

COUNCIL REGULATION (EC) No 1928/2004**of 25 October 2004****amending Regulation (EC) No 2287/2003 fixing for 2004 the fishing opportunities and associated conditions for certain fish stocks and groups of fish stocks, applicable in Community waters and, for Community vessels, in waters where limitations in catch are required**

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 2371/2002 of 20 December 2002 on the conservation and sustainable exploitation of fisheries resources under the Common Fisheries Policy⁽¹⁾, and in particular Article 20 thereof,

Having regard to the proposal from the Commission,

Whereas:

- (1) Annex V to Regulation (EC) No 2287/2003⁽²⁾ lays down an interim fishing effort limitation and additional conditions for monitoring, inspection and surveillance in the context of the recovery of certain fish stocks. Since then the Council has adopted Regulation (EC) No 423/2004 of 26 February 2004 establishing measures for the recovery of cod stocks⁽³⁾. It is appropriate to align the provisions of Annex V to those in Regulation (EC)

No 423/2004. Moreover the implementation of Annex V has shown that certain of its provisions need to be either clarified or made more flexible, in order to improve its applicability and effectiveness. It is necessary to ensure that any change to the scheme does not result in a lesser conservation value for the measures in question.

- (2) Regulation (EC) No 2287/2003 should therefore be amended accordingly,

HAS ADOPTED THIS REGULATION:

Article 1

Annex V to Regulation (EC) No 2287/2003 shall be replaced by the text appearing in the Annex to this Regulation.

Article 2

This Regulation shall enter into force on the third day following that of its publication in the *Official Journal of the European Union*.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Luxembourg, 25 October 2004.

For the Council
The President
R. VERDONK

⁽¹⁾ OJ L 358, 31.12.2002, p. 59.

⁽²⁾ OJ L 344, 31.12.2003, p. 1.

⁽³⁾ OJ L 70, 9.3.2004, p. 8.

ANNEX

'ANNEX V

**INTERIM FISHING EFFORT LIMITATION AND ADDITIONAL CONDITIONS FOR MONITORING,
INSPECTION AND SURVEILLANCE IN THE CONTEXT OF CERTAIN FISH STOCKS RECOVERY****General provisions**

1. The conditions laid down in this Annex shall apply to Community fishing vessels of length overall equal to or greater than 10 metres.

2. For the purposes of this Annex, the following geographical area shall apply:

- (a) Kattegat (ICES Division IIIa south),

Skagerrak and North Sea (ICES Divisions IVa,b,c, IIIa north and IIa EC),

West of Scotland (ICES Division VIa),

Eastern Channel (ICES Divisions VIId) and

Irish Sea (ICES Division VIIa).

- (b) For vessels notified to the Commission as being equipped with appropriate vessel monitoring systems, the following definition for the area West of Scotland, (ICES Division VIa) shall apply:

ICES Division VIa excluding that part which lies to the west of a line drawn by sequentially joining with straight lines the following geographical coordinates:

60° 00' N, 04° 00' W

59° 45' N, 05° 00' W

59° 30' N, 06° 00' W

59° 00' N, 07° 00' W

58° 30' N, 08° 00' W

58° 00' N, 08° 00' W

58° 00' N, 08° 30' W

56° 00' N, 08° 30' W

56° 00' N, 09° 00' W

55° 00' N, 09° 00' W

55° 00' N, 10° 00' W

54° 30' N, 10° 00' W.

3. For the purposes of this Annex, a day present within the area and absent from port shall be:

- (a) the 24-hour period between 00.00 of a calendar day and 24.00 of the same calendar day or any part of such a period during which a vessel is present within either of the areas defined in point 2 and absent from port, or
 - (b) any continuous period of 24 hours as recorded in the EC logbook during which a vessel is present within either of the areas defined in point 2 and absent from port or any part of any such time period.

A Member State which wishes to employ the definition of a day present within the area and absent from port laid down under subpoint (b) shall notify the Commission of the means of monitoring the activities of a vessel to ensure compliance with the conditions laid down in subpoint (b).

4. For the purpose of this Annex, the following groupings of fishing gear shall apply:

- (a) demersal trawls, seines or similar towed gear of mesh size equal to or greater than 100 mm except beam trawls;
- (b) beam trawls of mesh size equal to or greater than 80 mm;
- (c) static demersal nets including gill nets, trammel nets and tangle nets;
- (d) demersal longlines;
- (e) demersal trawls, seines or similar towed gear of mesh size between 70 mm and 99 mm except beam trawls with mesh size between 80 mm and 99 mm;
- (f) demersal trawls, seines or similar towed gear of mesh size between 16 mm and 31 mm except beam trawls;

Fishing effort

5. Each Member State shall ensure that, when carrying on board any of the fishing gear referred to in point 4, fishing vessels flying its flag and registered in the Community shall be present within the area and absent from port for no more than the number of days specified in point 6.
6. (a) The maximum number of days in any calendar month for which a vessel may be present within the area and absent from port having carried on board any one of the fishing gear referred to in point 4 is shown in Table I.

Table I

Maximum days present within the area and absent from port by fishing gear

Area defined in point	Grouping of fishing gear referred to in point					
	4a	4b	4c	4d	4e	4f
Kattegat, Skagerrak and North Sea, West of Scotland, Eastern Channel, Irish Sea	10	14	14	17	22	20

- (b) A Member State may aggregate the days present within the area and absent from port in Table I within management periods of up to eleven calendar months. Member States shall notify the Commission of their intention to aggregate management periods before the beginning of any aggregated period.
- (c) An additional number of days on which a vessel may be present within the area and absent from port when carrying on board any of the gear referred to in point 4 may be allocated to Member States by the Commission on the basis of the achieved results of decommissioning programmes that have taken place since 1 January 2002.

Member States wishing to benefit from such allocations shall submit a request to the Commission with reports containing the details of their completed decommissioning programmes.

On the basis of such a request the Commission, following consultation with Member States, may amend the number of days defined in point (a) for that Member State.

- (d) Derogations from the number of days present within the area and absent from port shown in Table I may be allocated to vessels by Member States under the conditions shown in Table II.

Member States wishing to apply this higher allocation of days shall notify the Commission with details of the vessels that will benefit and with details of their track records at least two weeks before the higher allocation of days are to be granted.

Table II*Derogations from days present within the area and absent from port in Table I and associated conditions*

Area Defined in point 2	Gear defined in point 4	2002 vessel track record (*)	Days
2(a)	4(a), 4(e)	Less than 5 % of each of cod, sole and plaice	no days restriction (**)
2(a)	4(a), 4(b)	Less than 5 % cod	100 to < 120 mm up to 14 ≥ 120 mm up to 15
2(a) Kattegat (ICES Division IIIa south), North Sea	4(c) gear of mesh size equal to or greater than 220 mm	Less than 5 % cod and more than 5 % of turbot and lumpfish	Up to 16 days
2(a) Eastern channel ICES Division VIIId	4(c) gear of mesh size equal to or less than 110 mm	Vessels of less than 15 m in length with landings of over 35 % unregulated species and absent from port for no more than 24 hours (**)	Up to 20 days

(*) As verified by the EC logbook — average annual landing in live weight.

(**) Notwithstanding this provision, the derogation shall also apply to a maximum of six vessels flying the flag of France and registered in the Community of length overall equal to or greater than 15 metres. A list of such vessels shall be submitted to the Commission before 1 February 2004.

(***) The vessel may be present within the area for the number of days in the month concerned.

If this higher allocation of days is given to a vessel, as a result of its low percentage track record of catch of certain species, that vessel shall not at any time retain more than the percentage of those species on board as shown in Table II. When this condition is not met by a vessel, that vessel shall with immediate effect no longer be entitled to the additional days.

- (e) Upon the request of a Member State the Commission may allocate a derogation under the first line in Table II in respect of the saithe fishery without the requirement for a track record in previous years of fishing with less than 5 % of each of cod, sole and plaice. Along with its request the Member State shall submit details of the vessels that would benefit, with evidence of their quota holding and planned activity. The request shall be submitted to the Commission at least 4 weeks before the beginning of the first management period in which the days are to be allocated.

Any vessel allocated extra days under this provision may not at any time retain on board more than 5 % of each of cod, sole and plaice.

Inspection and surveillance at sea and in port by the competent authorities shall be undertaken for verification of compliance with the above requirement. Any vessel found to be not complying with the requirement shall with immediate effect no longer be entitled to the additional days.

- (f) In recognition of the area closure in the Irish Sea for the protection of spawning fish and the assumed reduction in fishing mortality on cod, an additional two days will be available for vessels in groupings of fishing gear 4a and 4b which spend more than half of their allocated days in a given management period fishing in the Irish Sea.

7. Before the first day of each management period the master of a vessel or his representative shall notify to the authorities of the flag Member State which gear or gear he intends to use during the forthcoming management period. Until such notification is provided the vessel will not be entitled to fish within the areas defined in point 2 with any of the gear referred to in point 4.

Where the master of a vessel or his representative notifies the use of two of the groupings of fishing gear defined under point 4, the total number of days available during the forthcoming management period shall be no more than half the sum of the days to which the vessel is eligible for each gear, rounded down to the nearest whole day. It shall not be permitted to deploy either of the gear concerned for more days than the number of days laid down for that gear in Table I.

The option to use two gear shall only be available if the following additional monitoring arrangements are met:

- during a given trip the fishing vessel may carry on board only one of the fishing gear referred to in point 4,
- before any trip the master of a vessel or his representative shall give prior notice to the competent authorities of the type of fishing gear that is to be carried on board unless the type of fishing gear has not changed from the one notified for the previous trip.

Inspection and surveillance at sea and in port by the competent authorities shall be undertaken for verification of compliance with the above two requirements. Any vessel found to be not complying with these requirements shall with immediate effect no longer be permitted to use two groupings of fishing gear.

A vessel wishing to combine the use of one or more of the fishing gear referred to in point 4 (regulated gear) with any other fishing gear not referred to in point 4 (unregulated gear) will not be restricted in their use of the unregulated gear. Such vessels must pre-notify when the regulated gear is to be used. When no such notification has been given no gear referred to in point 4 may be carried on board. Such vessels must be authorised and equipped to undertake the alternative fishing activity.

8. A vessel which is present within any of the areas defined in point 2 and carrying on board any one of the fishing gear referred to in point 4 may not simultaneously carry on board any of the other gear referred to in point 4.
9. (a) In any given management period a vessel that has used the number of days present within the area and absent from port to which it is eligible shall remain in port or out of any area referred to in point 2 for the remainder of the management period unless using unregulated gear as described in point 7.

(b) In any given management period a vessel may undertake non-fishing related activities, without that time being counted against its days allocated under point 6, provided that the vessel first notifies the Member State of its intention to do so, the nature of its activity and that it surrenders its fishing licence for this time. Such vessels shall not carry any fishing gear or fish on board during that time.
10. (a) A Member State may permit any of its fishing vessels to transfer days present within the area and absent from port to which it is eligible to another of its vessels for the same management period and within the same area provided that the product of the days received by a vessel multiplied by its engine power in kilowatts (kilowatt days) is equal to or less than the product of the days transferred by the donor vessel multiplied by the engine power in kilowatts of that vessel. The engine power in kilowatts of the vessels shall be that recorded for each vessel in the Community fishing fleet register.

(b) The total number of days present within the area and absent from port transferred under sub-point (a) multiplied by the engine power in kilowatts of the donor vessel shall not be higher than the donor vessel's average annual days as verified by the EC logbook in the years 2001, 2002 and 2003, multiplied by the engine power in kilowatts of that vessel.

(c) The transfer of days as described in sub-point (a) shall only be permitted between vessels operating within the same gear grouping and area categories referred to in point 6(a) and during the same management period.

(d) No transfer of days from vessels benefiting from the allocation referred to in points 6(d), 6(e) and 7 is permitted.

(e) On request from the Commission, Member States shall provide reports on the transfers that have taken place.
11. A vessel with no track record of fishing in one of the areas defined in point 2 is allowed to transit across these areas provided that it has first notified its authorities of its intention to do so. While that vessel is within any of the areas defined in point 2 any fishing gear carried on board must be lashed and stowed in accordance with conditions laid down in Article 20(1) of Regulation (EEC) No 2847/93⁽¹⁾.

⁽¹⁾ OJ L 261, 20.10.1993, p. 1. Regulation as last amended by Regulation (EC) No 1954/2003 (OJ L 289, 7.11.2003, p. 1).

12. A Member State shall not permit fishing with a gear defined in point 4 in any area defined in point 2 by any of its vessels which have no record of such fishing activity in the years 2001, 2002 or 2003 in that area unless it ensures that equivalent capacity, measured in kilowatts, is prevented from fishing in the regulated area.

However, a vessel with a track record of using a gear defined in point 4 may be authorised to use a different gear defined in point 4, provided that the number of days allocated to this latter gear is greater than or equal to the number of days allocated to the first gear.

13. A Member State shall not count against the days allocated to any of its vessels under this Annex either any days when the vessel has been absent from port but unable to fish because it was assisting another vessel in need of emergency aid or any days when a vessel has been absent from port but unable to fish because it is transporting an injured crew member for emergency medical aid. The Member State shall provide justification to the Commission within one month of any decisions taken on this basis with associated evidence of the emergency from the competent authorities.

Monitoring, inspection and surveillance

14. Notwithstanding Article 19a of Regulation (EEC) No 2847/93, Articles 19b, 19c, 19d, 19e and 19k of that Regulation shall apply to vessels carrying on board the fishing gear defined in point 4 and operating in the areas defined in point 2.
15. Member States may implement alternative control measures to ensure compliance with reporting obligations referred in point 14 of this Annex which are as effective and transparent as these reporting obligations. Such alternative measures shall be notified to the Commission before being implemented.
16. The master of a Community fishing vessel, or his representative, prior to any entry to port or any landing location of a Member State after having been present in an area referred to in Table III with more than the quantities of any species indicated on that table, shall inform, at least four hours in advance of such entry, the competent authorities of that Member State of:
- the name of the port or landing location,
 - the estimated time of arrival at that port or landing location,
 - the quantities in kilograms live weight for all species of which more than 50 kg is retained on board.
17. The competent authorities of a Member State in which a landing requiring pre-notification is to be made may require that the discharge of catch retained on board does not commence until authorised by those authorities.

Table III

Landing quantities in tonnes by area and species above which special conditions apply

Area defined in point	Volume of Species in tonnes: Cod	
	PN	DP
2a Kattegat, North Sea and Skagerrak, West of Scotland, Eastern Channel, Irish Sea	1	2

PN — Prior Notification as referred to in Point 16.
DP — Designated Port as referred to in Point 19.

18. The master of a Community fishing vessel or his representative wishing to tranship or discharge at sea any quantity retained on board or to land in a port or landing location of a third country shall inform the competent authorities of the flag Member State at least 24 hours prior to transshipping or discharging at sea or to landing in a third country the information referred to in point 16.

19. It is not permitted to land in excess of the quantities of any species referred to in Table III (under the DP heading) for a fishing vessel having been in the area defined in the table outside a designated port.

Each Member State shall transmit to the Commission within 15 days of the date of entry into force of this Regulation the list of designated ports and, within 30 days thereafter, inspection and surveillance procedures including, for those ports, the terms and conditions for recording and reporting the quantities of any of the species and stocks referred to in Article 12 of this Regulation within each landing. The Commission shall transmit this information to all Member States.

20. By way of derogation from Article 5(2) of Commission Regulation (EEC) No 2807/83 of 22 September 1983 laying down detailed rules for recording information on Member States' catches of fish⁽¹⁾, the permitted margin of tolerance, when estimating quantities, in kilograms retained on board of vessels referred to in point 14 shall be 8 % of the logbook figure.
21. It shall be prohibited to retain on board a fishing vessel in any container any quantity of cod mixed with any other species of marine organism. Containers with cod shall be stowed in the hold in such a way that they are kept separate from other containers.
22. The competent authorities of a Member State may require that any quantity of cod caught in any of the areas specified in point 2 and first landed in that Member State is weighed in the presence of controllers before being transported from the port of first landing. For cod first landed in a port designated under point 19, representative samples, amounting to at least 20 % of the landings, shall be weighed in the presence of controllers authorised by the Member States before they are offered for first sale and sold. To this end, the Member States shall submit to the Commission, within one month of the date of entry into force of this Regulation, details of the sampling regime to be employed.
23. By way of derogation from Article 13 of Regulation (EEC) No 2847/93, quantities greater than 50 kg of any species referred to in Article 12 of this Regulation which are transported to a place other than that of landing or import shall be accompanied by a copy of one of the declarations provided for in Article 8(1) of Regulation (EEC) No 2847/93 pertaining to the quantities of these species transported. The exemption provided for in Article 13(4)(b) of Regulation (EEC) No 2847/93 shall not apply.
24. By way of derogation from Article 34c(1) of Regulation (EEC) No 2847/93, the specific monitoring programme for any of the stocks referred to in Article 12 may last more than two years from their date of entry into force.
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⁽¹⁾ OJ L 276, 10.10.1983, p. 1. Regulation as last amended by Commission Regulation (EC) No 1965/2001 (OJ L 268, 9.10.2001, p. 23).'