

EXECUTIVE NOTE

THE SEA FISHING (ENFORCEMENT OF COMMUNITY QUOTA AND THIRD COUNTRY MEASURES AND RESTRICTION ON DAYS AT SEA) (SCOTLAND) ORDER 2009 (SSI 2009/317)

1. The above instrument was made in exercise of the powers conferred by Section 30(2) of the Fisheries Act 1981 ("the 1981 Act") and is subject to negative resolution procedure.

Policy Objective

2. This Order brings fully into effect in Scotland the provisions of Council Regulation (EC) 43/2009 ("the TACs and Quotas Regulation") which was published in the Official Journal on 26 January 2009. In particular, it fully implements Annexe IIa to Council Regulation 43/2009 restricting, from 1 February 2009, days at sea by Scottish fishing vessels in certain areas of the North Sea, the Irish Sea, the Eastern Channel and the west coast of Scotland, (collectively referred to as 'the Cod Recovery Zone'). The Order also implements other measures in the TACs and Quotas Regulation, in particular the technical conservation measures in Annex III of the Regulation.

3. The Order will create offences which underpin the Conservation Credits Scheme (CCS), shown at Annexe 1, which is the method by which the allocation of effort to Scottish fishing vessels is managed. Although the scheme contains its own administrative sanctions, it is considered necessary to create offences to allow the imposition of sanctions upon those who do not observe effort rules. This directly benefits the entire Scottish fishing industry by operating the scheme on a level playing field.

4. The Order also revokes The Sea Fishing (Enforcement of Community Quota and Third Country Fishing Measures and Restriction on Days at Sea) (Scotland) Order 2008.

Consultation

5. The Scottish Government has had, during 2008 and 2009, ongoing and regular (monthly) consultation with industry representatives via the Conservation Credits Steering Group (CCSG) which have become paramount to the implementation of and industry participation with the CCS. The CCSG was also used as a forum to consult the industry on the technical conservation measures in Annex III of the Regulation. All aspects of the CCS have been discussed with and agreed by the CCSG prior to implementation. In addition, at the request of the Industry, a written public consultation on the method by which effort is allocated to fishing vessels was conducted between 9 March and 3 April 2009. We have been and continue to be in close discussion with various representatives of the majority of Scottish fishermen via the CCSG about the content of the Order as a mechanism to monitor and review the resultant policy and CCS scheme rules. The making and laying of the Order has been subject to unavoidable delay caused by the requirement to administer interim arrangements, whilst the consultation process was concluded, and thereafter to agree complex technical issues and scheme rules with the Industry. This has not presented an obstacle to administering the Scheme.

Financial Effects

6. The costs incurred due to vessels having to reduce their effective time at sea are mitigated by the fact that all eligible vessels are operating within the CCS and will have therefore avoided a straight cut in days at sea to deliver the cut in cod mortality required by the Regulation. The extent to which individual vessels can adjust their practices (including operating outwith the Cod Recovery Zone) will vary and the overall impact cannot be easily quantified.

7. A Regulatory Impact Assessment has been prepared and placed in SPICE. Copies are available from Marine Scotland, Room 426, Pentland House, 47 Robb's Loan, Edinburgh EH14 1TY, telephone 0131 244 4477.

Scottish Government, Marine Scotland

Sea Fisheries Policy

September 2009

Annexe 1 Conservation Credits Scheme consolidated scheme rules

Scottish Government Conservation Credits Scheme

Scheme rules

Version 1.0: issued 31 July 2009

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1. Purpose and revision

1.1 The purpose of these rules is to inform interested persons how the Scottish Government proposes to administer the days at sea regime for eligible vessels absent from port carrying regulated gears in the Cod Recovery Zone (CRZ). It seeks to provide a consolidated guide to the matters and arrangements most relevant to the operation of this regime.

1.2 These rules have been prepared by the Scottish Government in consultation with the Conservation Credits steering group. Where it appears to the Government that there is a need for revision, this will be done in consultation with the steering group and a new version of the rules will be issued. New versions will be sent to skippers or their appointed representative and to other interested persons.

1.3 The rules do not attempt to provide a definition for every term used, nor a full background to the history or reasons for particular rules or arrangements. They are intended rather to be a practical guide to the day to day management of the scheme and the activities of relevant vessels. The meaning of many terms is well understood and it is assumed that readers will be familiar with the main features of statutory and other arrangements for sea fishing. In addition, many terms used here are already defined in EU and / or domestic regulations and to repeat those definitions would make this guide overly long. Where necessary, reference is made to regulations and other instruments.

2. Status

2.1 The rules describe the manner in which the Scottish Government proposes to fulfil its functions in administering the days at sea regime for relevant vessels. These rules still require to be read along with the relevant provisions of EU and domestic law.

3. Eligibility to carry regulated gears

3.1 The regulated gears are those categories of gear described at Article 4 of Annex IIA to EC Regulation 43/2009. In these rules we will refer to Regulation 43/2009 as “the 2009 Regulation”.

3.2 Vessels will be eligible to be absent from port carrying categories of regulated gears in the CRZ where they have a record of fishing activity with those gears in the years 2001, 2002 or 2003.

3.3 Vessels eligible to carry gear category TR1 (whitefish gear) may carry any category of regulated gear.

4. Notification of intention to carry regulated gears: management periods

4.1 Before the first day of each management period, the master of a vessel or their representative must notify the effort management team which categories of regulated gear the vessel will carry in the forthcoming period.

4.2 A management period may be a period of one or more months.

5. Carriage of regulated gears of one category

5.1 Vessels may carry on board regulated gears of one category only.

6. Allocation of basic days at sea: flat rate and track record options

6.1 Upon receipt of an appropriate gear notification form, the effort management team will issue letters to eligible vessels that specify an allocation of days for the designated management period. These letters constitute a special permit to carry the specified regulated gears in the CRZ and should be carried on board at all times when absent from port and in the CRZ carrying regulated gears.

6.2 The Scottish Government will issue special permits to eligible licensed fishing vessels whose port of administration is in Scotland. Allocations of days will be made in respect of vessels. Allocations of days will not be made to licence entitlements not presently associated with a vessel.

Flat rate

6.3 Eligible vessels may receive a 'flat rate' allocation. The flat rates for basic allocations in 2009 are set out in Annex A. Vessels will receive an allocation of days in proportion to the duration of the management period notified – i.e. a vessel notifying a 6 month management period will receive half of the annual allocation.

6.4 Where a vessel notifies more than one category of gear, its allocation of days will be the average of the rates for the categories notified. Where a vessel notifies TR1 (whitefish) and another gear its allocation of days will be the average of two rates with a gear maximum for whitefish. The whitefish allocation of days will be the number of days that would have been allocated to a vessel notifying TR1 only less 60 days (or pro rata thereof for management periods of less than 12 months).

6.5 Where a vessel applies for an allocation of days in more than one sea area (i.e. for the West of Scotland and the North Sea) its allocation of days will be subject to an area maximum.

Track record allocation – the '85 per cent option'

6.6 Vessels notifying gear categories TR1 (whitefish) and / or TR2 (Nephrops) may, alternatively, apply for a basic allocation based upon 85 per cent of their average annual effort in the period 2004-07.

6.7 Where a vessel did not fish in one or more of the years between 2004 and 2007, the average will be based upon the years in which it did fish. In addition, where a vessel joined the fleet mid-year, the effort management team may consider averaging effort in that year on a pro rata basis. A track record allocation will not be made on the basis of fishing activity in one year only.

6.8 Vessels applying for a track record allocation that (are eligible to and) wish to notify both TR1 and TR2 will receive an allocation for each gear based on their average use with each gear, subject to a maximum of 100 days with TR1. It should be noted that vessels must apply for either the flat rate or a track record allocation for all categories of gear. They may not apply for the flat rate for one category of gear and the track record allocation for another.

6.9 All vessels receiving a track record allocation must keep and submit to the effort management team a record of all catches of cod, including discards, on a trip by trip basis. Records should be submitted directly to the effort management team.

6.10 Vessels receiving a track record allocation that carry on board TR1 gear must ensure that the cod end mesh size is 120mm or greater.

Track record allocation – the option to attribute kW days track records of associated licences

6.11 Vessels applying for a track record allocation may attribute to their track record the kW days track record of relevant CRZ eligible licences that are associated with the vessel making the application. Allocations (i.e. after the deduction of 15% from the average) will be subject to a maximum for all gears combined of 300 days.

6.12 An example illustrates the operation of the kW days track record option: A 200 kW vessel is licensed with licences from two 105kW vessels that it has replaced. Each of the replaced vessels had an average of 300 days at sea in the 2004-07 reference period - thus their combined kW day average is 63,000 kW days (31,500 + 31,500). The vessel now applying for a track record allocation may be allocated 85 per cent of the combined kW days track record –, 53,550 kW days, which is 267 days for the vessel with a 200kW engine.

6.13 It is anticipated that this option will be most relevant to new vessels, which will have incurred expenditure in acquiring and aggregating licences from CRZ eligible vessels.

6.14 The option will also be available to existing vessels that choose to aggregate licences with those on an already licensed vessel, but we do not anticipate that many existing vessels will wish to take it up. This is because the additional kW and tonnage capacity of licences will reduce to zero where those licences are aggregated with a vessel that is already licensed to its actual capacity. It is not possible to reinstate the kW and tonnage on to the licence entitlement if – in future – the licence holder sought to disaggregate it from the licences with which it had been aggregated.

7. Allocation of basic days at sea to vessels catching less than 5 per cent cod

7.1 Eligible vessels notifying gears TR1 and / or TR2 which, in 2007 and 2008, landed less than 2.5 per cent cod by weight may receive an allocation of 200 days at sea. Vessels that have no record of fishing with TR1 and / or TR2 in one of the years may qualify on the basis of activity in the year where there was fishing.

7.2 Alternatively, a vessel notifying these gears that landed 2.5 per cent or more of cod but less than 5 per cent cod will also be allocated more days at sea if they agree to fish exclusively south of latitude 59 degrees in the North Sea and outside both the 'Farn Deeps' and any amber avoidance areas (see section on Conservation Credits buy backs). For the purposes of the scheme, the 'Farn Deeps' will be the area defined in Annex B.

7.3 Vessels may qualify for this allocation separately with TR1 or TR2. Therefore, if a vessel's record of landings makes it eligible for the allocation in respect of one of the gear categories, then it may receive the allocation. A vessel that notifies both TR1 and TR2 and is eligible for the less than 5 per cent cod allocation for one gear but not the other will receive an allocation based on the average of the two relevant allocations. So, for example, a vessel fishing in the North Sea that qualifies for the allocation with TR2 but not TR1 will receive a basic allocation that is the average of 200 and 160, which is 180. Its allocation will be subject to the TR1 maximum described in paragraph 6.4 above.

7.4 A vessel will revert to the standard allocation(s) for the remainder of the scheme year for the gear categories notified if:

- i. On one occasion it lands more than 2.5 per cent cod;
- ii. An inspection or observation at sea records a catch of cod that is 5 per cent or more of the total catch; or,
- iii. Having agreed not to, it fishes at any time fish north of latitude 59 degrees in the North Sea or within the 'Farn Deeps'.

The effort management team – in considering whether to return a vessel to the standard allocation(s) - will take into account the actual weight of fish landed.

8. Conditions of basic days at sea allocation

8.1 In addition to the scheme rules specified, allocations of days at sea are subject to mandatory conditions:

- i. Vessels must comply with all Scottish Government Real Time Closures (RTCs) and seasonal closures; and, with any equivalent measures imposed by other UK Fisheries Administrations;
- ii. North Sea vessels notifying TR2 (Nephrops) are required to insert a 110mm Square Mesh Panel (SMP) into the fishing gear carried on board while absent from port and in the CRZ if using mesh in the cod end of less than 90mm; and,
- iii. Vessels will be expected, on request, to carry an observer.

8.2 Vessels notifying TR2 and fishing in the West of Scotland are subject to separate requirements in relation to gear that result from the provisions in the 2009 Regulation (specified in Article 6.5 of Annex III of the 2009 Regulation) about fishing in this area. These require the installation of a 120mm SMP. TR2 vessels fishing in the West of Scotland and complying with these requirements will – in doing so - also comply with Conservation Credits scheme rules. TR2 vessels fishing only in

the North Sea need only comply with the rules described in the preceding subparagraph (ii) above.

9. Allocation of additional days at sea (Conservation Credits ‘buy backs’)

9.1 Vessels notifying gear categories TR1 and / or TR2 will receive an allocation of days at sea in addition to the basic allocation if they agree to undertake specified additional conservation measures. These additional days are not available to vessels notifying only one gear category and receiving an allocation of days at sea based on catching less than 5 per cent cod. These additional measures are optional and may be taken up for the duration of one or more management periods.

9.2 There are two types of Conservation Credits buy back option:

- i. Fishing outside specified ‘amber’ avoidance areas (which are in addition to Real Time Closures and seasonal closures); and,
- ii. Fishing exclusively with specified selective gears.

Amber areas

9.3 Amber areas are areas associated with cod abundance (although to a lesser degree than Real Time Closures and seasonal closures). Amber areas are identified for each quarter of the fishing year. Vessels that sign up to this option and undertake no fishing in these areas during a management period will receive additional days at sea.

Specified selective gears

9.4 Vessels that fish exclusively with a specified selective gear during a management period will receive additional days at sea.

9.5 The specified selective gears are:

- i. The ‘Eliminator trawl’. This option is available to TR1 vessels. A definition is at Annex C;
- ii. The ‘Orkney cod avoidance trawl’. This option is available to TR1 vessels. A definition is at Annex C;
- iii. 130mm cod end: TR1 vessels carrying gear with cod end of mesh size 130mm or greater; or,
- iv. Nephrops Square Mesh Panel (SMP): The insertion of a 120mm SMP of minimum length 3m in the straight extension of the net or a 130mm SMP in the taper. The SMP must be no further than 12-15m from the cod line (i.e. the rearmost row of meshes of the SMP shall be no more than 12m from the cod line). In the West of Scotland, the SMP must be 130mm. This option is available to TR2 vessels.

Amount of buy back

9.6 The number of additional days that will be allocated to vessels of different types in different sea areas is shown at Annex A. The days shown there are annual allocations.

Method of calculating allocations for vessels notifying two gears and taking up buy back options

9.7 Vessels notifying TR1 and TR2 that take up buy back options for one gear but not the other will receive an allocation based on the average of their allocations for each gear, including the relevant buy back allocation. So, for example, a North Sea vessel that notifies TR1 and TR2 and fishes exclusively with the Orkney cod avoidance trawl when using TR1 will receive an annual allocation of 174 days of which no more than 120 may be used with TR1¹.

9.8 Vessels notifying TR1 and TR2 that elect to take up a specified selective gear option for each gear will receive an allocation based on the average of each basic allocation plus the relevant buy back allocation. So, for example, a North Sea vessel that notifies TR1 and TR2 and fishes exclusively with the Orkney cod avoidance trawl when using TR1 and with the Nephrops SMP with TR2 will receive an annual allocation of 178 days of which no more than 120 may be used with TR1².

9.9 Vessels that have notified TR1 and TR2 and have received, in respect of one gear category only, the allocation of 200 days at sea associated with catching less than 5 per cent cod, may also be allocated additional days at sea for taking up one or more of the Conservation Credits buy back options in respect of the other gear category. Their allocation of days at sea will be the average of the 200 day allocation and the basic allocation for the other gear plus the buy back days. So, for example, a West of Scotland vessel that notifies TR1 and TR2; is eligible for the less than 5 per cent cod catch allocation with TR2 only; and, fishes exclusively with the Orkney cod avoidance trawl when using TR1 will receive a basic allocation of 192 days, of which no more than 124 days may be with TR1³.

9.10 Vessels that receive a track record allocation and take up more of the Conservation Credits buy back options will have added to their allocation for each relevant gear the percentage additional allocation noted in the table in Annex A.

9.11 When a vessel volunteers to fish exclusively with a specified selective gear, Fisheries Officers will make arrangements with the vessel to inspect the gear so as to confirm that it conforms to the specification set out in the scheme rules.

9.12 Where two vessels that form a 'pair team' wish to take up one of the selective gear options, then both vessels must sign up.

¹ Allocation = TR1 allocation (180) + TR2 allocation (168), divided by 2 = 174. TR1 maximum = TR1 allocation minus 60 = (180 – 60 = 120).

² Allocation = TR1 allocation (180) + TR2 allocation (176), divided by 2 = 178. TR1 maximum = TR1 allocation minus 60 = (180 – 60 = 120).

³ Allocation = TR1 allocation (184) + TR2 allocation (200), divided by 2 = 192. TR1 maximum = TR1 allocation minus 60 = (184 – 60 = 124).

10. Transfers of days at sea

10.1 Transfers of days at sea are subject to controls.

10.2 Some vessels may not transfer out days:

- i. Vessels will not be permitted to transfer any days if they have not, in the preceding two years, undertaken fishing activities above a minimum level. The minimum level is 40 days at sea in each year carrying regulated gear in the CRZ;
- ii. Vessels that elect to take up one or more of the Conservation Credits buy back options may not thereafter transfer out any days. In applying this rule the effort management team will consider exceptional circumstances such as unplanned and lengthy repair work; and,
- iii. Vessels that receive the allocation of days at sea associated with catching less than 5 per cent cod.

10.3 Vessels that may transfer out days are subject to limitations:

- i. Transfers may only take place between vessels that have notified the same categories of regulated gears and within the same management period;
- ii. The maximum cumulative transfer out of days from a vessel's allocation will be limited to 50 per cent of the basic (annual pro-rata) days at sea allocation of the donor or its average number of days at sea over the period 2001-2005 (excluding from this average days that were transferred in from other vessels), whichever is the lower; and,
- iii. Vessels that receive a track record allocation may transfer days out and in, but only with other vessels that also receive a track record allocation.

10.4 Where a transfer takes place, the number of days received by the recipient will be adjusted in proportion to the comparative fishing capacity (measured in engine power) of the vessels involved.

10.5 Vessels that are ineligible to carry regulated gears in terms of section 3 may nonetheless transfer in days from eligible vessels. The transfer in of days by an ineligible vessel does not, however, confer any eligibility on the recipient.

11. Recording of time at sea: time at sea not counting against vessels' allocations

11.1 Days at sea may be administered in hours.

11.2 For the purposes of the scheme, a fishing trip will commence from the time a vessel records in its log book the commencement of the trip inside the CRZ. A fishing trip will be concluded when a vessel makes a landing or part landing, recording the landing in its log book. A fishing trip is also concluded where a vessel

enters a designated landing port and notifies that activity to the UK Fisheries Call Centre on 0131 271 9700 or by email to ukfcc@scotland.gsi.gov.uk.

Transiting the CRZ

11.3 Time at sea in the CRZ will not count where the vessel is in transit to fish exclusively outside the zone, or exclusively to the west of the ‘French line’ (described at Annex D). Vessels wishing to transit in this way must call the UK Fisheries Call Centre on 0131 271 9700, by fax on 0131 244 6471 or by email to ukfcc@scotland.gsi.gov.uk prior to departure from port. All on board fishing gear must be lashed and stowed during the period of transit. This method may also be used by vessels wishing to transit from port to port, however it should be noted that in order for time spent at sea to be excluded from the uptake of their days at sea allocation, no fish may be carried on board while in transit.

11.4 Skippers should note that if they notify an intention to transit, fish outside the CRZ or the west of the French line and then fish inside the CRZ or – where applicable – to the east of the French line on return to port, all of their time at sea within the CRZ, including that spent transiting the zone on their outward journey, will be deducted from their allocation.

11.5 As noted, time spent in the CRZ carrying regulated gear west of the ‘French line’ will not be deducted from a vessel’s days at sea allocation, as long as the vessel in question has installed appropriate VMS that allows their position to be tracked and that the appropriate contact has been made with the UKFCC prior to departure.

Non-fishing activity

11.6 Time at sea will not count against a vessel’s allocation where it is undertaking non-fishing related activity, provided that the vessel first notifies its intention to do so as well as notifying the nature of the activity. The vessel must surrender its special permit for the duration of the activity and must not carry fishing gear or fish on board.

Emergency aid

11.7 Time at sea will not count against a vessel’s allocation where it comes to aid of another vessel in need of emergency assistance or because it was transporting an injured person for emergency medical aid.

12. Penalties

12.1 There will be a regime of administrative penalties. Annex D describes the penalties and the circumstances where the effort management team will consider their application. Where the team is considering the application of a penalty it will notify the relevant persons in writing of the intention to impose the penalty, and the reasons for its possible application.

12.2 On receipt of this notification, the affected person may appeal. Appeals should be made to the address below and should state reasons. Where an appeal is lodged the effort management team will appoint a reporter – who will be an officer of

Marine Scotland from outwith the effort management team – to consider the terms of the appeal.

Effort management team
Marine Scotland: Sea Fisheries Policy
Room 428
Pentland House
47 Robb's Loan
Edinburgh
EH14 1TY
31 July 2009

ANNEX A

ALLOCATIONS OF DAYS AT SEA 2009

Flat rate basic allocations of days 2009

Gear category	Description	Days in sea areas			
		North Sea		West of Scotland	
		Min	Max	Min	Max
TR1	Whitefish demersal trawls – equal to or greater than 100mm	160	192	164	188
TR2	Nephrops demersal trawls – equal to or larger than 70mm and less than 100mm	168	184	176	188
TR1 / TR2	Under 5 per cent cod catch allocation		200		200
TR3	Demersal trawls, Seines of mesh size equal to or larger than 16 mm and less than 32 mm		228		228
BT1	Beam trawls of mesh size of 120mm or greater		152		168
BT2	Beam trawls of mesh size equal to or larger than 80mm and less than 120mm		152		168
GN1	Gill nets and entangling nets, excluding trammel nets		140		140
GT1	Trammel nets		140		140
LL1	Longlines		172		172

Flat rate buy back allocations of days 2009

Area		North Sea		West of Scotland	
Gear category		TR1	TR2	TR1	TR2
Buy back options		Additional days allocated			
1. Spatial options	1.i. Avoid amber areas	8	8	0	8
2. Specified selective gears – whitefish (one option per vessel)	2.i. Eliminator trawl	24		24	
	2.ii. Orkney cod avoidance trawl	20		20	
	2.iii. 130mm or greater cod end	8		8	
3. Specified selective gears – Nephrops	3.i. Nephrops SMP		8		4

85 per cent option buy back allocations of days 2009

Area	North Sea	West of Scotland
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Gear category		TR1	TR2	TR1	TR2
Buy back options		Additional days allocated (% reference period effort)			
1. Spatial options	1.i. Avoid amber areas	5%	5%	0	5%
2. Specified selective gears – whitefish (one option per vessel)	2.i. Eliminator trawl	15%		15%	
	2.ii. Orkney cod avoidance trawl	12%		12%	
	2.iii. 130mm or greater cod end	5%		5%	
3. Specified selective gears – Nephrops	3.i. Nephrops SMP		5%		2.5%

ANNEX B

Definition of ‘Farn Deeps’

The ‘Farn Deeps’, for the purposes of the scheme will be defined in terms of sequentially joining the following co-ordinates:

56.0000N 002.0000W
56.0000N 000.0000W
54.0000N 000.0000W
54.0000N 000.2068W

Then north along the mean low water mark to

55.7860N 002.0000W

Definitions of specified selective gears

“The Eliminator trawl”

To qualify for the additional days associated with the use of the Eliminator trawl, a vessel must use gear that has all of the following features:

- All top sheet wing netting sections to be made of diamond mesh netting of at least 600mm mesh size;
- All lower sheet wing netting sections to be made of diamond mesh netting of at least 600mm mesh size;
The belly panel must be made of diamond mesh netting of at least 600mm mesh size. It must extend across the full width of the trawl, be attached directly to the fishing line and extend towards the rear of the net for at least 7.5m (stretched length); and,
- All top sheet netting directly above and forward of the belly panel must be made of diamond mesh netting of at least 600mm mesh size.

“The Orkney cod avoidance trawl”

To qualify for the additional days associated with the use of the Orkney cod avoidance trawl, a vessel must use gear that has all of the following features:

- All top sheet wing netting sections to be made of diamond mesh netting of at least 300mm mesh size;
- All lower sheet wing netting sections to be made of diamond mesh netting of at least 300mm mesh size;
- The belly panel must be made of diamond mesh netting of at least 300mm mesh size. It must extend across the full width of the trawl, be attached directly to the fishing line and extend towards the rear of the net for at least 7.5m (stretched length); and,
- All top sheet netting directly above and forward of the belly panel must be made of diamond mesh netting of at least 300mm mesh size.

ANNEX D

Co-ordinates of 'French line'

The French line is defined by sequentially joining the following co-ordinates:

60° 15' N 04° 00' W
60° 00' N 04° 50' W
59° 40' N 05° 30' W
59° 40' N 06° 05' W
59° 20' N 06° 30' W
59° 00' N 07° 30' W
58° 40' N 07° 40' W
58° 10' N 09° 00' W
57° 50' N 09° 20' W
57° 20' N 09° 20' W
57° 00' N 09° 00' W
56° 40' N 08° 55' W
55° 30' N 09° 20' W
55° 20' N 09° 50' W
54° 30' N 10° 35' W

ANNEX E

Penalties

This table notes the penalties that the effort management team will consider imposing in different circumstances. The team will give consideration to any relevant exceptional circumstances.

Action	Penalty
Fishing in area of seasonal closure when in effect.	Deduction of 7 days.
Fishing in area of Real Time Closure when in effect.	Deduction of 5 days.
Carrying on board of more than one category of regulated gear.	On the first occasion, removal of administration of time at sea in hours. On the second and each subsequent occasion, deduction of 5 days.
Fishing in 'amber' avoidance area after notifying intention to fish exclusively outside any such areas.	On the first occasion, removal of administration of time at sea in hours. On the second occasion, deduction of days awarded in relation to avoidance of area in the management period, including any days used from that additional allocation.
Failure to fish exclusively with specified selective gear after notifying intention to so fish.	On the first occasion, removal of administration of time at sea in hours. On the second occasion, deduction of days awarded in relation to use of gear in the management period, including any days used, including any days used from that additional allocation.
Failure to accept an observer on board in response to a reasonable request.	On the first occasion, no penalty. On the second occasion, removal of administration of time at sea in hours. On each subsequent occasion, deduction of 5 days.

FINAL REGULATORY IMPACT ASSESSMENT

1. Title of proposal

The Sea Fishing (Enforcement of Community Quota and Third Country Fishing Measures and Restriction on Days at Sea) (Scotland) Order 2009

2. Purpose and Intended Effect of Measure

This Order brings fully into effect in Scotland the provisions of Council regulation (EC) 43/2009 (“the TACs and Quotas Regulation) which was published in the Official Journal on 26 January 2009. In particular, it fully implements Annexe IIa to Council Regulation 43/2009 restricting, from 1 February 2009, days at sea by Scottish fishing vessels in certain areas of the North Sea, the Irish Sea, the Eastern Channel, the west coast of Scotland, (collectively referred to as ‘the Cod Recovery Zone’).

This RIA relates to the Order implementing the EU measure, not to the EU measure itself. It does not therefore address the detail of the EU measure. The provisions made by the Order apply equivalently across all vessels that are subject to the restrictions set out in the EU measure therefore no one group will be disproportionately affected.

The Order also implements other measures in the TACs and Quotas Regulation, in particular the technical conservation measures in Annex III of the Regulation.

Background: An EU measure introduced last year and enforced in Scotland by The Sea Fishing (Restriction on Days at Sea) (Scotland) Order 2008 limited until 31 January 2009, the number of days that vessels carrying particular gears could spend at sea in certain areas. These restrictions were agreed at an EU Fisheries and Agriculture Council in December 2008 as part of various measures to aid the recovery of cod stocks. The new EU measure has now been agreed and will result in a number of changes to the previous arrangements.

Objective: The Instrument provides for the enforcement of EU Regulations, in particular those which set limits on the days spent at sea in the cod recovery zone by fishing vessels in 2009 and January 2010. It also determines how certain management options available to Member States in that measure shall be used.

Rationale for government intervention:

The EU measure reflects scientific evidence that while cod stocks in the North Sea are recovering they remain below target, that quota controls have failed to adequately control fishing mortality and that controls over time spent by vessels at sea are still necessary to aid stock recovery to sustainable levels. The measure aims to reduce cod mortality as part of a strategy to restore cod stocks to a sustainable level over the coming decade. Failure to act at EU level could have resulted in total cod (and other) stock collapse, with greater detrimental socio-economic effects. Failure to implement in the UK/Scotland would have the same potential effect and risk EC infraction proceedings against Scottish Ministers.

3. **Consultation**

The Scottish Government has had, during 2008 and 2009, ongoing and regular (monthly) consultation with industry representatives via the Conservation Credits Steering Group (CCSG) which have become paramount to the implementation of and industry participation with the Scottish Conservation Credits Scheme (CCS). All aspects of our current scheme have been discussed with and agreed by the CCSG prior to implementation. The policy is kept under ongoing review by the same mechanism.

We have been and continue to be in close discussion with various representatives of the majority of Scottish fishermen via the CCSG about the content of the Order.

Consultation with Small Business

Most businesses in the fish catching industry are small businesses. Since the regulation came into force there have been discussions with industry representative bodies via the CCSG during which a number of issues relevant to this Order were discussed. While the arrangements which operated throughout 2002, 2003, 2004, 2005, 2006, 2007 and 2008 mean that industry is now more accustomed to the principle of effort controls, some remain opposed to it and to some of the detail of the EU limits on days at sea. Prior to the implementation of this year's scheme, and due to the various options available to us following the greater flexibility allowed by the 2009 EU Regulation, we consulted widely with industry, implementing the scheme option chosen by the majority of respondents.

The main concerns raised to us throughout our discussions have been the reduction in effort in 2009 for vessels using whitefish and nephrops gears and the additional gear restrictions applied under the technical conservation regulation in the west of Scotland.

4. **Options**

Member States have a legal obligation to implement and enforce the measures. The EU measures permit some flexibility and discretion in application. Three implementation options have been identified:

Option 1 - implement the measure by reducing days at sea to cut cod mortality by 25% which is a direct translation of the Regulation with no flexibility

Option 2 - implement the measure and make provision for flexibility:

- Scottish Ministers to determine the length of effort management period and to allow industry to indicate their preference for the length of period;
- additional days to be granted to vessels continuing to limit their catches of cod or using more sustainable gears;
- some flexibility of the track record requirement relating to the ability to fish in the restricted areas;
- the transfer of days from one vessel to another within the same gear category
- a day to be counted as any continuous period of 24 hours.

- further development of the Conservation Credits Scheme, under which vessels avoid cuts in days imposed by the Commission and operate under “hours at sea” in return for operating in accordance with initiatives designed to protect fish stocks

Option 3 - implement the measure with no restrictions or scheme rules to control and manage effort uptake of the agreed allocation of UK days at sea. This would result in additional effort on whitefish to be artificially generated which will inevitably undermine the purpose and effects of the regulation and risks Scottish Ministers’ infraction.

5. Costs and Benefits

The vast majority of costs will depend on the extent to which a vessel has to reduce its effective time at sea. The extent to which individual vessels can adjust their practices to operate around the measures will vary and the overall impact cannot be quantified. It is clear however that under options 2 and 3 the flexibility for adaptation is greater and the potential costs therefore appreciably reduced.

The days at sea restrictions, particularly those relating to cod recovery, may cause difficulty for some Scottish vessels. However, impacts on profitability are multi-factorial and it is difficult to quantify exactly the impact they will have. It is hoped that the flexibility provided by the CCS will help to mitigate some of these costs. The profitability of individual vessels and their scope for adjustment of fishing activity varies greatly depending on a range of factors. Vessel owners are adjusting their fishing practices in order to make the most efficient use of their permitted days in the cod recovery zone.

There is provision in the EU measure for derogations from the restrictions for certain vessels based on their historic fishing activity. Scotland has opted to offer a maximum allocation of 200 days to vessels which recently (2007 & 2008) and currently land very low levels of cod. This represents responsible fisheries management by applying light touch regulation where vessels have low impact on cod mortality. Vessels which benefit from this derogation must land less than 2.5% of cod each trip. Of the 500 Scottish registered vessels affected by the regulation, over 380 vessels will be eligible to apply to benefit from this derogation.

The EU measure lasts until the end of January 2010, unless replaced. Negotiations within the EU on long-term successor arrangements will continue to take place throughout 2009.

Costs

Under all three options the master, owner or agent of affected vessels will be required to notify the Scottish Government of the length of management period they wish to adopt and the fishing gears they intend to carry during that period. The cost of this notification will depend on the method chosen, that is, fax, e-mail or by hand at their local fishery office and on the length of management period chosen, since notifications must be submitted again prior to the start of their next management period. A management period may range from 1 month to 12 months in length. This is not a new cost as it existed under the previous arrangements.

Under Option 2, vessels may be required to operate with different size fishing gear than is their usual practice. Costs for this cod-selective fishing gear vary dependant on which alternative gear option is chosen. The Scottish Government has provided EFF funds for up to 40% to provide assistance in lessening the burden of the Regulation. The cost is also offset by additional days granted, removing the cost of transfer of days from another vessel.

Under options 2 and 3, vessel owners will need to report transfers of days on a simple form to enable each vessel's entitlement to days to be monitored. This also is not a new cost.

The Scottish Government will, in addition to existing duties, advise the industry and monitor activity related to the controls. Use of options 2 and 3 will require some additional effort in The Scottish Government to allocate effort and monitor uptake and to arrange transfers.

Benefits

The Order provides for management options, including those elements where Member States have discretion, to be available to fishermen, subject to some limitations on transfers between vessels in order to respect the aims of the EU measure. Elements of the EC Regulation have direct effect in the UK under Section 30(1) of the Sea Fisheries Act 1981, but enforcement powers are required. This Order also creates the necessary offences and penalties to ensure compliance with the opportunity within the Conservation Credits Scheme to operate under “hours at sea”.

The direct benefit is that the entire Scottish fishing industry now operates on a level playing field.

6. Small Firms Impact Assessment

Fisheries regulations apply to both small and large firms in the same way. The types of small business in the fishing sector are individual vessel owners and small fishing companies employing a small number of staff. Options 1 and 2 would represent a greater burden to small businesses in the short term, and long term respectively.

Fishing vessels which carry the fishing gears specified in the EU measures and which operate in the North Sea, Irish Sea, Eastern Channel, Western Channel and West of Scotland are directly affected. In 2008 the cod recovery measures applied to some 500 vessels. It is likely that a similar number will fall within the scope of the Regulations in 2009. To the extent that the operations of these vessels will be constrained, a reduction in numbers of vessels in a port may affect related businesses, including vessel suppliers, fish merchants, fish processors and other support industries. These will generally be small businesses. However, the scheme for 2009 is very similar to that of 2008 and the CCS may prove to provide better opportunities for vessels with associated benefits to related businesses.

7. Legal Aid Impact Test

The proposal will not have a negative impact on the legal aid system as administrative penalties will be applied for non-compliance in many cases. This will, it is hoped, reduce the administrative burden when taking forward prosecutions. Marine Scotland Compliance will still be able to refer cases to the COPFS for prosecution but this does not alter or undermine an individual's access to the justice system. It does, in the majority of cases, allow them to accept and pay the penalty without venturing into the court system.

8. Test Run of Business Forms

In Scotland, the administration of this system is managed on a day to day basis by the Effort Control Team. All new forms, as a matter of course are run past local fishery offices and agents to ensure that they are easy to complete and fit for purpose. We have developed – and continue to review - changes to the current IT systems so that it can support the proposals in their delivery at local fishery office level.

9. Competition Assessment

The intention and effect of the EU measures are to impose tighter limits on vessels which fish specifically for cod than on those that take these stocks as a limited bycatch. In respect of cod there were in 2008 some 136 vessels falling within this category, and we expect a similar number to fall within the scope of these measures in 2009. The options considered above for the Order would not create significant distorting effects. Indications are that some other Member States do not intend to implement the flexibilities in the EU measure in a similar way to that intended by UK Fisheries Administrations.

This proposal will affect all businesses in the fish catching sector in the same way and is unlikely to directly affect the market structure or change the number of active fishing vessels.

10. Enforcement, Sanctions, Monitoring and Review

The Order sets out offences for contraventions of Annexe IIa of Council Regulation 43/2009 along standard lines for equivalent fisheries legislation and will be enforced in Scotland by Marine Scotland Compliance.

The EU Regulation and the implementing instrument apply until the end of January 2010. The Scottish Government monitors the effects of the measure and will feed into European Commission discussions on the form that any replacement effort management measures should take.

11. Implementation and delivery plan

Annexe A shows the detailed scheme rules.

12. Summary and Recommendations

Although the Order essentially implements an EU measure there is scope to decide whether to take up the options provided by the measure. These provide flexibility for industry and help to reduce the costs to them of the EU measure. There are some marginal costs for the Scottish Government. The Scottish Government must however ensure that the flexibility provided remains within the intention of the EU measure.

On that basis, Option 1 will implement the measure in an over-burdensome manner which would force some small businesses (vessels) out of business while option 2 offers the most pragmatic measures possible, whilst still fully implementing the regulation, and will help reduce the burden on small businesses. Option 3 will implement the measure with light-touch management with the least burden on industry, but takes no account of long-term fisheries management and recovery of fish stocks.

The Scottish Government therefore intends that option 2 be adopted.

Declaration:

I have read the Regulatory Impact Assessment and I am satisfied that the balance between cost and benefit is the right one in the circumstances.

Signed by the responsible Minister

.....

Date

.....

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Annexe A Conservation Credits Scheme consolidated scheme rules

Scottish Government Conservation Credits Scheme

Scheme rules

Version 1.0: issued 31 July 2009

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1. Purpose and revision

1.1 The purpose of these rules is to inform interested persons how the Scottish Government proposes to administer the days at sea regime for eligible vessels absent from port carrying regulated gears in the Cod Recovery Zone (CRZ). It seeks to provide a consolidated guide to the matters and arrangements most relevant to the operation of this regime.

1.2 These rules have been prepared by the Scottish Government in consultation with the Conservation Credits steering group. Where it appears to the Government that there is a need for revision, this will be done in consultation with the steering group and a new version of the rules will be issued. New versions will be sent to skippers or their appointed representative and to other interested persons.

1.3 The rules do not attempt to provide a definition for every term used, nor a full background to the history or reasons for particular rules or arrangements. They are intended rather to be a practical guide to the day to day management of the scheme and the activities of relevant vessels. The meaning of many terms is well understood and it is assumed that readers will be familiar with the main features of statutory and other arrangements for sea fishing. In addition, many terms used here are already defined in EU and / or domestic regulations and to repeat those definitions would make this guide overly long. Where necessary, reference is made to regulations and other instruments.

2. Status

2.1 The rules describe the manner in which the Scottish Government proposes to fulfil its functions in administering the days at sea regime for relevant vessels. These rules still require to be read along with the relevant provisions of EU and domestic law.

3. Eligibility to carry regulated gears

3.1 The regulated gears are those categories of gear described at Article 4 of Annex IIA to EC Regulation 43/2009. In these rules we will refer to Regulation 43/2009 as “the 2009 Regulation”.

3.2 Vessels will be eligible to be absent from port carrying categories of regulated gears in the CRZ where they have a record of fishing activity with those gears in the years 2001, 2002 or 2003.

3.3 Vessels eligible to carry gear category TR1 (whitefish gear) may carry any category of regulated gear.

4. Notification of intention to carry regulated gears: management periods

4.1 Before the first day of each management period, the master of a vessel or their representative must notify the effort management team which categories of regulated gear the vessel will carry in the forthcoming period.

4.2 A management period may be a period of one or more months.

5. Carriage of regulated gears of one category

5.1 Vessels may carry on board regulated gears of one category only.

6. Allocation of basic days at sea: flat rate and track record options

6.1 Upon receipt of an appropriate gear notification form, the effort management team will issue letters to eligible vessels that specify an allocation of days for the designated management period. These letters constitute a special permit to carry the specified regulated gears in the CRZ and should be carried on board at all times when absent from port and in the CRZ carrying regulated gears.

6.2 The Scottish Government will issue special permits to eligible licensed fishing vessels whose port of administration is in Scotland. Allocations of days will be made in respect of vessels. Allocations of days will not be made to licence entitlements not presently associated with a vessel.

Flat rate

6.3 Eligible vessels may receive a 'flat rate' allocation. The flat rates for basic allocations in 2009 are set out in Annex A. Vessels will receive an allocation of days in proportion to the duration of the management period notified – i.e. a vessel notifying a 6 month management period will receive half of the annual allocation.

6.4 Where a vessel notifies more than one category of gear, its allocation of days will be the average of the rates for the categories notified. Where a vessel notifies TR1 (whitefish) and another gear its allocation of days will be the average of two rates with a gear maximum for whitefish. The whitefish allocation of days will be the number of days that would have been allocated to a vessel notifying TR1 only less 60 days (or pro rata thereof for management periods of less than 12 months).

6.5 Where a vessel applies for an allocation of days in more than one sea area (i.e. for the West of Scotland and the North Sea) its allocation of days will be subject to an area maximum.

Track record allocation – the '85 per cent option'

6.6 Vessels notifying gear categories TR1 (whitefish) and / or TR2 (Nephrops) may, alternatively, apply for a basic allocation based upon 85 per cent of their average annual effort in the period 2004-07.

6.7 Where a vessel did not fish in one or more of the years between 2004 and 2007, the average will be based upon the years in which it did fish. In addition, where a vessel joined the fleet mid-year, the effort management team may consider averaging effort in that year on a pro rata basis. A track record allocation will not be made on the basis of fishing activity in one year only.

6.8 Vessels applying for a track record allocation that (are eligible to and) wish to notify both TR1 and TR2 will receive an allocation for each gear based on their average use with each gear, subject to a maximum of 100 days with TR1. It should be noted that vessels must apply for either the flat rate or a track record allocation for all categories of gear. They may not apply for the flat rate for one category of gear and the track record allocation for another.

6.9 All vessels receiving a track record allocation must keep and submit to the effort management team a record of all catches of cod, including discards, on a trip by trip basis. Records should be submitted directly to the effort management team.

6.10 Vessels receiving a track record allocation that carry on board TR1 gear must ensure that the cod end mesh size is 120mm or greater.

Track record allocation – the option to attribute kW days track records of associated licences

6.11 Vessels applying for a track record allocation may attribute to their track record the kW days track record of relevant CRZ eligible licences that are associated with the vessel making the application. Allocations (i.e. after the deduction of 15% from the average) will be subject to a maximum for all gears combined of 300 days.

6.12 An example illustrates the operation of the kW days track record option: A 200 kW vessel is licensed with licences from two 105kW vessels that it has replaced. Each of the replaced vessels had an average of 300 days at sea in the 2004-07 reference period - thus their combined kW day average is 63,000 kW days (31,500 + 31,500). The vessel now applying for a track record allocation may be allocated 85 per cent of the combined kW days track record –, 53,550 kW days, which is 267 days for the vessel with a 200kW engine.

6.13 It is anticipated that this option will be most relevant to new vessels, which will have incurred expenditure in acquiring and aggregating licences from CRZ eligible vessels.

6.14 The option will also be available to existing vessels that choose to aggregate licences with those on an already licensed vessel, but we do not anticipate that many existing vessels will wish to take it up. This is because the additional kW and tonnage capacity of licences will reduce to zero where those licences are aggregated with a vessel that is already licensed to its actual capacity. It is not possible to reinstate the kW and tonnage on to the licence entitlement if – in future – the licence holder sought to disaggregate it from the licences with which it had been aggregated.

7. Allocation of basic days at sea to vessels catching less than 5 per cent cod

7.1 Eligible vessels notifying gears TR1 and / or TR2 which, in 2007 and 2008, landed less than 2.5 per cent cod by weight may receive an allocation of 200 days at sea. Vessels that have no record of fishing with TR1 and / or TR2 in one of the years may qualify on the basis of activity in the year where there was fishing.

7.2 Alternatively, a vessel notifying these gears that landed 2.5 per cent or more of cod but less than 5 per cent cod will also be allocated more days at sea if they agree to fish exclusively south of latitude 59 degrees in the North Sea and outside both the 'Farn Deeps' and any amber avoidance areas (see section on Conservation Credits buy backs). For the purposes of the scheme, the 'Farn Deeps' will be the area defined in Annex B.

7.3 Vessels may qualify for this allocation separately with TR1 or TR2. Therefore, if a vessel's record of landings makes it eligible for the allocation in respect of one of the gear categories, then it may receive the allocation. A vessel that notifies both TR1 and TR2 and is eligible for the less than 5 per cent cod allocation for one gear but not the other will receive an allocation based on the average of the two relevant allocations. So, for example, a vessel fishing in the North Sea that qualifies for the allocation with TR2 but not TR1 will receive a basic allocation that is the average of 200 and 160, which is 180. Its allocation will be subject to the TR1 maximum described in paragraph 6.4 above.

7.4 A vessel will revert to the standard allocation(s) for the remainder of the scheme year for the gear categories notified if:

- iv. On one occasion it lands more than 2.5 per cent cod;
- v. An inspection or observation at sea records a catch of cod that is 5 per cent or more of the total catch; or,
- vi. Having agreed not to, it fishes at any time fish north of latitude 59 degrees in the North Sea or within the 'Farn Deeps'.

The effort management team – in considering whether to return a vessel to the standard allocation(s) - will take into account the actual weight of fish landed.

8. Conditions of basic days at sea allocation

8.1 In addition to the scheme rules specified, allocations of days at sea are subject to mandatory conditions:

- iv. Vessels must comply with all Scottish Government Real Time Closures (RTCs) and seasonal closures; and, with any equivalent measures imposed by other UK Fisheries Administrations;
- v. North Sea vessels notifying TR2 (Nephrops) are required to insert a 110mm Square Mesh Panel (SMP) into the fishing gear carried on board while absent from port and in the CRZ if using mesh in the cod end of less than 90mm; and,
- vi. Vessels will be expected, on request, to carry an observer.

8.2 Vessels notifying TR2 and fishing in the West of Scotland are subject to separate requirements in relation to gear that result from the provisions in the 2009 Regulation (specified in Article 6.5 of Annex III of the 2009 Regulation) about fishing in this area. These require the installation of a 120mm SMP. TR2 vessels fishing in the West of Scotland and complying with these requirements will – in doing so - also comply with Conservation Credits scheme rules. TR2 vessels fishing only in

the North Sea need only comply with the rules described in the preceding subparagraph (ii) above.

9. Allocation of additional days at sea (Conservation Credits ‘buy backs’)

9.1 Vessels notifying gear categories TR1 and / or TR2 will receive an allocation of days at sea in addition to the basic allocation if they agree to undertake specified additional conservation measures. These additional days are not available to vessels notifying only one gear category and receiving an allocation of days at sea based on catching less than 5 per cent cod. These additional measures are optional and may be taken up for the duration of one or more management periods.

9.2 There are two types of Conservation Credits buy back option:

- iii. Fishing outside specified ‘amber’ avoidance areas (which are in addition to Real Time Closures and seasonal closures); and,
- iv. Fishing exclusively with specified selective gears.

Amber areas

9.3 Amber areas are areas associated with cod abundance (although to a lesser degree than Real Time Closures and seasonal closures). Amber areas are identified for each quarter of the fishing year. Vessels that sign up to this option and undertake no fishing in these areas during a management period will receive additional days at sea.

Specified selective gears

9.4 Vessels that fish exclusively with a specified selective gear during a management period will receive additional days at sea.

9.5 The specified selective gears are:

- v. The ‘Eliminator trawl’. This option is available to TR1 vessels. A definition is at Annex C;
- vi. The ‘Orkney cod avoidance trawl’. This option is available to TR1 vessels. A definition is at Annex C;
- vii. 130mm cod end: TR1 vessels carrying gear with cod end of mesh size 130mm or greater; or,
- viii. Nephrops Square Mesh Panel (SMP): The insertion of a 120mm SMP of minimum length 3m in the straight extension of the net or a 130mm SMP in the taper. The SMP must be no further than 12-15m from the cod line (i.e. the rearmost row of meshes of the SMP shall be no more than 12m from the cod line). In the West of Scotland, the SMP must be 130mm. This option is available to TR2 vessels.

Amount of buy back

9.6 The number of additional days that will be allocated to vessels of different types in different sea areas is shown at Annex A. The days shown there are annual allocations.

Method of calculating allocations for vessels notifying two gears and taking up buy back options

9.7 Vessels notifying TR1 and TR2 that take up buy back options for one gear but not the other will receive an allocation based on the average of their allocations for each gear, including the relevant buy back allocation. So, for example, a North Sea vessel that notifies TR1 and TR2 and fishes exclusively with the Orkney cod avoidance trawl when using TR1 will receive an annual allocation of 174 days of which no more than 120 may be used with TR1⁴.

9.8 Vessels notifying TR1 and TR2 that elect to take up a specified selective gear option for each gear will receive an allocation based on the average of each basic allocation plus the relevant buy back allocation. So, for example, a North Sea vessel that notifies TR1 and TR2 and fishes exclusively with the Orkney cod avoidance trawl when using TR1 and with the Nephrops SMP with TR2 will receive an annual allocation of 178 days of which no more than 120 may be used with TR1⁵.

9.9 Vessels that have notified TR1 and TR2 and have received, in respect of one gear category only, the allocation of 200 days at sea associated with catching less than 5 per cent cod, may also be allocated additional days at sea for taking up one or more of the Conservation Credits buy back options in respect of the other gear category. Their allocation of days at sea will be the average of the 200 day allocation and the basic allocation for the other gear plus the buy back days. So, for example, a West of Scotland vessel that notifies TR1 and TR2; is eligible for the less than 5 per cent cod catch allocation with TR2 only; and, fishes exclusively with the Orkney cod avoidance trawl when using TR1 will receive a basic allocation of 192 days, of which no more than 124 days may be with TR1⁶.

9.10 Vessels that receive a track record allocation and take up more of the Conservation Credits buy back options will have added to their allocation for each relevant gear the percentage additional allocation noted in the table in Annex A.

9.11 When a vessel volunteers to fish exclusively with a specified selective gear, Fisheries Officers will make arrangements with the vessel to inspect the gear so as to confirm that it conforms to the specification set out in the scheme rules.

9.12 Where two vessels that form a 'pair team' wish to take up one of the selective gear options, then both vessels must sign up.

⁴ Allocation = TR1 allocation (180) + TR2 allocation (168), divided by 2 = 174. TR1 maximum = TR1 allocation minus 60 = (180 – 60 = 120).

⁵ Allocation = TR1 allocation (180) + TR2 allocation (176), divided by 2 = 178. TR1 maximum = TR1 allocation minus 60 = (180 – 60 = 120).

⁶ Allocation = TR1 allocation (184) + TR2 allocation (200), divided by 2 = 192. TR1 maximum = TR1 allocation minus 60 = (184 – 60 = 124).

10. Transfers of days at sea

10.1 Transfers of days at sea are subject to controls.

10.2 Some vessels may not transfer out days:

- iv. Vessels will not be permitted to transfer any days if they have not, in the preceding two years, undertaken fishing activities above a minimum level. The minimum level is 40 days at sea in each year carrying regulated gear in the CRZ;
- v. Vessels that elect to take up one or more of the Conservation Credits buy back options may not thereafter transfer out any days. In applying this rule the effort management team will consider exceptional circumstances such as unplanned and lengthy repair work; and,
- vi. Vessels that receive the allocation of days at sea associated with catching less than 5 per cent cod.

10.3 Vessels that may transfer out days are subject to limitations:

- iv. Transfers may only take place between vessels that have notified the same categories of regulated gears and within the same management period;
- v. The maximum cumulative transfer out of days from a vessel's allocation will be limited to 50 per cent of the basic (annual pro-rata) days at sea allocation of the donor or its average number of days at sea over the period 2001-2005 (excluding from this average days that were transferred in from other vessels), whichever is the lower; and,
- vi. Vessels that receive a track record allocation may transfer days out and in, but only with other vessels that also receive a track record allocation.

10.4 Where a transfer takes place, the number of days received by the recipient will be adjusted in proportion to the comparative fishing capacity (measured in engine power) of the vessels involved.

10.5 Vessels that are ineligible to carry regulated gears in terms of section 3 may nonetheless transfer in days from eligible vessels. The transfer in of days by an ineligible vessel does not, however, confer any eligibility on the recipient.

11. Recording of time at sea: time at sea not counting against vessels' allocations

11.1 Days at sea may be administered in hours.

11.2 For the purposes of the scheme, a fishing trip will commence from the time a vessel records in its log book the commencement of the trip inside the CRZ. A fishing trip will be concluded when a vessel makes a landing or part landing, recording the landing in its log book. A fishing trip is also concluded where a vessel

enters a designated landing port and notifies that activity to the UK Fisheries Call Centre on 0131 271 9700 or by email to ukfcc@scotland.gsi.gov.uk.

Transiting the CRZ

11.3 Time at sea in the CRZ will not count where the vessel is in transit to fish exclusively outside the zone, or exclusively to the west of the ‘French line’ (described at Annex D). Vessels wishing to transit in this way must call the UK Fisheries Call Centre on 0131 271 9700, by fax on 0131 244 6471 or by email to ukfcc@scotland.gsi.gov.uk prior to departure from port. All on board fishing gear must be lashed and stowed during the period of transit. This method may also be used by vessels wishing to transit from port to port, however it should be noted that in order for time spent at sea to be excluded from the uptake of their days at sea allocation, no fish may be carried on board while in transit.

11.4 Skippers should note that if they notify an intention to transit, fish outside the CRZ or the west of the French line and then fish inside the CRZ or – where applicable – to the east of the French line on return to port, all of their time at sea within the CRZ, including that spent transiting the zone on their outward journey, will be deducted from their allocation.

11.5 As noted, time spent in the CRZ carrying regulated gear west of the ‘French line’ will not be deducted from a vessel’s days at sea allocation, as long as the vessel in question has installed appropriate VMS that allows their position to be tracked and that the appropriate contact has been made with the UKFCC prior to departure.

Non-fishing activity

11.6 Time at sea will not count against a vessel’s allocation where it is undertaking non-fishing related activity, provided that the vessel first notifies its intention to do so as well as notifying the nature of the activity. The vessel must surrender its special permit for the duration of the activity and must not carry fishing gear or fish on board.

Emergency aid

11.7 Time at sea will not count against a vessel’s allocation where it comes to aid of another vessel in need of emergency assistance or because it was transporting an injured person for emergency medical aid.

12. Penalties

12.1 There will be a regime of administrative penalties. Annex D describes the penalties and the circumstances where the effort management team will consider their application. Where the team is considering the application of a penalty it will notify the relevant persons in writing of the intention to impose the penalty, and the reasons for its possible application.

12.2 On receipt of this notification, the affected person may appeal. Appeals should be made to the address below and should state reasons. Where an appeal is lodged the effort management team will appoint a reporter – who will be an officer of

Marine Scotland from outwith the effort management team – to consider the terms of the appeal.

Effort management team
Marine Scotland: Sea Fisheries Policy
Room 428
Pentland House
47 Robb's Loan
Edinburgh
EH14 1TY
31 July 2009

ALLOCATIONS OF DAYS AT SEA 2009

Flat rate basic allocations of days 2009

Gear category	Description	Days in sea areas			
		North Sea		West of Scotland	
		Min	Max	Min	Max
TR1	Whitefish demersal trawls – equal to or greater than 100mm	160	192	164	188
TR2	Nephrops demersal trawls – equal to or larger than 70mm and less than 100mm	168	184	176	188
TR1 / TR2	Under 5 per cent cod catch allocation		200		200
TR3	Demersal trawls, Seines of mesh size equal to or larger than 16 mm and less than 32 mm		228		228
BT1	Beam trawls of mesh size of 120mm or greater		152		168
BT2	Beam trawls of mesh size equal to or larger than 80mm and less than 120mm		152		168
GN1	Gill nets and entangling nets, excluding trammel nets		140		140
GT1	Trammel nets		140		140
LL1	Longlines		172		172

Flat rate buy back allocations of days 2009

Area		North Sea		West of Scotland	
Gear category		TR1	TR2	TR1	TR2
Buy back options		Additional days allocated			
1. Spatial options	1.i. Avoid amber areas	8	8	0	8
2. Specified selective gears – whitefish (one option per vessel)	2.i. Eliminator trawl	24		24	
	2.ii. Orkney cod avoidance trawl	20		20	
	2.iii. 130mm or greater cod end	8		8	
3. Specified selective gears – Nephrops	3.i. Nephrops SMP		8		4

85 per cent option buy back allocations of days 2009

Area	North Sea	West of Scotland
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Gear category		TR1	TR2	TR1	TR2
Buy back options		Additional days allocated (% reference period effort)			
1. Spatial options	1.i. Avoid amber areas	5%	5%	0	5%
2. Specified selective gears – whitefish (one option per vessel)	2.i. Eliminator trawl	15%		15%	
	2.ii. Orkney cod avoidance trawl	12%		12%	
	2.iii. 130mm or greater cod end	5%		5%	
3. Specified selective gears – Nephrops	3.i. Nephrops SMP		5%		2.5%

ANNEX B

Definition of ‘Farn Deeps’

The ‘Farn Deeps’, for the purposes of the scheme will be defined in terms of sequentially joining the following co-ordinates:

56.0000N 002.0000W
56.0000N 000.0000W
54.0000N 000.0000W
54.0000N 000.2068W

Then north along the mean low water mark to

55.7860N 002.0000W

Definitions of specified selective gears

“The Eliminator trawl”

To qualify for the additional days associated with the use of the Eliminator trawl, a vessel must use gear that has all of the following features:

- All top sheet wing netting sections to be made of diamond mesh netting of at least 600mm mesh size;
- All lower sheet wing netting sections to be made of diamond mesh netting of at least 600mm mesh size;
The belly panel must be made of diamond mesh netting of at least 600mm mesh size. It must extend across the full width of the trawl, be attached directly to the fishing line and extend towards the rear of the net for at least 7.5m (stretched length); and,
- All top sheet netting directly above and forward of the belly panel must be made of diamond mesh netting of at least 600mm mesh size.

“The Orkney cod avoidance trawl”

To qualify for the additional days associated with the use of the Orkney cod avoidance trawl, a vessel must use gear that has all of the following features:

- All top sheet wing netting sections to be made of diamond mesh netting of at least 300mm mesh size;
- All lower sheet wing netting sections to be made of diamond mesh netting of at least 300mm mesh size;
- The belly panel must be made of diamond mesh netting of at least 300mm mesh size. It must extend across the full width of the trawl, be attached directly to the fishing line and extend towards the rear of the net for at least 7.5m (stretched length); and,
- All top sheet netting directly above and forward of the belly panel must be made of diamond mesh netting of at least 300mm mesh size.

ANNEX D

Co-ordinates of 'French line'

The French line is defined by sequentially joining the following co-ordinates:

60° 15' N 04° 00' W
60° 00' N 04° 50' W
59° 40' N 05° 30' W
59° 40' N 06° 05' W
59° 20' N 06° 30' W
59° 00' N 07° 30' W
58° 40' N 07° 40' W
58° 10' N 09° 00' W
57° 50' N 09° 20' W
57° 20' N 09° 20' W
57° 00' N 09° 00' W
56° 40' N 08° 55' W
55° 30' N 09° 20' W
55° 20' N 09° 50' W
54° 30' N 10° 35' W

ANNEX E

Penalties

This table notes the penalties that the effort management team will consider imposing in different circumstances. The team will give consideration to any relevant exceptional circumstances.

Action	Penalty
Fishing in area of seasonal closure when in effect.	Deduction of 7 days.
Fishing in area of Real Time Closure when in effect.	Deduction of 5 days.
Carrying on board of more than one category of regulated gear.	On the first occasion, removal of administration of time at sea in hours. On the second and each subsequent occasion, deduction of 5 days.
Fishing in 'amber' avoidance area after notifying intention to fish exclusively outside any such areas.	On the first occasion, removal of administration of time at sea in hours. On the second occasion, deduction of days awarded in relation to avoidance of area in the management period, including any days used from that additional allocation.
Failure to fish exclusively with specified selective gear after notifying intention to so fish.	On the first occasion, removal of administration of time at sea in hours. On the second occasion, deduction of days awarded in relation to use of gear in the management period, including any days used, including any days used from that additional allocation.
Failure to accept an observer on board in response to a reasonable request.	On the first occasion, no penalty. On the second occasion, removal of administration of time at sea in hours. On each subsequent occasion, deduction of 5 days.