable in relation to Wales (defined in section 155(1) of the Government of Wales Act 1998 (c. 38) as including “the sea adjacent to Wales out as far as the seaward boundary of the territorial sea”); in respect of waters beyond Wales these functions remain exercisable by the Ministers. Section 53 of the Scotland Act 1998 (c.46) as read with article 3(1) and Schedule 1 of the Scotland Act 1998 (Concurrent Functions) Order 1999 (S.I. 1999/1592) provide for the functions exercisable under sections 1(3), (4) and (6), 3(1), (3) and (4) and 15(3) of the 1967 Act to be exercised by the Ministers, concurrently with Scottish Ministers, in relation to relevant British fishing boats within the Scottish zone, and Scottish fishing boats within British fishery limits but outside the Scottish zone. By virtue of article 2(1) of, and the Schedule to, the Transfer of Functions (Agriculture and Fisheries) Order 2000 (S.I. 2000/1812) any remaining functions of the Secretaries of State for Scotland and Wales under sections 1, 3 and 15(3) of the 1967 Act were transferred to the Minister of Agriculture, Fisheries and Food. By virtue of paragraph 2 of Schedule 1 to the Sea Fisheries (Northern Ireland) Order 2002 (S.I. 2002/790), an order under section 1 or 3 of the 1967 Act may make provision applying only to relevant British fishing boats other than Northern Ireland fishing boats. By virtue of paragraph 3(1)(a) and (b) of that Schedule the functions of the Ministers under sections 1 (of making an order prescribing the minimum size of fish which may be carried on a Northern Ireland fishing boat or within the Northern Ireland zone) and 3 (of making an order requiring nets and other fishing gear carried in Northern Ireland fishing boats or in the Northern Ireland zone to comply with prescribed requirements) of the 1967 Act were transferred to the Department of Agriculture and Rural Development but, by virtue of paragraph 3(2), the Ministers retain a concurrent function to make an order in relation to British fishing boats, other than Northern Ireland fishing boats, within the Northern Ireland zone and in relation to Northern Ireland fishing boats within British fishery limits but outside the Northern Ireland zone. The functions of the Minister of Agriculture, Fisheries and Food and one or more named Secretaries of State (however described) acting jointly were transferred to the Secretary of State for Environment, Food and Rural Affairs and the one or more Secretaries of State acting jointly by virtue of article 2(5) of the Ministry of Agriculture, Fisheries and Food (Dissolution) Order 2002 (S.I. 2002/794).

## **Citation, commencement and extent**

1.—(1) This Order may be cited as the South-west Territorial Waters (Prohibition of Pair Trawling) Order 2004 and shall come into force on 24th December 2004.

(2) Subject to paragraph (3), this Order shall not form part of the law of Scotland or Northern Ireland or apply in Wales.

(3) Nothing in paragraph (2) shall prejudice the effect of section 14 of the Sea Fish (Conservation) Act 1967 in relation to, or for purposes incidental to, any provision which creates an offence.

## **Interpretation**

2.—(1) In this Order—

“pair trawling” means fishing, by two or more vessels, carried out by a net or combination of nets; and

“the south-west territorial waters” means the sea up to 12 nautical miles from the baseline from which the breadth of the territorial sea adjacent to England is measured, contained within the area known as ICES statistical division VII e (Western English Channel) (a) namely, the waters bounded by a line beginning at a point on the south coast of England at 2°00' west longitude; then in a southerly and westerly direction along the coast of England to a point on the south-west coast at 50°00' north latitude; then due west to 7°00' west longitude; then due south to 49°30' north latitude; then due east to 5°00' west longitude; then due south to 48°00' north latitude; then due east to the coast of France; then in a northerly and north-easterly direction along the coast of France to Cap de la Hague; then due north to the point of beginning.

(2) In this Order—

(a) the term “within relevant British fishery limits” does not include—

(i) the Northern Ireland zone;

(ii) the territorial sea adjacent to Wales;

(iii) the territorial sea adjacent to the Isle of Man;

(iv) the territorial sea adjacent to Jersey; and

(v) seas within British fishery limits adjacent to Guernsey, as defined by section 8 of the Fishery Limits Act 1976(b) as extended to Guernsey; and

(b) any reference to any relevant British fishing boat “wherever it may be” does not include a fishing boat in the territorial sea adjacent to Wales.

## **Prohibition on pair trawling**

3.—(1) Subject to paragraph 2, no British fishing boat shall participate in pair trawling for sea fish in the south-west territorial waters.

(2) Paragraph 1 shall not apply to—

(a) fishing boats using nets with mesh in the cod end, in the mesh size ranges 16mm to 79mm inclusive; or

(b) fishing boats using nets—

(i) with mesh sizes in the cod end greater than 79mm; and

(ii) incorporating any individual mesh, irrespective of its position within the net, greater than 300mm.

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(a) A reference to the relevant statistical sub-area as defined by the International Council for the Exploration of the Sea.

(b) 1976 c.86; see also paragraph 3(c) of the Schedule to the Fishery Limits Act (Guernsey) Order 1989 (S.I. 1989/2407)

### **Prohibition on carrying towed gear**

4.—(1) No British fishing boat shall carry pair trawling gear, other than that specified in article 3(2), in any part of the south-west territorial waters unless every part of that gear is lashed and stowed.

(2) For the purposes of paragraph 1 above, “lashed and stowed”, in relation to pair trawling gear, means—

- (a) nets, weights and similar gear not connected to trawl boards or towing and hauling wires and ropes; and
- (b) if on or above deck, securely lashed to some part of the superstructure of the fishing boat.

### **Powers of British sea-fishery officers**

5.—(1) For the purposes of enforcing this Order a British sea fishery officer may exercise the powers conferred by this article in relation to—

- (a) any relevant British fishing boat wherever it may be; and
- (b) any other British fishing boat which is within relevant British fishery limits.

(2) He may go on board the boat, with or without persons assigned to assist him in his duties, and for that purpose may require the boat to stop and do anything else which will facilitate the boarding of the boat.

(3) He may require the attendance of the master and other persons on board the boat and may make any examination and inquiry which appears to him to be necessary for the purpose of enforcing this Order and, in particular—

- (a) may examine any fish on the boat and the equipment of the boat, including the fishing gear, and require persons on board the boat to do anything which appears to him to be necessary for facilitating the examination;
- (b) may require any person on board the boat to produce any document relating to the boat, to its fishing operations or other operations ancillary thereto or to the persons on board which is in his custody or possession and may take copies of any such document;
- (c) for the purpose of ascertaining whether the master, owner or charterer of the boat has committed an offence under the Sea Fish (Conservation) Act as read with this Order, may search the boat for any such document and may require any person on board the boat to do anything which appears to him to be necessary for facilitating the search; and
- (d) where the boat is one in relation to which he has reason to suspect that such an offence has been committed, may seize and detain any such document produced to him or found on board for the purpose of enabling the document to be used as evidence in proceedings for the offence;

but nothing in sub-paragraph (d) shall permit any document required by law to be carried on board the boat to be seized and detained except while the boat is detained in a port.

(4) Where it appears to a British sea-fishery officer that a contravention of any provision of this Order has at any time taken place, he may—

- (a) require the master of the boat in relation to which the contravention took place to take, or himself take, the boat and its crew to the port which appears to him to be the nearest convenient port; and
- (b) detain or require the master to detain the boat in the port;

and where such an officer detains or requires the detention of a boat he shall serve on the master a notice in writing stating that the boat will be or is required to be detained until the notice is withdrawn by the service on the master of a further notice in writing signed by a British sea-fishery officer.

22nd December 2004

*Ben Bradshaw*  
Parliamentary Under Secretary of State  
Department of Environment, Food and Rural Affairs

22nd December 2004

*Ian Pearson*  
Parliamentary Under Secretary of State  
Northern Ireland Office

## **EXPLANATORY NOTE**

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

This Order applies to British fishing boats.

This Order prohibits fishing using specified pair trawls in the south-west territorial waters of England (article 3). Pair trawling is a method of fishing by two or more vessels, carried out by a net or a combination of nets (article 2(1)). The carriage of pair trawling nets within the south-west territorial sea is prohibited unless all parts of the relevant gear are lashed and stowed (article 4).

The Order comes into force on 24th December 2004.

If any boat contravenes any prohibition under this Order, the master, owner and charterer is guilty of an offence and is liable to a fine (section 11(1)(a) and (b) of the Sea Fish (Conservation) Act 1967). The court may also order forfeiture of fish, nets or other fishing gear (section 11(2)-(3) of the 1967 Act).

The Order confers powers of enforcement on British sea fishery officers for the purposes of enforcing this Order. These powers may be exercised in relation to any British fishing boat within relevant British fishery limits, and in relation to a relevant British fishing boat wherever it may be (article 5).





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