STATUTORY RULES OF NORTHERN IRELAND

2007 No. 23

FISHERIES

The Environmental Impact Assessment (Fish Farming in Marine Waters) Regulations (Northern Ireland) 2007

Made - - - -	*15th January 2007*
Coming into operation	*5th February 2007*

The Department of Agriculture and Rural Development(**1**), being a Department designated for the purposes of section 2(2) of the European Communities Act 1972(**2**) in relation to measures relating to the requirement for an assessment of the impact on the environment of projects likely to have significant effects on the environment, in exercise of the powers conferred by the said section 2 and of all other powers enabling it in that behalf, hereby makes the following Regulations:—

Citation, commencement and application

1.—(1) These Regulations may be cited as the Environmental Impact Assessment (Fish Farming in Marine Waters) Regulations (Northern Ireland) 2006 and shall come into operation on 5th February 2007.

(2) These Regulations apply in any case where a person makes or is minded to make an application to the Department for a fish culture licence as regards fish farming in marine waters on or after 5th February 2007, and where—

(a) any part of the proposed development is to be carried out in a sensitive area; or

(b) the proposed development is designated to hold a biomass of 100 tonnes or greater; or

(c) the proposed development will extend to 0.1 hectare or more of the surface area of the marine waters, including any proposed structures or excavations.

Interpretation

2.—(1) In these Regulations—

"additional information" in any case where an environmental statement has been prepared means any substantive information relating to the statement provided by the applicant which is not contained in it;

"Appeals Commission" shall be construed in accordance with regulation 13(1);

(**1**) S.I. 1988/785
(**2**) 1972 c.68

"applicant" means a person who is minded to apply for, or who has applied for, a fish culture licence;

"consultation bodies" shall be construed in accordance with regulation 4(4);

"the Department" means the Department of Agriculture and Rural Development;

"the Directive" means Council Directive 85/337/EEC on the assessment of the effects of certain public and private projects on the environment, as amended by Council Directive 97/11/EC and Council Directive 2003/35/EC;

"document" includes a chart, map, diagram, illustration or other descriptive matter in any form and also includes, where appropriate, a copy of a document;

"environmental assessment" in relation to any application means the assessment of environmental information in respect of the proposed development required by regulation 3(1);

"environmental information" means—

(a) an environmental statement, including any additional information;

(b) any representations made by an authority, body or person required by these Regulations to be invited to make representations or to be consulted; and

(c) any representations duly made by any other person about the likely environmental effects of a proposed development;

"environmental statement" means a statement—

(a) that includes such of the information referred to in Part I of Schedule 2 as is reasonably required to assess the environmental effects of a proposed development and which the applicant can, having regard in particular to current knowledge and methods of assessment, reasonably be required to compile; but

(b) which includes at least the information referred to in Part II of Schedule 2;

"fish culture licence" means a licence granted under section 11 of the Fisheries Act (Northern Ireland) 1966(**3**);

"fish farming" means keeping live fish, excluding shellfish, (whether or not for profit) with a view to their sale or to their transfer to other marine waters;

"general advertisement" means publication of a notice—

(a) in the Belfast Gazette; and

(b) on the website maintained by the Department;

"inland waters" means waters of any river above the boundary between the tidal and freshwater portions thereof, and the waters of any freshwater lake;

"the Londonderry Area" has the meaning given to it by section 2(1) of the Foyle Fisheries Act (Northern Ireland) 1952(**4**);

"local advertisement" means a notice in two or more newspapers circulating in the immediate locality of any proposed development;

"marine waters" means waters within the seaward limits of the territorial sea adjacent to Northern Ireland, other than inland waters;

"proposed development" in relation to any application means the fish farm intended to be used in connection with the fish culture licence;

"scoping opinion" means a written statement of the opinion of the Department under regulation 6 as to the information to be provided in an environmental statement;

(**3**) 1966 c.17 (N.I.); section 11 was substituted by Article 6 of the Fisheries (Amendment) (Northern Ireland) Order 1991, S.I. 1991/1466 (N.I.13)
(**4**) 1952 c.5 (N.I.)

"screening opinion" means a written statement of the opinion of the Department under regulation 4 as to whether an environmental assessment is required in any case;

"selection criteria" means the criteria set out in Schedule 1;

"sensitive area" means any of the following—

(a) an area designated by order as a National Park under Article 12 of the Nature Conservation and Amenity Lands (Northern Ireland) Order 1985(**5**);

(b) an area of outstanding natural beauty designated as such by an order made under Article 14 of the Nature Conservation and Amenity Lands (Northern Ireland) Order 1985;

(c) an area of land declared to be a national nature reserve under Article 18 of the Nature Conservation and Amenity Lands (Northern Ireland) Order 1985;

(d) an area designated by order as a marine nature reserve under Article 20(**6**) of the Nature Conservation and Amenity Lands (Northern Ireland) Order 1985;

(e) a nature reserve provided by a district council under Article 22(1) of the Nature Conservation and Amenity Lands (Northern Ireland) Order 1985;

(f) an area of special scientific interest, that is to say, an area of land declared to be an area of special scientific interest under Article 28 of the Environment (Northern Ireland) Order 2002(**7**);

(g) a wildlife refuge, that is to say, an area specified in an order made under Article 16 of the Wildlife (Northern Ireland) Order 1985(**8**);

(h) a scheduled monument within the meaning of the Historic Monuments and Archoelogical Objects (Northern Ireland) Order 1995(**9**);

(i) a European site within the meaning of regulation 9 of the Conservation (Natural Habitats, etc) Regulations (Northern Ireland) 1995(**10**);

(j) Ramsar sites listed under the Convention on Wetlands of International Importance, especially as Waterfowl Habitat(**11**);

(k) a property appearing on the World Heritage list kept under Article 11(2) of the 1972 UNESCO Convention for the Protection of World Cultural and Natural Heritage(**12**).

(2) Expressions used both in these Regulations and in the Directive have the same meaning for the purposes of these Regulations as they have for the purposes of the Directive.

(3) The Interpretation Act (Northern Ireland) 1954(**13**) shall apply to these Regulations as it applies to an Act of the Assembly.

Prohibition on the granting of a fish culture licence without consideration of environmental information

3.—(1) Subject to paragraph (2) the Department shall not grant a fish culture licence as regards fish farming in marine waters where the proposed development will be likely to have significant effects on the environment by virtue inter alia of its nature, size or location unless it has, in accordance with the requirements of these Regulations, taken into consideration all environmental information in respect of the proposed development.

(**5**) S.I. 1985/170 (N.I. 1) as amended by S.I. 1989/492 (N.I. 3) and S.I. 2002 No. 3135 (N.I. 7)
(**6**) Article 20 was amended by section 3 of, and Schedule 1 to, the Territorial Sea Act 1987 (1987 c.49)
(**7**) S.I. 2002/3153 (N.I. 7)
(**8**) S.I. 1985/171 (N.I. 2)
(**9**) S.I. 1995/1625 (N.I. 9)
(**10**) S.R. 1995 No. 380 as amended by S.R. 2004 No. 435
(**11**) See Command paper 6464
(**12**) See Command paper 9424
(**13**) 1954 c.33 (N.I.)

(2) Paragraph (1) shall not apply where the Department grants a fish culture licence in accordance with a decision of the Appeals Commission following an appeal under section 11A(4)(b)(**14**) of the Fisheries Act (Northern Ireland) 1966.

Screening opinion of the Department

4.—(1) A person who is minded to apply for a fish culture licence as regards fish farming in marine waters may request the Department to state in writing its opinion as to whether an environmental assessment is required for it under regulation 3(1).

(2) A request under paragraph (1) shall be accompanied by—

(a) a map or chart showing the location and extent of the site of the proposed fish farm;

(b) a brief outline of the proposed annual scale of production in tonnes (deadweight), the biomass capacity of the proposed development, the equipment to be installed on site and of the possible effects of the proposed development on the environment;

(c) a statement of the proposed servicing methods and of any intended associated development; and

(d) such other information or representations as the person making the request may wish to provide or make.

(3) The Department shall, if it considers that it has not been provided with sufficient information to enable it to give an opinion on the questions raised, notify the person making the request in writing of the matters on which it requires further information.

(4) In coming to a view as to whether consideration of environmental information is required the Department shall consult—

(a) such authorities, bodies or persons mentioned in Schedule 3 and other bodies with specific environmental responsibilities as it considers appropriate ("the Consultation bodies"); and

(b) such persons as are in its opinion likely to be affected by the proposed fish farm.

(5) The Department shall respond to a request under paragraph (1) within 6 weeks commencing with the date of receipt of the request or such longer period as may be agreed with the person making the request.

(6) In giving a screening opinion the Department shall take into account such of the selection criteria as are relevant to the proposed development.

(7) If, in response to such a request, the Department expresses a screening opinion to the effect that consideration of environmental information would be required before a fish culture licence could be granted for the proposed development, it shall provide with the screening opinion a written statement giving clearly and precisely the reasons for its conclusion and shall by notice require the applicant to supply the authorities, bodies and persons, which have been consulted under paragraph (4), with such further information about the proposed development as they may request.

(8) Where the Department expresses a screening opinion referred to in paragraph (7) it shall inform the persons consulted under regulation 4(4) of the requirement for an environmental statement and that they may be required to make available to the applicant, in accordance with regulation 7(1), any information in their possession which he or they consider relevant to the preparation of an environmental statement.

(9) The Department shall by general and local advertisement—

(a) publish a copy of any opinion given pursuant to a request under paragraph (1) and any accompanying statement of reasons;

(b) publish copies of the relevant request and the documents which accompanied it;

(**14**) Section 11A was inserted by Article 6 of the Fisheries (Amendment) (Northern Ireland) Order 1991

(c) state that any person may make representations to the Department in writing in relation to the likely environmental effects of the proposed development in question at an address specified in the notice within 28 days of the date of the publication of the notice in the Belfast Gazette; and

(d) describe what other information relating to the environmental effects of the proposed development is available and give details of where it can be obtained.

(10) Where, in any case, the Department expresses a screening opinion to the effect that consideration of environmental information would not be required before a fish culture licence could be granted for a proposed development and publishes a copy of that opinion in accordance with paragraph (9)(a), any person aggrieved by the decision may appeal to the Appeals Commission.

(11) Upon such an application the Commission shall consider whether an environmental assessment is required in the case and, if it decides that one is required, it shall—

(a) notify the Department accordingly; and

(b) give it a statement of its reasons for that conclusion.

(12) Where the Department has, in any case, been given a notification under paragraph (11) it shall substitute a new opinion, which is in accordance with the decision of the Appeals Commission, for the one previously expressed by it in the case and for the purposes of these Regulations that new opinion shall be treated as the only screening opinion in that case.

(13) Where the Department has substituted a new opinion for a previous one under paragraph (12), it shall by general and local advertisement—

(a) give notice of the decision of the Appeals Commission, of the reasons for that decision and publish a copy of the new opinion;

(b) publish information about where copies of the relevant request for a screening opinion and of the documents which accompanied it may be inspected;

(c) state that any person may make representations to the Department in writing in relation to the likely environmental effects of the proposed development in question at an address specified in the notice within 28 days of the publication of the notice in the Beflast Gazette; and

(d) describe what other information relating to the environmental effects of the proposed development is available and give details of where it may be obtained.

(14) In any case where paragraph (13) applies, any reference in these Regulations to the period specified in paragraph (9) (c) shall be construed as a reference to the period specified in paragraph (13)(c).

Application made to the Department without an environmental statement

5. Where it appears to the Department that an application for a fish culture licence as regards fish farming in marine waters, has not been the subject of a screening opinion and the application is not accompanied by a statement referred to by the applicant as an environmental statement for the purposes of these Regulations, paragraphs (3) to (9) and (13) of regulation 4 shall apply as if the receipt of the application were a request made under paragraph (1) of regulation 4 and —

(a) any reference in these Regulations to such a request shall be construed accordingly; and

(b) any reference in these Regulations to paragraphs (3) to (9) of regulation 4, or to any of them, shall be construed as including a reference to the paragraph or paragraphs in question as applied by this regulation.