
STATUTORY INSTRUMENTS

1993 No. 1196

SEA FISHERIES

CONSERVATION OF SEA FISH

The Sea Fish Licensing (Time at Sea) (Principles) Order 1993

<i>Made</i>	- - - -	<i>30th April 1993</i>
<i>Laid before Parliament</i>		<i>4th May 1993</i>
<i>Coming into force</i>	- -	<i>5th May 1993</i>

The Minister of Agriculture, Fisheries and Food and the Secretaries of State respectively concerned with the sea fishing industry in Scotland, Wales and Northern Ireland, acting jointly, in exercise of the powers conferred on them by sections 4(6C) and 22(2)(a) of the Sea Fish (Conservation) Act 1967(1), and of all their other enabling powers, after giving due consideration to a scheme of decommissioning in accordance with section 4(6D) of that Act, hereby make the following Order:

Title and commencement

1. This Order may be cited as the Sea Fish Licensing (Time at Sea) (Principles) Order 1993 and shall come into force on 5th May 1993.

Interpretation

2.—(1) In this Order, unless the context otherwise requires—

“the Act” means the Sea Fish (Conservation) Act 1967;

“antecedent vessel” has the meaning assigned to it by article 11(1);

“the appropriate Minister” means—

(a) in relation to England, the Minister of Agriculture, Fisheries and Food;

(b) in relation to Scotland, Wales or Northern Ireland, the Secretary of State;

“the basic allocation” has the meaning assigned to it by article 4;

“capacity units”, in relation to a vessel, means—

$$(L \times B) + (0.45 \times P)$$

(1) 1967 c. 84; section 4 was amended by the Fishery Limits Act 1976 (c. 86), section 3, by the Fisheries Act 1981 (c. 29), section 20 and by the Sea Fish (Conservation) Act 1992 (c. 60), section 1; section 22(2)(a) which contains a definition of “the Ministers” for the purposes of section 4 was amended by the Fisheries Act 1981, sections 19(2)(d) and 45(b)

where:

L is the length of the vessel expressed in metres,

B is the breadth of the vessel expressed in metres, and

P is the engine power of the vessel expressed in kilowatts;

“compulsory returns”, in relation to a vessel, means—

- (a) entries kept in a logbook by the master of the vessel under an enforceable Community obligation relating to fishing activities and submitted to the appropriate Minister; or
- (b) declarations made under an enforceable Community obligation relating to fishing activities—
 - (i) as to fish landed, by the master of the vessel or by an agent;
 - (ii) as to trans-shipment, by the master of the vessel,
 and submitted to the appropriate Minister;

“donor vessel” has the meaning assigned to it by article 11(1);

“half-day” means all or part of any period of 12 consecutive hours commencing at midnight or at midday;

“length”, in relation to a boat, means the length calculated in accordance with the rules specified in Article 2(1) of Council Regulation (EEC) No.2930/86 defining characteristics for fishing vessels⁽²⁾;

“licence” means a licence granted under section 4 of the Act;

“principles” means principles to which section 20(5B) of the Act⁽³⁾ does not apply;

“recipient vessel” has the meaning assigned to it by article 11(1);

“the 1991 Regulations” means the Sea Fishing (Days in Port) Regulations 1991⁽⁴⁾;

“time at sea condition” means a condition included in a licence by virtue of section 4(6)(c) of the Act;

“vessel” means a fishing boat exceeding 10 metres in length;

“voluntary returns”, in relation to a vessel, means written data relating to fishing activities submitted by the master of the vessel, or by an agent, on a voluntary basis to the appropriate Minister before the date on which this Order comes into force;

“written returns”, in relation to a vessel, means—

- (a) compulsory returns; or
- (b) voluntary returns.

(2) For the purposes of this Order a vessel is at sea if it is not—

- (a) tied up, or anchored, immediately adjacent to land or in an area of safe water,
- (b) tied up, or anchored, or moving between moorings, within harbour limits,
- (c) tied up to, or moving between, vessels operating under the authority of a licence granted under section 4A of the Act, or
- (d) held on land.

⁽²⁾ OJNo. L274, 25.9.86, p.1.

⁽³⁾ Section 20(5B) was inserted by the Sea Fish (Conservation) Act 1992, section 7(3).

⁽⁴⁾ S.I.1991/139, amended by S.I. 1991/335.

(3) For the purposes of this Order the pattern of fishing activity of a vessel relates only to the species of fish caught, the main type of gear used or the statistical sub-areas or divisions of the International Council for the Exploration of the Sea⁽⁵⁾ in which fishing takes place.

(4) Any reference in this Order to a numbered article shall be construed as a reference to the article bearing that number in this Order.

Principles

3. The principles on which the time which vessels may spend at sea is to be arrived at for the purposes of any time at sea condition are set out in articles 4 to 12.

Basic principle where there has been no previous time at sea condition in respect of a vessel

4. Where no licence containing a time at sea condition has previously been granted in respect of a vessel, the time which that vessel may spend at sea in a period not exceeding 12 consecutive months shall be—

- (a) the total number of half-days calculated in accordance with article 5 (“the basic allocation”), increased, where appropriate, in accordance with the provisions of articles 6 to 11; or
- (b) 160 half-days,

whichever is the greater.

Basic allocation

5.—(1) Subject to paragraph (2) below, the basic allocation in respect of any vessel shall be the number of half-days spent at sea by the vessel in 1991, as derived from any written returns relating to that vessel.

(2) Where—

- (a) an application to register a vessel as a British fishing vessel under section 13 of the Merchant Shipping Act 1988⁽⁶⁾ was refused because the vessel failed to meet the criteria for British-owned vessels laid down in section 14 of that Act as originally enacted, and
- (b) the vessel was subsequently registered under section 13 of that Act and a licence was granted in respect of the vessel after 1st January 1991,

the basic allocation in respect of that vessel shall be the number of half-days spent at sea by the vessel in 1988, as derived from any written returns relating to that vessel.

Vessels to which the 1991 Regulations applied

6. Where the vessel is one to which the 1991 Regulations applied, the basic allocation shall be increased by 8 half-days in respect of each month from March 1991 to December 1991 inclusive during which the vessel was not exempted from those Regulations as provided for by regulation 3(2) of those Regulations.

Time spent fishing under the authority of a licence but not covered by written returns

7. Where the vessel spent any half-days at sea in the year to which the basic allocation relates fishing, under the authority of a licence, exclusively for species of fish in respect of which no

(5) Cmnd. 2586.

(6) 1988 c. 12; section 14 was modified by S.I. 1989/2006.

compulsory returns were required, and there are no voluntary returns in relation to that vessel in respect of those half-days, the basic allocation shall be increased by that number of half-days.

Other time spent at sea

8.—(1) Subject to paragraph (2) below, where—

- (a) the vessel spent any half-days at sea in the year to which the basic allocation relates, and
- (b) those half-days were not spent fishing for profit for sea fish, unless for salmon or migratory trout,

the basic allocation shall be increased by that number of half-days.

(2) Paragraph (1) above shall not apply in the case of any half-days at sea occurring in any period exceeding 27 consecutive half-days in which the vessel did not fish for profit.

Exceptional circumstances

9.—(1) Where as a result of exceptional circumstances the vessel spent significantly fewer half-days at sea in the year to which the basic allocation relates than it would otherwise have spent, the basic allocation shall be increased to take account of that fact.

(2) Exceptional circumstances for the purpose of paragraph (1) above are—

- (a) the overhaul, modernisation or repair of the vessel (but not an annual overhaul);
- (b) a prolonged or recurrent illness of the master or any member of the crew of the vessel or of their immediate family;
- (c) family bereavement of the master or any member of the crew of the vessel leading to prolonged or repeated absence from work;
- (d) other factors leading to prolonged or repeated absence from work on the part of the master or any member of the crew of the vessel.

(3) Exceptional circumstances for the purpose of paragraph (1) above do not include the requirement to remain in port contained in the 1991 Regulations.

Significant change in pattern of fishing activity, etc

10. Where after 1st January of the year to which the basic allocation relates and before the date on which this Order comes into force there was or is—

- (a) a significant change in the pattern of fishing activity of the vessel,
- (b) a significant financial investment in the vessel, or
- (c) a significant enforceable financial commitment in the vessel,

which resulted, or would result, in that vessel spending significantly more half-days at sea than it otherwise would have spent, or would spend, the basic allocation shall be increased to take account of that fact.

Surrender of licence and grant of new licence in respect of a different vessel

11.—(1) Where in the relevant period a licence was or is granted in respect of any vessel on the occasion of the surrender of a licence in respect of a different vessel (“the donor vessel”), the basic allocation in respect of the first-mentioned vessel (“the recipient vessel”) shall be increased, where appropriate, to take account of—

- (a) the basic allocation, increased where appropriate in accordance with articles 6 to 9, in respect of the donor vessel and any vessel whose licence was surrendered on the occasion

of the grant of a licence in respect of the donor vessel in the relevant period (“the antecedent vessel”), and

(b) the capacity units of the recipient vessel, the donor vessel and any antecedent vessel.

(2) Where—

(a) the person to whom the licence is to be granted in respect of the recipient vessel acquired or acquires the vessel, or entered or enters into an enforceable financial commitment to acquire the vessel, after 1st January of the year to which the basic allocation relates and before the date on which this Order comes into force, and

(b) the current or proposed pattern of fishing activity of the vessel—

(i) is significantly different from the pattern of fishing activity of the donor vessel or any antecedent vessel in the year to which the basic allocation in respect of the donor vessel or antecedent vessel relates, and

(ii) requires significantly more half-days at sea than the basic allocation in respect of the recipient vessel, increased, where appropriate, in accordance with paragraph (1) above,

that basic allocation shall be increased to take account of that fact.

(3) The relevant period for the purpose of paragraph (1) above is a period commencing after 1st January of the year to which the basic allocation in respect of the recipient vessel relates and before the date of commencement of any time at sea condition included in a licence in respect of that vessel.

Principles applicable where there has previously been a time at sea condition in respect of a vessel

12.—(1) Subject to paragraphs (2) and (3) below, where a licence containing a time at sea condition in respect of a period not exceeding 12 consecutive months has previously been granted in respect of any vessel, the time which that vessel may spend at sea in a subsequent period of 12 consecutive months shall be based on the time which it could spend at sea in accordance with the last such time at sea condition.

(2) Where a new licence is granted in respect of any recipient vessel and the surrendered licence in respect of the donor vessel included a time at sea condition, the time which the recipient vessel may spend at sea, for the purposes of any time at sea condition which is included in the new licence and expires on the date on which the time at sea condition in the surrendered licence would otherwise have expired, shall be a number of half-days based on—

(a) the number of half-days which the recipient vessel could spend at sea in accordance with any time at sea condition included in a licence in respect of that vessel, being a licence which was surrendered on the occasion of the grant of the new licence in respect of that vessel, less the number of half-days (if any) spent at sea for the purposes of that condition by that vessel in the period of operation of that condition,

(b) the number of half-days which the donor vessel could spend at sea in accordance with a time at sea condition included in the surrendered licence in respect of that vessel, less the number of half-days (if any) spent at sea for the purposes of that condition by that vessel in the period of operation of that condition, and

(c) a proportion of the capacity units of the recipient vessel and of the donor vessel.

(3) Where the principles in paragraph (2) above have been applied in respect of a recipient vessel for the purposes of the most recent time at sea condition included in a licence in respect of that vessel, the time which that vessel may spend at sea in a subsequent period of 12 consecutive months, for the purposes of the next time at sea condition included in a licence in respect of that vessel, shall be based on the time which it could spend at sea in accordance with that most recent time at sea condition, increased, where appropriate, to take account of—

- (a) the number of half-days spent at sea for the purposes of the time at sea condition referred to in paragraph (2)(a) above by the recipient vessel in the period of operation of that condition, and
- (b) the number of half-days spent at sea for the purposes of the time at sea condition referred to in paragraph (2)(b) above by the donor vessel in the period of operation of that condition.

In witness whereof the Official Seal of the Minister of Agriculture, Fisheries and Food is hereunto affixed on 30th April 1993.

L.S.

John Selwyn Gummer
Minister of Agriculture, Fisheries and Food

30th April 1993

Hector Monro
Parliamentary Under Secretary of State, Scottish
Office

29th April 1993

Gwilym Jones
Parliamentary Under Secretary of State, Welsh
Office

30th April 1993

Patrick Mayhew
Secretary of State for Northern Ireland

EXPLANATORY NOTE

(This note is not part of the Order)

This Order applies in respect of fishing boats exceeding 10 metres in overall length. The Order sets out principles on which the time which such boats may spend at sea is to be arrived at for the purpose of any condition included in a licence under section 4 of the Sea Fish (Conservation) Act 1967, as amended, by virtue of section 4(6)(c) of that Act.

In this Order articles 4 to 11 set out principles applicable in arriving at the initial allocation of time at sea in respect of a vessel in a period not exceeding 12 consecutive months. There is a minimum allocation of 160 half-days (article 4). Subject to that minimum, the Order provides for a basic allocation in that period based on half-days spent at sea by the vessel in a specified year, as derived from written returns submitted to the appropriate Minister (article 5).

Provision is made for the basic allocation to be increased to take account of a variety of circumstances (articles 6 to 11). Those circumstances include other time spent at sea in the specified year but not covered by written returns (articles 7 and 8) and cases where vessels spent significantly fewer half-days at sea in that year as a result of exceptional circumstances such as illness or family bereavement on the part of the master or crew (article 9). Special provision is made in respect of vessels to which the Sea Fishing (Days in Port) Regulations 1991 applied (article 6), in cases where there has been a significant change in the pattern of fishing activity of the vessel or a significant financial investment or commitment in the vessel (article 10) and in cases where a licence is granted in respect of a vessel on the occasion of the surrender of a licence in respect of a different vessel (article 11).

Principles applicable in arriving at subsequent allocations of time at sea in respect of a vessel are set out in article 12.