# 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:—

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

(*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 persent 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.