

S.I. No. 557/2001 — Sea Fisheries (Conservation and Rational Exploitation) Order, 2001

S.I. No. 557 of 2001

SEA FISHERIES (CONSERVATION AND RATIONAL EXPLOITATION) ORDER, 2001

I, Frank Fahey, Minister for the 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 (Alteration of Name of Department and Title of Minister) Order, 1997 (S.I. No. 301 of 1997)), for the purpose of giving effect to Council Regulation (EC) No. 850/1998 of 27 April, 1998, as amended, hereby order as follows:

1. This Order may be cited as the Sea Fisheries (Conservation and Rational Exploitation) Order, 2001 and shall come into operation on the 12th day of December, 2001.

2. In this Order -

“the Council Regulation” means Council Regulation (EC) No. 850/98 of 30 March, 1998(1) , as last amended by Council Regulation (EC) No. 973/2001 of 14 May, 2001(2) and by 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 Commission Regulation” means Commission Regulation (EEC) No. 3440/84 of 5 December, 1984(3) as last amended by Commission Regulation (EEC) No. 2122/89 of 14 July, 1989 (4) and any future regulation of the Commission made after the making of this Order which amends, extends, replaces or consolidates (with or without modifications) the Commission Regulation.

3. The provisions of the Council Regulation (being measures for the conservation of fishery resources through technical measures for the protection of juveniles of marine organisms) 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. The provisions of the Commission Regulation (being measures of conservation of fish stocks and rational exploitation of fisheries) insofar 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 Commission 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.

5. (1) 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.

(2) In a prosecution for an infringement of the Commission Regulation in respect of which provision is made in the Commission Regulation for an exclusion, qualification, or exception to, the relevant obligation imposed by the Commission 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.

(3) In a prosecution for an infringement of Article 16 of the Council Regulation, it shall be a defence for the person charged to prove that the fishing net in respect of the use of which the prosecution is brought was not, at the relevant time, being used for fishing for any species of fish which was not a species for which, at that time, a minimum net size was specified in the Council Regulation, or, in accordance with Article 48 of the Council Regulation.

6. (1) Where, in proceedings in which a contravention of this Order is alleged, it is proved that —

(a) fish were found on board a sea-fishing boat, and

(b) at the time when the fish were so found the sea-fishing boat concerned was within any of the regions specified in Article 2 of the Council Regulation,

it shall be presumed until the contrary is proved that all of the fish so found were taken within such limits and within such regions as may be appropriate.

7. (1) The mesh size of nets shall be measured for the purposes of this Order in accordance with the provisions of Commission Regulation (EEC) No. 2108/84 of 23 July, 1984(5) as amended by Commission Regulation (EC) No. 2550/97 of 16 December, 1997(6) and any future Regulation of the Commission which amends extends, replaces or consolidates the said Commission Regulation (EEC) 2108/84.

(2) The percentage of target species and protected species when fishing with small mesh nets shall, for the purposes of this Order, be measured in accordance with the provisions of Commission Regulation (EEC) No. 954/87 of 1 April, 1987(7) and any future regulation of the Commission which amends or replaces the said Commission Regulation (EEC) No. 954/87.

8. (1) For the purpose of enabling this Order to have full effect all of the powers conferred on a sea fisheries protection officer by the Principal Act are hereby extended to such extent as is appropriate for the enforcement of this Order.

(2) Without prejudice to the generality of paragraph (1) of this Article the following provisions shall apply—

(a) The powers referred to in paragraph (1) of this Article and exercisable as regards sea-fish (whether exercisable only as regards sea-fish of a particular description or otherwise exercisable) or as regards sea-fishing boats are hereby extended so as to be exercisable by a sea fisheries protection officer in relation to —

(i) salmon,

(ii) any boat other than a sea-fishing boat;

(b) the following provisions of the Principal Act, namely, section 231, section 233 (other than subsection (4)), section 233A (inserted by section 12 of the Act of 1978), section 234 (inserted by section 13 of the Act of 1978), section 235 (inserted by section 14 of the Act of 1978), section 236, and subsection (2) of section 309 (inserted by section 15(2) of the Act of 1978) shall, for the purposes referred to in paragraph (1) of this Article, be construed and have effect subject to the modifications specified in sub paragraph (c) of this paragraph;

(c) the modifications referred to in sub paragraph (b) of this paragraph are—

(i) any reference in the said section 231 to sea-fish shall be construed as including a reference to salmon,

(ii) the reference in paragraph (d) of subsection (1) of the said section 231 to under-sized sea-fish shall be construed as including a reference both to sea-fish of any other description and to salmon,

(iii) the reference in paragraph (e) of the said subsection (1) to an offence under this Chapter shall be construed as including an offence under section 223A of the Principal Act which is an infringement of this Order,

(iv) the reference in paragraph (f) of the said subsection (1) to forfeiture under this Chapter shall be construed as including a reference to forfeiture under section 2(1) of the Act of 1978 as a statutory consequence of conviction of an offence under the said section 223A which is such an infringement,

(v) any reference in the said sections 233, 233A, 234, 235 or 236 or in subsection (2) of the said section 309, or in the said Regulations, either to a sea-fishing boat or to a boat, shall be construed as a reference to a boat of any description,

(vi) any reference in the said sections 231, 233, 233A, 234, 235 or in

subsection (2) of the said section 309 to any of the said sections 231, 233, 233A, 234 or 235 or to the said subsection (2) or to any subsection or paragraph of any of the last-mentioned sections or to any paragraph of the said subsection (2) shall, where appropriate, be construed as a reference to that section, subsection or paragraph, as may be appropriate, as affected by this Order, and

(vii) any other necessary modifications.

(3) In any detention or other order, certificate, authorisation or other instrument made or given, whether wholly or partly by virtue of this Article, any reference to section 231, 233, 233A, 234, 235 or 236 of the Principal Act shall be construed as a reference or, as may be appropriate, as including a reference to the section as affected by this order.

(4) In this article “the Act of 1978” means the Fisheries (Amendment) Act, 1978 (No. 18 of 1978) .

9. The Sea Fisheries (Conservation and Rational Exploitation) Order, 1988 (S.I. No. 49 of 1988) is hereby revoked.

GIVEN under my Official Seal,

this 11th day of December, 2001,

Frank Fahey T.D.,

Minister for the Marine and Natural
Resources.

EXPLANATORY NOTE

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

This Order prescribes and adopts Council Regulation (EC) No. 850 of 1998, as amended, which establishes technical measures for the conservation of fishery resources, and provides that any infringement of the Regulation is an infringement of the Order.

The Order also revokes the Sea Fisheries (Conservation and Rational Exploitation) Order, 1988 (S.I. No. 49 of 1988) which gave effect to previous technical conservation measures.

Provision has been made in this Order for the automatic enforcement of future Council Regulations and Commission Regulations amending or replacing any of the Regulations prescribed and adopted in this Order.

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- (1) O.J.L125/1 of 27.4.98.
- (2) O.J.L137/1 of 19.5.01.
- (3) O.J.L318/23 of 7.12.84.
- (4) O.J.L203/21 of 15.7.89.
- (5) O.J.L194/22 of 24.7.84.
- (6) O.J.L349/1 of 19.12.97.
- (7) O.J.L90/27 of 2.4.87.

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