STATUTORY RULES OF NORTHERN IRELAND

1999 No. 415

FISHERIES

Environmental Impact Assessment (Fish Farming in Marine Waters) Regulations (Northern Ireland) 1999

Made - - - -	*11th October 1999*
Coming into operation	*8th November 1999*

The Department of Agriculture, being a Department designated(**1**) 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 on it by the said section 2 and of every other power enabling it in that behalf, and having taken into account the selection criteria specified in Annex III to Council Directive 85/337/EEC (on the assessment of the effects of certain public and private projects on the environment)(**3**), as inserted by Council Directive 97/11/EC (amending Council Directive 85/337/EEC) (**4**), 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) 1999 and shall come into operation on 8th November 1999.

(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 8th November 1999, and where—

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

(b) the proposed development is designed 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—

(**1**) S.I.1988/785
(**2**) 1972 c. 68
(**3**) O.J. No. L175, 5.7.85, p. 40
(**4**) O.J. No. L73, 14.3.97, p. 5

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

"the Department" means the Department of Agriculture for Northern Ireland;

"the Directive" means Council Directive 85/337/EEC, as amended by Council Directive 97/11/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 information" means—

(a) any environmental statement, including any further information provided by the applicant, required to be provided by these Regulations;

(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 the 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 the 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(**5**);

"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;

"inland waters" means waters of any river about 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(**6**);

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

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

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

"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(**7**);

(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;

(**5**) 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)
(**6**) 1952 c. 5 (N.I.)
(**7**) S.I. 1985/170 (N.I. 1)

(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(**8**) 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 24(**9**) of the Nature Conservation and Amenity Lands (Northern Ireland) Order 1985;

(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(**10**);

(h) a scheduled monument within the meaning of the Historic Monuments and Archeological Objects (Northern Ireland) Order 1995(**11**);

(i) a European site within the meaning of regulation 9 of the Conservation (Natural Habitats, etc) Regulations (Northern Ireland) 1995(**12**);

(j) Ramsar sites listed under the Convention on Wetlands of International Importance, especially as Waterfowl Habitat(**13**);

(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(**14**).

(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(**15**) shall apply to these Regulations as it applies to a Measure of the Northern Ireland 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 taken into consideration the environmental information in respect of the proposed development and states in its decision that it has done so.

(2) Paragraph (1) shall not apply where the Department grants a fish culture licence as regards fish farming in marine waters following an appeal under section 11A(4)(b)(**16**) of the Fisheries Act (Northern Ireland) 1966.

(3) In a case to which regulation 14 (development in Northern Ireland likely to have significant effects in another Member State) applies, paragraph (1) of this regulation is subject to the procedures for which that regulation provides.

(**8**) Article 20 was amended by section 3 of, and Schedule 1 to, the Territorial Sea Act 1987 (1987 c. 49)
(**9**) Article 24 was amended by Article 10(1) of the Nature Conservation and Amenity Lands (Amendment) (Northern Ireland) Order 1989, S.I. 1989/492 (N.I. 3)
(**10**) S.I. 1985/171 (N.I. 2)
(**11**) S.I. 1995/1625 (N.I. 9)
(**12**) S.R. 1995 No. 380
(**13**) See Command paper 6464
(**14**) See Command paper 9424
(**15**) 1954 c. 33 (N.I.)
(**16**) Section 11A was inserted by Article 6 of the Fisheries (Amendment) (Northern Ireland) Order 1991

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 ask the Department to state in writing its opinion as to whether an environmental assessment is required; and such an opinion is referred to in these Regulations as a "screening opinion".

(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 development, the equipment to be installed on site and of the possible effects of the 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 such authorities, bodies or persons mentioned in Schedule 3 as it considers appropriate.

(5) The Department shall respond to such a request 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 set out in Schedule 1 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 provide notice that the applicant shall 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 under paragraph (7) to the effect that consideration of environmental information would be required, the Department shall inform such of the authorities, bodies or persons mentioned in Schedule 3 as shall be appropriate according to the circumstances mentioned therein 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 make available for public inspection at all reasonable hours at an appropriate place, a copy of—

(a) any opinion given pursuant to a request under paragraph (1),

(b) any accompanying statement of reasons,

(c) the relevant request and the documents which accompanied it.

Application made to the Department without an environmental statement

5. Where it appears to the Department than 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) of regulation 4 shall apply as if the receipt of the application were a request made under paragraph (1) of regulation 4.

Scoping opinion of the Department

6.—(1) A person who is minded to apply for a fish culture licence as regards fish farming in marine waters may ask the Department to state in writing its opinion as to the information to be provided in the environmental statement; and such an opinion is referred to in these Regulations as a "scoping opinion".

(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 development, the equipment to be installed on site and of the possible effects of the 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 a scoping opinion, notify the person making the request in writing of the matters on which it requires further information.

(4) The Department shall not give a scoping opinion in response to a request under paragraph (1) until it has consulted the person who made the request and such bodies in Schedule 3 as it considers appropriate.

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

(6) Where a person has, at the same time as making a request for a screening opinion under paragraph (1) of regulation 4, asked the Department for an opinion under paragraph (1) of this regulation, and the Department has given a screening opinion to the effect that consideration of environmental information is required, the Department shall give a scoping opinion within 6 weeks commencing with the date on which that screening opinion was given or such longer period as may be agreed in writing with the person making the request.

(7) In giving a scoping opinion the Department shall take into account—

(a) the specific characteristics of the proposed development; and

(b) the environmental features likely to be affected by the development.

(8) Where the Department has given a scoping opinion in response to a request under paragraph (1) it shall not be precluded from requiring of the person to whom that opinion was given further information in connection with a statement submitted by the applicant which he refers to as an environmental statement for the purposes of these Regulations in connection with an application for a fish culture licence for the same, or substantially the same, development as was referred to in the request.

Provision of relevant information

7.—(1) Subject to paragraph (2), any authority, body or person notified in accordance with these Regulations that a person is minded to apply for or has applied for a fish culture licence for a development to which the prohibition in regulation 3(1) applies shall, if requested by the applicant,