STATUTORY RULES OF NORTHERN IRELAND

2004 No. 173

FISHERIES

Sea Fishing (Restriction on Days at Sea) Order (Northern Ireland) 2004

Made - - - -	*8th April 2004*
Coming into operation	*9th April 2004*

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 of every other power enabling it in that behalf, hereby makes the following Order:

Citation, commencement, extent and application

1.—(1) This Order may be cited as the Sea Fishing (Restriction on Days at Sea) Order (Northern Ireland) 2004 and shall come into operation on 9th April 2004.

(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 V.

Interpretation

2.—(1) In this Order –

"Annex V" means Annex V to Council Regulation (EC) No. 2287/2003 fixing for 2004 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**);

"the Annex V year" means the period commencing with the coming into operation of this Order and ending with 31st December 2004, and references to things done during the Annex V year cover things done at any time within it;

"base unit" has the same meaning as in Article 3;

"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 purposes under that Part of the Act;

(**1**) 1981 c. 29
(**2**) *See* Sea Fisheries (Northern Ireland) Order 2002 (S.I.2002/790) Article 3(2) and Schedule 2
(**3**) O.J. No. L344, 31.12.2003, p. 1
(**4**) 1995 c. 21

"cod recovery zone" means the geographical area defined in paragraph 2 of Annex V;

"day" has the meaning set out in paragraph 3(b) of Annex V;

"equivalent provision" means any provision, in any other Order made for the purposes of implementing Annex V, 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 V;

"foreign fishing boat" means a fishing boat covered by Annex V which is not a British fishing boat;

"management period" means a period established by Article 3;

"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 paragraph 4 of Annex V;

"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 that 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**);

"unused days" in relation to any fishing boat, grouping of regulated gear and management period, means the number of days available to the boat carrying the gear in the cod recovery zone during the period before its allocation of days under Article 4 is exhausted.

(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 of this Order other than Article 13, 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 (as aforesaid) of being reproduced.

(**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, 20.10.199, p. 1; the last amending instrument is Council Regulation (EC) No. 1954/2003 (O.J. No. L289, 7.11.2003, p. 1)

(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) The Interpretation Act (Northern Ireland) 1954(**8**), except section 20(2) and (3), shall apply to this Order at it applies to an Act of the Northern Ireland Assembly.

Establishment of management periods

3.—(1) Management periods for a Northern Ireland fishing boat, as referred to in point 6(b) of Annex V, 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;

(c) the determination of each management period must be notified to the Department of Agriculture and Rural Development at the same time as any grouping of regulated gear for the boat for the period;

and they are established by that determination and notification unless point 12 of Annex V 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 or by the Secretary of State for Environment, Food and Rural Affairs taking that point into account.

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

(3) For the purposes of this Article a notification given to the Department of Agriculture and Rural Development (whether after or in anticipation of the coming into operation of this Order) covering a management period including February, March or April 2004 and any grouping of gears for the period shall be treated as meeting the requirement of paragraph (1)(c).

Absences from port etc

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

(a) contravenes point 9 of Annex V, or

(b) during a management period established for it, is absent from port, while carrying the regulated gear notified for the period in the cod recovery zone, in excess of the ADMP granted to it on the basis of the following formulae, that is to say –

(i) $ADB = Y + DC$, and

(ii) $ADMP = (ADB \times Z) + DR - DT - DD - J - N$,

is guilty of an offence.

(2) In paragraph (1) –

(a) "ADMP" means the allocation of days for the Northern Ireland fishing boat to be out of port carrying the regulated gear in the management period;

(b) "ADB" means allocation of days for the Northern Ireland fishing boat to be out of port in the cod recovery zone carrying the regulated gear per base unit in the management period;

(c) "Y" means –

(**8**) 1954 c. 33 (N.I.)

(i) where one grouping of regulated gear has been notified for the Northern Ireland fishing boat, the number of days per base unit allocated for that gear grouping under point 6(a) of Annex V, and

(ii) where two groupings of regulated gear have been notified for the Northern Ireland fishing boat, the number of days per base unit allocated for the combination of those gear groupings under point 6(a), as read with point 7, of Annex V;

(d) "DC" means any number of days, extra to those covered by sub-paragraph (c), allocated to the United Kingdom under points 6(c) to (f) of Annex V for the purpose of being available to any fishing boat within a class within which the relevant fishing boat falls;

(e) "Z" means the number of base units in the management period;

(f) "DR" means the number of days transferred to the Northern Ireland fishing boat under Article 6 during the management period;

(g) "DT" means the number of days transferred from the Northern Ireland fishing boat under Article 6 during the management period;

(h) "DD" means the number of days required to be deducted as a result of failure to comply with any condition or requirement in point 6(d) or 6(e) of Annex V;

(i) "J" means any number of days during the management period (being one in which the regulated gear is at any time affixed to both the Northern Ireland fishing boat and one or more other fishing boats) when the Northern Ireland fishing boat is absent from port in the cod recovery zone but the gear is being carried by any other such boat which is so absent; and

(j) "N" means the number of days, if any, in which the Northern Ireland fishing boat was absent from port, while carrying regulated gear notified for the previous management period established for it in the cod recovery zone, in excess of the ADMP granted to it on the basis of those formulae during that previous management period.

Carriage and operation of fishing gears

5.—(1) The person in charge of a Northern Ireland fishing boat which fishes in contravention of the first paragraph of point 7 of Annex V is guilty of an offence.

(2) The person in charge of a Northern Ireland fishing boat which deploys regulated gear in contravention of the second paragraph of point 7 of Annex V whilst present in the cod recovery zone is guilty of an offence.

(3) The person in charge of a Northern Ireland fishing boat which uses regulated gear in contravention of the remainder of point 7 of Annex V is guilty of an offence.

(4) Where point 7 of Annex V 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.

(5) 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 V 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") under point 10 of Annex V 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;

(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(**9**); 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.

Transportation of cod

7. Where any quantities of cod are transported, during the Annex V year, in contravention of point 21 of Annex V, the owner or hirer of, and the person responsible for, the vehicle used to transport the cod is guilty of an offence.

Mixing of species

8. A person in charge of –

(a) a Northern Ireland fishing boat, or

(b) a foreign or British (other than Northern Ireland) fishing boat within the Northern Ireland zone,

which retains or stows cod during the Annex V year in contravention of point 19 of Annex V, is guilty of an offence.

Notification prior to entry to a Northern Ireland port

9.—(1) The person in charge of a British or foreign fishing boat to which point 15 of Annex V applies, which, during the Annex V year, enters a port in Northern Ireland without the information called for by that point having been provided as required by it, is guilty of an offence.

(2) For the purposes of paragraph (1), the Department of Agriculture and Rural Development is the person to whom that information is to be provided.

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