



Irish Statutory Instruments

S.I. No. 296/2009 - The European Communities Environmental Objectives (Freshwater Pearl Mussel) Regulations 2009

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S.I. No. 296 of 2009

THE EUROPEAN COMMUNITIES ENVIRONMENTAL OBJECTIVES
(FRESHWATER PEARL MUSSEL) REGULATIONS 2009

Notice of the making of this Statutory Instrument was published in

"Iris Oifigiúil" of 31st July, 2009.

I, JOHN GORMLEY, Minister for the Environment, Heritage and Local Government, in exercise of the powers conferred on me by section 3 of the section 2 of the European Communities Act 2007 (No. 18 of 2007) and for the purpose of giving further effect to Council Directive 2006/11/EC of the European Parliament and of the Council of 15 February 2006 on pollution caused by certain dangerous substances discharged into the aquatic environment of the Community, Council Directive 92/43/EEC of the European Parliament and of the Council of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora and Directive 2000/60/EC of the European Parliament and of the Council of 23 October 2000 establishing a framework for Community action in the field of water policy, hereby make the following Regulations:

Citation and commencement

1. (1) These Regulations may be cited as the European Communities Environmental Objectives (Freshwater Pearl Mussel) Regulations 2009.

(2) These Regulations shall come into operation on -.

Purpose of the Regulations

2. The purpose of these Regulations is to support the achievement of favourable conservation status for freshwater pearl mussels. To that end they:

(a) Set environmental quality objectives for the habitats of the freshwater pearl mussel populations named in the First Schedule to these Regulations that are within the boundaries of a site notified in a candidate list of European sites, or designated as a Special Area of Conservation, under the European Communities (Natural Habitats) Regulations, 1997 (S.I. No. 94/1997).

(b) Require the production of sub-basin management plans with programmes of measures to achieve these objectives.

(c) Set out the duties of public authorities in respect of the sub-basin management plans and programmes of measures.

Interpretation

3. In these Regulations, save where the context otherwise requires,-

"2003 Regulations" means the European Communities (Water Policy) Regulations 2003 (S.I. No. 722 of 2003) as amended;

"Act of 1972" means the European Communities Act of 1972 as amended by the European Communities Act 2007 ;

"Act of 1977" means the Local Government (Water Pollution) Acts 1977-1990;

"Act of 1992" means the Environmental Protection Agency Acts 1992-2007;

"Act of 1996" means the Waste Management Acts 1996-2008;

"Agency" means the Environmental Protection Agency;

"conservation status" of a species means the sum of the influences acting on the species concerned that may affect the long-term distribution and abundance of its populations;

The conservation status will be taken as "favourable" when:

- population dynamics data on the species concerned indicate that it is maintaining itself on a long-term basis as a viable component of its natural habitats, and

- the natural range of the species is neither being reduced nor is likely to be reduced for the foreseeable future, and

- there is, and will probably continue to be, a sufficiently large habitat to maintain its populations on a long-term basis;

"co-ordinating local authority" has the same meaning as in the 2003 Regulations;

"Directive 2006/11/EC" means Directive 2006/11/EC of the European Parliament and of the Council of 15 February 2006 on pollution caused by certain dangerous substances discharged into the aquatic environment of the Community;

"Directive 2000/60/EC" means Directive 2000/60/EC of the European Parliament and of the Council of 23 October 2000 establishing a framework for Community action in the field of water policy;

"ecological status" is an expression of the quality of the structure and functioning of aquatic ecosystems associated with surface waters, classified in accordance with the normative definitions of ecological status described in Directive 2000/60/EC;

"ecological quality ratio" (EQR) is an expression of the relationship between the values of the biological parameters observed for a given body of surface water and the values for those parameters in the reference conditions applicable to that body and which establishes, pursuant to Directive 2000/60/EC of the European Parliament and of the Council, and Commission Decision 2008/915/EC of 30 October 2008 (or any future amendment thereof), the values of a Member States monitoring system classification as a result of the intercalibration exercise referred to in paragraph 1.4.1 Annex V of that Directive. The ratio is expressed as a numerical value between zero and one, with high ecological status represented by values close to one and bad ecological status by values close to zero;

"freshwater pearl mussel" means the species *Margaritifera margaritifera* and/or *Margaritifera durrovensis*;

"Habitats Directive" means Council Directive 92/43/EEC of the European Parliament and of the Council of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora;

"Minister" means the Minister for the Environment, Heritage and Local Government unless otherwise indicated;

"public authority" means an authority or State Sponsored Body listed in the Second Schedule to these Regulations;

"river basin district" has the same meaning as in the 2003 Regulations;

"river basin management plan" means a river basin management plan, or updating of a river basin management plan, made in accordance with Regulation 13 of the 2003 Regulations;

"river" means a body of inland water flowing for the most part on the surface of the land but which may flow underground for part of its course;

"surface water" for the purpose of these Regulations means inland water except groundwater.

4. In accordance with Articles 11 and 17 of the Habitats Directive, the Minister shall, at least once every six years, carry out or cause to be carried out monitoring, and assessment of the conservation status, of freshwater pearl mussel populations listed in the First Schedule to

these Regulations, and the pressures impacting on that status. The conservation status of the freshwater pearl mussel shall be assessed using, *inter alia*, the criteria set out in the Third Schedule to these Regulations.

5. For the purpose of assessing the ecological status of a surface water body in accordance with Schedule IV to the European Communities Environmental Objectives (Surface Waters) Regulations 2009, the Agency shall, in the case of those surface water bodies identified under the First Schedule to these Regulations, assign a status of 'less than good ecological status' where, on the basis of specialist surveys undertaken, or caused to be undertaken, by the Minister to assess conservation status, the freshwater pearl mussel is found to be in unfavourable conservation status owing to water quality or hydrology in that water body. The monitoring and assessment required under Regulation 4 of these Regulations shall be such a status assessment.

6. For each water body listed in the First Schedule to these Regulations, the Minister shall, commencing in 2009, carry out or cause to be carried out:

(a) baseline monitoring of those ecological elements identified in the Third and Fourth Schedule to these Regulations,

(b) investigative monitoring to, where necessary, identify the pressures and their sources, which have led to unfavourable conservation status of the freshwater pearl mussel.

The Minister shall communicate the results of such monitoring to the public authorities listed in the Second Schedule to these Regulations where relevant to the performance of their functions.

7. The Minister shall prepare and publish a draft sub-basin management plan for each of the areas listed in the First Schedule to these Regulations. The Minister shall invite comment on the draft plans. Comment may be submitted in writing to the Minister by any person or body. A period of not less than two months shall be allowed for the submission of comment.

8. In consultation with the co-ordinating local authority and other public authorities in the river basin district in which the surface water body is situated, the Minister shall by not later than 22 December 2009, prepare, or cause to have prepared, and publish a sub-basin management plan in respect of each body of surface water classified as "less than good ecological status" under Regulation 5. The sub-basin management plan shall:

(a) specify objectives and targets, in accordance with Regulation 2, and the Third and Fourth Schedules to these Regulations, and deadlines for their achievement;

(b) provide for the investigation of sources of pressures leading to the unfavourable conservation status of the freshwater pearl mussel;

(c) establish a programme of measures, including a timeframe, for the reduction of pressures giving rise to unfavourable conservation status. The programme shall include pressure reduction targets and deadlines, either in relation to individual pollutants or to particular sectors or activities or both, to be implemented within the sub-basin, or parts of the sub-basin as appropriate;

(d) lay down a detailed programme of monitoring to be implemented within the sub-basin, or parts of the sub-basin as appropriate, in order to evaluate the effectiveness of measures and progress made towards restoring favourable conservation status.

9. It shall be the duty of a public authority listed in the Second Schedule to these Regulations to take such steps as are necessary and appropriate to the discharge of its functions to implement the measures identified in a sub-basin management plan.

10. In consultation with the co-ordinating local authority and other public authorities in the river basin district in which the surface water body is situated, the Minister shall by not later than 22 December 2015 and every 6 years thereafter, review, or cause to have reviewed, and, if necessary, update and publish a sub-basin management plan in respect of each body of surface water classified as "less than good ecological status" under Regulation 5.

11. The measures included in a sub-basin management plan prepared under these Regulations shall complement, and be additional to, any measures contained in a river basin management plan prepared by a co-ordinating local authority for the purpose of Regulation 13 of the 2003 Regulations. The sub-basin management plan shall not exempt a public authority, or body or person within the river basin district from any obligations otherwise arising under the said river basin management plan.

12. Without prejudice to the generality of Regulation 9 or any requirement arising under the European Communities Environmental Objectives (Surface Water) Regulations 2009, a public authority considering an application for authorisation of a discharge to waters draining to the surface water bodies identified under the First Schedule to these Regulations, under the Fisheries Acts 1959-2003, the Act of 1977, the Act of 1992, the Act of 1996 or Regulations made for that purpose under the European Communities Act of 1972 shall, where it is satisfied that the proposed discharge would not contravene Article 6(3) and 6(4) of the Habitats Directive, set down in the authorisation, emission limit values that aim to achieve the ecological quality objectives set out in the Fourth Schedule to these Regulations.

13. A public authority shall as soon as may be practicable, but not later than 22 December 2011 and sooner if required or where directed by the Minister-

(a) examine the terms of every authorisation to discharge to waters draining to the surface water bodies identified under the First Schedule to these Regulations and determine whether, having regard to the requirements of Regulations 9 and 12 of these Regulations, the authorisation requires to be reviewed,

(b) if the authorisation or revised authorisation requires to be so reviewed complete such a review by the required date, or

(c) if the authorisation or revised authorisation does not require to be so reviewed, and accordingly that no further action is required, declare in writing to the Minister that it is of that opinion with the reason(s) for that opinion.

A review for the purpose of these Regulations shall serve for the purpose of a review required under Regulation 11 of the European Communities Environmental Objectives (Surface Water) Regulations 2009.

14. The Minister shall monitor the implementation by public authorities of the sub-basin management plans and measures referred to in Regulation 8, and shall take such steps as necessary to ensure their implementation.

15. Where the Minister, the co-ordinating local authority for the river basin district or the Agency, as appropriate, is of the opinion that a person, public authority or body corporate has failed to comply with a function or duty under these Regulations, or has performed that function or duty in an unsatisfactory manner, the Minister, the co-ordinating local authority for the river basin district or the Agency, as appropriate, may request a report within a specified period from the person, public authority or body corporate in relation to the matter and the person, public authority or body corporate shall comply with the request.

16. The Minister, the co-ordinating local authority for the river basin district or the Agency, as appropriate, having considered any report of the person, public authority or body corporate may, with a view to ensuring the satisfactory performance of the function or duty in question-

(a) issue such advice and recommendations to the person, public authority or body corporate as it considers necessary, or

(b) provide, on such terms and conditions as may be agreed, such assistance or support as the Minister, the co-ordinating local authority for the river basin district or the Agency considers, in consultation with the person, public authority or body corporate concerned, would be helpful.

17. Where the Minister, the co-ordinating local authority for the river basin district, or the Agency is of the opinion that the response of the person, public authority or body corporate to advice or recommendations issued or assistance or support offered under Regulation 16 is inadequate for the purpose of complying with a duty or function under these Regulations they may, without prejudice to any powers under any other statute, direct the person, public authority or body corporate to carry out, cause to be carried out, or arrange for, such action related to the function or duty in question as the Minister, the co-ordinating local authority for the river basin district or the Agency considers necessary within such a period as may be specified.

18. Where a person, public authority or body corporate fails without reasonable cause to comply with a direction under Regulation 17, the Minister, the co-ordinating local authority for the river basin district or the Agency may carry out, cause to be carried out, or arrange for, such action related to the function or duty in question as the Minister, the co-ordinating local authority for the river basin district or the Agency consider necessary to ensure compliance with the direction. The costs of such action may be recovered by the Minister, the co-ordinating local authority for the river basin district or the Agency, as appropriate, from the person, public authority or body corporate as a simple contract debt in any court of competent jurisdiction.

19. Where, on application by the Minister, the co-ordinating local authority for the river basin district or the Agency, to the District Court, the Circuit Court or the High Court, the Court is satisfied that a person, public authority or body corporate is not undertaking, or does not intend to undertake, its functions or duties under these Regulations in a manner consistent with the implementation of a sub-basin management plan and its associated

measures or with a direction issued by the Minister, the co-ordinating local authority for the river basin district or the Agency under Regulation 17, the Court may by order-

(a) direct that person, body corporate or public authority to take such steps as are necessary to address the inconsistencies or other matters identified, and

(b) make such other provision, including provision in relation to the payment of costs, as the Court considers appropriate.

20. An application for an order under Regulation 19 of these Regulations shall be by motion and the Court, when considering the matter, may make such interim or interlocutory order as it considers appropriate.

21. It shall be an offence not to comply with a requirement of these Regulations.

22. A person, public authority or body corporate guilty of an offence is liable-

(a) on summary conviction, to a fine not exceeding €5,000, or imprisonment for a term not exceeding 3 months, or both, or

(b) on conviction on indictment, to a fine not exceeding €500,000, or imprisonment for a term not exceeding 3 years, or both.

23. Where an offence under these Regulations has been committed by a body corporate or unincorporated body and is proved to have been committed with the consent or connivance or to be attributable to any neglect on the part of a person being a director, manager, secretary or other similar officer of the body corporate, or of a person who was purporting to act in any such capacity, that person as well as the body corporate is guilty of an offence and is liable to be proceeded against and punished as if that person was guilty of the first-mentioned offence.

24. Where the affairs of a body corporate or unincorporated body are managed by its members, Regulation 23 shall apply in relation to the acts and defaults of a member in connection with that member's functions of management as if that member was a director or manager of the body corporate.

25. A prosecution for an offence under these Regulations may be taken by the Minister, the co-ordinating local authority for the river basin district, the Agency or, where appropriate, the relevant public authority. A prosecution for an offence may be taken by a local authority within the river basin district whether or not the offence is committed within the functional area of the authority.

26. The requirements of these Regulations are in addition to any obligations arising under the European Communities Environmental Objectives (Surface Water) Regulations 2009.

27. Except where otherwise required by these Regulations, the powers, duties and functions assigned to public authorities and other persons by Part II of the European Communities Environmental Objectives (Surface Water) Regulations 2009 shall apply also in relation to these Regulations.

FIRST SCHEDULE These Regulations apply to the habitats of the freshwater pearl mussel populations named hereunder that are within the boundaries of a site notified in a candidate list of European sites, or designated as a Special Area of Conservation, under the European Communities (Natural Habitats) Regulations, 1997 (S.I. No. 94/1997).

SAC Site Name	Freshwater pearl mussel population 1	SAC Site Code
Rivers and lakes containing <i>Margaritifera</i> (list not exhaustive)		
1 Bandon	002171 Bandon River cSAC	Bandon and Caha
2 Aughavaud (Barrow)	002162 River Barrow and River Nore cSAC	Aughavaud
3 Ballymurphy (Barrow) Ballymurphy	002162 River Barrow and River Nore cSAC	
4 Mountain (Barrow) Aughnabrisky	002162 River Barrow and River Nore cSAC	Mountain,
5 Bundorragha	001932 Mweelrea/ Shreefry/ Erriff Complex cSAC	Bundorragha
6 Caragh	000365 Killarney National Park, Macgillicuddy's Reeks and Caragh River Catchment cSAC	Caragh, Owenroe, Meelagh, Caraghbeg, Glashawee, Lough Beg Stream, Lough Acoose, Cloon Lough
7 Clady	000140 Fawnboy Bog/Lough Nacung cSAC	Clady
8 Owenriff (Corrib)	000297 Lough Corrib cSAC	Owenriff, Glengawbeg
9 Currane	000365 Killarney National Park, Macgillicuddy's Reeks and Caragh River Catchment cSAC	Capall, Cumberagh
10 Dawros	002031 The Twelve Bens/ Garraun Complex cSAC	Dawros
11 Eske	000163 Lough Eske and Ardnamona Wood cSAC	Eske
12 Kerry Blackwater	002173 and 000365 Blackwater River (Kerry) cSAC and Killarney National Park, Macgillicuddy's Reeks and Caragh River Catchment cSAC	Blackwater, Kealduff, Derreendarragh
13 Gearhameen (Laune) and Caragh River Catchment cSAC	000365 Killarney National Park, Macgillicuddy's Reeks and Caragh River Catchment cSAC	Gearhameen and Owenreagh

1 Population named after river of highest stream-order that contains freshwater pearl mussels.

SAC Site Name	Freshwater pearl mussel population 1	SAC Site Code
Rivers and lakes containing <i>Margaritifera</i> (list not exhaustive)		

14	Gliskeelan (Leannan) 002047 Park cSAC Glaskeelan	Cloghernagore Bog and Glenveagh National
15	Leannan 002176 Leannan River cSAC	Leannan
16	Allow (Munster Blackwater) (Cork/Waterford) cSAC Allow	002170 Blackwater River
17	Licky 002170 Blackwater River (Cork/Waterford) cSAC	Licky
18	Munster Blackwater 002170 Munster Blackwater (main channel)	Blackwater River (Cork/Waterford) cSAC
19	Newport 002144 Newport River cSAC	Newport
20	Nore 002162 River Barrow and River Nore cSAC	Nore
21	Owencarrow 002047 Cloghernagore Bog and Glenveagh National Park cSAC Owencarrow	
22	Owenea 000197 West of Ardara/Maas Road cSAC	Owenea
23	Owenmore 000375 Mount Brandon cSAC	Owenmore
24	Ownagappul 001879 Glanmore Bog cSAC	Ownagappul and Barrees
25	Cloon (Shannon Estuary) Cloon	002165 Lower River Shannon cSAC
26	Derreen (Slaney) 000781	Slaney River Valley cSAC Derreen
27	Clodiagh (Suir) 002137	Lower River Suir cSAC Clodiagh

1 Population named after river of highest stream-order that contains freshwater pearl mussels.

Map of the catchments of the specified freshwater pearl mussel populations. Catchments were delineated to the lowermost mussel contained within the boundaries of a site notified in a candidate list of European sites, or designated as a Special Area of Conservation.

SECOND SCHEDULE Relevant Public Authorities

The public authorities to which these Regulations apply are-

The Environmental Protection Agency

The relevant local authorities

An Bord Pleanála

The regional authorities in the area

The regional fisheries boards in the area

The Central Fisheries Board

The Electricity Supply Board

Waterways Ireland

The Commissioners of Public Works

The Minister for Environment, Heritage and Local Government

The Minister for Communications, Energy and Natural Resources

The Minister for Agriculture, Fisheries and Food

The Minister for Transport and Maritime Affairs

The National Roads Authority

Coillte Teoranta

Bord Na Mna plc

THIRD SCHEDULE Criteria for assessment of the conservation status of freshwater pearl mussel populations

	Criterion	Target to pass	Notes
Numbers of live adults most recent surveys	No recent decline	Based on comparative results from the	
Numbers of dead shells considered to be indicative of natural losses	<1% of population	and scattered distribution	1%
Mussels shell length 65mm survey of 0.5 X 0.5 m quadrats	At least 20% of population 65mm in length	Field survey of 0.5 X 0.5 m quadrats must be carried out in suitable habitat areas for juveniles	
Mussels shell length 30mm X 0.5 m quadrats	At least 5% of population 30mm in length	Field survey of 0.5 X 0.5 m quadrats must be carried out in suitable habitat areas for juveniles	

FOURTH SCHEDULE Ecological Quality Objectives for Freshwater Pearl Mussel Habitat

	Element	Objective	Notes
Macroinvertebrates	EQR 0.90	High status	
Filamentous algae(Macroalgae)	Absent or Trace (<5%)	Any filamentous algae should be wispy and ephemeral and never form mats	
Phytobenthos(Diatoms)	EQR 0.93	High status	
Macrophytes - rooted higher plants	Absent or Trace (<5%)	Rooted macrophytes should be absent or rare within the mussel habitat	
Siltation	No artificially elevated levels of siltation	No plumes of silt when substratum is disturbed	



Given under my official Seal,

27 July 2009.

JOHN GORMLEY,

Minister for the Environment, Heritage and Local Government.

EXPLANATORY NOTE

(This note is not part of the Instrument and does not purport to be a legal interpretation)

These Regulations have been developed for the purposes of responding to the requirements of the EU Commission that Ireland, as part of its response to a ruling by the European Court of Justice (Case C-282/02, Judgement of the Court of 2 June 2005), enact Regulations to set legally binding objectives for water quality in rivers, or parts of rivers, inhabited by freshwater pearl mussels *Margaritifera* and designated as Special Area of Conservation (SAC) to protect those species; and to take steps necessary to attain those objectives.

The Regulations require the Minister to carry out a programme of investigation and monitoring within each relevant river sub-basin to establish baseline conditions and threats and pressures to *Margaritifera*; to prepare a programme of measures for the attainment of the ecological objectives in the appropriate rivers, or stretches therein; and to publish a sub-basin management plan for each relevant river.

The Regulations require the EPA, when classifying surface waters in accordance with the ecological objectives approach of the Water Framework Directive, to assign a status of "less than good ecological status" where *Margaritifera* is found to be in unfavourable conservation status. This will trigger further actions as waters classified as less than good must be restored to at least good status within a prescribed timeframe.

The Regulations require a public authority that authorises discharge to any of the listed rivers to set down emission limit values that aim to achieve the prescribed ecological quality targets; and to examine existing authorisations within a set time and review them as appropriate.

The Regulations enable the Minister, local authorities or the EPA to advise or, if necessary, direct a person or body to carry out necessary actions.

The Regulations also set out offences and penalties.

1 Population named after river of highest stream-order that contains freshwater pearl mussels.

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