

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*

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The Department of Agriculture and Rural Development^(a), being a Department designated for the purposes of section 2(2) of the European Communities Act 1972^(b) 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);

“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

(a) S.I. 1988/785
(b) 1972 c.68

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(a);

“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(b);

“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;

“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(c);

(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(d) 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(e);

(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(f);

(a) 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)

(b) 1952 c.5 (N.I.)

(c) 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)

(d) Article 20 was amended by section 3 of, and Schedule 1 to, the Territorial Sea Act 1987 (1987 c.49)

(e) S.I. 2002/3153 (N.I. 7)

(f) S.I. 1985/171 (N.I. 2)

- (h) a scheduled monument within the meaning of the Historic Monuments and Archaeological Objects (Northern Ireland) Order 1995(a);
- (i) a European site within the meaning of regulation 9 of the Conservation (Natural Habitats, etc) Regulations (Northern Ireland) 1995(b);
- (j) Ramsar sites listed under the Convention on Wetlands of International Importance, especially as Waterfowl Habitat(c);
- (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(d).

(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(e) 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.

(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)(f) 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) S.I. 1995/1625 (N.I. 9)
 (b) S.R. 1995 No. 380 as amended by S.R. 2004 No. 435
 (c) See Command paper 6464
 (d) See Command paper 9424
 (e) 1954 c.33 (N.I.)
 (f) Section 11A was inserted by Article 6 of the Fisheries (Amendment) (Northern Ireland) Order 1991

- (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;
- (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 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 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.

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 request the Department to state in writing its opinion as to the information to be provided in an environmental statement in respect of the proposed development.

(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 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) unless it has consulted the person who made the request and any persons consulted under regulation 4(4) or (13).

(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, if relevant, of the date of the notice under paragraph (3) 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 the request for a screening opinion under regulation 4(1), asked the Department for an opinion under paragraph (1), 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 to which it relates.

(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 proposed 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 proposed development to which the prohibition in regulation 3(1) applies shall, if requested by the applicant, or may, without such request, enter into consultation with him with a view to ascertaining whether they have any information in their possession which he or they consider relevant to the preparation of the environmental statement and shall make any such information available to him.

(2) Nothing in paragraph (1) shall require the disclosure of any information which the body concerned is entitled or bound to hold in confidence or must be so treated under the Environmental Information Regulations (Northern Ireland) 2004(a).

Publicity where an environmental statement is required

8.—(1) This regulation applies in any case where—

- (a) the Department expresses a screening opinion that an environmental statement is required and the applicant wishes to proceed with the application;
- (b) following the period specified in regulation 4(9)(c) or (13)(c) as the case may be, the Department considers an environmental assessment is required for a proposed development under regulation 3(1).

(2) In any case to which this regulation applies, the Department shall by general advertisement and, at the applicant's expense, by local advertisement—

- (a) describe the nature, size and location of the proposed development;
- (b) state where the application may be inspected;
- (c) state that the proposed development is likely to have significant effects on the environment and that an environmental statement is required in respect of them;
- (d) state that any person may obtain information from, or make representations in writing to, the Department in relation to the likely environmental effects of the proposed development at an address specified in the notice within 28 days of the date of publication of the notice in the Belfast Gazette;
- (e) indicate the nature of the information in question and the times where and means by which it will be made available;
- (f) state the nature of the possible decisions that may be made in the case or, if there is one, the draft decision; and
- (g) indicate whether the proposed development is likely to have significant effects on the environment in another EEA State.

(3) Where the Department published an advertisement in accordance with paragraph (2) it shall, on or before the date of the publication of the notice in the Belfast Gazette, send a copy of that notice to each of the consultation bodies and to any person who in its opinion is likely to be affected by the proposed development.

(a) S.I. 2004/3391

(4) The Department shall make available to the public concerned any further information which is relevant to a case to which this regulation applies but which only becomes available after the publication of the advertisements under paragraph (2).

Consultation on the environmental statement

9.—(1) The applicant shall prepare an environmental statement in any case to which regulation 8 applies and shall submit it to the Department with enough copies to enable the Department to comply with the requirements of these Regulations for public participation in environmental assessments hereunder.

(2) Where the Department receives an environmental statement in accordance with paragraph (1) it shall by general and local advertisement give notice in accordance with paragraph (3).

(3) The advertisement shall state—

- (a) that the environmental statement has been prepared and give details of the places where and times at which copies, together with details of the proposed development to which the statement relates, may be inspected;
- (b) that any person wishing to make representations in relation to the likely environmental effects of the proposed development to which the statement relates shall make them in writing to the Department at the address specified in the advertisement within 28 days of the publication of the notice in the Belfast Gazette; and
- (c) that where no objection in relation to the likely environmental effects of the proposed development is made and the Department, having undertaken the assessment specified in regulation 12(1) considers that the proposed development should proceed, it may so determine.

(4) On or before the date of publication in the Belfast Gazette of the notice under paragraph (2), the Department shall—

- (a) send a copy of the environmental statement and notice to each of the consultation bodies and to any person who in its opinion is likely to be affected by the proposed development so that any such body or person has an opportunity to make representations on the likely environmental effects of the proposed development to which the statement relates before the expiry of the period specified in the notice;
- (b) make available at an office of the Department or some other convenient place for a period of at least 28 days following the date of publication of the notice in the Belfast Gazette, the details of the proposed development and the environmental statement relating to the proposed development and ensure that a reasonable number of copies of the statement are made available; and
- (c) if a charge is to be made for any such copy under regulation 14, give notice of the amount of the charge.

(5) Where, in accordance with paragraph (4)(a), the Department sends any person a copy of the environmental statement it shall consult that person about the statement and the likely environmental effects of the proposed development to which it relates.

Further information and evidence relating to environmental statements

10.—(1) The Department, when dealing with an application in relation to which an environmental statement has been provided may by notice in writing require the applicant to provide such further information as may be specified in the notice to enable the Department to make a determination in relation to the application or concerning any matter which is required to be dealt with in the environmental statement.

(2) The Department may only issue a notice under paragraph (1) where—

- (a) the applicant could (having regard in particular to current knowledge and methods of assessment) provide further information about any matter mentioned in Schedule 2; and

- (b) that further information is reasonably required to give proper consideration to the likely environmental effects of the proposed development to which the notice relates,

and where an applicant is so notified he shall provide the further information in question.

(3) The Department may in writing require to be produced to it such evidence, in respect of any environmental statement which falls to it to take into consideration, as it may reasonably call for to verify any information it contains.

(4) Where, pursuant to paragraph (1), the Department obtains any additional information it shall—

- (a) by general and local advertisement state that the additional information is available, and give details of the places where and times at which a copy of that additional information may be inspected or obtained and, if a charge is to be made for any such copy under regulation 14, the amount of the charge; and
- (b) state that any person who wishes to make representations in relation to the additional information should make such representations in writing to the Department at the address specified in the advertisement within 28 days of the date of the publication of the notice in the Belfast Gazette.

(5) At the same time as the notice in the Belfast Gazette is published under paragraph (4)(a), the Department shall—

- (a) send copies of the additional information to each person to whom a copy of the statement to which it related was given under regulation 9(4)(a);
- (b) make available for inspection at an office of the Department or at some other convenient place, for a period of at least 28 days following the date of the publication of the notice in the Belfast Gazette, the additional information, the details of the proposed development in question and the environmental statement relating to the development and ensure that a reasonable number of copies of the information are made available.

Proposed developments likely to have a significant effect on the environment in another EEA State

11.—(1) Where it appears to the Department that any proposed development is likely to have a significant effect on the environment in another EEA State or where another EEA State likely to be significantly affected so requests, the Department shall—

- (a) send to that EEA State, as soon as is possible and no later than the date of publication in the Belfast Gazette of the notice referred to in regulation 8(2)—
 - (i) a copy of the notice;
 - (ii) any available information on the possible significant effects of the proposed development on the environment in that EEA State;
- (b) make available to the EEA State any further information which is relevant to the notice in the Belfast Gazette forwarded to it under sub-paragraph (a) but which only became available after its publication;
- (c) inform the EEA State in writing that if it wishes to be consulted further in relation to the proposed development in accordance with paragraphs (2) to (4) it must inform the Department of that fact in writing within 28 days beginning with the day on which the Department forwarded the copy of the notice or other information, whichever is the latter, to that State.

(2) Where an EEA State indicates in accordance with paragraph (1)(c), that it wishes to be consulted further, the Department shall send to that EEA State—

- (a) a copy of the application relating to the proposed development;
- (b) a copy of the environmental statement in respect of the application;
- (c) all the information required to be given to any person under regulation 8; and
- (d) relevant information regarding the procedure for consultation under these Regulations,

but only to the extent that such information has not been provided to the EEA State earlier in accordance with paragraph (1)(a).

(3) The Department shall also—

- (a) arrange for the particulars and information referred to in paragraphs (1)(a) and (2) to be made available, within reasonable time, to the authorities referred to in Article 6(1) of the Directive and the public in the territory of the EEA State likely to be significantly affected by the proposed development in question; and
- (b) ensure that these authorities and the public concerned are given an opportunity, before a determination is made as to whether the proposed development should proceed, to forward to the Department, within reasonable time their opinion on the information supplied.

(4) The Department shall in accordance with Article 7(4) of the Directive—

- (a) consult with the EEA State concerned regarding, inter alia, the potential significant effects of the proposed development on the environment of that EEA State and the measures envisaged to reduce or eliminate such effects; and
- (b) determine, in agreement with the other EEA State, a reasonable period of time for the consultation period.

(5) Where an EEA State has been consulted in relation to any proposed development in accordance with paragraph (4) the Department shall inform the EEA State of the determination in respect of the proposed development and shall forward to it a statement of—

- (a) the determination and conditions attached thereto;
- (b) the main reasons and considerations on which the determination is based; and
- (c) a description, where necessary, of the main measures to avoid, reduce and, if possible, offset the adverse effects of the proposed development.

(6) Where the Department receives from another EEA State information relating to any matter which falls within the scope of these Regulations which has been made available in accordance with Article 7(1) and (2) of the EIA Directive (which relates to projects in one EEA State which are likely to have significant effects on the environment in another EEA State), the Department shall —

- (a) arrange for that information to be made available within a reasonable time, to the consultation bodies and such members of the public as, in its opinion, would be likely to be affected by the project;
- (b) ensure that the consultation bodies and members of the public provided with the information in accordance with paragraph (a) are given an opportunity during the period agreed between the Department and the relevant EEA State in accordance with paragraph (7)(b) to forward to the competent authority in the relevant EEA State within reasonable time, their opinion of the information provided.

(7) The Department shall also, in accordance with Article 7(4) of the EIA Directive —

- (a) enter into consultations with an EEA State from which information has been received as mentioned in paragraph (6) regarding, amongst other things, the potential significant effects of the proposed project on the environment in Northern Ireland and the measures envisaged to reduce or eliminate such effects; and
- (b) seek to agree with that EEA State a reasonable period, before consent for the project is granted, during which the consultation bodies and members of the public referred to in paragraph (6)(b) may forward their opinion to the competent authority of that EEA State in accordance with that paragraph.

Determination of whether a proposed development should proceed

12.—(1) On expiry of the period referred to in regulation 9(3)(b) the Department shall assess, in light of the environmental statement, any additional information and any representations made in

accordance with regulations 8, 9 or 11, the direct and indirect effects of the proposed development on the environmental factors specified in Schedule 2.

(2) Where the Department, having undertaken the assessment required by paragraph (1) considers that the proposed development should proceed, it may grant the fish culture licence which relates to the proposed development or it may do so subject to conditions.

(3) Where the Department, having undertaken the assessment required by paragraph (1), considers that the proposed development should not proceed, it shall refuse the application for a fish culture licence which relates to the proposed development.

(4) Where the Department makes a determination under this regulation it shall—

- (a) notify the applicant, each of the consultation bodies and any person whom in its opinion is likely to be affected by the proposed development in accordance with paragraph (5); and
- (b) publish a general and local advertisement in accordance with paragraph (6).

(5) Each notice under paragraph (4) shall inform the person concerned of the determination and shall give a statement of —

- (a) the Department's determination and any conditions to which it is subject;
- (b) the main reasons and considerations upon which its determination was based; and
- (c) where necessary, a description of the main measures to avoid, reduce and, if possible, offset the adverse effects of the proposed development.

(6) Each of the advertisements referred to in paragraph (4) shall inform the public of the determination and give details of the places where and the times at which the public may inspect a statement of —

- (a) the Department's determination and any conditions to which it is subject;
- (b) the main reasons and considerations upon which its determination was based; and
- (c) where necessary, a description of the main measures to avoid, reduce and, if possible, offset the adverse effects of the proposed development.

(7) In relation to any determination made by itself under this regulation or opinion given by itself under regulation 6, the Department shall maintain a record of, and make available to the public on request the following information —

- (a) the content of the determination and any conditions attached;
- (b) the main reasons and considerations on which the decision is based including information about the public participation process; and
- (c) a description, where necessary, of the main measures proposed to avoid, reduce or, if possible offset any major adverse effects.

Appeals

13.—(1) This regulation applies where an appeal is made to the Water Appeals Commission for Northern Ireland (“the Appeals Commission”) under section 11A(4)(b) of the Fisheries Act (Northern Ireland) 1966 in relation to an application for 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 size, nature or location.

(2) The Appeals Commission shall not dispose of any such appeal unless it has taken into consideration an assessment of the direct and indirect effects of the proposed development on the environmental factors specified in Schedule 2, made by it in the light of the environmental statement, any additional information and any representations made in accordance with regulations 8 to 10;

(3) Regulations 11(5) and 12(4) to (6) shall apply in relation to a decision of the Appeals Commission on any such appeal as they apply to a decision by the Department on an application to which the prohibition in regulation 3(1) applies as if the duty of the Department to notify any person, publish any advertisement and inform any person was a duty of the Appeals Commission.

Charges

14.—(1) A reasonable charge reflecting the costs of printing, copying and distribution may be made to the public for copies of the environmental statement made available to them under regulation 8 and for copies in excess of one copy for each authority, body or person consulted under regulation 9.

(2) An authority, body or person entering into consultation under regulation 9, having been requested to do so, may make a reasonable charge reflecting the cost of making available information which they had in their possession.

Public Participation

15. The Department shall, in relation to any proposed development, make available to the public —

- (a) at the time that the notice in the Belfast Gazette relating to the proposed development is published under regulation 8(2), all information that is relevant to it;
- (b) any other information which is relevant to a determination under regulation 12 or 13 and which only becomes available after the time that the public was given notice in accordance with regulation 8(2)(d);
- (c) any further information which is relevant to the assessment under regulations 12 and 13 and which only became available after the time that the notice in the Belfast Gazette relating to the proposed development was published under regulation 9(3)(b).

Revocation and transitional provisions

16.—(1) Subject to paragraph (2), the Environmental Impact Assessment (Fish Farming in Marine Waters) Regulations (Northern Ireland) 1999(a) are hereby revoked.

(2) Nothing in paragraph (1) shall affect the continued operation of the regulations mentioned in that paragraph in relation to any application for a fish culture licence as regards fish farming in marine waters made before these regulations came into operation.

Sealed with the Official Seal of the Department of Agriculture and Rural Development on 15th January 2007.



Liam McKibbin

A senior officer of the Department of Agriculture and Rural Development

(a) S.R. 1999 No. 415

Selection criteria for Screening opinions

Characteristics of the Development

1. The characteristics of developments must be considered having regard, in particular, to—
 - (a) the size of the development;
 - (b) the cumulation with other developments;
 - (c) the use of natural resources;
 - (d) the production of waste;
 - (e) pollution and nuisances; and
 - (f) the risk of accidents, having regard in particular to substances or technologies used.

Location of Developments

2. The environmental sensitivity of geographical areas likely to be affected by development must be considered, having regard, in particular, to—
 - (a) the existing seabed use;
 - (b) the relative abundance, quality and regenerative capacity of natural resources in the area; and
 - (c) the absorption capacity of the natural environment, paying particular attention to the following areas:
 - (i) wetlands;
 - (ii) coastal zones;
 - (iii) mountain and forest areas;
 - (iv) nature reserves and parks;
 - (v) areas classified or protected under Member States' legislation: special protection areas designated by Member States pursuant to Council Directive 79/409/EEC on the conservation of wild birds^(a) and Council Directive 92/43/EEC on the conservation of natural habitats and of wild flora and fauna^(b);
 - (vi) areas in which the environmental quality standards laid down in Community legislation have already been exceeded;
 - (vii) densely populated areas; and
 - (viii) landscapes of historical, cultural or archaeological significance.

Characteristics of the Potential Impact

3. The potential significant effects of developments must be considered in relation to criteria set out under paragraphs 1 and 2, and having regard in particular to—
 - (a) the extent of the impact (geographical area and size of the affected population);
 - (b) the transfrontier nature of the impact;
 - (c) the magnitude and complexity of the impact;
 - (d) the probability of the impact; and

(a) O.J. No. L103, 25.4.79, p.1

(b) O.J. No. L206, 22.7.92, p.7

(e) the duration, frequency and reversibility of the impact.

Matters for inclusion in Environmental Statement

PART I

- 1.** Description of the development, including in particular—
 - (a) a description of the physical characteristics of the whole development and land-use requirements during the construction and operational phases;
 - (b) a description of the main characteristics of the production processes, for instance, nature and quantity of the materials used; and
 - (c) an estimate, by type and quantity, of expected residues and emissions (water, air and soil pollution, noise, vibration, light, heat, radiation etc) resulting from the operation of the proposed project.
- 2.** An outline of the main alternatives studied by the developer and an indication of the main reasons for this choice, taking into account the environmental effects.
- 3.** A description of the aspects of the environment likely to be significantly affected by the proposed development, including, in particular, population, fauna, flora, soil, water, air, climatic factors, material assets, including the architectural and archaeological heritage, landscape, seascape and the inter-relationship between the above factors.
- 4.** A description of the likely significant effects of the proposed development on the environment resulting from—
 - (a) the existence of the development;
 - (b) the use of natural resources;
 - (c) the emissions of pollutants, the creation of nuisances and the elimination of waste; and
 - (d) the description by the developer of the forecasting methods used to assess the effects on the environment.
- 5.** A description of the measures envisaged to prevent, reduce and where possible offset any significant adverse effects on the environment.
- 6.** A non-technical summary of the information provided under paragraphs 1 to 5.
- 7.** An indication of any difficulties (technical deficiencies or lack of know-how) encountered by the developer in compiling the required information.

PART II

- 8.** A description of the development comprising information on the site, design and size of the development.
- 9.** A description of the measures envisaged in order to avoid, reduce and, if possible, remedy significant adverse effects.
- 10.** The data required to identify and assess the main effects which the development is likely to have on the environment.
- 11.** An outline of the main alternatives studied by the applicant and an indication of the main reasons for his choice, taking into account the environmental effects.

12. A non-technical summary of the information provided under paragraphs 8 to 11.

SCHEDULE 3

Regulations 4, 6 and 9

Bodies to be consulted

1. The Department of the Environment for Northern Ireland.
2. The Council for Nature Conservation and the Countryside.
3. The Loughs Agency of the Foyle, Carlingford and Irish Lights Commission where the proposed development is situated in the Londonderry Area.

EXPLANATORY NOTE

(This note is not part of the Regulations)

The Environmental Impact Assessment (Fish Farming in Marine Waters) Regulations (Northern Ireland) 1999 (“the 1999 Regulations”) provided for the implementation in Northern Ireland of the requirements of Council Directive 85/337/EEC on the assessment of the effects of certain public and private projects on the environment (O.J. No. L175, 5.7.85, p.40) as amended by Council Directive 97/11/EC (O.J. No. L73, 14.3.97, p.5) insofar as that Directive relates to an assessment of the environmental effects of certain projects in respect of fish farming in marine waters. These Regulations (which revoke and re-enact with amendments the 1999 Regulations) implement further changes to Directive 85/337/EEC made by Directive 2003/35/EC (O.J. No. L156, 25.6.03, p.17).

The Regulations apply to applications as regards fish farming in marine waters, made on or after [.....], where any part of the proposed development is in a sensitive area, or the proposed development is designed to hold a biomass of 100 tonnes or greater, or will extend to 0.1 hectare or more of the surface area. The Regulations provide for decisions on whether consideration of environmental information in respect of such applications for fish farming in marine waters is required to be taken by the Department of Agriculture and Rural Development (“the Department”).

The principal changes are as follows—

1. The Regulations provide for more information to be provided to the public in cases where the Department must determine whether a proposed fish farm is likely to have a significant effect on the environment.
2. The Regulations introduce into the processes for consultation about the environmental impact of the proposed development a requirement for the Department to make available to the public any additional information which comes to light after the stage in the process at which such information should have been formally publicised.
3. The Regulations set out in more detail the information to be provided in public notices and provide for wider means of notifying the public of relevant information. These include the use of electronic means.
4. The Regulations impose on the Department and the Water Appeals Commission a duty to formally record their determinations under the Regulations and to make them available to the public.
5. The Regulations introduce a new general duty on the Department to make information available to the public at large.