

## **S.I. No. 554/2010 — Sea-Fisheries (Illegal, Unreported and Unregulated Fishing) Regulations 2010.**

*Notice of the making of this Statutory Instrument was published in  
“Iris Oifigiúil” of 26th November, 2010.*

I, BRENDAN SMITH, Minister for Agriculture, Fisheries and Food, in exercise of the powers conferred on me by sections 3 and 14 of the Sea-Fisheries and Maritime Jurisdiction Act 2006 (No. 8 of 2006) and the Sea-Fisheries, Foreshore and Dumping at Sea (Transfer of Departmental Administration and Ministerial Functions) Order 2007 ( S.I. No. 707 of 2007 ) (as adapted by the Agriculture and Food (Alteration of Name of Department and Title of Minister) Order 2007 ( S.I. No. 705 of 2007 )), and in relation to Regulation 6 of these Regulations, section 3 of the European Communities Act 1972 (No. 27 of 1972), and for the purpose of giving full effect to Council Regulation (EC) No. 1005/2008 of 29 September 2008<sup>1</sup>, Commission Regulation (EC) No. 1010/2009 of 22 October 2009<sup>2</sup> and Commission Regulation (EU) No. 86/2010 of 29 January 2010<sup>3</sup>, hereby make the following regulations:

### *Citation*

1. These Regulations may be cited as the Sea-Fisheries (Illegal, Unreported and Unregulated Fishing) Regulations 2010.

### *Interpretation*

2. (1) In these Regulations—

“Commission Regulation” means Commission Regulation (EC) No. 1010/2009 of 22 October 2009 as amended by Commission Regulation (EU) No. 86/2010 of 29 January 2010;

“Council Regulation” means Council Regulation (EC) No. 1005/2008 of 29 September 2008 as amended by Commission Regulation (EU) No. 86/2010 of 29 January 2010.

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

### *Landing and transhipment*

3. (1) A person shall not, in contravention of Article 4(2), 5 or 7(1) of the Council Regulation—

(a) access port facilities within the State,

(b) use or attempt to use port services within the State, or

(c) engage in transhipment or landing operations at a port within the State in relation to—

(i) a sea-fishing boat within the exclusive fishery limits of the State,

(ii) an Irish sea-fishing boat wherever it may be, or

(iii) a person engaged in buying, handling, weighing, transhipping, transporting, landing, processing, storing, documenting or selling fish within the State or the exclusive fishery limits of the State.

(2) A person shall not tranship, or attempt to tranship, a fishery product, in contravention of Article 4(3) or Article 4(4) of the Council Regulation in relation to—

(i) a sea-fishing boat within the exclusive fishery limits of the State,

(ii) an Irish sea-fishing boat wherever it may be, or

(iii) a person engaged in buying, handling, weighing, transhipping, transporting, landing, processing, storing, documenting or selling fish within the State or the exclusive fishery limits of the State.

(3) A person on board a third country sea-fishing boat shall not commence landing or transhipment operations—

(a) subject to Article 7(3), in contravention of Article 7(2) (landing or transhipment subject to check or inspection) of the Council Regulation,

(b) in contravention of Article 8(1) (declaration indicating the quantity of fishery products to be landed or transhipped and date and place of each catch,), or

(c) in contravention of—

(i) Article 2(1) of the Commission Regulation (which establishes the form of prior notification to be given for the purposes of Article 6(1) of the Council Regulation),

(ii) Article 2(2) of the Commission Regulation (which establishes the form of prior notification to be given for the purposes of Article 6(1) of the Council Regulation if all catches are accompanied by a validated catch certificate),

(iii) Article 3(1) of the Commission Regulation (which establishes the form of the pre-landing declaration for the purposes of Article 8(1) of the Council Regulation),

(iv) Article 3(2) of the Commission Regulation (which establishes the form of the pre-transhipment declaration for the purposes of Article 8(1) of the Council Regulation),

(v) Article 3(4)(b) of the Commission Regulation (which provides that the declarations referred to in sub-paragraphs (iii) and (iv) shall be in the English language), or

(vi) the time limit established by Article 3(5) of the Commission Regulation,

or

(d) without the prior written authorisation of a sea-fisheries protection officer based at the port of landing, in relation to—

(i) a sea-fishing boat within the exclusive fishery limits of the State,

(ii) an Irish sea-fishing boat wherever it may be, or

(iii) a person engaged in buying, handling, weighing, transhipping, transporting, landing, processing, storing, documenting or selling fish within the State or the exclusive fishery limits of the State.

#### *Designated ports*

4. (1) Killybegs is the port within the state designated for the purposes of Article 5 of the Council Regulation.

(2) In proceedings for an offence, evidence that a port, whether within the State or otherwise, was at the time of the alleged offence designated for the purposes of Article 5 of the Council Regulation may be given by production of a copy of the Official Journal of the European Communities purporting to contain a list of designated ports.

#### *Prior notice of landing, etc.*

5. (1) A person shall not, by failing to give accurate prior notice in the form set out in Annex IIA to the Commission Regulation, or, if all catches are accompanied by a validated catch certificate, Annex IIB to the Commission Regulation, contravene—

(a) Article 6 of the Council Regulation, or

(b) in the case of a sea-fishing boat to which Article 1 of the Commission Regulation applies, that Article, in relation to—

(i) a sea-fishing boat within the exclusive fishery limits of the State,

(ii) an Irish sea-fishing boat wherever it may be, or

(iii) a person engaged in buying, handling, weighing, transhipping, transporting, landing, processing, storing, documenting or selling fish within the State or the exclusive fishery limits of the State.

(2) A person shall not contravene Article 6(2) of the Council Regulation by failing, in relation to a sea-fishing boat to which that provision applies, to accompany the notice referred to in paragraph (1) with a catch certificate validated in accordance with Chapter III of the Council Regulation.

(3) The authority within the State to which notice must be transmitted for the purposes of Article 6 of the Council Regulation is the Fisheries Monitoring Centre, Naval Base, Haulbowline, Co. Cork by telephone (+ 353 21 437 8752 or + 1890 252081), facsimile (+ 353 21 437 8096) or electronic mail ([fmcireland@defenceforces.ie](mailto:fmcireland@defenceforces.ie)).

(4) A certificate purporting to be signed by an officer of the Naval Service and to certify that on a specific day or days or during the whole of a specified period information required to be communicated was not received by the Fisheries Monitoring Centre is, without proof of the signature of the person purporting to sign the certificate or that he or she is an officer of the Naval Service, evidence, unless the contrary is shown, of the matters stated in the certificate and that the information was not communicated.

*Functions of Sea-Fisheries Protection Authority, etc*

6. (1) The Sea-Fisheries Protection Authority may exercise the functions—

- (a) specified in Articles 9, 10, 11, 24 (1), 25(2) and 55 (1) of the Council Regulation,
- (b) conferred on the competent authorities by Articles 15, 16 (1), 17, 18 and 21(1) of the Council Regulation,
- (c) conferred on an issuing authority by Articles 9, 10(2), 11, 14, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27 and 28 of the Commission Regulation, or
- (d) conferred on a liaison office by Title IV of the Commission Regulation.

(2) A function referred to in paragraph (1), other than that specified in Article 55(1) of the Council Regulation, may be exercised on behalf of the Sea-Fisheries Protection Authority by a sea-fisheries protection officer.

(3) A function conferred on the Sea-Fisheries Protection Authority by paragraph (1), so far as it relates to the import of a fishery product may be exercised by an authorized officer (within the meaning of the European Communities (Veterinary Checks on Products Imported from Third Countries) Regulations 2000 ( S.I. No. 292 of 2000 ) at a Border Inspection Post and for that purpose the authorized officer may exercise any or all of the powers conferred on an authorized officer by the European Communities (Agriculture, Fisheries and Food)(Compliance) Regulations 2009 ( S.I. No. 424 of 2009 ).

*Import of fishery products*

7. (1) A person shall not import a fishery product obtained from IUU fishing, in contravention of Article 12(1) of the Council Regulation.

(2) A person shall not import a fishery product unless it is accompanied by a catch certificate—

- (a) validated in accordance with Article 12(3) and containing the information referred to in Article 12(4), in contravention of Article 12(2) of the Council Regulation, or
- (b) a simplified catch certificate, in the case of a single consignment from a sea-fishing boat referred to in Article 6(1) of the Commission Regulation, containing the information specified in Article 6(2) validated in accordance with that paragraph, in contravention of Article 6 of the Commission Regulation.

(3) A person shall not, in contravention of Article 14(1) or (2) of the Council Regulation, import a consignment of fishery products from a third country other than the flag State of the sea-fishing boat that was used to catch the consignment other than in accordance with that provision.

(4) A person shall not import a fishery product—

- (a) in contravention of Article 16 (submission of catch certificate to competent authority) of the Council Regulation,
- (b) in contravention of Article 8 of the Commission Regulation (submission of catch certificate) if that provision applies.

(5) A person shall not have in his or her possession or under his or her control a fishery product that has been imported in contravention of this Regulation.

*Export of fishery products*

8. A person shall not export a fishery product in contravention of Article 15 of the Council Regulation which Article requires validation of the catch certificate by the competent authority.

*Restriction on marketing*

9. A person shall not release a fishery product onto the market or cause or permit another person to

do so in contravention of Article 17(7) of the Council Regulation which provision requires that such products not be released onto the market pending completion of verification checks.

*Approved economic operator*

10. (1) A person shall not import a fishery product in accordance with Title II of the Commission Regulation unless he or she is the holder of a certificate (“approved economic operator certificate”) granted for the purposes of Article 16(2) of the Council Regulation in accordance with Chapter II of Title II of the Commission Regulation and this Regulation.

(2) The Sea-Fisheries Protection Authority may grant an approved economic operator certificate, attach a condition to an approved economic operator certificate, vary or revoke a condition, suspend or withdraw an approved economic operator certificate or refuse an application.

(3) An application for an approved economic operator certificate shall be in a form and contain any information that the Sea-Fisheries Protection Authority may require or any information that is required by the Commission Regulation.

(4) The Sea-Fisheries Protection Authority shall not consider an application unless the application contains all the material and particulars sought by the authority and is accompanied by the fee (if any) set in accordance with section 63 of the Sea-Fisheries and Maritime Jurisdiction Act 2006 .

(5) The holder of an approved economic operator certificate shall make such returns to the Sea-Fisheries Protection Authority as the authority may require.

(6) Without prejudice to the generality of paragraph (2), the Sea-Fisheries Protection Authority shall refuse an application or suspend or withdraw an approved economic operator certificate if it is satisfied that the person concerned or facilities do not or cease to comply with Article 9 of the Commission Regulation,

(7) Without prejudice to the generality of paragraph (2), the Sea-Fisheries Protection Authority may refuse an application or suspend or withdraw an approved economic operator certificate if it is of the opinion that—

(a) an act of the institutions of the European Communities or these Regulations have not, are not or will not be, complied with,

(b) the applicant or holder of an approved economic operator certificate has committed an offence, whether he or she has been convicted or not, in contravention of the Council Regulation, the Commission Regulation or these Regulations,

(c) the applicant or holder approved economic operator certificate has failed to comply with a condition of approved economic operator certificate,

(d) in relation to an application, information required has not been furnished or information that is false or misleading in a material respect has been furnished,

(e) the applicant or holder of an approved economic operator certificate is not a fit and proper person to hold an approved economic operator certificate,

(f) the holder of approved economic operator certificate has ceased to carry out the activity to which the certificate relates,

(g) the applicant or holder of approved economic operator certificate, having been given 28 days to do so, fails to pay a fee set in accordance with section 63 of the Sea-Fisheries and Maritime Jurisdiction Act 2006 , or

(h) it is necessary, ancillary or supplementary for an act of the institutions of the European Communities to have full effect.

(8) Other than in the case of paragraph (6) or (7)(h), if the Sea-Fisheries Protection Authority proposes to refuse an application or suspend or revoke an approved economic operator certificate, it shall—

(a) notify the applicant or holder of the approved economic operator certificate of the proposal and the reasons for the proposal, and that he or she may make representations in relation to the proposal to the authority within 14 days of notification,

(b) consider a representation duly made before deciding whether to proceed with, modify or

annul the proposal, and

(c) notify the applicant or holder of the approved economic operator certificate of the decision and the reasons for the decision.

(9) If the Sea-Fisheries Protection Authority is of the opinion that—

(a) the applicant or holder of an approved economic operator certificate or facilities do not or have ceased to comply with Article 9 of the Commission Regulation, or

(b) it is necessary, ancillary or supplementary for an act of the institutions of the European Communities to have full effect, it may refuse an application, suspend or revoke an approved economic operator certificate in accordance with paragraph (10).

(10) If the Sea-Fisheries Protection Authority refuses an application or suspends or revokes an approval in accordance with this paragraph, it shall—

(a) notify the applicant or holder of the approved economic operator certificate of the decision and the reasons for the decision, and that he or she may make representations in relation to the decision to the authority within 14 days of notification,

(b) consider a representation made, and

(c) confirm, modify or annul the decision and notify the applicant or holder of the approved economic operator certificate of the decision and the reasons for the decision.

(11) If the Sea-Fisheries Protection Authority—

(a) suspends an approved economic operator certificate, the certificate and the entry in the register of approved economic operator certificates relating to the person suspended has no effect for the duration of the suspension, or

(b) withdraws an approved economic operator certificate, the certificate and the entry in the register of approved economic operator certificates relating to the person to whom approval formerly related has no effect.

(12) The Sea-Fisheries Protection Authority shall maintain and publish electronically a register of approved economic operator certificates.

#### *Import refusal notice*

11. (1) If the Sea-Fisheries Protection Authority, or an officer referred to in Regulation 6(2) or (3) of these Regulations, in exercise of the functions of the Authority under Article 18 of the Council Regulation proposes to refuse to permit the import of a fishery product in accordance with that provision, the authority or officer shall serve or cause to be served on the owner or person who appears to be in charge, possession or control of the fishery product a notice (“import refusal notice”) stating the reason for the refusal and directing that the fishery product be dealt with in a manner specified in the notice.

(2) A person shall not contravene an import refusal notice or a requirement of an import refusal notice unless and until the notice is annulled under Regulation 12.

(3) A requirement contained in an import refusal notice shall specify a time limit within which the notice is to be complied with.

(4) A requirement specified in an import refusal notice (in this paragraph referred to as “the earlier import refusal notice”) may be amended or withdrawn by a further notice in writing and the earlier import refusal notice has effect subject to the amendment or withdrawal.

(5) An import refusal notice, whether amended under paragraph (4) or not, may require the owner or person in charge of a fishery product to choose between one or more of the requirements specified in the import refusal notice and that person shall comply with the alternative requirement that he or she chooses.

#### *Appeal against import refusal notice*

12. (1) A person affected by an import refusal notice may, within 7 days of service of the import refusal notice, apply to the Judge of the District Court having jurisdiction in the District Court District where the fishery product to which the notice relates is situated or to the Judge of the District Court having jurisdiction in the District Court District where the person ordinarily resides on the

grounds that the import refusal notice or any term of the import refusal notice are not reasonable, having regard to the Council Regulation, the Commission Regulation or these Regulations (in this Regulation referred to as “an appeal”).

(2) An appeal may be heard at any sitting of the District Court within the appropriate District Court Area.

(3) Notice of an appeal, which shall contain a statement of the grounds upon which it is alleged that the import refusal notice or any term of the import refusal notice is unreasonable having regard to the Council Regulation, the Commission Regulation or these Regulations, shall be served on the Sea-fisheries Protection Authority at least 48 hours prior to the hearing of the appeal and a copy thereof shall be lodged with the appropriate District Court Clerk.

(4) On the hearing of an appeal, a Judge of the District Court may confirm, with or without modification, or annul an import refusal notice.

(5) A person, including a person on whom an import refusal notice is served, shall not,

(a) pending the determination of an appeal, deal with a fishery product to which an import refusal notice relates other than under and in accordance with the notice, or

(b) after the appeal, deal with a fishery product to which an import refusal notice relates other than under and in accordance with the import refusal notice or import refusal notice as modified.

#### *Service of import refusal notice*

13. (1) An import refusal notice shall, subject to paragraph (2), be addressed to the person concerned by name and may be served on or given to the person—

(a) by giving it to the person, his or her employee, servant or agent,

(b) by leaving it at the address at which the person ordinarily resides, normally carries out business, or, where an address for service has been furnished, at that address,

(c) by sending it by post in a prepaid registered letter to the address at which the person ordinarily resides or, where an address for service has been furnished, at that address, or

(d) if the address at which the person ordinarily resides cannot be ascertained by reasonable enquiry and the compliance notice relates to a premises, by delivering it to the premises or by affixing it in a conspicuous position on or near the premises.

(e) by electronic communication, or

(f) by sending a copy, by means of a facsimile machine, to a device or facility for the reception of facsimiles located at the address at which the person ordinarily resides or carries on business or, if an address for the service of notices has been furnished by the person, that address, provided that the sender’s facsimile machine generates a message confirming successful transmission of the total number of pages of the notice.

(2) If an import refusal notice is to be served on or given to a person who is the owner or occupier of a premises and the name of the person cannot be ascertained by reasonable enquiry, it may be addressed to the person by using the words the owner or the occupier.

(3) A person shall not, at any time within 6 months after an import refusal notice is affixed under paragraph (1)(d), remove, damage or deface the notice without lawful authority.

(4) For the purposes of this Regulation, a company within the meaning of the Companies Acts is considered to be ordinarily resident at its registered office and every other body corporate or unincorporated body is considered to be ordinarily resident at its principal office or place of business.

#### *Emergency measures*

14. (1) If—

(a) a person, by act or omission, fails to comply, whether within the time specified therein or otherwise, with an import refusal notice (including an import refusal notice modified in accordance with Regulation 12(4)), or

(b) a sea-fisheries protection officer or an officer to whom Regulation 6(3) refers has reasonable cause to suspect—

(i) that an import refusal notice (including an import refusal notice modified in accordance with Regulation 12(4)) is not or will not be complied with, or

(ii) pending the determination of an appeal, a fishery product to which the import refusal notice relates is or will not be dealt with other than in accordance with Regulation 12(5)),

the officer may seize and detain a fishery product in such manner as he or she thinks fit and sell or dispose of the fishery product in a manner as the officer considers appropriate.

(2) The costs of seizure, sale or disposal of a fishery product under this Regulation is recoverable by the Sea Fisheries Protection Authority—

(a) as a simple contract debt in a court of competent jurisdiction, or

(b) by deducting the costs from any sum due by the authority to a person on whom a notice has been served.

#### *Forgery*

15. (1) A person shall not forge or utter knowing it to be forged a catch certificate or validation of a catch certificate, notice under Regulation 10(9) or (11) or an approved economic operator certificate (hereafter in this Regulation referred to as “a forged document”).

(2) A person shall not alter with intent to defraud or deceive, or utter knowing it to be so altered a catch certificate or validation of a catch certificate, notice under Regulation 10(9) or (11) or an approved economic operator certificate (hereafter in this Regulation referred to as “an altered document”).

(3) A person shall not have, without lawful authority, in his or her possession or under his or her control a forged document or an altered document.

#### *Record keeping*

16. An approved economic operator shall not contravene Article 22(5) of the Council Regulation which provision relates to the maintenance of records.

#### *Contravention*

17. (1) A person shall not contravene Regulation 7(5), 10(1), 11(5), or 12(3) of these Regulations.

(2) A person who contravenes a provision of the Commission Regulation or the Council Regulation referred to in these Regulations also contravenes these Regulations.

#### *Amendment to Regulations*

18. The European Communities (Veterinary Checks on Products Imported from Third Countries) Regulations 2000 ( S.I. No. 292 of 2000 ) are amended, in Regulation 3(1), by the deletion in the definition of “product” of “, other than fish or fishery products”.

L.S.

GIVEN under my Official Seal,

18 November 2010.

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 the provisions of Council Regulation (EC) No. 86/2010 of 29 January amending Annex I to Council Regulation (EC) No. 1005/2008 as regards the definition of fishery products and amending Commission Regulation (EC) 1010/2009 as regards exchange of information on inspections of third country vessels and administrative arrangements on catch certificates.

1 O.J. L 286 of 29.10.2008, p.1.

2 O.J. L 280 of 27.10.2009, p.5.

3 O.J. L 26 of 30.1.2010, p.1.

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