

Scheme made by the Secretary of State for Environment, Food and Rural Affairs, laid before Parliament under section 15(3) of the Fisheries Act 1981, for approval by a resolution of each House of Parliament within forty days beginning with the day on which the Scheme was made, subject to extension for periods of dissolution, prorogation or adjournment for more than four days.

STATUTORY INSTRUMENTS

2004 No. 2467

SEA FISHERIES, ENGLAND

SEA FISH INDUSTRY

**The Fishing Boats (Satellite-Tracking
Devices) (England) Scheme 2004**

<i>Made</i>	- - - -	<i>14th September 2004</i>
<i>Laid before Parliament</i>		<i>21st September 2004</i> <i>22nd September</i>
<i>Coming into force</i>	- -	<i>2004</i>

The Secretary of State for Environment, Food and Rural Affairs, in exercise of the powers conferred by section 15 of the Fisheries Act 1981(1) and now vested in her(2), makes the following Scheme with the approval of the Treasury:

Title and commencement

1. This Scheme may be cited as the Fishing Boats (Satellite-Tracking Devices) (England) Scheme 2004 and shall come into force on the day after the day it is laid before Parliament.

Interpretation

2.—(1) In this Scheme—

“application” means an application under this Scheme and “applicant” shall be construed accordingly;

“approval” means an approval of an application;

“authorised officer” means any officer authorised in writing by the Secretary of State for the purposes of this Scheme;

(1) 1981 c. 29. See section 18(1) of the Fisheries Act 1981 for a definition of “the Ministers” relevant for the purposes of this Scheme. Sections 15(2) and 18(1) were amended by the Scotland Act 1998 (Consequential Modifications) (No.2) Order 1999 (S.I.1999/1820) Schedule 2, paragraph 68(1), (2) and (3).
(2) S.I. 2002/794, Article 2(1).

“the Defra provider” means the provider and installer of satellite-tracking devices selected by the Secretary of State for the purposes of the Regulation;

“English fishing boat” means a fishing boat which—

- (a) is registered in the United Kingdom under Part II of the Merchant Shipping Act 1995⁽³⁾,
- (b) or—
 - (i) is owned wholly or partly by persons qualified to own British ships for the purposes of that Part of that Act, but
 - (ii) is not a boat which counts as a British ship for the purposes of that Act solely as a result of the application of section 1(1)(c) of that Act to it by virtue of registration under the law of any of the Channel Islands or of the Isle of Man;

and has its port of administration in England at the date of application;

“port of administration” means the port from which the licence granted in respect of a fishing boat under section 4 of the Sea Fish (Conservation) Act 1967⁽⁴⁾ is issued;

“the Regulation” means Commission Regulation (EC) No. 2244/2003 laying down detailed provisions regarding satellite-based Vessel Monitoring Systems⁽⁵⁾;

“relevant person”, in relation to a fishing boat, means its owner, charterer (if any), or master or the representative of any of them;

“satellite-tracking device” has the same meaning as in the Regulation.

(2) Any obligation of the Secretary of State to publish material under this Scheme means an obligation to make it available in a manner in which she considers that the material is reasonably likely to be seen by those to whom this Scheme may apply, and publication in anticipation of this Scheme shall be treated for the purposes of this Scheme as having been carried out under it.

Eligibility

3.—(1) Any person who is a relevant person in relation to an English fishing boat to which the Regulation applies may make an application for a grant to the Secretary of State if he—

- (a) chooses to have a satellite-tracking device provided and installed by the Defra provider under an agreement to which he and the Defra provider are both parties;
- (b) undertakes not to contravene the agreement, and
- (c) undertakes to comply with any other conditions published by the Secretary of State relating to this Scheme.

(2) The Secretary of State shall publish a notice specifying the approved Defra provider.

Applications

4.—(1) The Secretary of State may from time to time publish an invitation for applications.

(2) An application must be lodged with the Secretary of State as specified in the invitation on or before the closing date in order to be considered for approval except where the Secretary of State is satisfied that—

- (a) the particular circumstances of the applicant render it unreasonable to expect his application to be lodged by the closing date, and
- (b) the date by which the application is lodged is as early as, in those circumstances, can reasonably be expected.

⁽³⁾ 1995 c. 21.

⁽⁴⁾ 1967 c. 84.

⁽⁵⁾ OJ No. L333, 20.12.2003, p. 17.

(3) In this Scheme “the closing date” means such date as the Secretary of State may from time to time publish as the date on or before which applications must be lodged.

(4) The Secretary of State shall reject any application relating to a fishing boat if she considers that the port of administration for the fishing boat has been changed for the primary purpose of eligibility to make an application.

(5) Following approval by the Secretary of State she shall make a grant which is equal to the price, as agreed between her and the Defra provider, of—

- (a) the satellite-tracking device;
- (b) the installation costs of the satellite-tracking device, and
- (c) a three year warranty for the installed satellite-tracking device,

which shall be payable in accordance with the following provisions of this Scheme.

Installation of satellite-tracking devices

5.—(1) Each successful applicant shall be notified by the Secretary of State in writing of the approval relating to his fishing boat, any conditions with which he must comply and the place at which, and the period within which, he must present his fishing boat to be fitted with the satellite-tracking device by the Defra provider.

(2) Subject to sub-paragraph (3), the approval of the Secretary of State shall terminate for the fishing boat in question if the successful applicant fails to present the boat at the place notified, and during the period notified, to him by the Secretary of State.

(3) If the successful applicant notifies the Secretary of State within a reasonable time of reasons for that failure (or, as the case may be, for anticipating that failure) the Secretary of State may grant him an alternative period, place or both within which to have the satellite-tracking device fitted and as a consequence the approval shall operate on the basis of that grant.

Payments under the Scheme

6.—(1) Once the installation of the satellite-tracking device has been completed and the Defra provider has informed the Secretary of State of this, the Secretary of State shall, subject to sub-paragraph (2), pay the amount of the price agreed under paragraph 4(5) to the Defra provider.

(2) No payment shall be made unless the Secretary of State is satisfied that the satellite-tracking device has been provided and the installation undertaken in accordance with procedures agreed by her with the Defra provider.

Assistance to authorised officers

7. Any applicant or any employee or agent of any applicant shall give to an authorised officer such assistance as the officer may reasonably request to exercise the power conferred on the officer by paragraph 8.

Powers of authorised officers

8.—(1) An authorised officer at all reasonable hours and on producing, if required to do so, some duly authenticated document showing the authority of the officer, may exercise the powers specified in this paragraph for the purpose of ascertaining whether and to what extent—

- (a) a person is entitled to make an application under paragraph 3;
- (b) conditions under paragraph 3(1)(d) and 5(1) have been complied with;
- (c) an offence under section 17 of the Fisheries Act 1981 has been, or is being, committed, and

(d) the satellite-tracking device is functioning.

(2) Subject to sub-paragraph (3) an authorised officer may enter upon any relevant premises.

(3) The power conferred by sub-paragraph (2) may be exercised in relation to premises used as a dwelling house only where reasonable notice of the intended exercise of the power has been given to all residents of that dwelling house.

(4) Any authorised officer who has entered any premises in accordance with sub-paragraph (2) may inspect those premises, any documents on those premises which are, or which such officer has reasonable cause to believe are, relevant documents.

(5) An authorised officer entering premises by virtue of this paragraph may be accompanied by such other person as the officer considers necessary and sub-paragraphs (2), (4), (6) and (7) shall apply in relation to such other person when acting under the instructions of the officer as if he were an authorised officer.

(6) An authorised officer may—

- (a) require any person who is an applicant or is an employee or agent of an applicant to produce any relevant documents and to supply such additional information in possession of the person or under his control relating to the application as the officer may reasonably request;
- (b) inspect any such documents and, where such documents are kept by means of a computer, have access to, and inspect and check the operation of, any computer and associated apparatus or material which has been used in connection with those documents;
- (c) require that copies of, or extracts from, any relevant documents be produced, and
- (d) inspect and remove for the purposes of further inspection any equipment on the fishing boat in respect of which an application has been made, including the satellite-tracking device.

(7) An authorised officer shall not be liable to civil or criminal proceedings for anything done in purported exercise of the powers conferred on the officer by this Scheme if the court hearing such proceedings is satisfied that—

- (a) the act was done in good faith;
- (b) that there were reasonable grounds for doing it, and
- (c) that it was done with reasonable skill and care.

(8) In this paragraph—

“premises” includes any fishing boat or other vehicle; and

“relevant documents” means any documents relating to the fishing boat in respect of which an application has been made, and

“relevant premises” means the fishing boat in respect of which an application has been made and any premises in which the relevant documents are retained or in which an authorised officer has reasonable grounds to believe such documents may be retained.

Revocation of approval

9.—(1) If at any time after the Secretary of State has approved an application in respect of any fishing boat it appears to her that—

- (a) any of the undertakings relating to the fishing boat given pursuant to paragraph 3 have not been complied with;
- (b) a relevant person, in relation to the fishing boat—
 - (i) has furnished information or produced a document in purported compliance with any provision of this Scheme which he knows to be false in a material particular, or

(ii) has recklessly made a statement which is false in a material particular;
(c) the relevant person or his employee or agent has failed to comply with paragraph 7;
she may revoke the approval or withhold any part of the payment in respect of the application.

(2) Where approval is revoked under sub-paragraph (1) after any payment relating to the fishing boat to the Defra provider has been made, the Secretary of State may recover on demand from the applicant an amount equal to the whole or any part of any such payment.

Interest

10.—(1) Where the Secretary of State decides to recover on demand an amount in accordance with paragraph 9(2), she may also recover interest on that amount on a daily basis at the rate of 1% above the LIBOR for the period beginning with the day following that on which the amount was paid and ending on the day on which she recovers it.

(2) In this paragraph “LIBOR”, in relation to any day, means the sterling three month London interbank offered rate in force for that day rounded if necessary to two decimal places.

(3) In any proceedings for recovery under this Scheme, a certificate issued by the Secretary of State stating the LIBOR applicable for any day is conclusive evidence of the LIBOR in question if the certificate also states that the Bank of England notified her of the LIBOR in question.

8th September 2004

Ben Bradshaw
Parliamentary Under Secretary of State
Department for Environment, Food and Rural
Affairs

We approve,

14th September 2004

Derek Twigg
John Heppell
Two of the Lords Commissioners of Her
Majesty’s Treasury

Status: This is the original version (as it was originally made).

EXPLANATORY NOTE

(This note is not part of the Scheme)

This Scheme makes provision for funding satellite-tracking devices on fishing boats which are administered in England and which are required on board fishing boats over 15 metres as a result of Commission Regulation (EC) No. 2244/2003 laying down detailed provisions regarding satellite-based Vessel Monitoring Systems. Paragraph 3 sets out the eligibility criteria for the Scheme and paragraph 4 gives details of the method of applying for funding under the Scheme. Paragraph 5 deals with the installation of the satellite-tracking devices on board fishing boats. Paragraph 6 makes provision for the payment under the Scheme and also sets out the circumstances in which payments will not be made to successful applicants. Paragraph 8 sets out the powers of an authorised officer and paragraph 7 requires any applicant or any employee of any applicant to assist an authorised officer. Paragraph 9 deals with the revocation of approval of an application and sets out the conditions and consequences of revocation and paragraph 10 deals with rates of interest where sums are recovered.