



STATUTORY INSTRUMENTS

S.I. No. 347 of 2008



EUROPEAN COMMUNITIES (CONTROL ON MUSSEL FISHING)
REGULATIONS 2008

(Prn. A8/1400)

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EUROPEAN COMMUNITIES (CONTROL ON MUSSEL FISHING)
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I, BRENDAN SMITH, Minister for Agriculture, Fisheries and Food, 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 further effect to Council Directive 79/409/EEC of 2 April 1979¹ as amended by Council Directive 81/854/EEC of 19 October 1981², Commission Directive 85/411/EEC of 25 July 1985³, Council Directive 86/122/EEC of 8 April 1986⁴, Commission Directive 91/244/EEC of 6 March 1991⁵, Council Directive 94/24/EC of 8 June 1994⁶, Commission Directive 97/49/EC of 29 July 1997⁷, Council Regulation (EC) No. 807/2003 of 14 April 2003⁸, Council Directive 2006/105/EC of 20 November 2006⁹ and Council Directive 92/43/EEC of 21 May 1992¹⁰ (as amended by Council Directive 97/62/EC of 27 October 1997¹¹, Regulation (EC) No. 1882/2003 of the European Parliament and of the Council of 29 September 2003¹² and Council Directive 2006/105/EC of 20 November 2006¹³), hereby make the following regulations:

Citation and Commencement

1. These Regulations may be cited as the European Communities (Control on Mussel Fishing) Regulations 2008 and come into operation on 23 August 2008.

Interpretation

2. In these Regulations “mussel seed” means mussels (*mytilus edulis*) whether alive or dead and includes any part of a mussel and the shell, or any part of the shell, of a mussel seed not intended for direct human consumption.

¹OJ L 103, 1 25.4.1979

²OJ L 319, 3 7.11.1981

³OJ L 233, 33 30.8.1985

⁴OJ L 100, 22 16.4.1986

⁵OJ L 115, 41 8.5.1991

⁶OJ L 164, 9 30.6.1994

⁷OJ L 223, 9 13.8.1997

⁸OJ L 122, 36 16.5.2003

⁹OJ L 363, 368 20.12.2006

¹⁰OJ L 206, 7 22.7.1992

¹¹OJ L 305, 42 8.11.1997

¹²OJ L 284 1 31.10.2003

¹³OJ L 363 368 20.12.2006

*Notice of the making of this Statutory Instrument was published in
“Iris Oifigiúil” of 5th September, 2008.*

Restriction on fishing

3. (1) A person shall not fish for or attempt to fish for mussel seed or cause or permit another person to fish for or attempt to fish for mussel seed within an area described in the Schedule.

(2) A person shall not buy, handle, weigh, tranship, transport, land, process, store or sell mussel seed that has been caught or harvested in contravention of paragraph (1).

(3) Nothing in this regulation affects the harvesting of mussel seed in accordance with an aquaculture licence (within the meaning of the Fisheries (Amendment) Act 1997 (No. 23 of 1997)).

Functions of sea-fisheries protection officer

4. (1) If a sea-fisheries protection officer has reasonable cause to suspect that—

- (a) a person may have mussels in his or her possession or under his or her control,
- (b) mussels may be, are or were present on a premises,
- (c) a premises is used for the storage, processing, sale or supply of mussels, or
- (d) a document relating to an activity mentioned at subparagraph (a), (b) or (c) may be, is or was present on a premises,

the sea-fisheries protection officer may—

- (i) stop a person, vehicle, vessel or container,
- (ii) board and search a vehicle, vessel or container,
- (iii) make a record using any means including writing, photography or video,
- (iv) require the name and address of a person,
- (v) require of a person the ownership, identity and origin of the mussel seed, or
- (vi) require a person in charge or control of a vessel, vehicle or container to refrain from moving it.

(2) If a sea-fisheries protection officer has reasonable cause to suspect that an offence is being or has been committed under these Regulations, the sea-fisheries protection officer may, in addition to the powers exercisable by him or her under paragraph (1)—

- (a) search a person, where the officer considers it necessary,

- (b) seize and detain a vessel, vehicle, container, equipment, machinery or other thing, or
- (c) seize and detain any mussel seed or fishing gear to which the alleged offence relates.

(3) A sea-fisheries protection officer shall not enter, except with the consent of the occupier, a private dwelling, unless he or she has obtained a search warrant under Regulation 6 other than if he or she has reasonable cause to suspect that before a search warrant could be sought in relation to the dwelling anything to which paragraph (1) or (2) relates is being or is likely to be destroyed or disposed of.

(4) A sea-fisheries protection officer may use reasonable force, if necessary, in exercise of his or her functions under this Regulation.

(5) A sea-fisheries protection officer, when exercising a power under this Regulation may be accompanied by other persons and may take with him or her, or those persons may take with them, any equipment or materials to assist the officer in the exercise of the power.

(6) A sea-fisheries protection officer is not liable in any proceedings for anything done in the purported exercise of his or her powers under this Regulation if the court is satisfied that the act was done in good faith and that there were reasonable grounds for doing it.

(8) If a member of the Garda Síochána has reasonable grounds to suspect that a person has committed an offence under these Regulations, the member may without warrant arrest the person.

(9) If in the course of exercising any powers under these Regulations a sea-fisheries protection officer or a member of the Garda Síochána finds or comes into possession of any thing that the officer or member believes to be evidence of an offence or suspected offence under these Regulations, it may be seized and retained for use in evidence in criminal proceedings.

(10) Nothing in these Regulations operates to prejudice a power conferred by another enactment to search, or to seize or detain property, which may be exercised by a member of an Garda Síochána or an officer of Customs and Excise.

Assistance to a sea-fisheries protection officer

5. A person or the servant, agent or employee of the person shall give any assistance requested to a sea-fisheries protection officer or person who accompanies a sea-fisheries protection officer.

Search warrant

6. (1) If a judge of the District Court is satisfied by information on oath of a sea-fisheries protection officer that there are reasonable grounds for suspecting evidence of or relating to the commission or intended commission of an offence

under these Regulations is to be found on a premises, the judge may issue a search warrant.

(2) A search warrant under this Regulation shall be expressed and operate to authorise a named sea-fisheries protection officer, accompanied by such sea-fisheries protection officers or other persons as the named officer thinks necessary, at any time, within one month from the date of issue of the warrant, on production if so requested of the warrant, to enter (if necessary by use of reasonable force) the premises named in the warrant.

(3) If a premises is entered under a search warrant, a sea-fisheries protection officer so entering may exercise all or any of the powers conferred on a sea-fisheries protection officer under these Regulations.

Obstruction, etc

7. A person shall not—

- (a) obstruct or impede a sea-fisheries protection officer (or a person who accompanies a sea-fisheries protection officer) in the exercise of his or her powers under Regulation 4,
- (b) fail, without reasonable cause, to comply with a requirement or direction of a sea-fisheries protection officer under Regulation 4, or
- (c) in purporting to give information to a sea-fisheries protection officer for the performance of the officer's functions under Regulation 4—
 - (i) make a statement that he or she knows to be false in a material particular or recklessly make a statement which is false in a material particular, or
 - (ii) fail to disclose a material particular.

Offences, etc.

8. (1) A person who contravenes or aids or abets a contravention of—

- (a) Regulation 3, 5 or 7, or
- (b) a direction or requirement of a sea-fisheries protection officer under Regulation 4,

commits an offence and is liable—

- (i) on summary conviction, to a fine not exceeding €5,000, or to imprisonment for a term not exceeding 6 months, or to both, or
- (ii) on conviction on indictment, to a fine not exceeding €250,000, or to imprisonment for a term not exceeding 3 years, or to both.

(2) If an offence under these Regulations is committed by a body corporate and is proven to have been so committed with the consent, connivance or approval of or to have been attributable to the wilful neglect on the part of any

person, being a director, manager, secretary or other officer of the body corporate or a person who was purported to act in any such capacity, that person, as well as the body corporate, commits offence and is liable to be proceeded against and punished as if he or she is guilty of the offence.

(3) If the affairs of a body corporate are managed by its members, paragraph (2) applies in relation to the acts and defaults of a member in connection with the functions of management as if the member were a director or manager of the body corporate.

(4) A summary offence under these Regulations may be prosecuted by the Sea Fisheries Protection Agency.

Revocation

9. The Mussel Seed (Prohibition on Fishing) Regulations 2008 (S.I. 194 of 2008) are revoked.

Schedule

Regulation 4.

The areas referred to in Regulation 4(1) are those parts of the exclusive fishery limits of the State that lie—

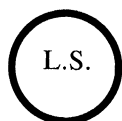
- (a) landwards of an imaginary line drawn from the northern point of Carlingford marina, through Greenore Point, through the sea-end of Ballagan Point to Cooley Point, all in county Louth,
- (b) landwards of an imaginary line drawn from Giles Quay southwards to the eastern side of the slipway at Corstown Bridge, both in county Louth,
- (c) landwards of an imaginary line drawn from Latitude 53 degrees 43 minutes 26 seconds North, Longitude 6 degrees 14 minutes 21 seconds West due eastwards to Latitude 53 degrees 43 minutes 26 seconds North, Longitude 6 degrees 14 minutes 1 second West and due south to Latitude 53 degrees 42 minutes 3 seconds North, Longitude 6 degrees 14 minutes 4 seconds West and due west to Latitude 53 degrees 42 minutes 3 seconds North, Longitude 6 degrees 14 minutes 17 seconds West,
- (d) landwards of an imaginary line drawn from Latitude 53 degrees 40 minutes 45 seconds North, Longitude 6 degrees 13 minutes 47 seconds West due eastwards to Latitude 53 degrees 40 minutes 45 seconds North, Longitude 6 degrees 13 minutes 43 second West and due south to Latitude 53 degrees 40 minutes 32 seconds North, Longitude 6 degrees 13 minutes 31 seconds West and due west to Latitude 53 degrees 40 minutes 32 seconds North, Longitude 6 degrees 13 minutes 39 seconds West,
- (e) within an imaginary circle of 1 kilometre diameter centred on the lighthouse on Rockabill, County Dublin,

- (f) landwards of an imaginary line drawn between Latitude 53 degrees 30 minutes 58 seconds North, Longitude 6 degrees 5 minutes 12 seconds West and Latitude 53 degrees 29 minutes 36 seconds North, Longitude 6 degrees 5 minutes 53 seconds West,
- (g) within an imaginary circle of 3.8 kilometres diameter centred on the summit of Knockbane, Lambay Island, County Dublin,
- (h) landwards of an imaginary line drawn from Latitude 53 degrees 27 minutes 30 seconds North, Longitude 6 degrees 7 minutes 25 seconds West due eastwards to Latitude 53 degrees 27 minutes 30 seconds North, Longitude 6 degrees 7 minutes 7 seconds West and due south to Latitude 53 degrees 26 minutes 58 seconds North, Longitude 6 degrees 7 minutes 9 seconds West and due west to Latitude 53 degrees 26 minutes 58 seconds North, Longitude 6 degrees 7 minutes 18 seconds West,
- (i) within an imaginary line drawn from Latitude 52 degrees 59 minutes 18 seconds North, Longitude 5 degrees 59 minutes 24 seconds West through Latitude 52 degrees 59 minutes 18 seconds North, Longitude 5 degrees 55 minutes 18 seconds West through Latitude 52 degrees 57 minutes 30 seconds North, Longitude 5 degrees 55 minutes 18 seconds West to Latitude 52 degrees 57 minutes 30 seconds North, Longitude 5 degrees 59 minutes 24 seconds West,
- (j) landwards of an imaginary line drawn from at Latitude 52 degrees 58 minutes 29 seconds North, Longitude 6 degrees 1 minute 15 seconds West through Latitude 52 degrees 58 minutes 39 seconds North, Longitude 6 degrees 53 seconds West through Latitude 52 degrees 58 minutes 5 seconds North, Longitude 5 degrees 59 minutes 24 seconds West through Latitude 52 degrees 57 minutes 29 seconds North, Longitude 5 degrees 59 minutes 24 seconds West through Latitude 52 degrees 57 minutes 16 seconds North, Longitude 5 degrees 59 minutes 57 seconds West to at Latitude 52 degrees 57 minutes 27 seconds North, Longitude 6 degrees 17 seconds West,
- (k) landwards of an imaginary line drawn from Latitude 52 degrees 25 minutes 48 seconds North, Longitude 6 degrees 19 minutes 30 seconds West, through Latitude 52 degrees 25 minutes 6 seconds North, Longitude 6 degrees 18 minutes 9 seconds West, through 52 degrees 23 minutes 47 seconds North, Longitude 6 degrees 19 minutes 40 seconds West, through Latitude 52 degrees 21 minutes 40 seconds North, Longitude 6 degrees 19 minutes 52 second West to Latitude 52 degrees 20 minutes 32 seconds North, Longitude 6 degrees 19 minutes 1 seconds West to Latitude 52 degrees 19 minutes 53 seconds North, Longitude 6 degrees 20 minutes 32 seconds West, to Latitude 52 degrees 19 minutes 59 seconds North, Longitude 6 degrees 21 minutes 51 seconds West,

- (l) within an imaginary line drawn from Latitude 52 degrees 21 minutes 36 seconds North, Longitude 6 degrees 17 minutes West, through Latitude 52 degrees 21 minutes 36 seconds North, Longitude 6 degrees 15 minutes 36 seconds West, through 52 degrees 14 minutes 48 seconds North, Longitude 6 degrees 15 minutes 36 seconds West, through Latitude 52 degrees 15 minutes 12 seconds North, Longitude 6 degrees 17 minutes 30 seconds West to Latitude 52 degrees 16 minutes 12 seconds North, Longitude 6 degrees 19 minutes West,
- (m) landwards of an imaginary line drawn from the Latitude 52 degrees 14 minutes 49 seconds North, Longitude 6 degrees 19 minutes 38 seconds West, through Latitude 52 degrees 14 minutes 48 seconds North, Longitude 6 degrees 14 minutes West, through 52 degrees 8 minutes 18 seconds North, Longitude 6 degrees 18 minutes 36 seconds West, through Latitude 52 degrees 8 minutes 18 seconds North, Longitude 6 degrees 26 minutes 18 seconds West to Latitude 52 degrees 11 minutes 19 seconds North, Longitude 6 degrees 26 minutes 32 seconds West,
- (n) landwards of an imaginary line drawn from Latitude 52 degrees 11 minutes 13 seconds North, Longitude 6 degrees 30 minutes 20 seconds West, through Latitude 52 degrees 3 minutes 36 seconds North, Longitude 6 degrees 30 minutes 48 seconds West, through 52 degrees 3 minutes 36 seconds North, Longitude 6 degrees 41 minutes 30 seconds West, through Latitude 52 degrees 10 minutes North, Longitude 6 degrees 41 minutes 30 seconds West Latitude 52 degrees 10 minutes 11 seconds North, Longitude 6 degrees 35 minutes 47 seconds West,
- (o) landwards of an imaginary line drawn from Latitude 52 degrees 12 minutes 54 seconds North, Longitude 6 degrees 42 minutes 21 seconds West, through Latitude 52 degrees 11 minutes 32 seconds North, Longitude 6 degrees 43 minutes 50 seconds West, through 52 degrees 11 minutes 32 seconds North, Longitude 6 degrees 44 minutes 48 seconds West to Latitude 52 degrees 12 minutes 38 seconds North, Longitude 6 degrees 44 minutes 24 seconds West,
- (p) landwards of an imaginary line drawn from the Latitude 52 degrees 12 minutes 12 seconds North, Longitude 6 degrees 47 minutes 8 seconds West, through Latitude 52 degrees 2 minutes 49 seconds North, Longitude 6 degrees 47 minutes 12 seconds West, through 52 degrees 2 minutes 49 seconds North, Longitude 7 degrees 2 minutes West to Latitude 52 degrees 8 minutes 18 seconds North, Longitude 6 degrees 55 minutes 54 seconds West,
- (q) north of an imaginary line drawn from Creadan Head to Broomhill Point, County Waterford,
- (r) north of an imaginary line drawn from the high Latitude 52 degrees 8 minutes 29 seconds North, Longitude 7 degrees 6 minutes 10 seconds

West to Latitude 52 degrees 8 minutes 23 seconds North, Longitude 7 degrees 5 minutes 53 seconds West,

- (s) west of an imaginary line drawn from Ballynacourty Point to the eastern side of the head of Helvick New Pier, County Waterford,
- (t) landwards of an imaginary line drawn from Latitude 52 degrees 3 minutes 33 seconds North, Longitude 7 degrees 32 minutes 49 seconds West, through Latitude 52 degrees 3 minutes 33 seconds North, Longitude 7 degrees 31 minutes 30 seconds West, through Latitude 52 degrees 2 minutes 22 seconds North, Longitude 7 degrees 31 minutes 30 seconds West to 52 degrees 2 minutes 22 seconds North, Longitude 7 degrees 33 minutes 58 seconds West,
- (u) in Dingle Bay, east of an imaginary line drawn from Latitude 52 degrees 6 minutes 32 seconds North, Longitude 9 degrees 57 minutes 6 54 seconds West, through Latitude 52 degrees 6 minutes 30 seconds North Longitude 10 degrees 1 seconds West, through Latitude 52 degrees 4 minutes 53 seconds North, Longitude 9 degrees 59 minutes 57 seconds West to Latitude 52 degrees 4 minutes 54 seconds north, 9 degrees 59 minutes 11 seconds West, and
- (v) in Lough Swilly, south of an imaginary line drawn from Latitude 55 degrees 8 minutes 36 seconds North, Longitude 7 degrees 31 minutes 55 seconds West to Latitude 55 degrees 9 minutes 16 seconds North, Longitude 7 degrees 29 minutes 17 seconds West.



GIVEN under my Official Seal,
22 August 2008

BRENDAN SMITH,
Minister for Agriculture, Fisheries and Food.

EXPLANATORY NOTE

(This note is not part of the Instrument and does not purport to be a legal interpretation).

These Regulations are to provide for the re-opening of the mussel seed fishery from August 23 2008 as well as the closure of some areas having regard to the need to protect the environment.

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