

Statutory Instruments

S.I. No. 297 of 2005

European Communities (Sea Fisheries) (Conservation and Rational Exploitation of Scallops) 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 full effect to Council Regulation (EC) No 1415/2004 of 19 July 2004¹, hereby make the following regulations:

¹ OJ No. L258, 5.8.2004, p.1

1. These Regulations may be cited as the European Communities (Sea Fisheries) (Conservation and Rational Exploitation of Scallops) Regulations 2005.

2. (1) In these Regulations -

"Council Regulation" means Council Regulation (EC) No. 1415/2004 of 19 July 2004¹;

¹ OJ No. L258, 5.8.2004, p.1

"fishing area" means waters falling within ICES (International Council for the Exploration of the Sea) sub-areas V, VI and VII specified in Annex I and Annex II to the Council Regulation in respect of the maximum level of annual fishing effort in respect of scallops allocated to the State under those Annexes;

"fishing day" means the 24-hour period between 00.00 hours of a day and 24.00 hours of the same day or any part of such a period during which an Irish sea-fishing boat is permitted under Regulation 4 to fish 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 per cent. of the total quantity in kilograms live weight of all other marine organisms retained on board or landed;

"Irish sea-fishing boat" means a sea-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 the year 2003 or 2004;

"owner" in relation to a sea-fishing boat, means the person registered as its owner, if no such person is registered, the person who owns the boat, and includes any part owner, charterer, hirer or operator of the boat;

"master" in relation to a sea-fishing boat, means the master, skipper or other person for the time being in charge of the boat;

"Minister" means Minister for Communications, Marine and Natural Resources;

"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;

"scallop" means *pecten maximus*.

(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) In these Regulations, unless otherwise indicated -

(a) a reference to a Regulation is a reference to a Regulation of these Regulations, and

(b) a reference to a paragraph or subparagraph is a reference to a paragraph or subparagraph of the provision in which the reference occurs.

4. (1) The Minister may, to conserve the State's annual fishing effort in respect of fishing for scallops, restrict, through an individual allocation to an Irish sea-fishing boat, the number of fishing days that the boat may fish for scallops in the fishing area, or any part of it, for such period as the Minister may decide.

(2) The calculation and allocation of fishing days to Irish sea-fishing boats under paragraph (1) shall be by reference to the following criteria-

(a) the application of the following fleet classification categories of Irish sea-fishing boats having an installed engine capacity of -

(i) between 0 and 500 kW, and

(ii) between 501 and 1,000 kW, and

(iii) 1001 kW or greater, and

(b) the proportionate contribution of each of the fleet classification categories referred to in subparagraph (a), expressed in terms of the combined capacity of the relevant Irish sea-fishing boats within those categories, to the total capacity in all 3 categories of those Irish sea-fishing boats that participated in fishing for scallops in either the year 2003 or 2004.

(3) Notification of an allocation of fishing days under paragraph (1) and the number of fishing days allocated in respect of an Irish sea-fishing boat shall be made in writing by a sea fisheries protection officer to the master of the boat by such means as he or she considers appropriate, including electronic means.

(4) Where the State's fishing effort in respect of fishing for scallops in the fishing area is restricted under paragraph (1) an Irish sea-fishing boat shall not fish for scallops in the fishing area other than in accordance with any allocation made in respect of the boat under that paragraph.

(5) An Irish sea-fishing boat may only fish for scallops in the fishing area during any restriction under paragraph (1) in respect of a fishing day allocated under that paragraph to the boat.

(6) Where an Irish sea-fishing boat fishes in contravention of this Regulation, the master and the owner of the boat commits an offence.

5. A person guilty of an offence under Regulation 4 is liable on summary conviction to a fine not exceeding €5,000.

6. In a prosecution of an offence for contravening Regulation 4 it is a defence for the defendant to show that the fishing days to which the prosecution relates were undertaken outside a restriction under that Regulation.

7. In a prosecution of an offence for contravening Regulation 4 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 that Regulation —

(a) any scallops on board such sea-fishing boat,

(b) any nets or other equipment or articles on board such sea-fishing boat indicating use of the boat for fishing, the retention, storage on board, trans-shipment or landing of scallops,

(c) 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 Regulation 4,

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

(e) any photographic evidence from which it so appears that the sea-fishing boat was so used or which in the opinion of the court suggests, or tends to suggest, that the sea-fishing boat was so used.

8. The Sea Fisheries (Conservation and Rational Exploitation of Scallop) Regulations 2005 (S.I. No. 245 of 2005) are revoked.

GIVEN under my Official Seal,

16 June 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 these Regulations is to allow for the conservation of the State's annual fishing effort for Scallops by allowing for the limitation of the number of days a boat may fish for scallops.