

S.I No. 241 of 2003

MUSSEL SEED (CONSERVATION AND RATIONAL EXPLOITATION) 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)), hereby order as follows:

1. This Order may be cited as the Mussel Seed (Conservation and Rational Exploitation) Order 2003 and shall come into operation on the 16th day of June 2003.

2. (1) In this Order —

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

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

"mussel seed" means mussels of any kind whether alive or dead and includes any part of a mussel and the shell, or any part of the shell, of a mussel seed and which are not intended for direct human consumption;

"mussel seed licence" means a licence granted under Article 5;

"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);

"specified area" means the exclusive fishery limits of the State;

"specified vessel" means an Irish sea-fishing boat or boat of any other class of description as may be approved by the Minister;

"licensed vessel" means a specified vessel in relation to which a mussel seed licence has been granted;

(2) 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.

(3) 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. This Order shall not apply to the collection and gathering of mussel seed by means other than fishing from a specified vessel.

4. In a prosecution for an infringement of this Order in respect of which provision is made in the Order for an exclusion, qualification, or exception to, the relevant obligation imposed by the Order 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, subject to the provisions of this Article, issue a mussel seed licence authorising, during such period as may be specified in the licence, any or all of the following activities:

(a) the fishing for mussel seed from a specified vessel in the specified area or such part thereof as may be identified in the licence, and

(b) the landing or transshipment of mussel seed taken in the specified area or such part thereof as may be identified in the licence.

(2) An application for a mussel seed licence shall be in such form as may be specified by the Minister.

(3) An application for a mussel seed licence may be made by a person who -

(a) is the owner, charterer or hirer of a specified vessel, or

(b) intends to deploy a specified vessel.

(4) The Minister may issue a supplementary mussel seed licence to a person who applies for such a licence, for such period as may be stated in such licence and an application for such a licence shall be in such form as may be specified by the Minister.

(5) An application for a supplementary mussel seed licence may be made by a person who-

(a) is the owner, charterer or hirer of a specified vessel, or

(b) intends to deploy a specified vessel

and who within 4 months prior to the date of the application held a licence issued pursuant to paragraph (1).

(6) The Minister may request a person making an application for a licence under this Order to furnish such further information or documentation as the Minister may reasonably require in relation to the application, and may defer consideration of the application until such information or documentation is furnished.

(7) The Minister may attach to or specify in a mussel seed licence or a supplementary mussel seed licence such conditions as the Minister considers necessary, including-

(a) a prohibition on the transshipment of or the landing of mussel seed other than at a specified place,

(b) a requirement that the master of the vessel concerned keep such records as are specified in the licence,

(c) a requirement that the master of the licensed vessel at all times permit the boarding and inspection of the vessel and the inspection of any records kept on board the vessel in relation to the vessel, on a request being made in that behalf by a sea fisheries protection officer, whether such records are kept pursuant to a requirement of the licence or otherwise, and the taking of copies of any such records by such officer or person, and to give such officer such assistance as may be reasonable to assist in such inspection.

(8) In considering an application for a licence under this Order the Minister shall have regard to such matters as appear likely to him or her to assist in the rational exploitation of mussel seed in the specified area or any part of that area, including-

(a) the experience of the applicant in relation to mussel seed fishing,

(b) the proportion of permitted tonnages licensed to the applicant previously which was harvested,

(c) the distance from the harvesting zone to the area where the mussel seed are to be relayed;

(d) the economic benefits likely to follow from the grant of a licence to the applicant,

(e) the extent to which the applicant has complied with conditions attached to a licence previously issued to that applicant.

(9) A licence issued pursuant to this Article does not authorise any fishing for mussel seed in any part of the area mentioned in the licence, or the landing or transshipment of mussel seed taken in that part of the area during any period prohibited by the Minister under section 223A of the Fisheries (Consolidation) Act 1959 as respects fishing for mussel seed in that part of the area.

(10) The Minister may, from time to time, restrict both the quantity and the species of mussel seed -

(a) that may be taken on board a particular licensed vessel in the specified area or part thereof, or

(b) in respect of mussel seed so taken, that may be landed or transhipped from or retained on board the vessel,

during such period as the Minister considers appropriate having regard to the need to conserve stocks of mussel seed in the specified area or part of the specified area.

(11) Notification of any restriction made under paragraph (10) shall be made in writing to the holder of the licence or the master of the licensed vessel concerned and may be made by a sea fisheries protection officer and such restriction, upon notification, shall be deemed to be a condition of the licence and the licence holder or the master of the licensed vessel concerned shall comply with or ensure compliance with such condition.

(12) The master of a licensed vessel shall not contravene any condition of a licence issued under this Order relating to the vessel or cause or permit such a contravention.

(13) A person making an application for a licence under this Order shall not furnish information in or in connection with such an application which is false or misleading.

6. (1) Subject to paragraph (2), the Minister, if satisfied that a condition specified in a licence issued under this Order has been contravened by-

(a) the holder of the licence,

(b) the master of the licensed vessel, or

(c) any person on board such vessel,
may revoke the licence.

(2) Where the Minister proposes, pursuant to paragraph (1), to revoke a licence issued under this Order, 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 licence concerned and, sent or given in any of the following ways -

(a) by delivering it to the holder 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 licence issued under this Order stands revoked if the holder of the licence ceases to be the owner, charterer or hirer, as the case may be, of the licensed vessel concerned.

7. (1) A person to whom this Order applies shall not, other than pursuant to a licence issued under this Order in respect of the specified area or such parts thereof as mentioned in the licence, catch and retain on board, tranship or land from a specified vessel mussel seed.

(2) The owner, charterer or hirer or the master or person in charge of a specified vessel shall not, other than pursuant to a licence issued under this Order in respect of the specified area or such parts thereof as mentioned in the licence, cause or permit the vessel to catch and retain on board, tranship or land mussel seed.

8. A person to whom a licence under this Order has been granted, or the master or person in charge of a specified vessel in respect of which a licence under this Order has been granted, shall not contravene a condition specified in the licence or attached to the licence.

9. The Molluscan Shellfish (Conservation of Stocks) Order 1987 (S.I. No. 118 of 1987) is amended by the insertion, after Article 11, of the following Article:

"11A. This Order shall not apply to mussel seed harvested in connection with relaying for the purposes of ongrowing".

GIVEN under my Official Seal,

This 17th day of June 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 revised licensing regime for the fishing of mussel seed by specified vessels.

The Order also provides for additional control measures as well as collection of data on mussel seed.

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