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SCOTTISH STATUTORY INSTRUMENTS

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**2008 No. 151**

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

**PART IV**

**RESTRICTION ON DAYS AT SEA**

**SOLE**

**Determination of number of days**

**15.** The Scottish Ministers may authorize a relevant fishing boat to be present within the sole recovery zone for such number of days as they may determine in accordance with Article 7 of Annex IIc.

**Determination of management periods and division of days between management periods**

**16.—(1)** Management periods, as referred to in paragraph 8.1 of Annex IIc, and the number of days during a management period as referred to in paragraph 8.2 of Annex IIc in relation to a relevant fishing boat, will be determined by the Scottish Ministers.

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

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

**Absence from port**

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

(a) is absent from port and within the sole recovery zone in excess of the number of days permitted to it under this Part of the Order in contravention of paragraph 8.3 of Annex IIc; or

(b) without having a management period, enters the sole recovery zone carrying on board any regulated gear,

is guilty of an offence.

(2) Paragraph (1)(a) does not apply to—

(a) a person in charge of a relevant fishing boat in respect of which paragraph 14 of Annex IIc applies provided that the person complies with the requirements of that paragraph; or

- (b) a person in charge of a relevant fishing boat which is permitted by paragraph 15 of Annex IIc to transit the sole recovery zone, provided that the person complies with the requirements of that paragraph.
- (3) Paragraph (1)(b) does not apply to a person in charge of a relevant fishing boat which is permitted by paragraph 15 of Annex IIc to transit the sole recovery zone, provided that the person complies with the requirements of that paragraph.
- (4) In addition to the determined number of days, for each management period there is added to the determined number of days, such number of days (if any) as may be allocated to the boat by the Scottish Ministers.
- (5) Where unused days have been transferred from a relevant fishing boat (“the donor”) to another relevant fishing boat (“the recipient”) the following applies, subject to any adjustment required by paragraph 11.1 of Annex IIc–
- (a) the donor must have deducted from its allocation of days such number of days as have been transferred to the recipient;
  - (b) the recipient must have added to its allocation of days such number of days as have been transferred by the donor.
- (6) Where unused days have been transferred from a relevant fishing boat (“the donor”) to a foreign fishing boat (“the recipient”), subject to any adjustment required by paragraph 12 of Annex IIc, the donor must have deducted from its allocation of days such number of days as have been transferred to the recipient.
- (7) Where unused days have been transferred from a foreign fishing boat (“the donor”) to a relevant fishing boat (“the recipient”), subject to any adjustment required by paragraph 12 of Annex IIc the recipient must have added to its allocation of days such number of days as have been transferred by the donor.
- (8) Where in the course of an absence from port during any management period within the sole recovery zone regulated gear is affixed to two or more fishing boats there will be deducted from the determined number of days for each such boat that is a relevant fishing boat in relation to that gear and that period a number of days equal to the number when it was absent from port but the gear was being carried by any other such boat.
- (9) Where during any management period a relevant fishing boat is absent from port operating with regulated gear within the same grouping of fishing gear and present within the cod recovery zone there will be deducted from the determined number of days for that boat in relation to that period a number of days equal to the number when it was absent from port and present within that area.
- (10) Subject to article 18, where during any management period a relevant fishing boat has–
- (a) been absent from port carrying fishing gear in excess of the determined number of days or the days permitted to it by this article; or
  - (b) purported to transfer days in accordance with article 20 in excess of its unused days,
- the Scottish Ministers may deduct a number equal to the number of days in that excess.
- (11) In any proceedings for an offence under paragraph (1)(a) of this article, it is a defence for a person to show that the number of days of absence from port carrying any type of fishing gear comprising the offence was no greater than the number of days of absence carrying that gear purportedly but not validly transferred to that person under article 20 and that person did not know and had no reasonable cause to suspect that the donor was not entitled to transfer the days.
- (12) In this article “determined number of days” means the number of days during a management period as determined by the Scottish Ministers in accordance with article 16(1).

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

- 18.**—(1) In making a decision to deduct days under article 17(10) the Scottish Ministers—
- (a) must specify to which management period the days deducted will relate; and
  - (b) may deduct days in respect of one or more than one management period, as they consider fit.
- (2) The Scottish Ministers, before making a decision to deduct days under article 17(10) must—
- (a) give the affected person a written notification of that intention (including a note of the management period or periods to which that deduction is proposed to apply) and an explanation of the reasons for considering the deduction of days (and the basis for proposing the deduction from a particular period or periods);
  - (b) afford that person an opportunity of making representations in that regard within such time and in such form as they think fit and, in order to effectively give such opportunity, may appoint a person (“the reporter”) to report to them as to the relevant factual circumstances; and
  - (c) consider any such representations (including the report prepared by the reporter) in making their decision in the case.
- (3) In this article “affected person” means the owner, master or charterer of the boat in respect of which a decision to deduct days under article 17(10) is made or is proposed to be made.

### **Use of regulated gear**

- 19.**—(1) A person in charge of a relevant fishing boat which fishes in contravention of the notification requirement in paragraph 13 of Annex IIc is guilty of an offence.
- (2) A person in charge of a relevant fishing boat which carries or uses, whilst present in the sole recovery zone, regulated gear other than the regulated gear notified under the requirement in paragraph 13 of Annex IIc is guilty of an offence.

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

- 20.**—(1) Transfer of unused days within the same management period from one relevant fishing boat (“the donor”) to another (“the recipient”) for the purposes of paragraph 11 of Annex IIc where either the donor or the recipient is, or both are, a relevant fishing boat, is permitted subject to the conditions specified in paragraphs 11.1 to 11.3 of Annex IIc, to the extent specified in a notification of transfer sent to the Scottish Ministers and consented to by the Scottish Ministers.
- (2) Transfer of unused days within the same management period between a relevant fishing boat and a foreign fishing boat for the purposes of paragraph 12 of Annex IIc is permitted subject to the conditions specified in paragraph 12 of Annex IIc, to the extent specified in a notification of transfer sent to the Scottish Ministers and consented to by the Scottish Ministers.
- (3) A person who knowingly or recklessly makes a statement in a notification under paragraph (1) or (2) which is false in a material particular is guilty of an offence.
- (4) For the purposes of this article “the same management period” means any two management periods provided that the transfer takes place during the concurrence of the management periods.