

SI No 245 of 2005

SEA FISHERIES (CONSERVATION AND RATIONAL EXPLOITATION OF SCALLOP) REGULATIONS 2005

I, Noel Dempsey, Minister for Communications, Marine and Natural Resources, in exercise of the powers conferred on me by section 3 of the European Communities Act, 1972 (No. 27 of 1972) for the purpose of giving effect to the provisions of Articles 2 and 3, Annex I Table B and Annex II of Council Regulation (EC) No 1415/2004 of 19 July 2004¹ hereby make the following Regulations:

¹ O.J. L 258/1, 5.8.2004

1. (1) These Regulations may be cited as the Sea Fisheries (Conservation and Rational Exploitation of Scallop) Regulations 2005 and shall come into operation on 18 May 2005.

2. (1) In these Regulations, unless the context otherwise requires-
"Council Regulation" means Council Regulation (EC) No. 1415/2004 of 19 July 2004;

"scallop" means *pecten maximus*;

"fishing day" means the 24-hour period between 00.00 hours of a calendar day and 24.00 hours of the same calendar day or any part of such a period during which a vessel is fishing for scallops;

"fishing for scallops" means the use of dredges resulting in the retention on board or landing of a quantity in kilograms live weight of scallop greater than 10% of the total quantity in kilograms live weight of all other marine organisms retained on board or landed;

"ICES" means the International Council for the Exploration of the Sea;

"ICES zones" means those zones given, respectively, in Council Regulation (EEC) No. 3880/91 of 17 December 1991 (²) on the submission of nominal catch statistics by Member States fishing in the north-east Atlantic, and Council Regulation (EC) No. 2597/95 of 23 October 1995 (³) on the submission of nominal catch statistics by Member States fishing in certain areas other than those of the North Atlantic;

³ O.J. L 270/1, 13.11.1995, as amended by Commission Regulation (EC) No. 1638/2001 (O.J. L. 222/29 of 17.08.2001)

² O.J. L 365/1, 31.12.1991, as amended by Commission Regulation (EC) No. 1637/2001 (O.J. L. 222/20 of 17.8.2001)

"Irish sea-fishing boat" means a fishing boat greater than 15 metres in overall length, entered in the Register of Fishing Boats, licensed in the Specific Segment of the Irish fishing fleet and was fishing for scallops in either 2003 or 2004;

"Minister" means the Minister of State at the Department of Communications, Marine and Natural Resources;

"Register of Fishing Boats" means the Register of Fishing Boats established and maintained pursuant to the Merchant Shipping Act, 1894 (as adapted and amended by any subsequent enactment);

"Sea Fisheries Protection Officer" means an officer of the Minister authorised by the Minister as a sea fisheries protection officer for the purposes of the Fisheries Acts 1959 to 2003 and of these Regulations.

"specified area" means waters falling within ICES (International Council for the Exploration of the Sea) sub-areas V, VI and VII (Community waters and waters not under the sovereignty or jurisdiction of third countries);

(2) A word or expression that is used in these Regulations and is also used in the Council Regulation has, unless the contrary intention appears, the same meaning in these Regulations as it has in the Council Regulation.

3. The provisions of the Council Regulation in so far as they relate to scallop within the exclusive fishery limits of the State are hereby prescribed and adopted and accordingly any infringement of the Council Regulation within these limits after the commencement of these Regulations shall be an infringement of these Regulations.

4. In a prosecution for an infringement of the Council Regulation, in so far as it relates to scallop, in respect of which provision is made in the Council Regulation for an exclusion, qualification, or exception to, the relevant obligation imposed by the Council Regulation which would be capable of constituting a defence to the charge, it shall be for the person charged to establish any such defence and it shall be presumed, until the contrary is proved, that there is no such defence in the particular case.

5. The Minister may restrict, through an individual allocation to an Irish sea-fishing boat, the number of fishing days that such boat may fish for scallops in the specified area, or any part thereof, for such period as the Minister may decide. The calculation and allocation of such fishing days to Irish sea-fishing boats shall be undertaken by reference to the following criteria-

(a) the application of fleet classification categories of Irish sea-fishing boats having an installed engine capacity of (i) between 0 and 500 kW (ii) between 501 and 1,000 kW and (iii) 1001 kW and greater; and

(b) the proportionate contribution of each of these three fleet classification categories, expressed in terms of the combined capacity of the relevant Irish sea-fishing boats within those categories, to the total capacity in all three categories of those Irish sea-fishing boats that participated in the scallops fishery in either 2003 or 2004.

6. The transfer of fishing days between Irish sea-fishing boats is prohibited.

7. Notification of an allocation of fishing days under Regulation (5) and its duration shall be made in writing by a Sea Fisheries Protection Officer to the holder or the master of the Irish sea-fishing boat concerned and the licence holder or the master shall comply with or ensure compliance with such notification.

8. In a prosecution for an offence contravening Regulation 5 of these Regulations it shall be a defence for the defendant to show that the fishing days to which the prosecution relates were undertaken outside the specified duration.

9. In a prosecution for an offence for contravening Regulation 5 of these Regulations the following shall be *prima facie* evidence that the Irish sea-fishing boat concerned was, at the time of the alleged offence, engaged in fishing for scallops in contravention of those Regulations —

(a) evidence that such sea-fishing boat had on board any books, papers or other documents from which it appears to the Court that on the day on which the

offence is alleged to have been committed the sea-fishing boat was engaged in fishing for scallops contrary to those Regulations,

(b) any admission by any person who is for the time being the master or other person in charge, or another member of the crew, of such sea-fishing boat that at such time she was so used, or

(c) any other matter from which it so appears that such sea-fishing boat was so used or which in the opinion of the Court suggests, or tends to suggest, that such sea-fishing boat was so used.

GIVEN under my Official Seal,
This 18th day of May 2005



Noel Dempsey
Minister for Communications, Marine and Natural Resources

EXPLANATORY NOTE

(This note is not part of the instrument and does not purport to be a legal interpretation).

The effect of this Regulation is to provide a mechanism for regulating fishing effort in the scallop fishery.

The Regulation shall come into operation on 18 May 2005.
