

S.I. No. 10/2003 — Sea Fisheries (Conservation and Rational Exploitation of Deep-Sea Species) Order, 2003

SI No. 10 of 2003

SEA FISHERIES (CONSERVATION AND RATIONAL EXPLOITATION OF DEEP-SEA SPECIES) ORDER, 2003

I, Dermot Ahern, Minister for Communications, Marine and Natural Resources, in exercise of the powers conferred on me by section 223A (inserted by section 9 of the Fisheries (Amendment) Act, 1978 (No. 18 of 1978) and amended by section 4 of the Fisheries (Amendment) Act, 1983 (No. 27 of 1983)) of the Fisheries (Consolidation) Act, 1959 (No. 14 of 1959) and the Fisheries (Transfer of Departmental Administration and Ministerial Functions) Order, 1977 (S.I. No. 30 of 1977) (as adapted by the Marine and Natural Resources (Alteration of Name of Department and Title of Minister) Order, 2002 (S.I. No. 307 of 2002)), for the purpose of giving effect to Council Regulation (EC) No. 2347/2002 of 16 December, 2002⁽¹⁾ . hereby order as follows:

1. This Order may be cited as the Sea Fisheries (Conservation and Rational Exploitation of Deep-Sea Species) Order, 2003 and shall come into operation on 23 January, 2003.
2. In this Order —

“the Council Regulation” means Council Regulation (EC) No. 2347/2002 of 16 December, 2002 and any future Regulation of the Council made after the making of this Order which amends, extends, replaces or consolidates (with or without modifications) the Council Regulation (as defined herein);

“the Minister” means the Minister for Communications, Marine and Natural Resources;

“deep-sea species” means species included in the list in Annex I of the Council Regulation;

“specified area” means waters falling within ICES (International Council for the Exploration of the Sea) sub-areas I to XIV inclusive (Community waters and waters not under the sovereignty or jurisdiction of third countries), and Community waters of CECAF areas 34.1.1, 34.1.2, 34.1.3 and 34.2;

“deep-sea species licence” means a licence granted under Article 5;

“ICES” means the International Council for the Exploration of the Sea;

“ICES zones” means those zones given, respectively, in Council Regulation (EEC) No. 3880/91 of 17 December 1991 on the submission of nominal catch statistics by Member States fishing in the north-east Atlantic¹, and Council Regulation (EC) No. 2597/95 of 23 October 1995 on the submission of nominal catch statistics by Member States fishing in certain areas other than those of the North Atlantic²;

“Irish sea-fishing boat” means a fishing boat included on the Irish Register of Fishing Boats;

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

“licensed vessel” means an Irish sea-fishing boat in relation to which a deep-sea species licence has been granted;

a reference to an Article is a reference to an Article of this Order, unless it is indicated that reference to some other Order is intended; and

a reference to a paragraph is a reference to a paragraph of the Article in which the reference occurs, unless it is indicated that reference to some other Article is intended.

3. The provisions of the Council Regulation, being measures for the conservation and rational exploitation of deep-sea species in so far as they relate to the State, including the exclusive fishery limits of the State, are hereby prescribed and adopted and accordingly any infringement of the Council Regulation within these limits or, as the case may be, within the State after the commencement of this Order, shall be an infringement of this Order.
4. In a prosecution for an infringement of the Council Regulation in respect of which provision is made in the Council Regulation for an exclusion, qualification, or exception to, the relevant obligation imposed by the Council Regulation which would be capable of constituting a defence to the charge, it shall be for the person charged to establish any such defence and it shall be presumed, until the contrary is proved, that there is no such defence in the particular case.
5. (1) The Minister may at his or her discretion —
 - (a) upon the application in writing of any person who
 - (i) is the owner, charterer or hirer of an Irish sea-fishing boat,
 - (ii) in relation to which there is in force a licence under section 222B(3) (inserted by section 2 of the Fisheries Amendment Act, 1983 (No. 27 of 1983) and amended by section 5 of the Fisheries (Amendment) Act 1994 (No. 23 of 1994)) of the Fisheries (Consolidation) Act 1959 (No. 14 of 1959), and

- (iii) is entered in the Register of Fishing Boats, and
- (b) upon the furnishing by such person to the Minister of —
 - (i) information, to the satisfaction of the Minister, that the boat to which the application relates when going to sea has complied with any manning requirement of Part II of the Fishing Vessels (Certification of Deck Officers and Engineer Officers) Regulations 1988 (S.I. No. 289 of 1988), as amended, in respect of it, and
 - (ii) such other information as he or she may reasonably require in relation to the application,

grant to the person a deep-sea species licence authorising, subject to this Article, the fishing for deep-sea species from that boat in the specified area or such parts thereof as mentioned in the licence and the landing or transshipment of deep-sea species taken in that area or such parts thereof as mentioned in the licence during such period as mentioned in the licence.

(2) The Minister may renew, subject to this Article, at his or her discretion, a deep-sea species licence granted under paragraph (1) for such period as may be stated in the renewed deep-sea species licence provided he or she is satisfied that —

- (a) the holder of the deep-sea species licence upon its expiration continues to be the owner, charterer or hirer, as the case may be, of the deep-sea species licensed vessel, and
- (b) the deep-sea species licensed vessel concerned upon the expiration of the deep-sea species licence continues —
 - (i) to be licensed under section 222B(3) of the Fisheries (Consolidation) Act 1959 ,
 - (ii) to be entered in the Register of Fishing Boats, and
 - (iii) to comply with the manning requirements referred to in paragraph (1)(b)(i) of this Article.

(3) Without prejudice to the Minister's discretion to refuse to grant or renew a deep-sea species licence, the Minister may refuse to grant or renew a deep-sea species licence where the applicant or licence holder, as the case may be, has previously had a deep-sea species licence held by him or her revoked.

(4) A deep-sea species licence does not authorise any fishing for deep-sea species in any part of the area mentioned in the licence, or the landing or transshipment of deep-sea species taken in that part during any period prohibited by the Minister under section 223A of the Fisheries (Consolidation) Act 1959 for fishing for deep-sea species in that part.

(5) The Minister may, from time to time, restrict both the quantity and the species of deep-sea species —

- (a) that may be taken on board a particular licensed vessel in the specified area or part thereof, or
- (b) in respect of deep-sea species so taken, that may be landed or transhipped from or retained on board the vessel,

during such period as the Minister decides.

(6) Notification of any restriction made under paragraph (5) and its duration shall be made in writing by a sea fisheries protection officer to the holder of the deep-sea species licence or the master of the licensed vessel concerned and such restriction, upon notification, shall be deemed to be a condition of the deep-sea species licence and the licence holder or the master of the licensed vessel concerned shall comply with or ensure compliance with such condition.

(7) The Minister may attach to or specify in a deep-sea species licence such conditions —

- (a) prohibiting the landing or transhipment of deep-sea species other than at a specified place,
- (b) requiring the keeping by the master of the licensed vessel of such records as are specified in the deep-sea species licence,
- (c) requiring the master of the licensed vessel at all times on a request being made in that behalf to permit the boarding and inspection of the boat and inspection of any records kept on board the vessel in relation to the vessel, whether pursuant to a requirement of the deep-sea species licence or otherwise, by a sea fisheries protection officer and the taking of copies of any such records by such an officer or person, and to give such officer such assistance as may be reasonable to assist in such inspection,

(8) The Minister may at any time revoke or vary a term or condition in a deep-sea species licence or attach a new condition to a deep-sea species licence.

(9) The master of a licensed vessel shall not contravene any condition of the deep-sea species licence relating to the vessel or cause or permit such a contravention.

6. (1) Subject to paragraph (2), the Minister, if satisfied that a term mentioned in or a condition of, specified in or attached to a deep-sea species licence has been contravened by the holder of the licence, the master of the licensed vessel or any person on board, may revoke the licence.

(2) Where the Minister proposes to revoke a deep-sea species

licence under paragraph (1), he or she shall notify in writing the holder of the licence of the proposal and the reasons for it and the holder may within 14 days of service of the notification make representations to the Minister about the proposal and the Minister shall consider any such representations.

(3) A notification under paragraph (2) shall be addressed to the holder of the deep-sea species licence concerned and, sent or given in any of the following ways —

- (a) by delivering it to the holder of the deep-sea species licence or the master or person in charge of the licensed vessel concerned,
- (b) by leaving it at the address at which the holder ordinarily resides or carries on business or in a suitable secure and conspicuous position on board the licensed vessel, or
- (c) by sending it by prepaid registered post to the holder at such address.

(4) A deep-sea species licence stands revoked if —

- (a) the holder of the deep-sea species licence ceases to be the owner, charterer or hirer, as the case may be, of the licensed vessel concerned,
- (b) the licensed vessel ceases to be an Irish sea-fishing boat,
- (c) a licence under section 222B of the Fisheries (Consolidation) Act 1959, in relation to the licensed vessel is revoked or has expired, or
- (d) the licensed vessel ceases to be registered in the Register of Fishing Boats.

7. (1) A person shall not, other than pursuant to a deep-sea species licence issued under Article 5 in respect of the specified area or such parts thereof as mentioned in the licence, catch and retain on board, tranship or land from an Irish sea-fishing boat an aggregate quantity of deep-sea species in excess of 100 kg in each sea trip or catch and retain on board an aggregate quantity of deep-sea species in excess of 10 tonnes each calendar year.

(2) The owner, charterer or hirer or the master or person in charge of an Irish sea-fishing boat shall not, other than pursuant to a deep-sea species licence issued under Article 5 in respect of the specified area or such parts thereof as mentioned in the licence, cause or permit the boat to catch and retain on board, tranship or land an aggregate quantity of deep-sea species in excess of 100 kg in each sea trip or catch and retain on board an aggregate quantity of deep-sea species in excess of 10 tonnes each calendar year.

8. The Deep Sea Fish Stocks (Licensing) Order 2002 (S.I. No. 593 of 2002) is

hereby revoked.

GIVEN under my Official Seal,

This 22nd day of January 2003.



Dermot Ahern

Minister for Communications,

Marine and Natural Resources

EXPLANATORY NOTE

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

The effect of this Order is to establish a licensing regime for the fishing of a range of deep-sea species, including a number for which quotas have been allocated by the European Community to Member States.

The Order also provides for additional control measures as well as collection of additional data on deep-sea species.

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¹ O.J. No. L351, 28.12.2002, p.6

¹ O.J. No. L365, 31.12.1991, p.1. Regulation as amended by Commission Regulation (EC) No. 1637/2001 (O.J. No L. 222, 17.8.2001, p. 20)

² O.J. No. L 270, 13.11.1995, p.1. Regulation as amended by Commission Regulation (EC) No. 1638/2001 (O.J. No. L 222, 17.8.2001, p. 29)