

PROPOSED ENVIRONMENTAL IMPACT ASSESSMENT (FISH FARMING IN MARINE WATERS) REGULATIONS (NI) 2005

A CONSULTATION DOCUMENT

INTRODUCTION

This Consultation Document sets out the Department of Agriculture and Rural Development's (DARD's) proposals for new Regulations to implement Article 3 of European Directive 2003/35/ EC (known as "the Public Participation Directive") which amends Council Directive 85/337/EEC (known as the Environmental Impact Assessment or "EIA" Directive) mainly with regard to public participation provisions. The Directive was due for implementation by 25 June 2005.

The proposed Regulations also replicate and replace the Environmental Impact Assessment (Fish Farming in Marine Waters) Regulations (Northern Ireland) 1999 which implemented Directive 85/337/EEC (as amended by Directive 97/11/EC) in respect of the Environmental Impact Assessment requirements for certain projects. The new Regulations will enhance public consultation and participation in the development of certain projects.

Like the 1999 Regulations, the proposed Environmental Impact Assessment (Fish Farming in Marine Waters) Regulations 2005 will apply to applications as regards fish farming in marine waters where any part of the proposed development: -

- (a) is in a sensitive area; or
- (b) is designed to hold a biomass of 100 tonnes or greater; or
- (c) will extend to 0.1 hectare or more of the surface area.

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

The proposed Environmental Impact Assessment (Fish Farming in Marine Waters) Regulations are similar to Regulations being introduced by other GB Departments to implement the Public Participation Directive.

The Public Participation Directive is one of the legislative instruments that transpose the provisions of the Aarhus Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters into European Community Law. The Directive is the main instrument to align Community legislation with the Public Participation provisions of the Convention.

DETAILS OF THE CONSULTATION PROCESS

1. Responses to this Consultation Document should be received by no later than Monday 16th January 2006.
2. Responses and any comments about this Consultation should be either: -
 - sent to Ms Lynne Gardiner, Fisheries Division, Department of Agriculture and Rural Development, Annexe 5, Castle Grounds, Stormont, BELFAST BT4 3PW (Fax number (028) 90523121); or
 - emailed to lynne.gardiner@dardni.gov.uk
3. Hard copies of this Consultation Document can be obtained from Fisheries Division at the above address or by telephoning Ms Lynne Gardiner on (028) 90522424.
4. The Consultation Document is also available on the DARD website, under consultations at www.dardni.gov.uk/consultations
5. Copies of this document in an alternative format can be made available on request in large print, disk, Braille and audiocassette. It may also be made available in other languages on request.

FREEDOM OF INFORMATION ACT 2000 – CONFIDENTIALITY OF CONSULTATIONS

Please note that the Department may in due course wish to publish responses to this Consultation Document or a summary of these responses.

Your response and other responses to the consultation may be disclosed on request. The Department can only refuse information in exceptional circumstances. **Before** you submit your response please read the paragraphs below on the confidentiality of consultations and they will give you guidance on the legal position about any information given by you in response to this consultation.

The Freedom of Information Act gives the public a right of access to any information held by a public authority, namely, the Department in this case. This right of access to information includes information provided in response to a consultation. The Department cannot automatically consider confidential information supplied to it in response to a consultation. However, it does have the responsibility to decide whether any information provided by you in response to this consultation, including information about your identity, should be made public or be treated as confidential.

This means that information provided by you in response to this consultation is unlikely to be treated as confidential, except in very particular circumstances. The Lord Chancellor's Code of Practice on the Freedom of Information Act provides that:-

- the Department should only accept information from third parties in confidence if it is necessary to obtain that information in connection with any of the Department's functions and it would not otherwise be provided;
- the Department should not agree to hold information received from third parties "in confidence" which is not confidential in nature; and
- acceptance by the Department of confidentiality provisions must be for good reasons, capable of being justified to the Information Commissioner.

For further information about the confidentiality of responses please contact the Information Commissioner's Office (or see website at <http://www.informationcommissioner.gov.uk>).

A list of the stakeholder organisations that we have contacted directly for this exercise is attached. This list is not exhaustive and we would welcome views from all interested parties.

RE-ENACTED PROVISIONS

The proposed Regulations will re-enact the following provisions in the Environmental Impact Assessment (Fish Farming in Marine Waters) Regulation (Northern Ireland) 1999 (the 1999 Regulations).

1. Before granting a fish culture licence as regards fish farming in marine waters, the Department of Agriculture and Rural Development must assess the environmental impact of the proposed development and consult a number of specified bodies.
2. Where the environmental effects are considered significant, the person who is minded to apply for the fish culture licence as regards fish farming in marine waters is required to prepare an Environmental Statement detailing the environmental effects of the proposed development and the measures proposed to mitigate those effects.
3. The Department is required to publish its decision on whether or not an Environmental Statement is needed and to give interested parties and the public an opportunity to comment on the need for a statement, and ultimately on any statement produced. Only after consultation and consideration of representations received may the Department grant a fish culture licence as regards fish farming in marine waters.

4. In light of the Environmental Statement, the Department may grant a fish culture licence in respect of a proposed fish farming development in marine waters or it may do so subject to certain conditions.
5. The Regulations give the Water Appeals Commission a role in determining the scope and content of the Environmental Statement on application for such direction from the Department.
6. The Regulations also lay down detailed procedures for consultation with another Member State, such as the Republic of Ireland, where a proposed development as regards fish farming in marine waters is likely to have significant environmental effects in the territory of that Member State.
7. The Regulations also set out the publication requirements for further environmental information obtained in relation to an Environmental Statement and also require the Department to notify persons or organisation who comment on a proposed fish farming development, subject to an Environmental Statement, of any ultimate decision to grant a fish culture licence to proceed with the proposed development. In giving such notification, the Department must confirm in writing that it has considered all the relevant factors, including representations received during the consultation procedures.

NEW PROVISIONS – AMENDMENTS MADE BY THE PROPOSED REGULATIONS

The principal changes made by the 2005 Regulations are as follows: -

- (1) The Regulations introduce into the processes for consultation about the environmental impact of a proposed fish farming development in marine waters a requirement for the Department to make available to the public any additional information that comes to light after the stage in the process at which such information should have been formally publicised.

- (2) 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 e.g. publication on the Department's website.
- (3) 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.
- (4) The Regulations introduce a new general duty on the Department to make information available to the public at large.

OVERVIEW OF THE REGULATIONS/DETAILED PROVISIONS

The proposed Environmental Impact Assessment (Fish Farming in Marine Waters) Regulations (Northern Ireland) 2005 (copy attached) have a similar structure to the 1999 Regulations.

Interpretation

Article 2, in compliance with the Public Participation Directive adds new definitions viz "additional information" relating to an environmental statement, which must be published.

Definitions for "Appeals Commission", "consultation bodies", "environmental assessment", "general advertisement", "local advertisement" and "proposed development" are also clarified.

Screening opinion of the Department

New provisions are added to regulation 4 requiring the Department to publish by general and local advertisement-

- a copy of a screening opinion and any accompanying statement of reasons;

- a copy of a request for a screening opinion and any documents which accompanied it;
- a notice inviting any person to make written representations to the Department on the likely environmental effects of a proposed development; and
- a description of what other information relating to the environmental effects of the proposed development is available and where this can be obtained.

Publicity where an environmental statement is required

Regulation 8 sets out what information must be published in respect of a proposed development where an Environmental Statement is required, where information about the proposed development can be inspected and invites the public to make written representations to the Department on the likely environmental effects of the proposed development.

Consultation on the environmental statement

Regulation 9 sets out the arrangements for consultation with the public and consultation bodies on an Environmental Statement submitted in respect of a proposed development.

Further information and evidence relating to environmental statements

New provisions are added to regulation 8 requiring the Department to make additional information relevant to an Environmental Statement available to the public through general and local advertisements.

Public Participation

Regulation 15 requires all information relevant to a decision obtained at any stage in the process to be made available to the public.

EQUALITY IMPACT ASSESSMENT AND HUMAN RIGHTS IMPLICATIONS

An equality impact assessment screening process on the proposed Environmental Impact Assessment (Fish Farming in Marine Waters) Regulations (Northern Ireland) 2005 has been carried out. The conclusion from the screening exercise is that there is no adverse differential impact anticipated for any of the groups specified in Section 75 of the Northern Ireland Act 1998 in consequence of implementing the proposed legislation.

The Department is of the view that the proposed legislation is compatible with the Human Rights Act 1998.

REGULATORY IMPACT ASSESSMENT

As the proposed Regulations essentially affect the Department's operations and administrative procedures, it is considered that they will have negligible impact on business or the voluntary sector. Accordingly a Regulatory Impact Assessment is not considered necessary.

FINANCIAL IMPLICATIONS

The proposed Regulations make largely technical amendments to enhance administrative procedures already operated by the Department on the environmental impact assessment of proposed developments. The cost of implementation is therefore not expected to be significant.

RESPONSES TO CONSULTATION

The Department is bound by the EU obligation to make new Regulations to comply with the Public Participation Directive. We would therefore welcome comments and views on the proposed legislation and specifically the changes necessary to enhance public participation in decision-making on the environmental impact assessment of proposed developments.

**PROPOSED ENVIRONMENTAL IMPACT ASSESSMENT (FISH FARMING
IN MARINE WATERS) REGULATIONS**

CONSULTATION LIST

All Northern Ireland Party Leaders

NI MPs and MEPs

Other NI Parties

NI Members of the House of Lords

Westminster Spokespersons

26 District Councils

Water Appeals Commission

Department of the Environment

Department of Culture, Arts and Leisure

Environment Heritage Service

Office of Deputy Prime Minister

Department of Environment, Food and Rural Affairs

Scottish Executive Environment and Rural Affairs Department

National Assembly for Wales - Department for Environment, Planning and
Countryside

Department of Communications, Marine and Natural Resources

Lough Agency of the Foyle, Carlingford and Irish Lights Commission

Fisheries Conservancy Board

UFU Fish Farming Committee

Seafish

Council for Nature Conservation and the Countryside

Ulster Wildlife Trust

RSPB

NI Environment Link

National Trust

Ulster Museum

Ulster Angling Federation

Ards and Down Salmonid Enhancement Association

Strangford Lough Management Advisory Committee

Commissioners of Irish Lights

Royal North of Ireland Yacht Club

Aquaculture Initiative (EEIG)

Joint Marine Partnership

General Consumer Council

Agricultural Research Institute of Northern Ireland

NIPSA

NIFPO

ANIFPO