



STATUTORY INSTRUMENTS.

S.I. No. 346 of 2009



EUROPEAN COMMUNITIES (HABITATS AND BIRDS) (SEA-
FISHERIES) REGULATIONS 2009

(Prn. A9/1246)

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EUROPEAN COMMUNITIES (HABITATS AND BIRDS) (SEA-FISHERIES) REGULATIONS 2009

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EUROPEAN COMMUNITIES (HABITATS AND BIRDS) (SEA-FISHERIES) REGULATIONS 2009

I, BRENDAN SMITH, Minister for Agriculture, Fisheries and Food, 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 further effect to Council Directive No. 79/409/EEC of 2 April 1979¹ (as amended by Council Directive No. 81/854/EEC of 19 October 1981², Commission Directive No. 85/411/EEC of 25 July 1985³, Council Directive No. 86/122/EEC of 8 April 1986⁴, Commission Directive No. 91/244/EEC of 6 March 1991⁵, Council Directive No. 94/24/EC of 8 June 1994⁶, Commission Directive No. 97/49/EC of 29 July 1997⁷, Council Regulation (EC) No 807/2003 of 14 April 2003⁸, Council Directive No. 2006/105/EC of 20 November 2006⁹) and Council Directive No. 92/43/EEC of 21 May 1992¹⁰ (as amended by Council Directive No. 97/62/EC of 27 October 1997¹¹, Regulation (EC) No 1882/2003 of the European Parliament and of the Council of 29 September 2003¹² and Council Directive No. 2006/105/EC of 20 November 2006¹³), so far as those Directives relate to the impact of sea-fisheries on the marine environment, hereby make the following Regulations:

Part 1

PRELIMINARY AND GENERAL

Citation

1. These Regulations may be cited as the European Communities (Natural habitats and birds) (Sea-fisheries) Regulations 2009.

Interpretation

2. (1) In these Regulations-

“authorised officer” means—

(a) a sea-fisheries protection officer within the meaning of section 16 of the Sea-Fisheries and Maritime Jurisdiction Act 2006, or

¹ OJ L 103 of 25.4.1979, p.1.

² OJ L 319 of 7.11.1981, p. 3.

³ OJ L 233 of 30.8.1985, p.33.

⁴ OJ L 100 of 16.4.1986, p. 22.

⁵ OJ L 115 of 8.5.1991, p. 41.

⁶ OJ L 164 of 30.6.1994, p.9.

⁷ OJ L 223 of 13.8.1997, p. 9.

⁸ OJ L 122 of 16.5.2003, p.36.

⁹ OJ L 363 of 20.12.2006, p.368.

¹⁰ OJ L 206 of 22.7.1992, p.7.

¹¹ OJ L 305 of 8.11.1997, p. 42.

¹² OJ L 284 of 31.10.2003, p. 1.

¹³ OJ L 363 of 20.12.2006, p.368.

Notice of the making of this Statutory Instrument was published in “Iris Oifigiúil” of 4th September, 2009.

(b) a person appointed under Regulation 6;

“birds Directive” means Council Directive No. 79/409/EEC of 2 April 1979 (as amended by Council Directive No. 81/854/EEC of 19 October 1981, Commission Directive No. 85/411/EEC of 25 July 1985, Council Directive No. 86/122/EEC of 8 April 1986, Commission Directive No. 91/244/EEC of 6 March 1991¹⁴, Council Directive No. 94/24/EC of 8 June 1994, Commission Directive No. 97/49/EC of 29 July 1997, Council Regulation (EC) No 807/2003 of 14 April 2003 and Council Directive No. 2006/105/EC of 20 November 2006);

“fish” includes crustaceans and molluscs;

“habitats Directive” means Council Directive No. 92/43/EEC of 21 May 1992 as amended by Council Directive No. 97/62/EC of 27 October 1997, Regulation (EC) No 1882/2003 of the European Parliament and of the Council of 29 September 2003 and Council Directive No. 2006/105/EC of 20 November 2006;

“Minister” means Minister for Agriculture, Fisheries and Food.

(2) A word or expression that is used in these Regulations and that is also used in the birds Directive or the habitats Directive has, in these Regulations, the same meaning as in the Directive in which it occurs.

(3). These Regulations apply to the regulation of fishing activity within, or adjacent to, a site referred to in Regulation 3(1) for the purpose of achieving the specific conservation objectives relating to that site.

Part 2

MEASURES FOR ENVIRONMENTAL PROTECTION

Fisheries Natura plan

3. (1) Where (whether before or after the making of these Regulations) the Minister for the Environment, Heritage and Local Government—

(a) designates a site as a special area of conservation in accordance with Regulation 9 of the European Communities (Natural Habitats) Regulations 1997 (S.I. No. 94 of 1997), or

(b) by Regulations under the European Communities Act 1972 designates a site as a special protection area for the purposes of the birds Directive,

and that site is used for sea-fishing (within the meaning of Part 2 of the Sea-Fisheries and Maritime Jurisdiction Act 2006 (No. 8 of 2006)) and is located, wholly or partially, below the high water mark-

(i) a person affected by the designation, or

(ii) the Minister,

¹⁴ OJ L 115 of 8.5.1991, p. 41.

may prepare a plan (“fisheries Natura plan”) that relates to fishing activity within the site

(2) The objective of a fisheries Natura plan is to assist in the achievement of the objectives of the birds Directive and the habitats Directive, so far as sea-fisheries has an impact on the achievement of those objectives, in a site to which the plan relates.

(3) A fisheries Natura plan may relate to one or more sites referred to in paragraph (1).

(4) A draft fisheries Natura plan may include measures—

- (a) restricting, including prohibiting, fishing activity or fishing activity of a particular class or description,
- (b) restricting, including prohibiting, use of fishing gear or fishing gear of a particular class or description or other fishing means,
- (c) limiting fishing effort by sea-fishing boats generally or sea-fishing boats of particular class or description,
- (d) limiting fishing activity by means other than sea-fishing boats,
- (e) restricting, including prohibiting, times of fishing, and
- (f) restricting, including prohibiting, the taking of particular species,

(5) A person referred to in paragraph (1)(i) may submit a draft fisheries Natura plan to the Minister.

(6) The Minister shall, after preparing, or on receipt of, a draft fisheries Natura plan, send a copy to the Marine Institute.

(7) The Marine Institute shall prepare an assessment of a draft fisheries Natura plan sent to it by the Minister having regard to the achievement of the objectives of the birds Directive and the habitats Directive, so far as the draft fisheries Natura plan would have an impact on the achievement of those objectives, in a site to which the plan relates and make a report of the assessment to the Minister.

(8) The Minister shall-

- (a) publish a draft fisheries Natura plan (whether prepared in accordance with paragraph (1)(ii) or submitted under paragraph (5)) and the report received under paragraph (7) in a manner that he or she considers appropriate (including electronic publication), and
- (b) send a copy of a draft fisheries Natura plan (whether prepared in accordance with paragraph (1)(ii) or submitted under paragraph (5)) and the report received under paragraph (7) to the Minister for the Environment, Heritage and Local Government, the Minister for

Communications, Energy and Natural Resources and any other person who he or she considers appropriate,

and invite representations on the report within one month of the date of publication or, for 2009, a shorter period determined by the Minister.

(9) A person may make representations on a report on a draft fisheries Natura plan within one month of it being published or, for 2009, a shorter period determined by the Minister.

(10) As soon as may be after receipt of representations under paragraph (9), the Minister shall finalise the fisheries Natura plan and publish the fisheries Natura plan in any manner that he or she considers appropriate (including electronic publication).

(11) The Minister shall publish notice of a fisheries Natura plan or the amendment or withdrawal of a fisheries Natura plan in *Iris Oifigiúil*.

(12) The Minister may revise, amend or withdraw a fisheries Natura plan or issue a new fisheries Natura plan in place of a fisheries plan in accordance with this Regulation.

(13) If a person submits a draft fisheries Natura plan to the Minister and the Minister is already dealing with a draft plan submitted in respect of the same site or sites, he or she is not required to proceed in accordance with this Regulation in respect of the second submitted plan.

(14) Where, before the making of these Regulations, the Minister engaged in a process approximating to that established by this Regulation, whether the process was completed before or after the making of these Regulations, a plan prepared in accordance with that process is considered to be a fisheries Natura plan.

Fisheries Natura declaration

4. (1) If the Minister has finalised and published a fisheries Natura plan and it appears to him or her to be necessary, supplemental or incidental to achieving the objectives of the birds Directive or the Habitats Directive, the Minister may issue a declaration (“fisheries Natura declaration”).

(2) A person shall not contravene a fisheries Natura declaration.

(3) A fisheries Natura declaration may relate to one or more sites referred to in Regulation 3(1).

(4) A fisheries Natura declaration may include measures-

- (a) regulating, including prohibiting, fishing or fishing of a particular class or description,
- (b) regulating, including prohibiting, use of fishing gear or fishing gear of a particular class or description,

- (c) limiting fishing by sea-fishing boats generally or sea-fishing boats of a particular class or description,
- (d) limiting fishing by means other than sea-fishing boats,
- (e) regulating, including prohibiting, times of fishing, and
- (f) regulating, including prohibiting the taking of particular species,

(5) A notice specifying the date and time of its issue and the date from which it comes into force, not being a day earlier than the day after its first publication, shall be published, in such manner as the Minister considers appropriate and expedient in the circumstances (including electronic means, whether by electronic-mail, facsimile, the internet, or otherwise, or by publication in a newspaper published and circulating in the State or to organisations the Minister considers representative of the interests of persons engaged in seafishing).

(6) Without prejudice to *subsection (5)*, notice of the publication of a notice shall be made publishing the notice in the *Iris Oifigiúil*.

(7) The Minister may revise, amend or withdraw a fisheries Natura declaration or issue a new fisheries Natura declaration in place of a fisheries Natura declaration in accordance with this Regulation.

(8) A fisheries Natura declaration may require that sea-fishing, either generally or sea-fishing of a particular class or description, be regulated by permit.

Fisheries Natura permit

5. (1) If a fisheries Natura declaration requires that sea-fishing, either generally or sea-fishing of a particular class or description, be regulated by permit, a person shall not, nor cause or permit another person to, fish for, land, tranship or have on board fish of a species specified in the declaration except in accordance with a permit (“fisheries Natura permit”).

(2) The Minister may grant a fisheries Natura permit, attach conditions to a fisheries Natura permit, revoke or vary a condition, insert a new condition, revoke a fisheries Natura permit or refuse an application.

(3) A person shall not contravene a fisheries Natura permit.

(4) An application for a fisheries Natura permit shall be made by the owner of the Irish sea-fishing boat or other method of fishing to which the application relates, be in a form, be accompanied by any material and contain any particulars that the Minister specifies.

(5) A fisheries Natura declaration may relate to one or more sites referred to in Regulation 3(1).

(6) Without prejudice to the generality of paragraph (2), a condition attached to a fishing conservation permit may-

- (a) specify the quantities and types of fishing gear which may be kept on board a sea-fishing boat to which a permit relates,
- (b) specify the quantities and types of fishing gear which may be used for the purposes of sea-fishing generally or sea-fishing of a particular class or description, and the manner in which the gear may be used or stored,
- (c) prohibit the trans-shipment or landing of sea-fish or sea-fish of a particular class or description other than at specified places and within specified hours,
- (d) require the giving of specified advance notice of entry into port, and any other information as may be specified in the permit,
- (e) require the authorisation by an authorised officer for the landing of sea-fish generally or sea-fish of a particular class or description,
- (f) require the separate storage of different types of sea-fish or sea-fish caught in an area to which the permit relates and other sea-fish,
- (g) require the collection, collation and submission of specified data in relation to fishing for, trans-shipment or landing of sea-fish,
- (h) requiring the keeping of records in relation to the activities of the sea-fishing boat as may be specified in the permit,
 - (i) require the facilitation of the placing of any person appointed by the Minister on board a sea-fishing boat to which a permit relates for the purposes of ensuring compliance with these Regulations or for, scientific observation, and require the provision of assistance and co-operation to that person in carrying out his or her duties or otherwise,
- (j) require the keeping of the permit on the sea-fishing boat to which it relates,
- (k) restrict the quantity of sea-fish or sea-fish of a particular class or description, that may be taken or retained, on board a particular sea-fishing boat in any specified area or part of it, or, in respect of fish taken or retained on board, that may be landed or trans-shipped from that boat, or
- (l) provide that a fisheries Natura permit is revoked if—
 - (i) the person to whom the permit is granted ceases to be the owner of the boat to which the permit relates, or
 - (ii) the boat ceases to be an Irish sea-fishing boat (within the meaning of section 2 of the Sea-Fisheries and Maritime Jurisdiction Act 2006)

- (7) Without prejudice to the generality of paragraph (2), the Minister may refuse an application or revoke a fisheries Natura permit if—
- (a) the applicant or person to whom a fisheries Natura permit is granted has been convicted of, or committed, an offence, whether he or she has been convicted or not, under any enactment that relates to the environment,
 - (b) the applicant or person to whom a fisheries Natura permit is granted has failed to comply with a condition attached to a permit,
 - (c) the applicant or person to whom a fisheries Natura permit is granted is not, in the opinion of the Minister, a fit and proper person to hold a permit,
 - (d) without prejudice to paragraph (11), in relation to the application, information required has not been furnished or information that is, in the opinion of the Minister, false or misleading has been furnished, or
 - (e) it is, in the opinion of the Minister necessary, incidental, supplementary or consequential for the purposes of giving effect to an act of an institution of the European Communities or Regulations under the European Communities Act 1972 relating to the environment.
- (8) Without prejudice to the generality of paragraph (2), the Minister shall refuse an application or revoke a fisheries Natura permit if the applicant or person to whom a permit is granted is convicted, on indictment, of an offence under an enactment relating to the environment.
- (9) Other than in the case of paragraph (8) or (10), if the Minister proposes to revoke a fisheries Natura permit or to refuse an application, he or she shall—
- (a) notify the person concerned in writing of the proposal and of the reasons for the proposal, and that he or she may make representations to the Minister in relation to the proposal within 14 days of the notification,
 - (b) consider a representation duly made before deciding whether to proceed with, modify or annul the proposal, and
 - (c) notify the person concerned of the decision and the reasons therefor.
- (10) If the Minister is of the opinion that it is necessary to give effect to an act of an institution of the European Communities or an enactment relating to the environment, he or she may revoke a fisheries Natura permit or refuse an application in accordance with paragraph (11).
- (11) If the Minister revokes a fisheries Natura permit or refuses an application in accordance with this paragraph, he or she shall—

- (a) notify the person concerned in writing of the decision and the reasons for the decision, and that he or she may make representations to the Minister in relation to the decision within 14 days of the date of the notification,
- (b) consider a representation made, and
- (c) confirm, modify or annul the decision and notify the person concerned of the decision and the reasons for the decision.

(12) A person to whom a fisheries Natura permit is granted shall make such returns to the Minister as and when, and in such form as, the Minister may from time to time direct.

(13) The Minister may renew without application, at his or her discretion, a fisheries Natura permit for a period stated in the renewed permit, if the Minister is satisfied the holder of the permit upon its expiration continues to be the owner of the Irish sea-fishing boat or other method of fishing to which the permit relates.

(14) If the Minister grants a fisheries Natura permit, attaches conditions to a fisheries Natura permit, revokes or varies a condition, inserts a new condition, revokes a fisheries Natura permit, or refuses an application, he shall notify the applicant or person to whom the fisheries Natura permit was granted in writing (including writing in electronic form).

(15) Revocation of a fisheries Natura permit, or insertion or variation of a condition, after the fisheries Natura permit is granted, comes into force as specified in the notification to the holder of the permit, no earlier than 24 hours after the notification is sent.

(16) The holder of a fisheries Natura permit shall, if the permit relates to a sea-fishing boat, inform the master of the sea-fishing boat to which the permit relates of revocation of the permit or of a condition or variation of a condition notified to the holder under paragraph (14).

(17) If a sea-fishing boat to which a fisheries Natura permit relates is engaged with another sea-fishing boat in pair fishing for a specified stock or stocks in an area specified in a permit, the boat may, take on board the quantity allowed to the other boat or land or trans-ship the other boat's share of the specified stock or stocks taken, subject to any conditions as may be specified in the fisheries Natura permit relating to the second-mentioned boat.

(18) In paragraph (17), "pair fishing" means, the towing or trawling of a trawl, seine or other net in the sea by the boat jointly with another authorised boat for the purpose of catching fish.

Part 3

AUTHORISED OFFICERS AND RELATED MATTERS

Appointment of authorised officer

6. (1) The Minister may appoint such and as many persons as he or she sees fit to be authorised officers for the purposes of some or all of these Regulations.

(2) An authorised officer appointed under this Regulation shall be issued with a warrant of appointment and shall, if not in uniform, when exercising or seeking to exercise any power under these Regulations, if requested by a person affected, produce the warrant to that person and a form of personal identification.

(3) An appointment as an authorised officer ceases—

- (a) if the Minister terminates the appointment, whether or not the appointment was for a fixed period,
- (b) if it is for a fixed period, on the expiry of that period, or
- (c) if the person appointed is an officer of the Minister or Customs and Excise, a member of the Garda Síochána or the Defence Forces, upon the person ceasing to be such an officer or member.

(4) Nothing in paragraph (3) is to be construed so as to prevent the Minister from reappointing as an authorised officer a person to whom that paragraph relates.

Functions of authorised officer

7. (1) If an authorised officer has cause to suspect that—

- (a) A vessel is or may have been on a site referred to in Regulation 3(1),
- (b) fish or a fishery product is present, has been present or may be present on a vessel, vehicle, premises or container,
- (c) fish or a fishery product is or has been processed, stored or otherwise dealt with on a vessel, vehicle, premises or container,
- (d) a document relating to fish or a fishery product is present, was present or may be present on a sea-fishing boat, vessel, vehicle, premises or container, or
- (e) an offence is being or has been committed under these Regulations,

the authorised officer may enter the premises and he or she may—

- (i) search the premises,
- (ii) stop a person, vehicle, vessel or container, or require that a vessel or vehicle be manoeuvred as directed for the purposes of identification or of allowing the officer to go on board it,
- (iii) board, open, search and examine a vehicle, vessel, fishing gear, other equipment used in connection with fishing, or container,

- (iv) search a person, if the authorised officer considers it necessary,
- (v) examine fish, a fishery product, fishing gear, other equipment used in connection with fishing, a vehicle, vessel, container or other thing that may, consist of or contain fish or a fishery product and for that purpose to open any package, hold, tank, container or other article which contains or is suspected of containing fish, fishing gear or other equipment used in connection with fishing,
- (vi) take, without payment, samples of fish or a fishery product or other thing or an article, substance or liquid as he or she may reasonably require and carry out or cause to be carried out on a sample such tests, analyses, examinations or inspections as he or she considers necessary or expedient,
- (vii) seize and detain (for so long as is necessary) a sea-fishing boat, fishing gear or other equipment used in connection with fishing, any fish (with or without any container) or a fishery product, a vehicle or container, any computer or other storage medium in which any record is kept or any thing believed to be liable to forfeiture under these Regulations,
- (viii) require the production of a document, record or thing relating to fish or a fishery product, a vehicle, vessel, container, fishing gear or other equipment used in connection with fishing,
- (ix) examine and verify the accuracy of or retain a document, record or thing,
- (x) dispose of, or require the owner or person in charge of or in possession of, fish or a fishery product to deal with or dispose of it (or any fishing gear, equipment, machinery, plant or other thing used in connection with, or that may have been in contact with, the fish or a fishery product) in a manner that the authorised officer sees fit,
- (xi) take evidence, including photographic evidence or electronically recorded evidence, of anything relating to an offence under these Regulations which is being committed or suspected of being or having been committed,
- (xii) check the size, weight, characteristics and condition of sea-fish and the operation of any equipment used for the measurement, weighing, handling, storage, trans-shipment, transportation and processing of sea-fish;
- (xiii) give a direction to, or request information of, a person regarding fish or a fishery product, or a premises as he or she considers necessary,

- (xiv) require the owner, master or member of the crew of a sea-fishing boat to produce the certificates of registry, licences, authorisations, permits, logbooks or other records relating to the boat or any fishing gear or equipment on the boat, the crew or a member of the crew, which are in his or her possession or control,
- (xv) require the master of the boat to give an explanation concerning the boat or any fishing gear or equipment on it or concerning the boat's fishing activity and the certificates, licences, authorisations, logbooks, or other records relating to it
- (xvi) require the name and address of a person and the name and address of any other relevant person including the person to whom fish or a fishery product is being delivered or who is causing it to be delivered,
- (xvii) require of a person the ownership, identity and origin of fish or a fishery product, or
- (xix) mark or otherwise identify fish or a fishery product or a sample taken under subparagraph (vi).

(2) An authorised officer shall not enter, except with the consent of the occupier, a private dwelling, unless he or she has obtained a search warrant under Regulation 8 other than if he or she has reasonable cause to suspect that before a search warrant could be sought in relation to the dwelling anything to which paragraph (1) relates is being or is likely to be destroyed or disposed of.

(3) An authorised officer may use reasonable force, if necessary, in exercise of his or her powers under these Regulations.

(4) An authorised officer, when exercising a power under this Regulation may be accompanied by other persons and may take with him or her, or those persons may take with them, any equipment or materials to assist the officer in the exercise of the power.

(5) An authorised officer is not liable in any proceedings for anything done in the purported exercise of his or her powers under these Regulations if the court is satisfied that the act was done in good faith and that there were reasonable grounds for doing it.

(6) A sea-fisheries protection officer acting under this Regulation may—

- (a) operate any computer at a place being searched or cause the computer to be operated by a person accompanying the officer, and
- (b) require a person at that place who appears to the officer to have access to the information in any computer—
 - (i) to give to the officer any password necessary to operate it,

- (ii) otherwise to enable the officer to examine the information accessible by the computer in a form in which the information is visible and legible, or
- (iii) to produce the information in a form in which it can be removed and in which it is, or can be made, visible and legible.

(7) Without prejudice to the generality of paragraph (1), a direction or requirement of an authorised officer may include conditions prohibiting, restricting or otherwise controlling the use, processing or movement of a sea-fishing boat, fishing gear, fish or a fishery product as may be specified by the authorised officer.

(8) Nothing in this Regulation operates to prejudice any power to search, or to seize or detain property, which may, apart from these Regulations, be exercised by an authorised officer, member of the Garda Síochána or an officer of Customs and Excise.

(9) Nothing in section 17 of the Industrial and Provident Societies Act 1893 prevents an authorised officer from exercising a power conferred on him or her by these Regulations.

Search warrant

8. (1) If a judge of the District Court is satisfied by information on oath of an authorised officer that there are reasonable grounds for suspecting—

- (a) evidence of or relating to the commission or intended commission of an offence under these Regulations is to be found on a premises, or
- (b) a document or other record related to a thing to which subparagraph (a) refers is or may be on the premises,

the judge may issue a search warrant.

(2) A search warrant under this Regulation is expressed and operates to authorise a named authorised officer, accompanied by such authorised officers or other persons as the named authorised officer thinks necessary, at any time, within one month from the date of issue of the warrant, on production if so requested of the warrant, to enter (if necessary by use of reasonable force) the premises, vehicle, vessel or aircraft named in the warrant.

(3) If a premises is entered pursuant to a warrant issued under this Regulation, an authorised officer so entering may exercise all or any of the powers conferred on an authorised officer under these Regulations.

(4) In this Regulation “premises” includes a vessel, vehicle or aircraft.

Assistance to authorised officer

9. A person shall give any assistance requested to an authorised officer or person who accompanies an authorised officer.

Obstruction, etc

10. A person shall not—

- (a) obstruct or impede an authorised officer in the exercise of his or her powers under Regulation 7,
- (b) fail, without reasonable cause, to comply with a requirement or direction of an authorised officer under Regulation 7,
- (c) in making an application for a fisheries Natura permit or in purporting to give information to an authorised officer for the performance of the officer's powers under Regulation 7—
 - (i) make a statement that he or she knows to be false in a material particular or recklessly make a statement which is false in a material particular, or
 - (ii) fail to disclose a material particular,
- (d) tamper or otherwise interfere with a sample taken under Regulation 7,
- (e) fail to obey an order for the boat to be stopped or to be manoeuvred in accordance with directions of an authorised officer,
- (f) fail to obey an instruction for the boat to be taken to a specified port, given by an authorised officer
- (g) when his or her name and address is lawfully requested of him or her by an authorised officer refuse or fail to give his or her name and address or give a name or address which is false or misleading,
- (h) when the name and address of any other person is lawfully requested of him or her by an authorised officer refuse or fail, knowing such name and address, to give the name or address or give a name or address which is false or misleading, or
- (i) aid or abet a contravention of these Regulations,

Disposal of sea-fish, etc

11. (1) When an authorised officer detains in his or her custody any sea-fish, fishery product or other article, he or she shall, as soon as conveniently may be, take such steps as may be proper to have the person accused of the alleged offence committed in relation to the sea-fish, fishery product or other article dealt with according to law.

(2) If an authorised officer detains in his or her custody any sea-fish or fishery product and the sea-fish or fishery product is likely to become unfit for human food before the matter can conveniently be dealt with by any court, he or she may produce the sea-fish or fishery product to a designated officer (if he or she is not a designated officer), and, if authorised so to do by the designated officer, sell or otherwise dispose of the sea-fish or fishery product.

(3) If an authorised officer detains in his or her custody any live sea-fish, he or she may produce the sea-fish to a designated officer (if he or she is not a designated officer) and, if authorised so to do by the designated officer, return the sea-fish to the sea.

(4) A designated officer to whom sea-fish or fishery product is produced under this Regulation or which he or she has detained in his or her authority as an authorised officer shall, if he or she is of opinion that the sea-fish or fishery product ought to be destroyed or returned to the sea, give to the authorised officer producing the sea-fish or fishery product or create for himself or herself a certificate in writing describing the sea-fish or fishery product and any marks, peculiarities or other particulars thereof pointed out to him or her by the authorised officer and authorising the officer to sell or otherwise dispose of the sea-fish or fishery product or return the sea-fish to the sea.

(5) A certificate under paragraph (4) is, until the contrary is shown, evidence in every court of all matters of fact stated in it.

Part 4

PROCEEDINGS, OFFENCES AND RELATED MATTERS

Detention order

12. (1) If an authorised officer has, in the exercise of the powers conferred on him or her by Regulation 7, detained a boat or vehicle and the persons on board the boat or vehicle at a port, an authorised officer who suspects that a person on board the boat or on the vehicle has committed an offence under these Regulations shall (unless he or she is proceeding under Regulation 13), as soon as may be, apply to a judge of the District Court for an order authorising the continued detention of the boat or vehicle and those persons, and the judge may grant an order authorising the detention for a period of 48 hours if he or she is satisfied that the authorised officer has a reasonable suspicion that a person on board the boat or on the vehicle has committed an offence under these Regulations.

(2) Upon the expiration of the period of 48 hours—

- (a) the boat or vehicle shall be released, unless an order or an application for an order providing for its further detention has been made under this Regulation before the expiration of that period, and
- (b) each person shall be released, unless an order providing for his or her further detention has been made under this Regulation before the expiration of that period.

(3) In this Regulation “application for an order” includes mentioning to the court that an application will be made to the court.

Detention pending trial

13. (1) If an authorised officer has in exercise of the powers conferred on him or her by Regulation 7 detained a boat or vehicle and the persons on board

the boat or vehicle at a port, an authorised officer shall, as soon as may be, bring the master of the boat and any other persons on board the boat or on the vehicle against whom proceedings for an offence under these Regulations have been or are about to be instituted before a judge of the District Court.

(2) Subject to paragraph (3), the judge shall, if he or she is satisfied that proceedings have been or are about to be instituted against the master and those other persons or any one or more of them, by order, directed to an authorised officer, require the officer to detain at a specified port in the State the boat or vehicle and each person (including the master) in respect of whom he or she is satisfied that proceedings have been or are about to be instituted, until the proceedings have been determined.

(3) The judge may order the release on bail of a person against whom proceedings have been instituted before the proceedings have been determined.

Provision of security

14. (1) If—

- (a) a person is convicted by a judge of the District Court of an offence under these Regulations or proceedings in relation to the offence are dismissed by a judge of the District Court, and
- (b) the offence relates to a sea-fishing boat and the boat, on which the person committed the offence or to which the proceedings related, has been detained under Regulation 12 or 13, the judge shall, by order directed to an authorised officer, require the officer in the event of an appeal from, or any other proceedings in relation to the order of the District Court or the order of any other court to which the case is brought, whether by way of appeal or otherwise, to detain the boat further pending the determination of the appeal or other proceedings (and any proceedings consequent upon the appeal or the other proceedings) at a specified port in the State.

(2) If—

- (a) a person is sent forward for trial or for sentence by a judge of the District Court to a court other than the District Court, charged with an offence under these Regulations, and
- (b) the offence relates to a sea-fishing boat and the boat on which the person committed, or is alleged to have committed, the offence has been detained under Regulation 7, 12 or 13,

the judge shall, by order directed to an authorised officer, require the officer—

- (i) to detain the boat further at a specified port in the State pending the determination of the case in that other court, and
- (ii) in the event of an appeal from, or other proceedings in relation to the order of the District Court or of the other court to which

the person is sent forward under this Regulation or of any other court to which the case is brought, whether by way of appeal or otherwise, to detain the boat further pending the determination of the appeal or the other proceedings (and any proceedings consequent upon the appeal or the other proceedings) at a specified port in the State.

- (3) (a) If, in respect of an offence under these Regulations, an order is made under Regulation 13 or paragraph (1) in relation to a boat, a judge of the District Court may, at his or her discretion, by order directed to an authorised officer, require the boat to be released if security, which in the opinion of the judge is satisfactory, is given for payment, in the event of conviction of the defendant in respect of the offence or in the event of his or her failure to attend before any court when attendance is required, in relation to the offence or any trials, appeals or other proceedings in relation to the offence, of a sum that, in the opinion of the judge, is sufficient to provide for—
- (i) payment of the maximum fine ordered, or which may be ordered, to be paid in respect of the offence,
 - (ii) the estimated amount of the costs (if any) of any trials, appeals or other proceedings in relation to the offence awarded, or which may be awarded, against the defendant, and
 - (iii) the estimated value of any forfeitures ordered, or which may be ordered, to be made upon the final determination of any trial, appeal or other proceedings in relation to the offence.
- (b) The security provided for in subparagraph (a) is in addition to and not in substitution for any other bond or recognisance which a defendant may be required to enter into by the judge of the District Court in relation to any trial, appeal or other proceedings in respect of the alleged offence.

(4) If an order is made under this Regulation for the detention or release of a boat, the boat shall be detained or released in accordance with its terms.

Matters relating to indictable offences

15. (1) A person charged with an indictable offence under these Regulations may, with the consent of the prosecutor, elect to be sent forward for trial in the Circuit Court on a plea of not guilty.

(2) If a person elect to be sent forward for trial in the Circuit Court on a plea of not guilty, the prosecutor shall cause to be served on the accused person or the solicitor (if any) for that person, within 42 days after the not guilty plea is entered (or longer period as the District Court determines under paragraph (3)), any documents that under section 4B or 4C (inserted by section 9 of the Criminal Justice Act 1999) of the Criminal Procedure Act 1967 are required to be served and have not already been served and a copy of those documents is to be furnished to the District Court.

(3) The District Court may, on the application of the prosecutor, extend the period within which a document required under section 4B of the Criminal Procedure Act 1967 is to be served, if satisfied that—

(a) there is good reason for doing so, and

(b) it would be in the interests of justice to do so.

(4) An application may be made and an extension may be granted under paragraph (3) before or after the expiry of—

(a) the period of 42 days mentioned in paragraph (1), or

(b) any extension of that period granted under paragraph (3).

(5) If a judge of the District Court refuses to grant an extension, he or she shall strike out the proceedings against the accused in relation to the offence.

(6) The striking out of proceedings under paragraph (5) does not prejudice the institution of any further proceedings against the accused by the prosecutor.

Service of documents

16. (1) If a judge of the District Court proposes to make an order for the release on bail of a defendant before him or her, charged with an offence under these Regulations who is ordinarily resident outside the State, the judge shall direct that all documents (including an indictment) required by law to be served on the defendant in connection with or for the purpose of the charge or of any proceedings arising out of or connected with the charge may, instead of being served on the defendant, be served on a person specified in the direction who is ordinarily resident in the State, unless he or she is satisfied that the documents can be duly served on the defendant in the State.

(2) If a judge of the District Court who has given a direction under paragraph (1) or another judge of the District Court acting in his or her place is satisfied that, owing to the death or absence from the State of a person specified in the direction or for any other reason a document referred to in paragraph (1) cannot be served on that person, the judge shall direct that the document may be served on another person specified in the direction who is ordinarily resident in the State.

(3) Service of a document referred to in this Regulation on a person specified in a direction under this Regulation is deemed for all purposes to be service on the defendant.

Due diligence, etc

17. If an offence under these Regulations is committed by a person on board a sea-fishing boat, and the master or owner of the boat is charged with having committed the offence, it is a defence for him or her to show that—

- (a) he or she used due diligence to prevent the commission of the acts alleged to constitute the offence and they were done without his or her consent, connivance or default, or
- (b) the acts were necessary to secure the safety of the boat or any other vessel or person in peril on the sea.

Presumption

18. In a prosecution of an offence under these Regulations in relation to the catching, retention, storage on board, trans-shipment or landing of fish on board, by, or from a sea-fishing boat, it is presumed, unless the contrary is shown, that the sea-fishing boat was, at the time of the alleged offence, used for the catching, retention, storage on board, trans-shipment or landing of the fish in contravention of these Regulations, from—

- (a) any fish relevant to the offence on board the sea-fishing boat,
- (b) any net or other equipment or articles on board the sea-fishing boat indicating use of the boat for fishing, the retention, storage on board, trans-shipment or landing of fish relevant to the offence,
- (c) evidence that the sea-fishing boat had on board any records from which it appears to the court that on the day on which the offence is alleged to have been committed fish relevant to the offence were caught, retained, stored on board, trans-shipped or landed contrary to these Regulations,
- (d) any admission by any person who is for the time being the master or another member of the crew, of the sea-fishing boat that it was so used,
- (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, or
- (f) any data received by a Fisheries Monitoring Centre (within the meaning of Commission Regulation (EC) No.2244/2003 of 18 December 2003¹⁵) from which it appears that the sea-fishing boat was so used or which in the opinion of the court suggests, or tends to suggest, that the boat was so used.

Offences

19. (1) A person who contravenes Regulation 4(2), 5(3), (12) or (16), 9 or 10 commits an offence.

(2) A summary offence under these Regulations may be prosecuted by the Sea Fisheries Protection Authority.

¹⁵ O.J. L333 of 20.12.2003, p.17

(3) If an offence under these Regulations is committed using, or on board, a sea-fishing boat, the master and the owner of the boat, in addition to any other person alleged to have committed the offence, commits an offence.

(4) If an offence under these Regulations is committed by a body corporate and is proven to have been so committed with the consent, connivance or approval of or to have been attributable to the wilful neglect on the part of any person, being a director, manager, secretary or other officer of the body corporate or a person who was purported to act in any such capacity, that person, as well as the body corporate, commits an offence and is liable to be proceeded against and punished as if he or she was guilty of the offence.

(5) If the affairs of a body corporate are managed by its members, paragraph (3) applies in relation to the acts and defaults of a member in connection with the functions of management as if the member were a director or manager of the body corporate.

Penalties

20. (1) A person who commits an offence under these Regulations is liable—

(a) on summary conviction, to a fine not exceeding € 5,000, or

(b) (i) on conviction on indictment to a fine not exceeding €35,000, and

(ii) as a statutory consequence of conviction, if a sea-fishing boat is used in the commission of the offence, forfeiture of all fish and fishing gear aboard the boat to which the offence relates.

Jurisdiction of district court

21. (1) Notwithstanding anything contained in any other enactment, an offence under these Regulations, may be determined in a summary way by a judge of the District Court upon the complaint, verbal or otherwise, of an authorised officer.

(2) For the purpose of giving jurisdiction under these Regulations an offence under these Regulations and triable summarily is, if committed using or on board a sea-fishing boat—

(a) deemed to have been committed in any place in which the accused person may be, or

(b) which was within limits of a site specified in the Schedule when the act was committed or when the accused person was arrested, is deemed to have been committed in a district court district abutting on, or adjacent to, that portion of those limits in which the boat was when the act was committed or the accused person arrested.

Recovery of fine and forfeiture, etc,

22. (1) If a person is convicted of an offence under these Regulations—

(a) the Court shall fix a time within which the costs and fine (if any) are to be paid,

- (b) if the boat to which the person belongs is, at the time of the hearing of the proceedings for the offence, detained, the Court shall by order directed to an authorised officer or officers require the officer or officers to detain further, until the fine and costs (if any) are paid, at a specified port in the State the boat, and the boat shall be detained accordingly,
- (c) in the event of the fine and costs (if any) not being paid within the time specified in accordance with subparagraph (a), the fine and costs (if any) may be recovered by distress and the sale of such boat (including the capacity thereof), and
- (d) nothing in this Regulation prevents a fine and costs (if any) being recovered by ordinary process of law.

(2) If—

- (a) an article on board a boat is ordered by a court to be forfeited or, as a statutory consequence of conviction by a court, is forfeited, and
- (b) the boat is detained under Regulation 11 or 12, the Court may, on the application of the prosecutor, by order directed to an authorised officer, authorise the officer to detain the boat until possession has been taken of the article forfeited, and the boat may be detained accordingly.

(3) If an article on board a boat is forfeited under these Regulations, an authorised officer may request the master of the boat to make available facilities (including moving of the boat from place to place and the doing of things upon, to or with the boat, its equipment or machinery) as the authorised officer may reasonably require for the purpose of enabling him or her to take possession of the article.

Non-recording of forfeiture

23. If a person is convicted on indictment of an offence under these Regulations and any fishing gear or fish is, as a statutory consequence of the conviction, forfeited, then, notwithstanding any rule of law, it is not necessary for the court to—

- (a) pronounce the fact of such forfeiture at the time of adjudication, or
- (b) record the fact of the forfeiture in the judge's minute book, the charge sheet or in the order of conviction.

Appeal by prosecutor

24. (1) If any proceedings tried summarily in the District Court for an offence under these Regulations are dismissed, whether on the merits or without prejudice, the prosecutor may appeal against the order of dismissal to the judge of the Circuit Court within whose Circuit the courthouse where the order was made is situated.

(2) The judge of the Circuit Court on an appeal under paragraph (1) may vary, confirm or reverse the order and his or her decision is final and conclusive and may not be appealed.

Evidence on certificate

25. (1) A copy of a fisheries Natura plan or a fisheries Natura declaration, which has endorsed on it a certificate purporting to be signed by an officer of the Minister stating that the copy is a true copy of the plan or declaration may, without proof of signature of that officer, be produced in every court and in all legal proceedings and is evidence, unless the contrary is shown, of the plan or declaration.

(2) In proceedings, evidence of an act of the institutions of the European Communities may be given by production of a copy of the act certified by an officer of the Minister to be a copy of the act, and it is not necessary to prove the signature of the officer or that he or she is an officer of the Minister.

(3) Paragraph (2) is in addition to and not in substitution for the European Communities (Judicial Notice and Documentary Evidence) Regulations 1972 (S.I. No. 341 of 1972).

Part 6

AMENDMENTS

Amendments to Regulations

26. (1) The European Communities (Natural Habitats) Regulations, 1997 (S.I. No 94 of 1997) are amended—

(a) by the insertion, after Regulation 7(6), of—

“(7) An authorised officer has no function in relation to sea-fishing that is carried out in accordance with a fisheries Natura plan or a fisheries Natura declaration within the meaning of the European Communities (Natural habitats and birds) (Sea-fisheries) Regulations 2009.”,

(b) by the insertion, after Regulation 12(2), of—

“(3) A management agreement, whether entered into before or after the making of the European Communities (Natural habitats and birds) (Sea-fisheries) Regulations 2009, does not have effect in relation to sea-fishing that is carried out in accordance with a fisheries Natura plan or a fisheries Natura declaration within the meaning of those Regulations.”,

(c) by the insertion, after Regulation 13(3), of—

“(4) A conservation measure, or administrative or contractual measure does not apply to sea-fishing that is carried out in accordance with a fisheries Natura plan or a fisheries Natura declaration within

the meaning of the European Communities (Natural habitats and birds) (Sea-fisheries) Regulations 2009.”,

(d) by the insertion, after Regulation 14(4), of—

“(5) This Regulation, Regulation 15 and Regulation 16 do not apply to sea-fishing that is carried out in accordance with a fisheries Natura plan or a fisheries Natura declaration within the meaning of the European Communities (Natural habitats and birds) (Sea-fisheries) Regulations 2009.”, and

(e) by the insertion, after Regulation 20(8), of—

“(9) Compensation is not payable in respect of any prohibition or restriction of sea-fishing in accordance with the European Communities (Natural habitats and birds) (Sea-fisheries) Regulations 2009.”.

(2) The European Communities (Conservation of Wild Birds) (Illanamaster SPA 004074) Regulations 2005 (S.I. No. 714 of 2005) are amended—

(a) in Regulation 4(2) by the insertion after “doing of the thing” of “or, in the case of sea-fishing, it is done in accordance with a fisheries Natura plan or a fisheries Natura declaration (both within the meaning of the European Communities (Natural habitats and birds) (Sea-fisheries) Regulations 2009) relating to the special protection area”, and

(b) in Regulation 4(3) by the insertion after “Minister” of “or, in the case of sea-fishing, in accordance with a fisheries Natura plan or a fisheries Natura declaration (both within the meaning of the European Communities (Natural habitats and birds) (Sea-fisheries) Regulations 2009) relating to the special protection area”.

(3) The European Communities (Conservation of Wild Birds) (Stags of Broad Haven SPA 004072)) Regulations 2005 (S.I. No. 716 of 2005) are amended—

(a) in Regulation 4(2) by the insertion after “doing of the thing” of “or, in the case of sea-fishing, it is done in accordance with a fisheries Natura plan or a fisheries Natura declaration (both within the meaning of the the European Communities (Natural habitats and birds) (Sea-fisheries) Regulations 2009) relating to the special protection area”, and

(b) in Regulation 4(3) by the insertion after “Minister” of “or, in the case of sea-fishing, in accordance with a fisheries Natura plan or a fisheries Natura declaration (both within the meaning of the the European Communities (Natural habitats and birds) (Sea-fisheries) Regulations 2009) relating to the special protection area”.



GIVEN under my Official Seal,
27 August 2009

BRENDAN SMITH
Minister for Agriculture, Fisheries and Food

EXPLANATORY NOTE

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

These Regulations provide for a Fisheries Natura Plan for wild fisheries that may impact on Natura 2000 sites, the Appropriate Assessment of those Plans, a process of public and statutory consultation and for the Minister to accept, reject or amend such plans. It provides powers for the Minister to control fishing via a Permit system and further provides for offences and penalties.

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