

STATUTORY INSTRUMENTS.

S.I. No. 73 of 2004.

SEA FISHERIES (WEIGHING PROCEDURES FOR HERRING, MACKEREL AND HORSE MACKEREL) (No. 2) REGULATIONS 2004.

I, DERMOT AHERN, 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) for the purpose of giving effect to the provisions of point 12 of Annex IV of Council Regulation (EC) No. 2287/2003 of 19 December 2003¹ hereby make the following Regulations:

¹ O.J. No. L344, 31.12.2003

1. (1) These Regulations may be cited as the Sea Fisheries (Weighing Procedures for Herring, Mackerel and Horse Mackerel) (No. 2) Regulations 2004.

(2) These Regulations come into operation on 20 February 2004.

2. (1) In these Regulations, unless the context otherwise requires—

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

"Annex" means point 12 of Annex IV to the Council Regulation;

"Council Regulation" means Council Regulation (EC) No. 2287/2003 of 19 December 2003 and any future Regulation of the Council made after the making of these Regulations, which amends, extends, replaces or consolidates (with or without modification) the Council Regulation (as defined herein);

"competent authority" means the Department of Communications, Marine and Natural Resources;

"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 this Order;

"Sea-fishing boat" means a boat registered on the Irish sea-fishing boat register, on the EU Community Fishing Fleet Register, or a Third country fishing vessel;

"master", in relation to a sea-fishing boat, includes a person in charge of the boat;

"Member State" means a Member State of the European Communities other than the State;

"Third country" means all countries other than the State and a Member State of the European Communities;

"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);

(2) A reference to a paragraph is a reference to a paragraph of the Regulation in which the reference occurs, unless it is indicated that reference to some other Regulation is intended.

(3) A word or expression that is used in these Regulations and is also used in the Council Regulation has, unless the contrary intention appears, the same meaning in these Regulations as it has in the Council Regulation.

(4) A sea fisheries protection officer shall have all the powers under Sections 233, 233A and 234 of the Fisheries (Consolidation) Act 1959 (No. 14 of 1959) for the purposes of enforcing the provisions of these Regulations.

3. The provisions of the Annex are hereby prescribed and adopted and accordingly any infringement of the Annex after the commencement of these Regulations shall be an infringement of these Regulations.

4. In a prosecution for an infringement of the Annex in respect of which provision is made in the Annex for an exclusion, qualification, or exception to, the relevant obligation imposed by the Annex 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. The provisions of these Regulations shall apply to sea-fishing boats specified in the Annex.

6. The master of a sea-fishing boat or the agent shall give to a sea fisheries protection officer not less than 4 hours notice of his intention to make such landing. Notification can be in written form to the Killybegs office fax number: + 353 74 973 1819 or to the Killybegs office telephone number: + 353 74 973 1264. The notification must include such information as the sea fisheries protection officer may require, including:

- the name of the vessel;
- the port of landing;
- the estimated time of arrival at that port;
- the quantities in kilograms live weight by species retained on board; and
- contact details.

7. (1) The ports designated for the purpose of the Annex are Killybegs, Galway Port, Rossaveal, Castletownbere, Dingle, Rathmullen.

All landings into these ports, which are subject to the provisions of the Annex, must be weighed by means of weigh bridges located in the ports.

(2) Notwithstanding the provisions of Regulation 7(1), until 31 May 2004, transitional provisions shall apply to all landings into the designated ports which are subject to the provisions of the Annex. In respect of Rossaveal, Castletownbere, Dingle and Rathmullen in the absence of a weighbridge for the transitional period, the weight of landings shall be determined on the basis of the following requirements. All fish must be discharged into carriage units or fish containers of known capacity as set out in (i) or (ii) under.

(i) Carriage units must have pre-determined calibrated capacities as approved by the competent authority. Each carriage unit shall be uniquely identifiable and have a calibrated capacity assigned to it;

(ii) Fish containers with a known fish carrying capacity.

All units used to carry fish, whether filled or partially filled with fish, shall be counted as being full.

8. (1) The master of a sea-fishing boat, or the agent, shall provide all reasonable assistance to a sea fisheries protection officer to enable the quantities of herring, mackerel and horse mackerel declared in the respective logbook and the quantity of herring, mackerel and horse mackerel on board the respective sea-fishing boat to be cross-checked for verification purposes.

(2) In the event of mixed catches being recorded in the logbook, the master of the sea-fishing boat to which these Regulations apply shall provide to a sea fisheries protection officer, immediately upon arrival in port, a representative sample of the catch in accordance with the provisions of Council (EC) Regulation No. 954/87 of 1 April 1987.

9. All buyers, transporters or their agents shall provide all reasonable assistance to a sea fisheries protection officer to enable the quantities of herring, mackerel and horse mackerel to be weighed in the manner required by these Regulations.

10. In a prosecution for an infringement of these Regulations it shall be for the person charged to establish a defence by reference to any exclusion, qualification or exception to the relevant obligation provided for by these Regulations and it shall be presumed, until the contrary is proved, that there is no such defence in this particular case.

11. (1) A person who, by act or omission, contravenes any provision of the Annex or Regulations 6, 7, 8 or 9 shall be guilty of an offence and shall be liable on summary conviction to a fine not exceeding €3,000.

(2) An offence under these Regulations may be prosecuted by the Minister.

(3) Where an offence under these Regulations has been committed by a body corporate and it is proved to have been so committed with the consent or connivance of or to be attributable to any neglect on the part of any person who, when the offence was committed, was a director, manager, secretary or other officer of the body corporate, or a person purporting to act in any such capacity, that person, as well as the body corporate, shall be guilty of an offence and shall be liable to be proceeded against and punished as if guilty of the first-mentioned offence.

(4) Where the affairs of a body corporate are managed by its members, paragraph (3) shall apply in relation to the acts and defaults of a member in connection with the functions of management as if such a member were a director or manager of the body corporate.

12. The Sea Fisheries (Weighing Procedures for Herring, Mackerel and Horse Mackerel) Regulations 2004 (S.I. No. 55 of 2004) are hereby revoked.

(L.S.)

GIVEN under my Official Seal 19th February 2004.

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.)

These Regulations transpose into Irish law the provisions of point 12 of Annex IV of Council Regulation (EC) No. 2287/2003 which establishes weighing procedures for fishing vessels landing more than 10 tonnes of herring, mackerel and horse mackerel per landing.

Masters or other persons in charge of the Irish sea-fishing boats in question will be required to give 4 hours advance notification of landings to Sea Fisheries Protection Officers. Landings in excess of 10 tonnes shall only be permitted in designated ports. All landings in these ports must be weighed by means of weigh bridges located in the ports. Transitional provisions shall apply to all landings into the designated ports until 31 May 2004.