

S.I. No. 464/2005 — European Communities (Sea Fisheries) (Conservation and Rational Exploitation of Scallop) Regulations 2005

S.I. No. 464 of 2005

EUROPEAN COMMUNITIES (SEA FISHERIES) (CONSERVATION AND RATIONAL EXPLOITATION OF SCALLOP) REGULATIONS 2005

I, Noel Dempsey, Minister for Communications, Marine and Natural Resources, in exercise of the powers conferred on me by 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 1954/2003 of 4 November 2003¹ and Council Regulation (EC) No 1415/2004 of 19 July 2004², hereby make the following regulations:

1. These Regulations may be cited as the European Communities (Sea Fisheries) (Conservation and Rational Exploitation of Scallop) Regulations 2005.
2. (1) In these Regulations -

“Council Regulations” means Council Regulation (EC) No. No 1954/2003 of 4 November 2003 and Council Regulation (EC) No 1415/2004 of 19 July 2004;

“Irish sea-fishing boat” means a boat equal to or greater than 10 metres in length overall and entered in the Register of Fishing Boats;

“owner” in relation to a sea-fishing boat, means the person registered as its owner or, if no such person is registered, the person who owns the boat, and includes any part owner, charterer, hirer or operator of the boat;

“master” in relation to a sea-fishing boat, means the master, skipper or other person for the time being in charge of the boat;

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

“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);

“sea fisheries protection officer” means an officer of the Minister authorised by the Minister as a sea fisheries protection officer for the

purposes of the Fisheries Acts 1959 to 2003 and of these Regulations;

“scallop” means *pecten maximus*;

“fishing area” means waters falling within ICES (International Council for the Exploration of the Sea) sub-areas V, VI and VII specified in Annex I and Annex II to Council Regulation (EC) No 1415/2004 of 19 July 2004 in respect of the maximum level of annual fishing effort in respect of scallops allocated to the State under those Annexes;

“fishing day” means the 24-hour period between 00.00 hours of a day and 24.00 hours of the same day or any part of such a period during which an Irish sea-fishing boat is permitted under Regulation 4 to fish for scallops;

“scallop fishing” means the use, on any particular occasion, of dredges resulting in the retention on board or landing of a quantity in kilograms live weight of scallop greater than 10 per cent. of the total quantity in kilograms live weight of all other marine organisms retained on board or landed on that occasion;

- (2) A word or expression that is used in these Regulations and is also used in the Council Regulations has, unless the contrary intention appears, the same meaning in these Regulations as it has in the Council Regulations.
- (3) In these Regulations, unless otherwise indicated -
 - (a) a reference to a Regulation is a reference to a Regulation of these Regulations, and
 - (b) a reference to a paragraph or subparagraph is a reference to a paragraph or subparagraph of the provision in which the reference occurs.
3. (1) A person who is the owner, charterer or hirer of an Irish sea-fishing boat shall not engage in scallop fishing in the fishing area otherwise than in accordance with an authorisation granted under Regulation 4 to him or her.
- (2) A person on board an Irish sea-fishing boat shall not engage in scallop fishing in the fishing area and the master of an Irish sea-fishing boat shall not cause or permit the boat or any person onboard on the boat to engage in scallop fishing in the fishing area otherwise than in accordance with an authorisation granted under Regulation 4.
4. (1) The Minister may, in accordance with and subject to the need to conserve the State's annual fishing effort in respect of scallop fishing, upon the application of any person who is the owner, charterer or hirer of an Irish sea-fishing boat in relation to which there is in force a licence under section 222B (inserted by the Fisheries (Amendment) Act 1983) of the Fisheries (Consolidation Act) 1959 and which is entered in the Register of Fishing Boats and upon being furnished by the person with any information which the Minister may reasonably require in relation to the application, grant to the person an authorisation for the purposes of

conducting scallop fishing.

- (2) Without prejudice to Regulation 6, an authorisation under this Regulation shall stand revoked if the holder of the authorisation ceases to be the owner, charterer or hirer of the boat to which the authorisation relates or ceases to hold a licence granted under section 222B of the Fisheries (Consolidation) Act 1959 in respect of the boat or the boat ceases to be registered in the Register of Fishing Boats.
- (3) An authorisation under this Regulation shall be subject to any or all of the following conditions as the Minister thinks fit and specifies in the authorisation, namely conditions -
 - (a) specifying the quantities or types of fishing gear or gears which may be kept on board or used for the purposes of scallop fishing, and the manner in which such gear or gears may be used;
 - (b) specifying the duration of the authorisation;
 - (c) restricting the quantity of scallop that may be taken, landed or transhipped in a specified period or periods;
 - (d) restricting, through an individual allocation to an Irish sea-fishing boat, the number of fishing days that the boat may fish for scallops in the fishing area, or any part of it, for such period as the Minister may decide;
 - (e) prohibiting the landing or transhipment of scallop other than at specified places;
 - (f) requiring the collection, collation and submission of all specified data considered necessary in relation to scallop fishing;
 - (g) requiring the keeping by the master of the boat of specified records in relation to the activities of the boat;
 - (h) requiring the master of the boat concerned at all times, on a request being made of him or her in that behalf, to facilitate the boarding and inspection of the boat and inspection of the authorisation and any records kept on board the boat in relation to the boat (whether the request is made pursuant to the authorisation or otherwise by a sea fisheries protection officer) and the taking of copies of the authorisation or any such records by such an officer;
 - (i) requiring the master of the boat to facilitate the placing of any person appointed by the Minister on board the vessel for the purposes of ensuring compliance with the requirements of the authorisation, fisheries legislation generally and scientific observation or otherwise;

- (j) requiring the keeping of the authorisation on the boat concerned;
or
 - (k) requiring the surrender of the authorisation by the holder to the Minister or a sea fisheries protection officer upon its expiry or revocation.
5. Where an Irish sea-fishing boat fishes in contravention of Regulation 3 the master and the owner of the boat shall each be guilty of an offence and shall be liable on summary conviction to a fine not exceeding €5,000.
 6. The Minister may, if he or she is satisfied that there has been, as respects the scallop fishing, a failure to comply with any enactment or any Act adopted by an institution of the European Communities or with a condition specified in an authorisation granted under Regulation 4 by the holder of the authorisation or the master of the vessel to which the authorisation relates, revoke the authorisation.
 7. The Minister may amend or revoke a condition of an authorisation or insert a new condition (being a condition referred to in Regulation 4(3)) in an authorisation and the condition as so amended, revoked or inserted shall be regarded as being specified in the authorisation.
 8. In a prosecution for an offence under Regulation 5 it is a defence for the defendant to show that the fishing days to which the prosecution relates were undertaken outside a restriction referred to in Regulation 4(3).
 9. In a prosecution for an offence under Regulation 5 the following shall be *prima facie* evidence that the Irish sea-fishing boat concerned was, at the time of the alleged offence, engaged in fishing for scallops in contravention of Regulation 3
 - (a) any scallops on board such sea-fishing boat,
 - (b) any nets or other equipment or articles on board such sea-fishing boat indicating use of the boat for fishing, the retention, storage on board, trans-shipment or landing of scallops,
 - (c) evidence that such sea-fishing boat had on board any books, papers or other documents from which it appears to the court that on the day on which the offence is alleged to have been committed the sea-fishing boat was engaged in fishing for scallops contrary to Regulation 3,
 - (d) any admission by any person who is for the time being the master or another member of the crew, of such sea-fishing boat that at such time she was so used, or
 - (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.
 10. The European Communities (Sea Fisheries) (Conservation and Rational Exploitation of Scallops) Regulations 2005 (S.I. No. 297 of 2005) are revoked.

GIVEN under my Official Seal,

28 July 2005

Noel Dempsey

**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 these Regulations is to allow for the conservation of scallop stocks, in particular the State's annual fishing effort for scallop, by allowing for the limitation of scallop fishing activity through a licensing system.

¹ OJ No. L289, 7.11.2003, p.1

² OJ No. L258, 5.8.2004, p.1

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