

## Sea- fisheries & Natura 2000

### Procedures operated by the Department of Agriculture Food and the Marine

#### Habitats and Birds Directives and Sea-Fisheries

Sea-fisheries in Natura 2000 areas are regulated in accordance with -

- The European Communities (Birds and natural Habitats) Regulations 2011 (SI 477 of 2011)
- The European Union (Birds and Natural Habitats) (Sea-fisheries) Regulations 2013 (SI 290 of 2013).

These two sets of Regulations transpose into Irish law the obligations on the Minister with regard to sea-fisheries arising from the EU Habitats and Birds Directives.

Regulation 27 of SI 477 of 2011 places legal obligations on the Minister for Agriculture Food and the Marine in relation to his functions. These obligations transpose article 6.2 of the Habitats Directive and in short require the Minister to manage sea-fisheries to ensure that significant impacts on designated habitats and species are avoided.

Regulation 42 of SI 477 of 2011 places legal obligations on the Minister for Agriculture Food and the Marine in consenting to or adopting a plan or project that may have significant impacts on a Natura 2000 site. These obligations transpose article 6.3 of the Habitats Directive. In short, the Minister is required to conduct a screening for appropriate assessment before consenting to or adopting the plan or project. On the basis of that screening assessment, the Minister must determine if an appropriate assessment is required. He must conclude that it is required where he cannot exclude significant impacts based on objective scientific information. The Minister may only consent to a plan or project or adopt or implement the plan or project where he has determined that it will not affect the integrity of the Natura 2000 site.

#### **Implementation**

The above legal obligations on the Minister are implemented through SI 290 of 2013, which establish a legal framework for management of sea-fisheries in Natura 2000 areas.

Where the Minister considers that there is an immediate and significant risk arising from sea-fishing activities to the conservation objectives of a Natura 2000 site, he may issue a temporary Fisheries Natura Declaration under Regulation 9 of SI 290 of 2013 imposing emergency measures to mitigate the risk. Following issue of this temporary Declaration, a full risk assessment of the risk is undertaken in accordance with Regulation 8 of SI 290 of 2013 to assist the Minister in complying with Regulation 27 of SI 477 of 2011 on an ongoing basis and to provide a scientific rationale for management measures.

A planned programme of site by site risk assessments is ongoing to assist the Minister in complying with Regulation 27 of SI 477 of 2011 in respect of sea-fisheries. These risk assessments are intended to provide the Minister with advice on the risk of significant impacts on designated habitats or species in a particular site arising from the sea-fishing activities known to occur in that site. This enables the Minister to make an informed decision on management measures. The work programme follows an adopted Risk Assessment Framework - <http://www.fishingnet.ie/sea-fisheriesinnaturaareas/proceduresandmethodology/>.

A similar programme of site by site appropriate assessments is ongoing to assist the Minister in complying with Regulation 42 of SI 477 of 2011 in respect of sea-fisheries and aquaculture. These appropriate assessments are intended to enable the Minister to determine if his adoption or implementation of a plan or project or his licensing of a fishery or aquaculture activity would be likely to affect the integrity of the Natura 2000 site concerned.

### **An outline of the process in relation to risk assessment follows**

#### **Risk Assessment**

1. The Minister may direct the Marine Institute to prepare an assessment of sea-fishing in a Natura 2000 site.
2. This risk assessment is conducted by the Marine Institute in accordance with an adopted methodology and by reference to the site's published conservation objectives.
3. The Minister publishes the Marine institute assessment report and invites public comments within 1 month.
4. Simultaneously, the Minister consults with the Ministers for Arts Heritage and the Gaeltacht, Environment Heritage and Local Government, and Communications Energy and Natural Resources.
5. The risk assessment may recommend mitigating measures to ensure ongoing compliance with Regulation 27. If so, the Minister may prepare a draft Risk Mitigation and Management Plan setting out his proposed mitigation measures to address the identified risks. This Plan will normally be published for consultation together with the Risk Assessment report, allowing stakeholders to consider the report and the proposed management response together, and thus give an informed reaction.
6. Risks can be considered to be mitigated when:
  - The activity has been prohibited or stopped;
  - The pattern (seasonal, spatial, intensity) of fishing has been changed to enable recovery of impacts between fishing events and thereby avoiding cumulative impacts and where monitoring or specific research data shows that this is the case;
  - The fishing gear or the method of fishing has been altered to reduce its impact and where monitoring or specific research data shows that this is the case;
  - Additional monitoring data shows that the identified risk is not impacting the habitat or species concerned and the risk is thereby downgraded.
7. Having considered any representations received, the Minister may request the Marine Institute to review and finalise the assessment report in light of those submissions.
8. Where the Minister considers that mitigating measures must be given force of law, he makes a legal instrument known as a 'Natura Declaration', which makes such measures mandatory. It is an offence to contravene a Natura Declaration.



## **An outline of the process in relation to screening and appropriate assessment follows**

### **Screening of a Fisheries Natura Plan**

1. Where a particular fishery is managed as a plan or project, the Minister may request a person (fishermen in the area concerned) to submit a draft Fisheries Natura Plan describing the fishing activity, its location and intensity.
2. The Minister may direct the Marine Institute to carry out a screening for appropriate assessment of the draft Plan and to make a recommendation to him on whether or not appropriate assessment is required.
3. Having regard to the recommendation of the Marine Institute, the Minister publishes his determination on the need for an appropriate assessment.
4. Where the Minister determines that appropriate assessment is not required, he may adopt the Plan and licence the fishery as necessary.

### **Appropriate Assessment**

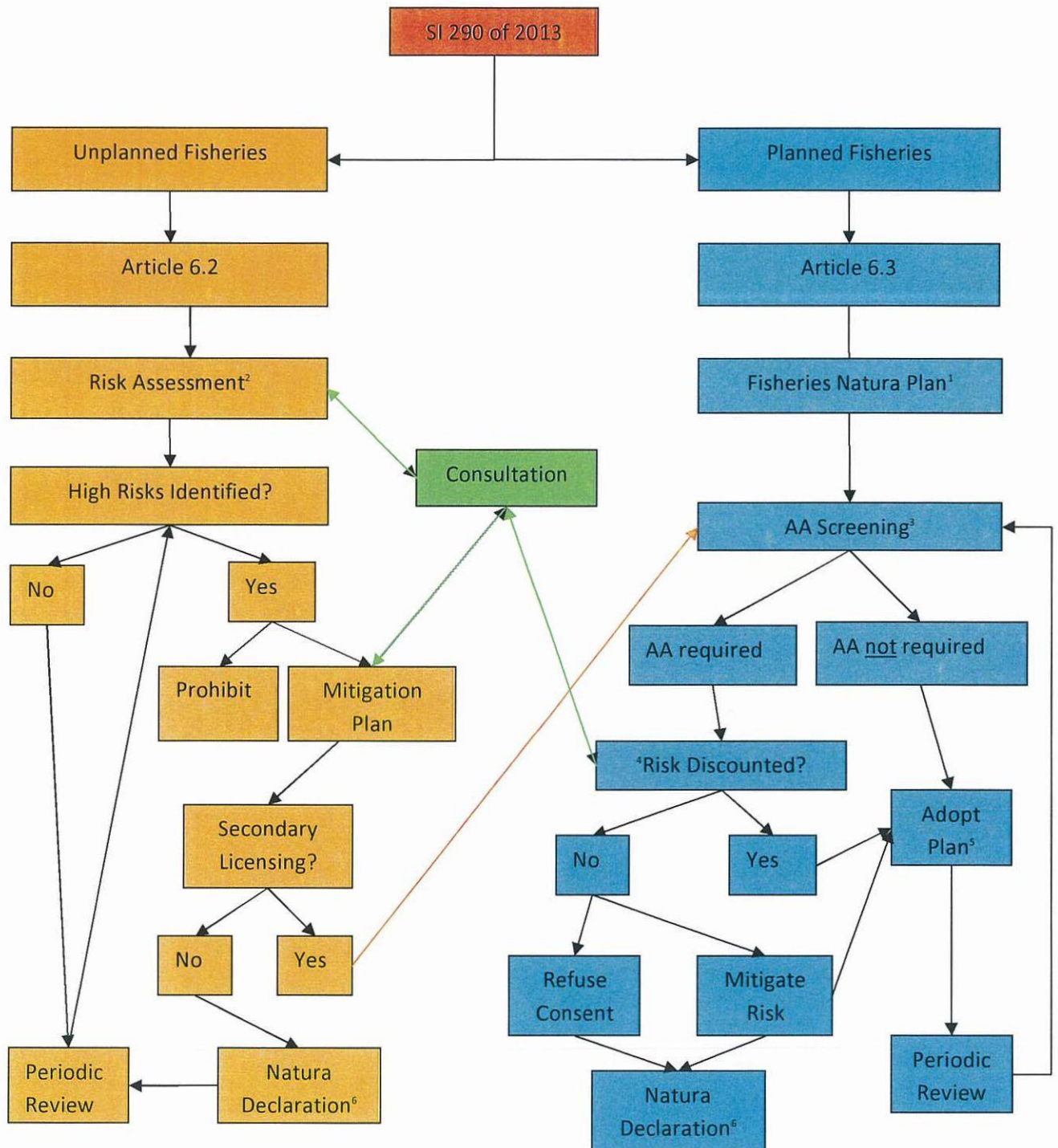
1. Where the Minister determines that an appropriate assessment is required, he must direct the Marine Institute to conduct the assessment and furnish to him a report which includes a Natura Impact Statement and a Concluding Statement setting out potential impacts on the conservation objectives of the sites concerned.
2. The appropriate assessment will assess plans for both fishing and aquaculture activity in the site and their in-combination effects.
3. The Appropriate Assessment report prepared by the Marine Institute presents scientific analysis and conclusions on the likelihood of significant effects on the designated habitat and species. These conclusions are drawn having regard to guidance issued by the European Commission and NPWS and are based on relevant scientific literature, site specific studies and/or expert judgement.
4. The Fisheries Natura Plan and Appropriate Assessment report are published by the Minister and public comments invited within 1 month. Simultaneously, the Minister consults with the Ministers for Arts Heritage and the Gaeltacht, Environment Community and Local Government, and Communications Energy and Natural Resources.
5. The Minister may direct the Marine Institute after receipt of representations and submissions to finalise a report taking account of any representations and submissions and submit the final report to him/ her.
6. The Appropriate Assessment report may discount the possibility of significant effects. Alternatively, where risks cannot be discounted, it may recommend that the activity not take place as proposed. This may mean that consent should be refused or that it may be given with conditions (including implementation of mitigating measures).
7. A guidance document from the European Commission on implementation of article 6 of the Habitats Directive to fisheries ("Common Methodology for Assessing the Impact of Fisheries on Marine Natura 2000 sites") details some possible mitigating actions that may be taken. Regulation 9 of SI 290 of 2013 details a range of possible measures. Ultimately, mitigating

actions may include any measure that successfully reduces eliminates the risk of significant effects.

8. Before making his determination on the Fisheries Natura Plan, the Minister may convene an ad-hoc Technical Advisory Committee (TAC) to consider the Fisheries Natura Plan, Appropriate Assessment report, views submitted by stakeholders, views of other Ministers, and possible mitigating actions necessary, with a view to making recommendations to the Minister to inform his/her determination on the Plan. The TAC is comprised of experts from the Marine Institute, Bord Iascaigh Mhara and the Sea-Fisheries Protection Authority and representatives of fishermen who submitted the Fisheries Natura Plan. The TAC is chaired by the Department of Agriculture, Food and the Marine.
9. The Minister makes his determination on the Fisheries Natura Plan, having regard to the Appropriate Assessment report, views submitted by stakeholders, views of other Ministers and the advice of the TAC.
10. The determination is published. If the Fisheries Natura Plan is adopted (with or without modifications) this is also published. Submissions received (together with any responses) are also published.
11. Where the Minister considers that management measures included in the Fisheries Natura Plan or any required mitigating measures must be given force of law, he makes a legal instrument known as a "Natura Declaration" under SI 290 of 2013. It is an offence to contravene a Natura Declaration.
12. While the fishing activity concerned may be licensed by the Minister following his determination, he may also consider it necessary for the effective management of fishing activities in the Natura 2000 site concerned to further restrict access permit holders. Such Fisheries Natura Permits may include conditions regulating or restricting fishing activity in the site.
13. Any approved Fisheries Natura Plan is reviewed periodically to determine if any changes to the Plan or management measures for the site are required. This adaptive management approach ensures ongoing protection of the designated habitats and species in the site.



## Implementation of Article 6 to Sea Fisheries in Ireland



### Explanatory Notes

1. Regulation 27 of SI 411 of 2011 (transposing article 6.2 Habitats Directive)
2. Regulation 42 of SI 411 of 2011 (transposing article 6.3 Habitats Directive)
3. A Fisheries Natura Plan is prepared in accordance with Regulation 3 SI 290 of 2013
4. Risk Assessment of unplanned fisheries under Regulation 8 SI 290 of 2013

5. Screening for appropriate assessment under Regulation 4 SI 290 of 2013
6. Appropriate Assessment under Regulation 5 and Ministerial Determination under Regulation 6 of SI 290 of 2013
7. Adoption of a Fisheries Natura Plan under Regulation 6 SI 290 of 2013. Plan may be modified.
8. Natura Declaration made under Regulation 9 SI 290 of 2013 regulating fishing.