STATUTORY RULES OF NORTHERN IRELAND

2005 No. 350

ARGICULTURE

The Sea Fishing (Restriction on Days at Sea) Order (Northern Ireland) 2005

Made - - - -	*26th July 2005*
Coming into operation	*28th July 2005*

The Department of Agriculture and Rural Development, in exercise of the powers conferred by section 30(2) of the Fisheries Act 1981(**1**), and now vested in it(**2**), and every other power enabling it in that behalf hereby makes the following Order:

PART 1

PRELIMINARY

Citation, commencement, extent and application

1.—(1) This Order may be cited as the Sea Fishing (Restriction on Days at Sea) Order (Northern Ireland) 2005 and shall come into operation on 28th July 2005.

(2) This Order does not apply to any fishing boat which is less than 10 metres in length as set out in point 1 of Annex IVa and point 1 of Annex IVc.

Interpretation

2.—(1) In this Order –

"Annex IVa" means Annex IVa to Council Regulation (EC) No. 27/2005 fixing for 2005 the fishing opportunities and associated conditions for certain fish stocks and groups of fish stocks, applicable in Community waters and, for Community vessels, in waters where catch limitations are required(**3**);

"Annex IVc" means Annex IVc to Council Regulation (EC) No. 27/2005 fixing for 2005 the fishing opportunities and associated conditions for certain fish stocks and groups of fish stocks,

(**1**) 1981 c. 29
(**2**) Sea Fisheries (Northern Ireland) Order 2002 (S.I.2002/790) Article 3(2) and Schedule 2
(**3**) O.J. No. L12, 14.1.2005, p. 1

applicable in Community waters and, for Community vessels, in waters where catch limitations are required;

"the Annex IV year" means the period commencing with the coming into operation of this Order and ending with 31st December 2005, and references to things done during the Annex IV year cover things done at any time within it;

"base unit" has the same meaning as in Article 3 in relation to cod and Article 13 in relation to sole;

"British fishing boat" means a fishing boat which is registered in the United Kingdom under Part II of the Merchant Shipping Act 1995(**4**) or is owned wholly by persons qualified to own British ships for the purposes of that Part of that Act;

"cod recovery zone" means the geographical area defined in point 2 of Annex IVa;

"day" has the meaning set out in point 3(b) of Annex IVa and point 3(b) of Annex IVc;

"equivalent provision" means any provision, in any other Order made for the purposes of implementing Annex IVa or IVc or Regulation 423/04 in relation to any part of the United Kingdom, which has equivalent effect to a provision in this Order, proceedings in respect of which may be taken in Northern Ireland by virtue of section 30(2A) of the Fisheries Act 1981;

"fishing boat" includes any vessel covered by Annex IVa or Annex IVc;

"foreign fishing boat" means a fishing boat covered by Annex IVa or Annex IVc which is not a British fishing boat;

"management period" means a period established as provided in Article 3 or 13, as the case may be;

"Northern Ireland fishing boat" means a fishing boat which is registered in the register maintained under section 8 of the Merchant Shipping Act 1995 and whose entry in the register specifies a port in Northern Ireland as the port to which the boat is to be treated as belonging;

"Northern Ireland zone" has the same meaning as in the Northern Ireland Act 1998(**5**);

"person in charge", in relation to a fishing boat, means the owner, master or charterer, if any, of the fishing boat or the agent of any of them;

"regulated gear" means any gear within a grouping of fishing gears set out in point 4 of Annex IVa in relation to cod and point 4 of Annex IVc in relation to sole;

"Regulation 2807/83" means Commission Regulation (EEC) No. 2807/83 laying down detailed rules for recording information on Member States' catches of fish, as amended at the date this Order is made(**6**);

"Regulation 2847/93" means Council Regulation (EEC) No. 2847/93 establishing a control system applicable to the Common Fisheries Policy, as amended at the date this Order is made(**7**);

"Regulation 423/04" means Council Regulation (EC) No. 423/2004 establishing measures for the recovery of cod stocks(**8**);

"sole recovery zone" means the geographical area defined in point 2 to Annex IVc.

"unused days" in relation to any fishing boat, grouping of regulated gear and management period, means in relation to cod, the number of days available to the boat carrying the gear in the

(**4**) 1995 c. 21
(**5**) 1998 c. 47
(**6**) O.J. No. L276, 10.10.1983, p. 1; the last amending instrument is Commission Regulation (EC) No. 1965/2001 (O.J. No. L268, 9.10.2001, p. 28)
(**7**) O.J. No. L261, 20.10.1993, p. 1; the last amending instrument is Council Regulation (EC) No. 806/2003 (O.J. No. L122, 16.5.2003, p. 1)
(**8**) O.J. No L70, 9.3.2004, p. 8

cod recovery zone during the period before its allocation of days under Article 4 is exhausted and, in relation to sole, the number of days available to the boat carrying the gear in the sole recovery zone during the period before its allocation of days under Article 14 is exhausted;

"The Department" means Department of Agriculture and Rural Development.

(2) In this Order –

"logbook" means the same as in Article 6 of Regulation 2847/93 as amplified by Regulation 2807/83, and, for the purposes of any provision other than Article 12 and 22, any reference to a document or logbook includes any –

(i) map, plan, graph or drawing;

(ii) photograph;

(iii) data, howsoever reproduced, communicated via a satellite-based vessel monitoring system established under Article 3.1 of Regulation 2847/93;

(iv) disk, tape, sound track or other device in which sounds or other data (not being visual images) are recorded so as to be capable (with or without the aid of some other equipment) of being reproduced; and

(v) film (including microfilm), negative, tape, disk or other device in which one or more visual images are recorded so as to be capable of being reproduced.

(3) Any information provided to any authority for the purposes of any provision of this Order shall be treated as also provided for the purposes of any equivalent provision.

(4) Expressions in this Order which are not defined in paragraph (1) and which appear in Annex IVa or Annex IVc of Council Regulation (EC) No. 27/2005 or Regulation 423/04 have the same meaning in this Order as they respectively do in those Regulations.

(5) The Interpretation Act (Northern Ireland) 1954(**9**), except section 20(2) and (3), shall apply to this Order as it applies to an Act of the Northern Ireland Assembly.

PART 2

COD

Establishment of management periods

3.—(1) Management periods for a Northern Ireland fishing boat, as referred to in point 6(b) of Annex IVa, shall be determined and notified by the person in charge of the boat, as follows:

(a) the base unit for determination of management periods shall be one month;

(b) each management period may be determined in multiples of the base unit from 1 to 11 months; and

(c) the determination of each management period must be notified to the Department at the same time as any notification under Article 5;

and they are established by that determination and notification unless point 12 of Annex IVa applies to the boat, in which case they are established by confirmation of that determination and notification by the Department of Agriculture and Rural Development taking that point into account.

(2) The person in charge of a Northern Ireland fishing boat may aggregate the days allocated for each month as set out in point 6 of Annex IVa for being present within the area and absent from port, within management periods.

(**9**) 1954 c. 33 (N.I.)

(3) For the purposes of this Article –

(a) a notification given to the Department (whether after or in anticipation of the coming into force of this Order) covering a management period including all or any part of the first stage and any grouping of gears for the period shall be treated as meeting the requirement of paragraph (1)(c) but with the management period counting as beginning immediately at the start of the second July stage and ending as notified; and

(b) the second July stage counts as one month and shall accordingly be treated as a single base unit.

(4) In paragraph (3) and Article 4(6) "the first stage" means the period starting with 1st February 2005 and ending immediately before the date on which this Order comes into operation, and in paragraph (3) "the second July stage" means the remainder of July 2005.

(5) The person in charge of a Northern Ireland fishing boat, which, at any time during the Annex IV year, is absent from port in the cod recovery zone carrying regulated gear for which a management period has not been established as provided in paragraph (1), is guilty of an offence.

Absences from port

4.—(1) A person in charge of a Northern Ireland fishing boat carrying regulated gear which, at any time in the Annex IV year, either –

(a) contravenes point 9 of Annex IVa; or

(b) subject to any adjustments made under this Article for the purposes of Annex IVa, during a management period is absent from port in the cod recovery zone in excess of the number of days permitted to it under point 6(a) of Annex IVa,

is guilty of an offence.

(2) In addition to the number of days of absence from port permitted under point 6(a) of Annex IVa applicable to the Northern Ireland fishing boat in accordance with any regulated gear that it carries, for each calendar month the Department may allocate to the boat –

(a) a proportion of such number of days as may be allocated to the United Kingdom under point 6(c) of Annex IVa; and

(b) further days in accordance with point 6(d), (e) and (f) of Annex IVa.

(3) Where in respect of a management period established for it days have been transferred from one British fishing boat ("the donor") to another British fishing boat ("the recipient") under Article 6 for the purposes of point 10 of Annex IVa , the following shall apply –

(a) the donor shall have deducted from its allocation of days such number of days as have been transferred to the recipient; and

(b) the recipient shall have added to its allocation of days such number of days as have been transferred by the donor.

(4) Where on any day during a management period any regulated gear is at any time affixed to both a Northern Ireland fishing boat and one or more other fishing boats whilst they are in the cod recovery zone, that day shall be deducted from each boat's allocation.

(5) Where a Northern Ireland fishing boat was absent from port in the cod recovery zone carrying regulated gear in excess of its allocation of days in respect of a previous management period, there shall be deducted the number of days during which the boat was so absent from the next management period.

(6) Where a management period includes all or any part of the first stage, any number of days spent absent from port in that period in the cod recovery zone carrying regulated gear by a Northern Ireland fishing boat shall be deducted from the allocation of days for that period.

(7) Where during the management period or periods, a Northern Ireland fishing boat is absent from port in the circumstances as set out in point 13 of Annex IVa, the person in charge of the Northern Ireland fishing boat shall apply to the Department for an adjustment of the allocation of days in respect of those circumstances.

(8) For the purposes of paragraph (2) and (7), where additional days are allocated by the Department to a Northern Ireland fishing boat, the allocation does not have effect until the person in charge of the fishing boat is notified of the allocation by the Department.

Carriage and operation of fishing gears

5.—(1) The person in charge of a Northern Ireland fishing boat which fishes or deploys regulated gear in contravention of any requirement of point 7 of Annex IVa is guilty of an offence.

(2) Where point 7 of Annex IVa requires notification or prior notice it must, in the case of a Northern Ireland fishing boat, be given to the Department of Agriculture and Rural Development.

(3) The person in charge of a Northern Ireland fishing boat which carries fishing gear on board in contravention of point 8 or 11 of Annex IVa is guilty of an offence.

Transfer of days from one boat to another

6.—(1) Unused days may be transferred from one British fishing boat ("donor") to another British fishing boat ("recipient") in accordance with point 10 of Annex IVa, where either the donor or the recipient is, or both are, a Northern Ireland fishing boat.

(2) A transfer under paragraph (1) is only effective if, where the donor is a Northern Ireland fishing boat, a written notification of transfer, signed by the donor's owner (or, as the case may be, each part owner), is sent to the Department of Agriculture and Rural Development before the end of the management period in relation to which the transfer is to take effect, and contains all the following particulars:

(a) the name and PLN and RSS number of the donor;

(b) the management period and any grouping of regulated gear to which the transfer relates;

(c) the name and PLN and RSS number of each recipient;

(d) the number of days transferred to each recipient;

(e) a declaration to the effect that the donor is entitled to make the transfer; and

(f) the date of signature.

(3) A person who makes a false declaration in a notification under paragraph (2) is guilty of an offence.

(4) For the purpose of this Article –

(a) "name" in relation to a fishing boat which is registered in the United Kingdom under Part II of the Merchant Shipping Act 1995, means its registered name as referred to in regulation 30 of the Merchant Shipping (Registration of Ships) Regulations 1993(**10**); and

(b) the requirement for a notification to contain PLN and RSS numbers applies only in relation to a fishing boat which is registered in the United Kingdom under Part II of the Merchant Shipping Act 1995, and those numbers are respectively its port number and its official number within the meaning of regulation 31 of the Merchant Shipping (Registration of Ships) Regulations 1993.

(**10**) S.I. 1993/ 3138; the relevant amending instrument is S.I. 1999/3206