
SCOTTISH STATUTORY INSTRUMENTS

2016 No.

ENVIRONMENTAL PROTECTION

MARINE MANAGEMENT

The Small Isles Marine Conservation Order 2016

<i>Made</i>	- - - -	2016
<i>Laid before the Scottish Parliament</i>		2016
<i>Coming into force</i>	- -	2017

The Scottish Ministers make the following Order in exercise of the powers conferred by sections 85(1)(a), (2) and (4), 86(1) and (3) and 92(1) and (5) of the Marine (Scotland) Act 2010^(a) and all other powers enabling them to do so.

In accordance with section 85(1)(a) of that Act, this Order is made for the purpose of furthering the stated conservation objectives for the Small Isles MPA^(b) in so far as the conservation objectives relate to black guillemot, burrowed mud, circalittoral sand and mud communities, fan mussel aggregations, horse mussel beds, northern feather star aggregations on mixed substrata, northern sea fan and sponge communities and white cluster anemones^(c).

In accordance with section 87(2) of that Act, the Scottish Ministers have sent a copy of a draft of this Order to persons whom they considered were likely to be interested in or affected by the making of this Order.

In accordance with section 87(3) of that Act, the Scottish Ministers have placed a copy of a draft of this Order in such place as they considered was likely to be most convenient for the purpose of enabling it to be inspected by persons likely to be affected by the making of this Order.

In accordance with section 87(6) and (7) of that Act, the Scottish Ministers have published notice of their proposal to make this Order.

Citation and commencement

1. This Order may be cited as the Small Isles Marine Conservation Order 2016 and comes into force on 2017.

(a) 2010 asp 5.

(b) The Small Isles MPA was designated by the Small Isles Nature Conservation Marine Protected Area Order 2014 (“the 2014 Order”). The 2014 Order is available at <http://www.gov.scot/Resource/0045/00457011.pdf>

(c) The conservation objectives are stated in article 5 of the 2014 Order and the protected features are stated in Schedule 2 to the 2014 Order.

Interpretation

2. In this Order—

“boundary line” means a boundary delineated by a line as described in the Schedule;

“co-ordinate” means a co-ordinate of latitude and longitude according to the World Geodetic System 1984(a);

“the protected area” means the area described in article 3; and

“the Small Isles MPA” means the area designated as a nature conservation marine protected area by, and described in article 3 of, the Small Isles Nature Conservation Marine Protected Area Order 2014(b).

The protected area

3. For the purposes of this Order, the area protected by it is—

(a) the seabed and subsoil; and

(b) all of the water covering the seabed,

within the Small Isles MPA.

Prohibited and regulated activities

4.—(1) Paragraphs (2) and (3) apply in order to further the stated conservation objectives of the Small Isles MPA in relation to black guillemot, burrowed mud, circalittoral sand and mud communities, fan mussel aggregations, horse mussel beds, northern feather star aggregations on mixed substrata, northern sea fan and sponge communities and white cluster anemones.

(2) A person must not deploy (by any means) or use any fishing gear within the protected area.

(3) While a fishing vessel is within the protected area the master of the vessel must ensure that any fishing gear carried on board the vessel is properly lashed and stowed in such a way that it may not be readily used.

(4) Paragraphs (2) and (3) do not apply to the deployment or use of—

(a) any fishing gear within the protected area for the purpose of saving life, or for the purpose of securing the safety of a vessel, aircraft or marine structure; or

(b) a mechanical dredge or a demersal trawl (other than a beam trawl) by a vessel with an engine power not exceeding 500 kilowatts, and registered as such under Part II of the Merchant Shipping Act 1995(c), within those parts of the protected area which are described in the Schedule.

(5) In this article—

“beam trawl” means a type of demersal trawl which has its mouth extended by a beam, bar or other rigid device;

“creel” means a basket, small cage, pot, receptacle or container with one or more openings or entrances which may be baited and placed on the seabed for the purpose of catching fish or shellfish;

“demersal seine net” means an encircling net, attached to ropes, which is laid on, and towed across, the seabed;

“demersal trawl” means a net which is towed along the seabed;

(a) The World Geodetic System 1984 is defined at paragraph 2.1 of the United States National Imagery and Mapping Agency Technical Report TR8350.2, third edition, amendment 1 of 3rd January 2000 entitled “Department of Defense World Geodetic System 1984” (<http://earth-info.nga.mil/GandG/publications/tr8350.2/wgs84fin.pdf>)

(b) The Small Isles Nature Conservation Marine Protected Area Order 2014 (“the 2014 Order”) was made by the Scottish Ministers under powers within the Marine (Scotland) Act 2010, including section 67(1)(a). By virtue of section 165(3) of that Act the 2014 Order is not a Scottish statutory instrument but a Scottish Ministerial Order. The 2014 Order is available at <http://www.gov.scot/Resource/0045/00457011.pdf>

(c) 1995 c.21.

“dredge” means—

- (a) a mechanical dredge; or
- (b) a suction dredge which raises material, fish and shellfish from the seabed by the use of a solids pump, air lift or water jets which dig into the seabed;

“fishing gear” means any beam trawl, demersal seine net, demersal trawl, dredge, passive gear, and any rope or wire associated with the gear;

“parlour creel” means a creel which has at least two compartments, entry to one or more of which is likely to be gained only through an internal connection from another compartment; and

“passive gear” means any fishing gear or catch operation which does not require an active movement of the gear, including—

- (a) gillnets, trammel nets and trap nets; and
- (b) drifting gillnets, and drifting trammel nets, any of which may be equipped with anchoring, floating and navigational gear,

but excluding long lines, lines, creels and parlour creels.

Authorisation for the purpose of scientific research

5.—(1) The Scottish Ministers may, following written application to them, issue a permit authorising the activity mentioned in paragraph (2) which would, apart from any such permit, be unlawful under this Order.

(2) The activity mentioned in this paragraph is the deployment or use of any fishing gear for the purpose of scientific research.

(3) The Scottish Ministers must not issue a permit unless they are satisfied that there is no significant risk of the activity hindering the achievement of the stated conservation objectives for the Small Isles MPA.

(4) In this article, “fishing gear” has the same meaning as in article 4(5).

Disapplication of exception to the offences under sections 94 and 95 of the Marine (Scotland) Act 2010

6.—(1) Paragraph (b) of section 97(1) of the 2010 Act does not apply in relation to—

- (a) an offence under section 94 of the 2010 Act of contravening this Order;
- (b) an offence under section 95 of the 2010 Act committed in relation to the protected area.

(2) In this article “the 2010 Act” means the Marine (Scotland) Act 2010.

A member of the Scottish Government

St Andrew’s House,
Edinburgh

2016

SCHEDULE

Articles 2 and 4(4)(b)

AREAS WHERE MECHANICAL DREDGING AND DEMERSAL TRAWLING (OTHER THAN BEAM TRAWLING) BY CERTAIN SPECIFIED VESSELS IS ALLOWED

For the purposes of articles 2 and 4(4)(b) the parts of the protected area described in this Schedule are—

- (a) the area which is described in Part 1;
- (b) the area which is described in section A of Part 2, but excepting from the area described in section A the area which is described in section B of that Part;
- (c) the area which is described in Part 3.

In each case the areas described in this Schedule are enclosed by the boundary lines which are described by reference to the co-ordinates of the points joined by a line and a topographical description of the line

PART 1

<i>Boundary Line</i>	<i>Set of co-ordinates of points which the boundary line joins</i>	<i>Topographic description of boundary line</i>
1	A to B	Geodesic line
2	B to C	Geodesic line
3	C to D	Geodesic line
4	D to E	Geodesic line
5	E to A	Geodesic line

Where—

- “A” is 56°58.880’N, 006°50.461’W;
- “B” is 57°01.973’N, 006°47.942’W;
- “C” is 57°01.964’N, 006°45.330’W;
- “D” is 57°00.881’N, 006°46.029’W; and
- “E” is 56°58.854’N, 006°49.087’W;

PART 2

SECTION A

<i>Boundary Line</i>	<i>Set of co-ordinates of points which the boundary line joins</i>	<i>Topographic description of boundary line</i>
1	F to G	Geodesic line
2	G to H	Geodesic line
3	H to I	Geodesic line
4	I to J	Geodesic line
5	J to K	Geodesic line
6	K to L	Geodesic line
7	L to M	Geodesic line

8	M to N	Geodesic line
9	N to O	Geodesic line
10	O to P	Geodesic line
11	P to Q	Geodesic line
12	Q to R	Geodesic line
13	R to S	Geodesic line
14	S to T	Geodesic line
15	T to U	Geodesic line
16	U to V	Geodesic line
17	V to W	Geodesic line
18	W to X	Geodesic line
19	X to Y	Geodesic line
20	Y to Z	Geodesic line
21	Z to AA	Geodesic line
22	AA to AB	Geodesic line
23	AB to AC	Mean high water spring tide around east coast of Rum
24	AC to AD	Geodesic line
25	AD to AE	Geodesic line
26	AE to AF	Geodesic line
27	AF to AG	Geodesic line
28	AG to AH	Geodesic line
29	AH to AI	Geodesic line
30	AI to AJ	Geodesic line
31	AJ to AK	Geodesic line
32	AK to AL	Geodesic line
33	AL to AM	Geodesic line
34	AM to AN	Geodesic line
35	AN to AO	Geodesic line
36	AO to AP	Mean high water spring tide
37	AP to AQ	Geodesic line
38	AQ to AR	Geodesic line
39	AR to F	Geodesic line

Where—

“F” is 57°04.591’N, 006°43.187’W;

“G” is 57°08.145’N, 006°33.950’W;

“H” is 57°08.342’N, 006°32.627’W;

“I” is 57°07.144’N, 006°31.984’W;

“J” is 57°07.114’N, 006°24.224’W;

“K” is 57°06.515’N, 006°22.801’W;

“L” is 57°06.735’N, 006°20.827’W;

“M” is 57°07.525’N, 006°21.224’W;

“N” is 57°09.125’N, 006°19.963’W;

“O” is 57°09.575’N, 006°16.690’W;

“P” is 57°09.098’N, 006°16.447’W;

“Q” is 57°06.749’N, 006°19.163’W;

“R” is 57°06.389’N, 006°18.981’W;

“S” is 57°04.522’N, 006°15.191’W;
 “T” is 57°04.543’N, 006°14.170’W;
 “U” is 57°05.469’N, 006°12.951’W;
 “V” is 57°06.739’N, 006°12.150’W;
 “W” is 57°03.778’N, 006°05.170’W;
 “X” is 57°02.391’N, 006°05.122’W;
 “Y” is 56°54.874’N, 006°17.596’W;
 “Z” is 56°55.250’N, 006°23.748’W;
 “AA” is 56°57.482’N, 006°27.973’W;
 “AB” is 56°58.492’N, 006°23.568’W;
 “AC” is 57°03.337’N, 006°20.768’W;
 “AD” is 57°03.322’N, 006°23.139’W;
 “AE” is 57°03.665’N, 006°23.945’W;
 “AF” is 57°04.381’N, 006°23.263’W;
 “AG” is 57°04.537’N, 006°23.959’W;
 “AH” is 57°04.679’N, 006°25.776’W;
 “AI” is 57°04.439’N, 006°27.602’W;
 “AJ” is 57°03.740’N, 006°27.884’W;
 “AK” is 57°03.127’N, 006°27.926’W;
 “AL” is 57°03.282’N, 006°29.166’W;
 “AM” is 57°04.354’N, 006°28.977’W;
 “AN” is 57°04.299’N, 006°29.444’W;
 “AO” is 57°04.113’N, 006°29.548’W;
 “AP” is 57°03.625’N, 006°35.447’W;
 “AQ” is 57°05.171’N, 006°36.137’W; and
 “AR” is 57°05.237’N, 006°37.279’W;

SECTION B

<i>Boundary Line</i>	<i>Set of co-ordinates of points which the boundary line joins</i>	<i>Topographic description of boundary line</i>
1	AS to AT	Geodesic line
2	AT to AU	Geodesic line
3	AU to AV	Geodesic line
4	AV to AW	Geodesic line
5	AW to AS	Geodesic line

Where—

“AS” is 57°04.475’N, 006°11.894’W;
 “AT” is 57°04.680’N, 006°10.360’W;
 “AU” is 57°02.960’N, 006°06.536’W;
 “AV” is 57°02.630’N, 006°08.722’W; and
 “AW” is 57°03.050’N, 006°12.141’W;

PART 3

<i>Boundary Line</i>	<i>Set of co-ordinates of points which the boundary line joins</i>	<i>Topographic description of boundary line</i>
1.	AX to AY	Geodesic line
2.	AY to AZ	Geodesic line
3.	AZ to BA	Geodesic line
4	BA to BB	Geodesic line
5	BB to BC	Geodesic line
6	BC to BD	Geodesic line
7	BD to BE	Geodesic line
8	BE to BF	Geodesic line
9	BF to BG	Geodesic line
10	BG to BH	Geodesic line
11	BH to BI	Geodesic line
12	BI to BJ	Geodesic line
13	BJ to BK	Geodesic line
14	BK to BL	Geodesic line
15	BL to AX	Geodesic line

Where—

“AX” is 56°51.683’N, 006°49.959’W;

“AY” is 56°52.370’N, 006°50.185’W;

“AZ” is 56°54.576’N, 006°42.342’W;

“BA” is 56°58.008’N, 006°40.327’W;

“BB” is 56°59.079’N, 006°37.867’W;

“BC” is 57°02.347’N, 006°34.334’W;

“BD” is 57°03.160’N, 006°32.894’W;

“BE” is 57°03.148’N, 006°32.430’W;

“BF” is 57°02.580’N, 006°32.453’W;

“BG” is 57°02.317’N, 006°31.128’W;

“BH” is 57°01.024’N, 006°30.464’W;

“BI” is 57°00.881’N, 006°32.039’W;

“BJ” is 56°57.237’N, 006°29.862’W;

“BK” is 56°56.031’N, 006°39.137’W; and

“BL” is 56°53.367’N, 006°42.337’W;

EXPLANATORY NOTE

(This note is not part of the Order)

Article 11(1) of Regulation (EU) No 1380/2013 of the European Parliament and of the Council on the Common Fisheries Policy (OJ L 354, 28.12.2013, p.22) empowers EU member States to adopt conservation measures which are necessary for compliance with obligations under EU environmental legislation.

The Small Isles Nature Conservation Marine Protected Area Order 2014 (“the 2014 Order”) designated that part of the Scottish marine area which is adjacent to the Small Isles as a nature conservation marine protected area (“Small Isles MPA”).

This Order furthers the stated conservation objectives for the Small Isles MPA insofar as they relate to black guillemot, burrowed mud, circalittoral sand and mud communities, fan mussel aggregations, horse mussel beds, northern feather star aggregations on mixed substrata, northern sea fan and sponge communities and white cluster anemones.

Article 3 describes the area protected by this Order (“the protected area”). It is the area which is designated under the 2014 Order as the Small Isles MPA.

Article 4 prohibits and regulates activities within the protected area.

Article 4(2) provides that a person must not deploy or use any fishing gear within the protected area. The term “fishing gear” is defined in article 4(5) of the Order.

Article 4(3) regulates the storage of fishing gear on fishing vessels within the protected area.

Article 4(4) provides that the provision made by the Order in prohibiting and regulating activities is subject to certain specified exceptions. Article 4(4)(a) provides that the prohibitions and regulations do not apply to activities carried out in the protected area for the purpose of saving life or for the purpose of securing the safety of a vessel, aircraft or marine structure. Article 4(4)(b) provides that mechanical dredging and demersal trawling (other than beam trawling) by vessels with engines, the power of which do not exceed 500 kilowatts and registered as such under Part II of the Merchant Shipping Act 1995, is permitted within certain specified parts of the protected area, as described in the Schedule.

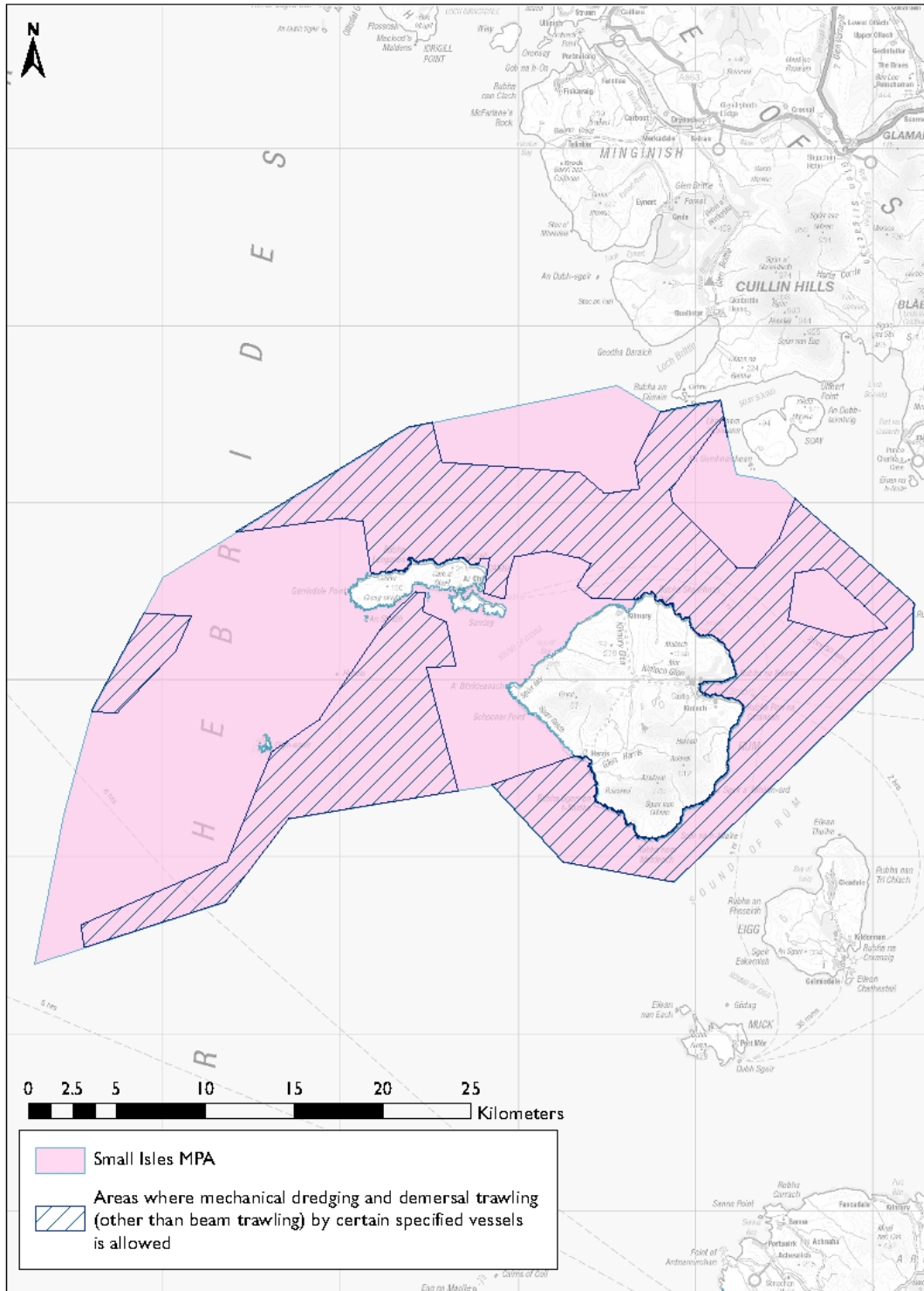
Article 5 of the Order provides that the Scottish Ministers may issue permits authorising fishing within the protected area only for the purpose of scientific research which would, apart from such a permit, be unlawful under the Order. The article makes provision regarding the procedure which applies to the making of applications for permits and the determination of such applications.

Article 6 of the Order provides that paragraph (b) of section 97(1) of the Marine (Scotland) Act 2010 does not apply in relation to an offence under section 94 or 95 of that Act.

A person who contravenes this Order commits an offence and is liable on summary conviction to a fine of up to £50,000, and on conviction on indictment to an unlimited fine.

A business and regulatory impact assessment has been prepared in relation to this Order and placed in the Scottish Parliament Information Centre. A copy of this can be obtained from Marine Scotland, the Scottish Government, Victoria Quay, Edinburgh, EH6 6QQ.

An illustrative map showing the Small Isles MPA, and the parts of the MPA in respect of which article 4(4)(b) of the Order applies, is attached to this note.



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