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A summary of the Fisheries Act 1966 in the context of European legislation

This paper provides a brief analysis of the Fisheries Act (Northern Ireland) 1966 within the context of more recent European legislation. It also examines some of the implications of the abolition in 2009 of the Fisheries Conservancy Board with regard to which government departments and bodies have responsibility for monitoring and enforcement.

Executive Summary

The Fisheries Act 1966 makes provision for the development and improvement of fisheries in Northern Ireland, consolidating amendments to the previous Fisheries Acts (Northern Ireland) from 1842 to 1954. The Act also sets out the role and responsibilities of the Fisheries Conservancy Board, which was abolished and its functions absorbed within the Department of Culture, Arts and Leisure in 2009. The current version of the legislation was substantially amended in 2001.

Four pieces of European legislation have affected the Fisheries Act 1966 since its creation: the Nitrates Directive, Habitats Directive, Water Framework Directive, and a European Eel Regulation. In the case of each of these pieces of European legislation, Statutory Rules have been introduced in Northern Ireland to make the necessary amendments to, and interfaces with, the Fisheries Act 1966.

An anomaly remains outstanding that the Habitats Directive specifies the protection of the salmon as a European Protected Species, in spite of the Fisheries Act making provision for the catch and sale of the fish, albeit with stated restrictions and only under licence. This is an area which may require further policy development.

A key component of the Fisheries Act and subsequent European legislation is the monitoring of water quality and fish stocks. At the time of the 1966 Act, these issues were overseen by the Ministry of Agriculture, and dealt with on the ground by the Fisheries Conservancy Board. At the current time, responsibility for monitoring and enforcement is spread across three government departments, with no single body responsible for coordinating communication.

1 The Fisheries Act 1966¹

The Fisheries Act (Northern Ireland) 1966 was originally designed to extend the functions of the Ministry of Agriculture in relation to fisheries and to make provision for the development and improvement of fisheries by that Ministry. It consolidated amendments to the previous Fisheries Acts (Northern Ireland), extending from 1842 to 1954.

The Act also established the Fisheries Conservancy Board (FCB) and defined its functions and responsibilities. The FCB was established in 1966 with responsibility for the conservation and protection of the salmon and inland fisheries of Northern Ireland, other than those which fall within the responsibility of the Loughs Agency. The functions of the FCB included the issuing of fishing licences, enforcement of fishing regulations and byelaws, and assisting in the investigation of pollution incidents which involve fish kills. The FCB was abolished in 2009 and its functions passed to DCAL.

The structure of the Act is as follows:

Part	Brief description
1	Functions of the Ministry of Agriculture: including their role in the supervision and protection of fisheries, and in fostering the establishment and development of fisheries.
2	Fisheries Conservancy Board: sets out FCB's role in enforcing the Act, liaising with the department and any other relevant bodies, and making byelaws where necessary.
3	Fishing licences: includes the use of rods and fishing engines, the keeping and inspection of catch records, and the enforcement of fines for illegal fishing.
4	Protection of fisheries: includes the protection of young and breeding fish, the prohibition of pollution or poisoning of freshwater, and the prevention of trade in under-sized fish.
5	Regulation for fishing of salmon, eels and freshwater fish: covers the prohibition of certain fishing techniques, penalties for contravention, and the regulation of nets, traps and weirs.
6	Times of fishing for salmon, trout, pollen and eels: prescribes the existence of a closed season for the catching of these types of fish.
7	Restrictions on dealings in salmon, trout and eels: covers the prohibition of any kind of sale of illegally caught fish, the prohibition of any salmon, trout or eel sales at certain times of the year, the granting of fish trading licences, and the clear labelling of packages containing these types of fish.
8	Sea-fishing: includes the overall regulation of sea fishing, the registration of boats, the prohibition of certain forms of fishing engine or gear, and the setting of seasons.
9	Shell-fish and marine fish licences: covers the issuing of the various forms of licence, and activities deemed an offence, such as damage to, or dredging of, a shell-fish fishery.
10	Miscellaneous offences: these include the obstruction of lawful fishing, and unauthorised entry onto private or restricted fishing areas.
11	Authorised persons: prescribes the role of police officers and Fisheries Conservancy Board staff, and outlines procedures by which private water bailiffs are appointed for the protection of fisheries. The role and powers of private water bailiffs are also set out.
12	Supplemental provisions: covers such subjects as forfeitures, penalties, forms of evidence required, and the role of the Appeals Commission.

¹ Fisheries Act (Northern Ireland) 1966 (Chapter 17). Office of Public Sector Information: <http://bit.ly/c0oEja> Accessed 20.9.10.

2 Subsequent amendments

Since 1966, a number of (largely minor) amendments have been carried out to the Fisheries Act. The most significant of these occurred in 2001 when the Fisheries (Amendment) Act (Northern Ireland) was passed which created amendments to the following areas:

- Regulation of sea-fisheries in Northern Ireland inshore waters
- Enforcement of regulatory powers in relation to sea-fisheries in Northern Ireland inshore waters
- Disturbing spawning beds
- Charges for fishing permits
- Power of Board to make byelaws
- Reduced duties for Fisheries Conservancy Board licences
- Reinstatement of polluted waters

In addition to these amendments, a number of significant European Directives have come into force which have had a direct effect on the functions laid out in the 1966 legislation. These directives are described below.

3 Eel regulation

In 2007, a new eel regulation was approved by the European Council, intended to implement measures 'for the recovery of the European eel'. Council Regulation (EC) No 1100/2007² sets out the following measures:

- Each member state must introduce an Eel Management Plan for each eel river basin within their region. These should be subjected to evaluation by the Scientific, Technical and Economic Committee for Fisheries (STEFEC).
- Special measures must be taken to increase the numbers of eels less than 12 cm in length released into European waters as well as for the transfer of eel less than 20 cm in length for the purpose of restocking.
- By 2013, 60% of eels less than 12 cm in length caught annually should be reserved for restocking.
- Catches of eels on the seaward side of river basins should be reduced by at least 50%.
- A control and monitoring system should be established.
- Measures to ensure control and enforcement of imports and exports of eel.

As a result of this EU regulation, DCAL introduced an Eel Management Plan in June 2010, along with a Statutory Rule³ to amend the current Northern Ireland legislation.

² Council Regulation (EC) No 1100/2007 of 18 September 2007, establishing measures for the recovery of the stock of European eel', *Official Journal of the European Union*: <http://bit.ly/bYotHH> Accessed 27.9.10.

4 Water Framework Directive⁴

This directive was introduced in 2000, replacing and harmonising seven previous directives. In essence, the directive sought to achieve seven key aims:

- expanding the scope of water protection to all waters, surface waters and groundwater
- achieving ‘good status’ for all waters by a set deadline
- water management based on river basins
- a ‘combined approach’ of emission limit values and quality standards
- ensuring correct water pricing based on ‘true costs’
- promoting greater public involvement
- streamlining legislation by rationalising seven European directives into one

As a response to this, a Statutory Rule was introduced in 2003 which sets out the responsibilities under the directive for the relevant departments. DoE acts as the lead department in implementing and regulating the necessary measures.

Other departments are also named as having a direct responsibility under this legislation, with the Department of Agriculture and Rural Development, the Department for Regional Development and the Department of Culture, Arts and Leisure required to ‘exercise their relevant functions in a manner which secures compliance with the requirements of the Directive’⁵.

Given that four government departments are involved in the implementation of the Water Framework Directive, this may raise concerns about the complexity of governance arrangements and effective coordination of implementation and practice on the ground.

5 Habitats Directive

The Habitats Directive was introduced in 1992 and updated in 2007. It is intended ‘to help maintain biodiversity in the Member States by defining a common framework for the conservation of wild plants and animals and habitats of Community interest’.

Among the species covered in Annex 2 – a list of the European Protected Species (EPS) – is the salmon (while in freshwater). As an EPS, salmon is therefore protected

³ Statutory Rule 2010 No. 166: Fisheries – Eel Fishing Regulations (Northern Ireland) 2010. Office of Public Sector Information: http://www.opsi.gov.uk/sr/sr2010/nisr_20100166_en_1 Accessed 1.10.10.

⁴ Directive 2000/60/EC of the European Parliament and of the Council establishing a framework for the Community action in the field of water policy: <http://bit.ly/bCF5Gu> Accessed 22.9.10.

⁵ Statutory Rule 2003 No. 544: The Water Environment (Water Framework Directive) Regulations (Northern Ireland) 2003. Office of Public Sector Information: <http://www.opsi.gov.uk/sr/sr2003/20030544.htm> Accessed 29.9.10.

from injury and from disturbance or obstruction which may hinder its ability to breed. It is stated that trade in such species is an offence, and their transportation for the purposes of sale elsewhere also an offence.

However, Part 5 of the Fisheries Act 1966 still sets out circumstances by which salmon may be caught and sold, and the DCAL website still advertises the opportunities available for salmon fishing.

The Conservation (Natural Habitats etc.) Regulations (Northern Ireland) 1995⁶ updates Northern Ireland legislation and addresses the interface with the Habitats Directive. Further amendments were provided in the Conservation (Natural Habitats, etc.) (Amendment) Regulations (Northern Ireland) 2007. Together, these two pieces of legislation make provision for the various departmental responsibilities in Northern Ireland, including the Fisheries Conservancy Board, though it does not deal directly with this anomaly regarding salmon fishing. This is an area which may benefit from further policy development.

6 Nitrates Directive

The Nitrates Directive⁷ was introduced in 1991 with the aim of protecting water quality across Europe from pollution from nitrates produced through agricultural processes⁸. Under this Directive, member states have a responsibility to develop a mandatory Action Plan and are required on a four year basis to monitor and report on nitrates concentrations within their water, eutrophication (the process where water bodies receive excess nutrients that stimulate excessive plant growth, such as algal blooms), and an Assessment of Action Programme impact.

Statutory Rule 2004 No. 419, The Protection of Water Against Agricultural Nitrate Pollution Regulations (Northern Ireland)⁹ came into force in 2004. Since 2007, Nitrates Action Programme Regulations¹⁰ have been in operation across Northern Ireland. These regulations set out detailed requirements to prevent water pollution by nitrates from a range of agricultural sources. The regulations cover issues such as when fertilisers can be sown, storage requirements for animal manures and also set out the types of records that will need to be kept by farmers to prove their compliance with the regulations.

⁶ Statutory Rule 1995 No. 380: The Conservation (Natural Habitats, etc.) Regulations (Northern Ireland) 1995. Office of Public Sector Information: http://www.opsi.gov.uk/sr/sr2009/nisr_20090008_en_1 Accessed 28.9.10.

⁷ Council Directive 91/676/EEC of 12 December 1991 concerning the protection of waters against pollution caused by nitrates from agricultural sources: http://ec.europa.eu/environment/water/water-nitrates/index_en.html Accessed 27.9.10.

⁸ Allen, M. 2010. 'A brief overview of the EU Nitrates Directive and its impacts on Northern Ireland', Northern Ireland Assembly Research & Library paper.

⁹ Statutory Rule 2004 No. 419, The Protection of Water Against Agricultural Nitrate Pollution Regulations (Northern Ireland) 2004. Office of Public Sector Information: <http://www.opsi.gov.uk/sr/sr2004/20040419.htm> Accessed 19.9.10.

¹⁰ Statutory Rule 2006 No. 489: The Nitrates Action Programme Regulations (Northern Ireland) 2006. Office of Public Sector Information: <http://www.opsi.gov.uk/sr/sr2006/20060489.htm> Accessed 28.9.10.

A key component of the Nitrates Directive was the need for national governments to monitor the potential for eutrophication of watercourses. A joint scientific report commissioned by the Department of the Environment and DARD and carried out in 2002¹¹ sought to establish the environmental aspects and impacts of the Nitrates Directive in Northern Ireland. This report concluded that the majority of rivers and lakes in Northern Ireland were being enriched by agriculture-derived nitrates and that as a result there was a risk of eutrophication.

The Protection of Water Against Agricultural Nitrate Pollution Regulations (Northern Ireland) and Nitrates Action Programme Regulations do not specifically mention a role for either the Fisheries Conservancy Board or DCAL, though it is stated that DoE, DARD and DRD have specific responsibilities.

7 Further Concerns

A key component of both the Fisheries Act and subsequent European legislation is the monitoring and enforcement of water quality and fish stocks. At the time of the 1966 Act, these issues were overseen by the Ministry of Agriculture, and dealt with on the ground by the Fisheries Conservancy Board. Since that time, a very different departmental landscape has come into existence, and the FCB has been abolished. This now leaves responsibility for monitoring and enforcement spread across three government departments, with no single body responsible for coordinating communication between the departments and bodies involved. At present, responsibilities are divided as follows:

¹¹ DoE-DARD Scientific Working Group. 2002. *Report on the Environmental Aspects of the Nitrates Directive in Northern Ireland*.

Department	Responsibility
Culture, Arts and Leisure	Absorbed functions of Fisheries Conservancy Board (FCB) in 2009: responsibility for the conservation and protection of the salmon and inland fisheries of Northern Ireland (other than those which fall within the responsibility of the Loughs Agency). The functions of the FCB included the issuing of fishing licences, enforcement of fishing regulations and byelaws and assisting in the investigation of pollution incidents which involve fish kills.
Agriculture and Rural Development	Joint responsibility with DoE for the Nitrates Directive and specific responsibilities in the Water Framework Directives. Responsibility for the Northern Ireland Countryside Management Scheme which aims to increase water quality and biodiversity.
Environment	Overall responsibility for protecting and promoting the natural environment. Lead department for implementation of the Habitats Directive and the Water Framework Directives, and joint responsibility for Nitrates Directive.
Regional Development	
Northern Ireland Environment Agency	Executive Agency within DoE with responsibility for implementing DoE's environmental policy and strategy. Responsible for water quality, and therefore applications for effluent discharge and inspecting illegal pollution events.
Loughs Agency	A cross-border body responsible for conservation and protection across the Foyle and Carlingford catchments, including the development of fisheries and aquaculture, conservation and protection of inland fisheries and sustainable development of marine tourism.

In 2007, an independent Review of Environmental Governance was published¹². Foundations for the Future made a series of recommendations about environmental governance in Northern Ireland. The review stated that, 'the present fragmentation of responsibility for environmental policy has created a policy system that is not fit for purpose'¹³, especially with regard to the pressure and pace of EU policy making. To combat this, the report recommended that responsibility for all environmental matters should transfer to the Department of the Environment, including inland fisheries and waterways, both of which are over-seen by DCAL at present.

The review also recommended the creation of an Environmental Protection Agency with responsibility for regulation and enforcement on the ground, funded and over-seen by DCAL, but independent from it. It was proposed that a new EPA would have regulatory responsibility for a number of the functions which are currently split across various bodies, such as pollution prevention and control, the protection of species and habitats, river basin catchment management, and sustainable inland fisheries.

¹² Bell, G., Burke, T., & Turner, S. 2007. *Foundations for the Future: The Review of Environmental Governance*.

¹³ Bell, G., Burke, T., & Turner, S. 2007. *Foundations for the Future: The Review of Environmental Governance*: p43.