

EXPLANATORY MEMORANDUM TO

The Strangford Lough (Sea Fishing Exclusion Zones) Regulations (Northern Ireland) 2011

SR 2011 no. 35

1. Introduction

- 1.1. This Explanatory Memorandum has been prepared by the Department of Agriculture and Rural Development to accompany the Statutory Rule (details above) which is laid before the Northern Ireland Assembly.
- 1.2. The Statutory Rule is made under section 19(1), 124(1), 124(2) and 124(2A) of the Fisheries Act 1966 and is subject to the confirmatory resolution procedure.

2. Purpose

- 2.1. The objective of these regulations is to provide protection from sea fishing activities for two areas identified as having *modiolus modiolus* (horse mussel) within the Strangford Lough Special Area of Conservation (SAC). Under the EU Habitats Directive which is implemented in NI through the Conservation (Natural Habitats, etc) Regulations (Northern Ireland) 1995, "The Habitats Regulations", responsible Departments have an obligation to protect, or restore to favourable conservation status, the designated features of Special Areas of Conservation (SAC).

3. Background

- 3.1. In 2003, an interim report of the Strangford Lough Ecological Change Investigation (SLECI) indicated that the *modiolus* beds in Strangford Lough were in unfavourable condition and that continued fishing with mobile gear was a likely factor in preventing restoration to favourable status. Under threat of infraction proceedings from the European Commission, for failing to protect a European Site under the Habitats Directive, DARD and DOE took the decision to introduce a temporary ban on all mobile gear fishing in Strangford Lough from December 2003 and developed a *Modiolus* Restoration Plan which was approved by the commission.
- 3.2. The plan aims to return the *modiolus* beds to "favourable conservation status" and includes a commitment to give complete protection from all activities for two remaining intact *modiolus* beds identified in the 2003 surveys that prompted the mobile gear ban.

4. Consultation

- 4.1. This issue was subject to public consultation, lasting 12 weeks, in November 2007. It was clear from the consultation that there was no consensus of opinion amongst stakeholders. Subsequent meetings have taken place between DARD, Industry, DOE and NIEA and a proposed solution which will include a voluntary code of practice has been agreed.

- 4.2. These proposed regulations offer a solution that is acceptable to DARD, Industry, the DOE and NIEA and will further limit any environmental impact that potting may have. The Departments are in agreement that their proposed location and extent affords best protection to modiolus beds while avoiding undue interference with fishing grounds.

5. Equality Impact

- 5.1. Equality screening has been carried out. The proposals apply solely to the fish catching sector and have no disproportionate effect on any of the Section 75 groups.

6. Regulatory Impact

- 6.1. A final Regulatory Impact Assessment has been prepared and is enclosed.

7. Financial Implications

- 7.1. There are no financial implications.

8. Section 24 of the Northern Ireland Act 1998

- 8.1. The Regulation is compatible with section 24 of the Northern Ireland Act 1998.
- 8.2. The Regulations deal with the prohibition of fishing within two defined areas and apply to all Northern Ireland registered fishing vessels and is therefore not discriminatory in terms of human rights, religious belief, or political opinion.
- 8.3. The scope and extent of the Regulations are compatible with the Common Fishery Policy and are therefore compatible with EU law.
- 8.4. The Regulations help to meet obligations under the EU Habitats Directive to protect a Special Area of Conservation

9. EU Implications

- 9.1. Failure to implement these regulations and give protection to these areas would break an undertaking given to the Commission and therefore significantly increase the risk of infraction proceedings being taken against the UK. Large fines could be imposed which would have to be paid by the Department responsible ie DARD.

10. Parity or Replicatory Measure

- 10.1. Administrations in the rest of GB have similar obligations to protect any designated marine European Sites under the Habitats Directive, however Strangford is unique in that a site has been damaged and therefore requires restoration.
- 10.2. The Habitats Directive also applies in ROI and there several examples of marine areas where fishing activity has been restricted.

11. Additional Information

- 11.1. Since the SL1 and draft Regulation was considered by the Agriculture and Rural Development Committee on 7th December 2010 a number of technical amendments have been made following advice from the

Departmental Solicitors. The underlying policy of the scheme has not changed materially.

- 11.2. The main changes were:
 - a. removal of reg 4: The DSO did not think that regulation 4 was necessary as it appeared to duplicate the effect of section 14(3) of the 1966 Act.
 - b. removal of the stated co-ordinates from regulation 3(2) and inserting them as schedule 1 for regulations 2 (2): The DSO felt it would be clearer if the co-ordinates for each zone were set out in columns with headings for the points, latitude and longitude.