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SCOTTISH STATUTORY INSTRUMENTS

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**2005 No. 90**

**The Sea Fishing (Restriction on Days at Sea) (Scotland) Order 2005**

**PART III**

**SOLE**

**Determination of management periods**

**13.**—(1) Management periods, as referred to in paragraph 6(b) of Annex IVc, in relation to a relevant fishing boat shall be determined by the Scottish Ministers.

(2) A person in charge of a relevant fishing boat may notify the Scottish Ministers indicating the preference of that person as to the length of the management period for that boat.

(3) In determining the management period for that boat the Scottish Ministers shall have regard to any preference as to the length of the management period indicated in a notification under paragraph (2).

**Absence from port**

**14.**—(1) A person in charge of a relevant fishing boat which—

- (a) contravenes paragraph 8 of Annex IVc; or
- (b) is absent from port in excess of the number of days permitted to it under the following provisions of this article,

is guilty of an offence.

(2) In addition to the number of days indicated in paragraph 6(a) of Annex IVc, applicable to the boat in accordance with any regulated gear it carries (“the basic number”), for each calendar month there is added to the number indicated in paragraph 6(a) of Annex IVc, such number of days (if any) as may be allocated to United Kingdom vessels under paragraph 6(c) of Annex IVc.

(3) Where days have been transferred from one relevant fishing boat (“the donor”) to another relevant fishing boat (“the recipient”) the following shall apply, subject to any adjustment required by paragraph 9(a) of Annex IVc—

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

(4) Where during any management period regulated gear is affixed to two or more fishing boats there shall be deducted from the basic number for each such boat that is a relevant fishing boat in relation to that gear and that period a number of days equal to the number when it was absent from port but the gear was being carried by any other such boat.

(5) Where during any management period a relevant fishing boat is absent from port operating with regulated gear within the same grouping of fishing gear and present within the cod recovery zone there shall be deducted from the basic number for that boat in relation to that period a number of days equal to the number when it was absent from port and present within that area.

(6) Subject to article 15, where during any management period a relevant fishing boat has—

(a) been absent from port carrying fishing gear in excess of the days permitted to it by this article; or

(b) purported to transfer days in accordance with article 17 in excess of its unused days, the Scottish Ministers may deduct a number equal to the number of days in that excess.

(7) In any proceedings for an offence under paragraph (1)(b) of this article, it shall be a defence for a person to show that the number of days of absence from port carrying any type of fishing gear comprising the offence was no greater than the number of days of absence carrying that gear purportedly but not validly transferred to that person under article 17 and that person did not know and had no reasonable cause to suspect that the donor was not entitled to transfer the days.

#### **Procedure as to decisions to deduct days**

**15.—**(1) In making a decision to deduct days under article 14(6), the Scottish Ministers—

(a) shall specify which management period the days deducted will relate to; and

(b) may deduct days in respect of one or more than one management period, as they consider fit.

(2) The Scottish Ministers, before making a decision to deduct days under article 14(6), shall—

(a) give the affected person a written notification of that intention (including a note of the management period or periods to which that deduction is proposed to apply) and an explanation of the reasons for considering the deduction of days (and the basis for proposing the deduction from a particular period or periods);

(b) afford that person an opportunity of making representations in that regard within such time and in such form as they think fit and, in order to effectively give such opportunity, may appoint a person (“the reporter”) to report to them as to the relevant factual circumstances; and

(c) consider any such representations (including the report prepared by the reporter) in making their decision in the case.

(3) In this article—

“affected person” means the owner, master or charterer of the boat in respect of which a decision to deduct days under article 14(6) is made or is proposed to be made.

#### **Use of regulated gear**

**16.—**(1) A person in charge of a relevant fishing boat which fishes in contravention of the notification requirement in paragraph 7 of Annex IVc is guilty of an offence.

(2) A person in charge of a relevant fishing boat which carries or uses, whilst present in the sole recovery zone, regulated gear other than the regulated gear notified under the requirement in paragraph 7 of Annex IVc is guilty of an offence.

#### **Transfer of days from one boat to another**

**17.—**(1) Transfer of unused days within the same management period from one relevant fishing boat (“the donor”) to another (“the recipient”) for the purposes of paragraph 9 of Annex IVc where either the donor or the recipient is, or both are, a relevant fishing boat, is permitted subject to the

conditions specified in paragraph 9(a) to (c) of Annex IVc, to the extent specified in a notification of transfer sent to the Scottish Ministers.

(2) A person who knowingly or recklessly makes a statement in a notification under paragraph (1) which is false in a material particular is guilty of an offence.

(3) For the purposes of this article “the same management period” means any two management periods provided that the transfer takes place during the concurrence of the management periods.

### **Mixing of species**

**18.** A person in charge of a relevant fishing boat or a foreign fishing boat within the Scottish zone which retains species in contravention of paragraph 17 of Annex IVc (separate storage of sole) is guilty of an offence.

### **Transportation of sole**

**19.** Where any quantities of sole are transported in contravention of paragraph 20 of Annex IVc (transportation of sole to be accompanied by a copy of the relevant part of the logbook), the owner or hirer of, and the person responsible for, the vehicle used to transport the sole is guilty of an offence.

### **Landing of sole where prior notification is required**

**20.—**(1) The competent authority for the purposes of paragraph 15 of Annex IVc is the Scottish Ministers.

(2) Where there is in respect of a relevant fishing boat a failure to comply with paragraph 15 of Annex IVc the master, the representative of the master, the owner and the charterer (if any) are guilty of an offence.

### **Recording information on catches of fish**

**21.** A person in charge of a relevant fishing boat or a foreign fishing boat in respect of which the 8% margin of tolerance referred to in paragraph 16 of Annex IVc is exceeded, is guilty of an offence.

### **Weighing of sole**

**22.—**(1) Any quantity of sole exceeding 300kg caught in the sole recovery zone by a relevant fishing boat or a foreign fishing boat shall be weighed in accordance with paragraph 18 of Annex IVc.

(2) Where there is a failure to comply with paragraph (1) the person in charge of the relevant fishing boat or foreign fishing boat is guilty of an offence.