

## 1989 No. 463

## FISHERIES

**Foyle Area (Control of Drift Net Fishing)  
Regulations 1989**

*Made* . . . . . 1st December 1989

*Coming into operation* . . . . . 1st January 1990

The Foyle Fisheries Commission in exercise of its powers under sections 13 and 14 of the Foyle Fisheries Act 1952(a) and sections 13 and 14 of the Foyle Fisheries Act (Northern Ireland) 1952(b), with the approval of the Minister for the Marine in the Republic of Ireland(c) and the Department of Agriculture for Northern Ireland(d), hereby makes the following Regulations:—

*Citation and commencement*

1. These Regulations may be cited as the Foyle Area (Control of Drift Net Fishing) Regulations 1989 and shall come into operation on 1st January 1990.

*Interpretation*

2. In these Regulations:

- “applicant” means an individual who makes a licence application;
- “crew member” means an individual whose name and address are included in an application for a licence in pursuance of Regulation 4(1)(i) of the 1976 Regulations;
- “datum years” means the 3 calendar years immediately preceding the calendar year in respect of which the licence application is made;
- “drift net fishing” means fishing lawfully using a drift net in the Foyle Area under the authority of a licence issued under the 1976 Regulations;
- “first datum year” means the calendar year immediately preceding the calendar year in respect of which the licence application is made;
- “Fisheries Acts” means the Foyle Fisheries Act 1952, the Foyle Fisheries Act (Northern Ireland) 1952, the Fisheries (Consolidation) Act 1959(e), the Fisheries (Amendment) Act 1962(f), the Fisheries Act (Northern Ireland) 1966(g), the Fisheries Act 1980(h), and the

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(a) No. 5 of 1952 (Republic of Ireland)  
 (b) 1952 c. 5 (N.I.)  
 (c) 1962 c. 5 (N.I.) section 2(2)  
 (d) S.R. & O. (N.I.) 1963 No. 29 Art. 2(2) and Sch. Part II  
 (e) No. 14 of 1959 (Republic of Ireland)  
 (f) No. 31 of 1962 (Republic of Ireland)  
 (g) 1966 c. 17 (N.I.)  
 (h) No. 1 of 1980 (Republic of Ireland)

Fisheries (Amendment) Act 1987(a) and the Fisheries (Amendment) (No. 2) Act 1987(b);

“licence application” means an application to the Commission for a licence;

“season” means the period or cumulation of periods in any calendar year when it is lawful to be engaged in drift net fishing in the waters described individually in column 1 of the Schedule;

“second datum year” means the calendar year immediately preceding the first datum year;

“senior helper” means an individual nominated by a licensee in pursuance of Regulation 4(1)(iii) of the 1976 Regulations;

“single parent” means the parent in a household which does not include that parent’s spouse and includes a widow;

“son” includes an adopted son and “parent” shall be construed accordingly;

“the 1976 Regulations” means the Foyle Area (Licensing of Fishing Engines) Regulations 1976(c); and

“third datum year” means the calendar year immediately preceding the second datum year.

#### *Restriction on the Number of Drift Net Licences*

3.—(1) Subject to paragraphs (2) and (3) the number of licence applications which the Commission shall approve in any year under the 1976 Regulations in respect of any of the waters as described in column 1 of the Schedule shall not exceed the number specified in column 2 of the Schedule opposite the related description of the waters in column 1.

(2) Where a licence is forfeited or a licensee is declared to be disqualified from holding a licence in accordance with section 75 of the Foyle Fisheries Act 1952 or section 74 of the Foyle Fisheries Act (Northern Ireland) 1952 the Commission shall correspondingly reduce the number of licences in the appropriate waters specified in column 2 of the Schedule.

(3) Where a licensee who is a single parent dies and has a son who will attain the age of 18 years within a period of not more than 6 years from the date of the licensee’s death and is likely to apply for and use a licence and (but for the fact that the deceased licensee was a single parent) could become eligible to qualify under Regulation 5(10) for the allocation of a licence the Commission shall during a period of not more than 6 years from the date of the licensee’s death correspondingly reduce the number of licences in the appropriate waters specified in column 2 of the Schedule.

#### *Approval of Applications for Drift Net Licences*

4. The Commission shall not approve an application for a drift net licence under the 1976 Regulations unless the applicant is an individual who:

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(a) No. 14 of 1987 (Republic of Ireland)

(b) No. 32 of 1987 (Republic of Ireland)

(c) S.R. 1976 No. 362 as amended by S.R. 1985 No. 341 and S.R. 1989 No. 462

- (i) meets all the requirements of the 1976 Regulations applying to the application, approval and issue of a drift net licence; and
- (ii) (a) was the holder of a drift net licence in at least one of the datum years; or
  - (b) was lawfully engaged in drift net fishing as a senior helper or crew member in at least one of the datum years; or
  - (c) has attained the age of 18 years and is the son of a deceased licensee who at the time of his death was a single parent and has made application for a licence to be allocated under Regulation 5(11).

#### *Manner of Allocation of Drift Net Licence*

5.—(1) Where the number of licence applications in any year in respect of any of the waters described in column 1 of the Schedule exceeds the number specified in column 2 of the Schedule opposite the related description of the waters in column 1 the licences shall, subject to Regulation 4, be allocated to applicants, who are qualified in accordance with the subsequent provisions of this Regulation and Regulation 6.

(2) The Commission shall firstly allocate licences to each applicant who:

- (a) held a licence in each of the datum years to fish in the waters in respect of which the licence application is made; and
- (b) did not apply in any of the datum years for the authorisation of the Commission to have his senior helper act in his absence for a season or any part of a season as provided for in Regulation 14A(2) of the Foyle Area (Control of Netting) Regulations 1981(a).

(3) If, having allocated licences to applicants who are qualified in accordance with paragraph (2), any licences still remain to be allocated the Commission shall proceed to the allocation of such remaining licences to each applicant who meets the requirements of paragraph (2)(a) but does not meet the requirements of paragraph (2)(b) and whose failure to meet the requirements of paragraph (2)(b) was due to:—

- (a) the inability of the applicant to be present during all the fishing operations in any or any part of a season or seasons in the datum years due to temporary illness or injury or other reasons (except chronic illness or infirmity or old age) outside the control of the applicant; or
- (b) the applicant being the widow of a licensee who, for a period of not more than 6 years has held a licence each year since the date of the licensee's death and who has a son of the deceased licensee who will attain the age of 18 years within a period of not more than 6 years from the date of the licensee's death and is likely to apply for and use a licence.

(4) If, having allocated licences to applicants who are qualified in accordance with paragraph (3) any licences still remain to be allocated the Commission shall proceed to the allocation of such remaining licences to each applicant who:—

- (a) held a licence in 2 of the 3 datum years to fish in the waters in respect of which the licence application is made; and
- (b) did not apply in either of these years for the authorisation of the Commission to have his nominated senior helper act in his absence for a season or any part of a season as provided for in Regulation 14A(2) of the Foyle Area (Control of Netting) Regulations 1981.

(5) If, having allocated licences to applicants who are qualified in accordance with paragraph (4), any licences still remain to be allocated the Commission shall proceed to the allocation of such remaining licences to each applicant who meets the requirements of paragraph (4)(a) but does not meet the requirement of paragraph (4)(b) and whose failure to meet the requirements of paragraph (4)(b) was due to:—

- (a) the inability of the applicant to be present during all the fishing operations in any or any part of the season or seasons in either or both of the datum years due to temporary illness or injury or other reason (except chronic illness or infirmity or old age) outside the control of the applicant; or
- (b) the applicant being the widow of a licensee who for a period of not more than 6 years has held a licence each year since the date of the licensee's death and who has a son of the deceased licensee who will attain the age of 28 years within a period of not more than 6 years from the date of the licensee's death and is likely to apply for and use a licence.

(6) If, having allocated licences to applicants who are qualified in accordance with paragraph (5), any licences still remain to be allocated the Commission shall proceed to the allocation of such remaining licences to each applicant who:—

- (a) held a licence in the first datum year to fish in the waters in respect of which the licence application is made; and
- (b) did not apply in that year for the authorisation of the Commission to have his senior helper act in his absence for the season or any part of the season as provided for in Regulation 14A(2) of the Foyle Area (Control of Netting) Regulations 1981.

(7) If, having allocated licences to applicants who are qualified in accordance with paragraph (6), any licences still remain to be allocated the Commission shall proceed to the allocation of such remaining licences to each applicant who meets the requirements of paragraph (6)(a) but does not meet the requirements of paragraph (6)(b) and whose failure to meet the requirements of paragraph (6)(b) was due to:—

- (a) the inability of the applicant to be present during all the fishing operations in the season or any part of the season in the first datum year due to temporary illness or injury or other reason (except chronic illness or infirmity or old age) outside the control of the applicant; or
- (b) the applicant being the widow of a licensee who for a period of not more than 6 years has held a licence each year since the date of the licensee's death and who has a son of the deceased licensee who will attain the age of 18 years within a period of not more than 6 years from the date of the licensee's death and is likely to apply for and use a licence.

(8) If, having allocated licences to applicants qualified in accordance with paragraph (7), any licences still remain to be allocated the Commission shall proceed to the allocation of such remaining licences to each applicant who is a son over the age of 18 years of a deceased licensee who died since the beginning of the first datum year or a licensee who had indicated to the Commission during the first datum year that he has retired from drift net fishing and where:—

- (a) the applicant has been the senior helper of the deceased or retired licensee in each datum year since he reached the age of 18 years; and
- (b) the deceased or retired licensee did not apply in any of the datum years to have his senior helper act in his absence for a season or any part of a season as provided for in Regulation 14A(2) of the Foyle Area (Control of Netting) Regulations 1981 except where such application was due to temporary illness or injury or other reason (except chronic illness or infirmity or old age) outside the control of the deceased or retired licensee.

(9) If, having allocated licences to applicants qualified in accordance with paragraph (8), any licences still remain to be allocated the Commission shall proceed to the allocation of such remaining licences to each applicant who is the widow of a licensee who died since the beginning of the first datum year who:—

- (a) undertakes to the Commission that she will use the licence and not apply to the Commission to have a senior helper act in her absence for the season or any part of the season as provided for in Regulation 14A(2) of the Foyle Area (Control of Netting) Regulations 1981 except when she is unable to be present during all or any of the fishing operations due to temporary illness or injury or other reason (except chronic illness or infirmity or old age) outside her control; or
- (b) has a son of the deceased licensee who will attain the age of 18 years within not more than 6 years from the date of the licensee's death and is likely to apply for and use a licence.

(10) If, having allocated licences to applicants who are qualified in accordance with paragraph (9), any licences still remain to be allocated the Commission shall proceed to the allocation of such remaining licences to each applicant who is a son over the age of 18 years of a deceased licensee who died within a period of 5 years ending on the day immediately preceding the first day of the first datum year where the deceased licensee's widow has held a licence each year since the date of the licensee's death and does not make an application and where the applicant is the only son of the deceased licensee who makes an application.

(11) If, having allocated licences to applicants who are qualified in accordance with paragraph (10), any licences still remain to be allocated the Commission shall proceed to the allocation of such remaining licences to each applicant over the age of 18 years who is a son of a deceased licensee who died within a period of 5 years ending on the day immediately preceding the first day of the first datum year and who at the time of his death was a single parent and where the applicant is the only son of the deceased licensee who makes an application.

- (12) (a) If, having allocated licences to applicants who qualified in accordance with paragraph (11), any licences still remain to be allocated the Commission shall proceed to the allocation of such remaining licences to each applicant who as senior helper or crew members was engaged in drift net fishing in at least one of the datum years.
- (b) When allocating licences in accordance with this paragraph the Commission shall decide on the priority of allocation having regard to:—
- (i) the number of datum years in which the applicant has been a senior helper or crew member;
  - (ii) the number of years since the applicant first made an application for a licence but for the purposes of this paragraph all such applications made earlier than 1980 shall be considered as applications first made in 1980;
  - (iii) the extent to which the applicant and his spouse had sources of income other than from drift net fishing during the datum years;
  - (iv) the extent to which the applicant has already incurred expenditure on a boat, nets and other equipment which can be lawfully used for drift net fishing; and
  - (v) any conviction under the Fisheries Acts in respect of an offence committed since the beginning of the first datum year.
- (c) The applicant shall provide the Commission with such documentary evidence as to the date when he first made application for a licence as may be required by the Commission.
- (d) The applicant shall provide the Commission with such documentary evidence as to his receipts from drift net fishing and other forms of fishing and total income as may be required by the Commission.
- (e) For the purposes of this paragraph total income includes salary, wages and profit from any trade or business as computed for the purposes of taxation and any unemployment or other state benefits.
- (f) The applicant shall provide the Commission with such documentary evidence as to his expenditure on a boat, nets or equipment required for drift net fishing as may be required by the Commission.
- (13) If, having allocated licences to applicants who are qualified in accordance with paragraph (12), any licences still remain to be allocated the Commission shall proceed to the allocation of such remaining licences to any other applicants who are not qualified under the preceding provisions of this Regulation but who otherwise meet the conditions of Regulation 4 and for the purposes of Regulation 6 all such applicants shall have equal entitlement to be granted a licence.

6. When in the determination of allocations under any of the provisions of Regulation 5 the Commission considers a number of applicants qualified under any of the said provisions have equal or nearly equal entitlement to be granted a licence and the number of licences remaining to be allocated is less than the said number of such applicants the Commission shall allocate the remaining licences by the drawing of lots in the presence of the applicants or their representatives.

Given under the Common Seal of the Foyle Fisheries Commission on 16th November 1989.

(L.S.) *Eileen Twomey*  
Member of the Commission  
appointed by the Minister for the  
Marine.

The Minister for the Marine hereby  
approves the foregoing Regula-  
tions.

Sealed with the Official Seal of the  
Minister for the Marine on 17th  
November 1989.

(L.S.) *John Keohane*  
A person authorised by the Minister  
for the Marine to authenticate the  
Official Seal of the Minister.

(L.S.) *J. W. Anderson*  
Member of the Commission  
appointed by the Department of  
Agriculture for Northern Ireland.

The Department of Agriculture for  
Northern Ireland hereby approves  
the foregoing Regulations.

Sealed with the Official Seal of the  
Department of Agriculture for  
Northern Ireland on 1st December  
1989.

(L.S.) *L. Sinclair*  
Assistant Secretary  
Department of Agriculture for  
Northern Ireland.

## SCHEDULE

Regulations 3 and 5

1	2
<i>Waters to which licences refer</i>	<i>Maximum number of licences</i>
(a) Wholly to seaward of Lough Foyle, the seaward limit of which for the purpose of these Regulations shall be deemed to be an imaginary straight line drawn between Greencastle Fort in the County of Donegal and the Martello Tower at Magilligan Point in the County of Londonderry.	20
(b) Wholly in Lough Foyle or partly in the said Lough Foyle and partly seaward of the seaward limit of Lough Foyle as aforesaid.	92

## EXPLANATORY NOTE

*(This note is not part of the Regulations.)*

These Regulations prescribe the maximum number of licences which the Foyle Fisheries Commission may issue for drift net fishing in the tidal waters of the Foyle Area both in Lough Foyle and seaward of Lough Foyle.

They also prescribe the class of persons who may be issued with a drift net licence and where a number of applications made for licences in any year exceeds the maximum number prescribed it sets out the manner in which the licences shall be allocated.