1993 No. 482

FISHERIES

Foyle Area (Control of Drift Net Fishing) Regulations 1993

Made . . . . . 7th December 1993

Coming into operation . . 1st October 1994

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 1993 and shall come into operation on 1st October 1994.

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;

(**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

"Fisheries Acts" means the Foyle Fisheries Acts 1952 to 1983(**a**), the Foyle Fisheries Act (Northern Ireland) 1952, the Fisheries Acts 1959 to 1991(**b**), and the Fisheries Act (Northern Ireland) 1966(**c**);

"licence" means a licence for drift net fishing;

"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;

"the 1976 Regulations" means the Foyle Area (Licensing of Fishing Engines) Regulations 1976(**d**); 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 in any year an applicant who held a licence in the previous year 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 and the applicant is qualified and otherwise would be entitled to a licence in accordance with these Regulations then in the event that:—

(*a*) the period of disqualification will not expire before the end of the season the Commission shall correspondingly reduce the number of licences granted in that year in the appropriate waters specified in column 2 of the Schedule; or

(*b*) the period of disqualification will expire before the end of the season the Commission shall retain the number of licences granted in that year in the appropriate waters specified in column 2 of the Schedule to enable it to grant him a licence for the remainder of the season.

(**a**) No. 5 of 1952 (Republic of Ireland), No. 44 of 1961 (Republic of Ireland), No. 13 of 1976 (Republic of Ireland), No. 2 of 1983 (Republic of Ireland)

(**b**) No. 14 of 1959 (Republic of Ireland), No. 1 of 1980 (Republic of Ireland), No. 14 of 1987 (Republic of Ireland), No. 32 of 1987 (Republic of Ireland) and No. 26 of 1991 (Republic of Ireland)

(**c**) 1966 c. 17 (N.I.)

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

(3) Where a licensee who is a single parent dies and has a child 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 could 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(6) 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 provided the deceased licensee had held a licence in each of the 3 years prior to his death and did not permit any fishing to take place in his absence during any or any part of a season or seasons in these years under the authority of his licence except when he obtained the authorisation of the Commission to have his nominated senior helper act in his absence as provided for in Regulation 14A(2) of the Foyle Area (Control of Netting) Regulations 1981(**a**).

Approval of applications for Drift Net Licences

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

(1) meets all the requirements of the 1976 Regulations applying to the application, approval and issue of a licence; and

(2) (*a*) was the holder of a 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 child of a licensee or a deceased licensee and has made application for a licence to be allocated under Regulation 5(4), (6) or (7); or

(*d*) is the spouse of a licensee who died since the beginning of the first datum year and who has made application for a licence to be allocated under Regulation 5(5).

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 Regulations 6 and 7.

(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 permit any fishing to take place in his absence in any of these years under the authority of his licence.

(3) If, having allocated licences to applicants who are qualified in accordance with paragraph (2), any licences still remain to be allocated the

(a) S.R. 1981 No. 169 as amended by S.R. 1985 No. 342

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 and he obtained the authorisation of the Commission to have his nominated senior helper act in his absence as provided for in Regulation 14A(2) of the Foyle Area (Control of Netting) Regulations 1981; or

(*b*) the applicant being the spouse of a deceased licensee and who:

(i) for a period of not more than 6 years has held a licence each year since the date of the licensee's death;

(ii) has a child 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 could apply for and use a licence; and

(iii) before permitting any fishing to take place in her absence under the authority of her licence obtained the authorisation of the Commission to have her nominated senior helper act in her absence, as provided for in Regulation 14A(2) of the Foyle Area (Control of Netting) Regulations 1981.

(4) If, having allocated licences to applicants 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 is a child, having attained the age of 18 years, of a deceased licensee who died since the beginning of the first datum year or a licensee who has indicated to the Commission that he has retired from drift net fishing and has given the Commission a written commitment that he will not be applying for a licence in any future year and where:—

(*a*) the applicant has been the senior helper of the deceased or retired licensee in each datum year since he attained the age of 18 years;

(*b*) the deceased or retired licensee did not permit any fishing to take place in his absence under the authority of his licence during any of the datum years except when he obtained 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, due to temporary illness or injury or other reasons except chronic illness or infirmity or old age) outside the control of the deceased or retired licensee; and

(*c*) the deceased or retired licensee held a licence in each of the datum years.

(5) If, having allocated licences to applicants 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 is the spouse of a licensee who died since the beginning of the first datum year who:—

(*a*) did not permit any fishing to take place in his absence under the authority of his licence during any of the datum years except when he obtained 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, due to temporary illness or injury or other reasons (except chronic illness or infirmity or old age) outside the control of the deceased licensee; and

(*b*) held a licence in each of the datum years;

and the applicant:—

(*c*) undertakes to the Commssion that she will use the licence and not apply for the authorisation of the Commission to have her 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 during the season due to temporary illness or injury or other reasons (except chronic illness or infirmity or old age) outside her control; or

(*d*) has a child 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 could 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 is a child, having attained 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 and where the deceased licensee's spouse:

(*a*) has held a licence each year since the date of the licensee's death;

(*b*) during the datum years has not contravened Regulation 14A of the Foyle Area (Control of Netting) Regulations 1981; and

(*c*) has not applied for a licence in the current year and has given the Commission a written commitment that she will not be applying for a licence in any future year;

and where either the deceased licensee or his spouse held a licence in each of the datum years and the applicant is the only child of the deceased licensee who makes an application.

(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 is a child, having attained 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 and who at the time of his death was a single parent and where the applicant is the only child of the deceased