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STATUTORY INSTRUMENTS

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**1997 No. 1924**

**SEA FISHERIES**

**SEA FISH INDUSTRY**

**The Fishing Vessels (Decommissioning) Scheme 1997**

*Approved by both Houses of Parliament*

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|-------------------------------|---------|------------------------|
| <i>Made</i>                   | - - - - | <i>4th August 1997</i> |
| <i>Laid before Parliament</i> |         | <i>5th August 1997</i> |
| <i>Coming into force</i>      | - -     | <i>6th August 1997</i> |

The Minister of Agriculture, Fisheries and Food and the Secretaries of State respectively concerned with the sea fish industry in Scotland, Wales and Northern Ireland, in exercise of the powers conferred on them by sections 15(1) and (2) of the Fisheries Act 1981<sup>(1)</sup>, and of all other powers enabling them in that behalf, with the approval of the Treasury in accordance with the said section 15(1), hereby make the following Scheme:

**Title and commencement**

1. This Scheme may be cited as the Fishing Vessels (Decommissioning) Scheme 1997 and shall come into force on 6th August 1997.

**Interpretation**

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

“the Act” means the Fisheries Act 1981;

“application” means an application for grant and “applicant” shall be construed accordingly;

“the appropriate closing date” has the meaning assigned to it in paragraph 4(3);

“the appropriate decommissioning date” has the meaning assigned to it in paragraph 7(3);

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

“breadth”, in relation to a vessel, means the breadth calculated and measured in accordance with the rules specified in Article 3 of Council Regulation (EEC) No. 2930/86 defining characteristics for vessels<sup>(2)</sup> as amended<sup>(3)</sup>;

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(1) 1981 c. 29; section 18(1) contains a definition of “the Ministers”.

(2) O.J. No. L274, 25.9.86, p. 1.

(3) There are no amendments relevant to this Scheme.

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

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

where:

L is the length of the vessel,

B is the breadth of the vessel, and

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

“the Commission” means the Commission of the European Communities;

“the Community waters” means the sea falling under the sovereignty or within the jurisdiction of the member States;

“day” means all or any part of a period of 24 consecutive hours beginning at midnight;

“decommissioning” has the meaning assigned to it in paragraph 8(4) and “decommission”, “decommissioned” and “decommissioning grant” shall be construed accordingly;

“E.C. Treaty” means the Treaty establishing the European Community;

“fishing trips” means time spent by a vessel—

(a) engaged in fishing for profit;

(b) steaming between port and fishing ground and between one fishing ground and another, and for this purpose “fishing for profit” means fishing with a view to securing a financial return deriving from sale of the sea fish landed;

“grant” means decommissioning grant under this Scheme;

“length”, in relation to a vessel, except in the case of paragraph 3(1)(e), means the length calculated and measured in accordance with the rules specified in Article 2(1) of Council Regulation (EEC) No. 2930/86;

“the Ministers” means the Minister of Agriculture, Fisheries and Food and the Secretaries of State respectively concerned with the sea fish industry in Scotland, Wales and Northern Ireland;

“the register” means the register of vessels established under section 8 of the Merchant Shipping Act 1995(4) and references to “registered” shall be construed accordingly;

“relevant conditions” means any conditions relating to the approval of an application which have been notified to the applicant under paragraph 6(3)(b);

“sea fish” has the same meaning as in Part II of the Act(5).

(2) Any reference in this Scheme to a numbered paragraph shall, unless the context otherwise requires, be construed as a reference to the paragraph bearing that number in this Scheme.

(3) Any payment of grant made under this Scheme by the Ministers may be made by any of them and any reference in this Scheme to such a payment shall be construed accordingly.

### **Decommissioning grants**

3.—(1) Any person who owns a registered vessel—

(a) which is over 10 metres in length,

(b) in respect of which there is a licence to which sub-paragraph (2) below applies,

(c) which whilst registered as a United Kingdom vessel has, during each of the calendar years 1995 and 1996, spent at least the appropriate number of days at sea on fishing trips,

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(4) 1995 c. 21.

(5) See section 18(1) of the Act.

- (d) which is at least 10 years old at the date of the application, and
- (e) which, in the case of a vessel over 12 metres in registered length had, on the date of application, either a valid vessel certificate under the provisions of the Fishing Vessels (Safety Provisions) Rules 1975(6) or a letter confirming the completion of a satisfactory survey issued by the Secretary of State for Transport,

may make an application to the Ministers in respect of that vessel.

(2) This sub-paragraph applies to the following classes of Category A(7) licences:

- (a) Category A;
- (b) Category A (Purser);
- (c) Category A (Freezer);
- (d) Category A (Moratorium).

(3) The Ministers shall publish a notice specifying the appropriate number of days in such manner as they consider appropriate.

(4) Notwithstanding sub-paragraph (1) above, the Ministers may reject an application in respect of a vessel which in their opinion is not fit for undertaking fishing trips.

(5) Notwithstanding sub-paragraph (1) above, no person may make an application in respect of any fishing vessel in respect of which an application was approved by the Ministers under the Fishing Vessels (Decommissioning) Scheme 1996(8) but which was not decommissioned in accordance with that scheme.

(6) Notwithstanding sub-paragraph (1) above, no person may make an application in respect of any fishing vessel which between 1st January and 31st December 1996 spent more days at sea on nephrops fishing trips than on any other fishing trips.

(7) In this paragraph—

“the appropriate number of days” means such number of days as the Ministers may from time to time determine;

“licence” means one or more licences granted in respect of a vessel under section 4 of the Sea Fish (Conservation) Act 1967(9);

“nephrops fishing trip” means any day on which the catch landed by the fishing vessel consisted of at least 30% nephrops (*Nephrops norvegicus*) and not more than 60% of other species listed in Annex II to Council Regulation (EC) No. 894/97(10).

## Applications

4.—(1) The Ministers may from time to time invite applications.

(2) Without prejudice to the other provisions of this Scheme, an application must be lodged with the Ministers on or before the appropriate closing date in order to be considered for approval under this Scheme.

(3) In this Scheme “the appropriate closing date” means such date as the Ministers may from time to time determine.

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(6) S.I.1975/330, amended by S.I. 1975/471, 1976/432, 1977/313, 498, 1978/1598, 1873, 1981/567, 1991/1342 and by the Fisheries Act 1981, Schedule 3, paragraph 8(3).

(7) A Category A licence is a licence which authorises fishing in all or any part of the Community waters for all or any of the species of sea fish for which the United Kingdom has a share of the Community total allowable catch.

(8) S.I. 1996/1242.

(9) 1967 c. 84; section 4 was amended by the Fishery Limits Act 1976 (c. 86), section 3, the Fisheries Act 1981 (c. 29), section 20 and the Sea Fish (Conservation) Act 1992 (c. 60), section 1.

(10) O.J. No. L132, 23.5.97, p. 1.

(4) The Ministers shall publish in such manner as they consider appropriate a notice inviting applications and specifying the appropriate closing date.

(5) An application made in pursuance of a notice published under sub-paragraph (4) above shall be in writing, shall be made in such form and manner, shall include such information and undertakings and shall be delivered to such address as the Ministers may specify in the notice or from time to time require.

(6) An applicant shall furnish all such further information relating to the application as the Ministers may specify in the notice or from time to time require.

(7) An application shall be in respect of one vessel only and shall include a bid stating the amount of grant for which the applicant offers to—

- (a) decommission the vessel,
- (b) surrender all licences and claims to licences in respect of the vessel in accordance with the requirements of paragraph 9(1)(a), and
- (c) remove the vessel from the register.

(8) No more than one application in pursuance of a notice published under sub-paragraph (4) above may be made in respect of any vessel.

(9) The foregoing provisions of this paragraph shall apply in respect of any subsequent notices inviting applications.

(10) Where an application in respect of a vessel has been approved by the Ministers under paragraph 6, no further application may be made in respect of that vessel.

### **Consideration of applications**

5.—(1) As soon as reasonably practicable after the appropriate closing date the Ministers shall—

- (a) identify those applications made in pursuance of that notice which satisfy the foregoing provisions of this Scheme,
- (b) divide the bid included in each such application by the number of capacity units of the vessel concerned, and
- (c) place each such application in rank according to the result of the calculation referred to in sub-paragraph (b) above.

(2) The Ministers may reject any application if they consider the application to be unreasonable, unnecessary or unwarranted.

(3) In exercising their powers under sub-paragraph (2) above the Ministers may have regard to—

- (a) the benefit likely to be derived from, and value for money represented by, the bid;
- (b) the extent to which approval of the application would contribute towards fulfilment of the obligations of the United Kingdom deriving from:
  - (i) Commission Decision [92/593/EEC](#) on a multiannual guidance programme for the fishing fleet of United Kingdom for the period 1993 to 1996 pursuant to Council Regulation ([EEC](#)) No. [4028/86](#)(**11**), as read with Council Decision [94/15/EC](#) relating to the objectives and detailed rules for restructuring the Community fisheries sector over the period 1st January 1994 to 31st December 1996 with a view to achieving a lasting balance between the resources and their exploitation(**12**);

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(11) O.J. No. L401, 31.12.92, p. 33; Council Regulation ([EEC](#)) No. [4028/86](#) (O.J. No. L376, 31.12.86, p. 7) was revoked by Council Regulation 2080/93 (O.J. No. L193, 31.7.93, p. 1) but the Decision remains in force by virtue of Article 9 of the latter Regulation.

(12) O.J. No. L10, 14.1.94, p. 20.

(ii) Council Decision [97/413/EC](#) relating to the objectives and detailed rules for restructuring the Community fisheries sector over the period 1st January 1997 to 31st December 2001 with a view to achieving a lasting balance between the resources and their exploitation<sup>(13)</sup>;

(c) the amount of money available for this Scheme.

(4) The Ministers shall reject any application if, as regards the measures to which the application relates, the Commission decides that this Scheme is, or any measures undertaken, or to be undertaken, under this Scheme, are, not compatible with the common market having regard to Article 92 of the E.C. Treaty.

(5) The Ministers may reject any application if they have reasonable grounds for suspecting that there has been any fixing or adjustment of the amount of a bid by, under or in accordance with any agreement (whether legally binding or not) or arrangement with another person.

(6) Subject to sub-paragraphs (2) to (5) above and sub-paragraph (7) below, the Ministers shall select applications for approval by proceeding through the rank referred to in sub-paragraph (1) (c) above from the application incorporating the lowest amount bid per capacity unit towards the application incorporating the highest amount bid per capacity unit until the maximum amount of money allocated for the Scheme is reached.

(7) Where as a result of the procedure referred to in sub-paragraph (6) above there are two or more identical bids per capacity unit which are higher than the amount of any other bid which has been selected for approval, and there is insufficient money to meet all of them, in deciding which bid or bids to accept the Ministers may take into account the number of days at sea spent on fishing trips by each of the vessels concerned during the calendar years 1995 and 1996, as recorded in the vessel's logbook, with a view to giving preference to vessels that spent more days at sea in those years.

### **Approval of applications**

6.—(1) The Ministers shall approve any application which they have selected for approval under paragraph 5.

(2) Subject to the provisions of this Scheme, the Ministers may at any time—

- (a) determine conditions to which an approval given under this paragraph shall be subject, and
- (b) amend such conditions.

(3) The Ministers shall in writing—

- (a) notify applicants of the result of their applications;
- (b) notify applicants whose applications they have approved under this paragraph of any conditions which they have determined or amended under sub-paragraph (2) above.

(4) The Ministers shall revoke any approval granted under this paragraph, other than any approval in respect of which grant has already been paid, if, as regards the measures to which the approval relates, the Commission decides that this Scheme is, or any measures undertaken, or to be undertaken, under this Scheme, are, not compatible with the common market having regard to Article 92 of the E.C. Treaty.

### **Eligibility and claims for payment of grant**

7.—(1) Subject to sub-paragraph (2) below and paragraph 17, applicants whose applications have been approved under paragraph 6 shall be eligible for payment of grant in accordance with paragraph 11.

(2) No grant shall be paid to an applicant in respect of any vessel unless—

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<sup>(13)</sup> O.J. No. L175, 3.7.97, p. 27.

- (a) a claim form in respect of that application, signed by the applicant, has been lodged with the Ministers on or before the appropriate decommissioning date, and
  - (b) the Ministers are satisfied that the requirements set out in paragraphs 8 and 9 have been complied with.
- (3) In this Scheme “the appropriate decommissioning date” means such date as the Ministers may from time to time determine.
- (4) The Ministers shall publish a notice specifying the appropriate decommissioning date in such manner as they consider appropriate.
- (5) A claim form submitted in pursuance of a notice published under sub-paragraph (4) above shall be in writing, shall be made in such form and manner, shall include such information and declarations and shall be delivered to such address as the Ministers may specify in the notice or from time to time require and (without prejudice to the generality of the foregoing) shall include declarations that—
- (a) the vessel has been decommissioned in accordance with the requirements of paragraph 8,
  - (b) all licences and claims to licences have been surrendered in accordance with the requirements of paragraph 9(1)(a), and
  - (c) the vessel has been removed from the register.
- (6) An applicant shall furnish all such further information in support of the claim form as the Ministers may specify in the notice or from time to time require.

### **Decommissioning of the vessel**

- 8.—**(1) At least two weeks prior to the decommissioning of the vessel the applicant shall notify the Ministers in writing of the intended date and place of decommissioning (which shall be within a member State) and the proposed method of decommissioning.
- (2) The vessel shall not be decommissioned until the method of decommissioning notified under sub-paragraph (1) above has been approved by the Ministers.
- (3) The vessel shall be decommissioned—
- (a) before the appropriate decommissioning date, and
  - (b) in accordance with—
    - (i) the method of decommissioning which has been approved by the Ministers under sub-paragraph (2) above, or
    - (ii) in exceptional circumstances and with the consent of the Ministers (which may be given before or after the decommissioning), any other method of decommissioning which accords with sub-paragraph (4) below.
- (4) In this Scheme “decommissioning”, in relation to a vessel, means the permanent withdrawal of that vessel from operation within the sea fish industry of the European Community as a result of—
- (a) permanently breaking up the vessel or otherwise permanently disabling it (but not, in either case, by scuttling) so that it is incapable of use for any seagoing purpose; or
  - (b) permanently transferring the vessel into the ownership of a museum to which sub-paragraph (5) below applies.
- (5) This sub-paragraph applies to a museum which—
- (a) is registered with the Museums and Galleries Commission<sup>(14)</sup>, or

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<sup>(14)</sup> The Museums and Galleries Commission was founded in 1931 and incorporated under Royal Charter in 1987.

- (b) has as its purpose or one of its purposes the preservation for the public benefit of a collection of historic, artistic or scientific interest and is wholly or mainly maintained out of moneys provided by Parliament.

### **Surrender of licences and removal from the register**

9.—(1) The applicant shall before the appropriate decommissioning date—

- (a) surrender the licence referred to in paragraph 3(1)(b), and all current licences in respect of the vessel granted whether under section 4 of the Sea Fish (Conservation) Act 1967 or otherwise, and any claims to any new licences arising from such licences, to the person who granted such licences and in the case of any licences granted by a person other than by the Ministers furnish to the Ministers evidence that all such licences have been so surrendered;
- (b) take all necessary steps to ensure that the vessel is removed from the register and furnish to the Ministers evidence that it has been so removed.

(2) In sub-paragraph (1)(a) above “licences”, in relation to licences granted otherwise than under section 4 of the Sea Fish (Conservation) Act 1967, includes any written authorisation, consent or permit.

### **Substantial damage or destruction of vessel**

10.—(1) Where any vessel to which an application which has been approved under paragraph 6 relates is substantially damaged or destroyed—

- (a) the applicant shall forthwith in writing notify and provide full details to the Ministers of the damage or destruction;
- (b) the applicant shall with the notice referred to in paragraph (a) above furnish the Ministers with information concerning—
  - (i) any policy of insurance in respect of the vessel which was in force at the time of, and
  - (ii) any criminal or civil proceedings which to his knowledge are contemplated or in progress in respect of, the incident;
- (c) the applicant shall provide the Ministers with such further information as they may require concerning the incident, the insurance arrangements relating to the vessel and any such criminal or civil proceedings;
- (d) the applicant shall if requested by the Ministers provide them with written authority authorising contact with the insurers of the vessel;
- (e) the applicant shall notify the Ministers of any amount received under such policy of insurance, or by way of compensation or damages, as a result of the incident.

(2) Sub-paragraph (1) above shall apply regardless of whether or not the method of decommissioning the vessel had been approved under paragraph 8(2) before the incident occurred.

(3) In this paragraph “incident” means an incident in which the vessel to which an approved application relates is substantially damaged or destroyed.

### **Amount of grant**

11. The amount of grant which applicants who are eligible for payment of grant shall be paid shall be the amount of the bid made by such applicants in their applications.

### **Method of payment**

12.—(1) Payments by way of grant may be made by the Ministers at such time, or by such instalments at such intervals or times, as they may determine.

(2) The Ministers may decline to make payment of grant to any person other than:

- (a) the applicant;
- (b) a bank or building society nominated by the applicant;
- (c) a person to whom the applicant has assigned the grant.

### **Undertakings**

13. Without prejudice to the generality of paragraph 6(2), any person whose application has been approved under paragraph 6 may be required by the Ministers to provide, or arrange for the provision of, such undertakings as the Ministers may consider appropriate to the case.

### **Assistance to authorised officers**

14. Any applicant or any employee, servant or agent of any applicant shall give to an authorised officer such assistance as he may reasonably request to exercise the power conferred upon him by paragraph 15.

### **Powers of authorised officers**

15. An authorised officer at all reasonable hours and on producing, if required to do so, some duly authenticated document showing his authority, may enter upon and inspect any vessel which is, or which such officer has reasonable cause to believe is, a vessel in respect of which an application has been made for the purpose of ascertaining whether and to what extent—

- (a) a person is entitled under paragraph 3 to make the application;
- (b) the application should be selected for approval under paragraph 5;
- (c) paragraphs 8 to 10 and 14, any relevant conditions and any undertakings given by the applicant have been complied with;
- (d) the decommissioning of the vessel is being, or has been, actually carried out;
- (e) any amount of grant is recoverable in accordance with paragraph 17;
- (f) an offence under section 17 of the Act has been or is being committed.

### **Protection of officers**

16. Any authorised officer shall not be liable in any civil or criminal proceedings for anything done in the purported exercise of the powers conferred on him by virtue of paragraph 15 if the court is satisfied that the act was done in good faith, that there were reasonable grounds for doing it and that it was done with reasonable skill and care.

### **Reduction, withholding and recovery of grant**

17. If at any time after the Ministers have approved an application in respect of any vessel it appears to them that any of the relevant conditions, or any undertakings provided in relation to that vessel under paragraph 13, have been breached or have not been complied with and in particular (without prejudice to the generality of such conditions or undertakings) that—

- (a) the application or any part of it was not an application which the applicant was entitled under paragraph 3 to make;



- (b) the applicant or an employee, servant or agent of an applicant—
  - (i) has failed to comply with any requirement imposed by paragraphs 8 to 10 and 14;
  - (ii) has intentionally obstructed any officer in the exercise of his powers under paragraph 15; or
  - (iii) has given information on any matter relevant to the giving of the approval or the making of a payment relevant to the approval which is false or misleading in a material respect;
- (c) there has been damage or destruction of the vessel resulting in the payment to any person of any amount under a policy of insurance or by way of compensation or damages (regardless of whether or not the method of decommissioning the vessel had been approved under paragraph 8(2) before such damage or destruction occurred),

they may revoke the approval of such application in whole or in part or may reduce or withhold any grant in respect of the application and, where payment by way of grant has been made, may on demand recover, as a civil debt or, in Scotland, as a debt, an amount equal to the whole or any part of the payment which has been so made.

30th July 1997

*Elliot Morley*  
Parliamentary Secretary, Ministry of Agriculture,  
Fisheries and Food

31st July 1997

*Sewel*  
Parliamentary Under Secretary of State, Scottish  
Office

4th August 1997

*Win Griffiths*  
Signed by authority of the Secretary of State for  
Wales Parliamentary Under Secretary of State,  
Welsh Office

31st July 1997

*Marjorie Mowlam*  
Secretary of State for Northern Ireland

We approve,

31st July 1997

*Jim Dowd*  
*Graham Allen*  
Two of the Lords Commissioners of Her  
Majesty's Treasury

*Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.*

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## EXPLANATORY NOTE

*(This note is not part of the Scheme)*

This Scheme provides for the making of grants by the Minister of Agriculture, Fisheries and Food and the Secretaries of State respectively concerned with the sea fish industry in Scotland, Wales and Northern Ireland, in respect of the decommissioning of vessels registered in the United Kingdom.

Applications for grant will be considered in respect of vessels meeting the requirements set out in paragraph 3 of the Scheme. These include a requirement that to be eligible a vessel must be licensed with a Category A, a Category A (Purser), a Category A (Freezer) or a Category A (Moratorium) licence. Vessels issued with Category A (Island vessels) or Category A (10 metre and Under) licences are excluded.

Paragraphs 4 to 6 of the Scheme lay down a procedure for the making and approval of applications. Applications must be in respect of one vessel only and include a bid by the applicant for the amount of grant for which he offers to decommission and de-register the vessel and surrender all licences and claims to licences in respect of the vessel. Bids will be selected for approval in accordance with paragraph 5.

The Ministers are empowered from time to time to determine a date (described in the Scheme as the appropriate decommissioning date) before which, in order for grant to be payable, the applicant must provide proof that decommissioning, deregistration and surrender of licences and claims to licences have taken place (paragraph 7); and there are requirements concerning decommissioning (which must involve permanently breaking up the vessel or otherwise permanently disabling it—but not by scuttling—so that it is incapable of use for any seagoing purpose or permanently transferring the vessel into the ownership of a museum), deregistration and surrender of licences and claims to licences (paragraphs 8 and 9). In the event of substantial damage or destruction of the vessel the applicant is required to provide the Ministers with certain information (paragraph 10).

The amount of grant in respect of an approved application is the amount of the bid (paragraph 11) and provision is made concerning the method of payment of grant (paragraph 12). Ministers may require a person whose application is approved to provide, or arrange for the provision of, undertakings (paragraph 13).

Applicants are required, on request, to give assistance to authorised officers of the Ministers, who are given powers of entry and inspection for specified purposes (paragraphs 14 to 16), and provision is made for the reduction, withholding and recovery of grant in certain circumstances (paragraph 17).

Section 17 of the Fisheries Act 1981 creates offences in respect of the production of false statements or documents in purported compliance with any requirement imposed by the Scheme and wilful refusal to supply information, make returns or produce documents when required to do by or under the Scheme.

This Scheme is made by virtue of Article 8 of Council Regulation (EC) No. 3699/93 laying down the criteria and arrangements regarding Community structural assistance in the fisheries and aquaculture sector and the processing and marketing of its products (O.J. No. L346, 31.12.93, p. 1), as amended by Council Regulation (EC) No. 2719/95 (O.J. No. L283, 25.11.95, p. 3) and Council Regulation (EC) No. 965/96 (O.J. No. L131, 1.6.96, p. 1) and as read with—

- (a) Council Decision 94/15/EC relating to the objectives and detailed rules for restructuring the Community fisheries sector over the period 1st January 1994 to 31st December 1996 with a view to achieving a lasting balance between the resources and their exploitation (O.J. No. L10, 14.1.94, p. 20).

**Status:** This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

- (b) Commission Decision [92/593/EEC](#) on a multiannual guidance programme for the fishing fleet of United Kingdom for the period 1993 to 1996 (O.J. No. L401, 31.12.92, p. 33), and
- (c) Council Decision [97/413/EC](#) relating to the objectives and detailed rules for restructuring the Community fisheries sector over the period 1st January 1997 to 31st December 2001 with a view to achieving a lasting balance between the resources and their exploitation (O.J. No. L175, 3.7.97, p. 27).