

# EPD's comments on the SEA Scoping Report for the Draft Aquaculture Strategy

27<sup>th</sup> July 2012

## General Comments

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1. In its earlier comments on the SEA Screening Template, MEPA had informed MRRA that the Aquaculture Strategy requires an Appropriate Assessment (AA) in line with L.N. 311 of 2006. We note that the scoping report does not explain how the SEA and the AA for this Strategy will be coordinated. It is important to note that the SEA mechanism does not per se satisfy the requirements of the Habitats Directive and L.N. 311 of 2006 (as amended). Terms of Reference for the preparation of the Appropriate Assessment of an aquaculture strategy are attached in Appendix 1.
2. The site of the current proposal for the North Aquaculture Zone (NAZ), which is subject to discussions between MEPA and MRRA, does not tally with the boundaries of the new aquaculture site for the North of Malta as proposed in the Aquaculture Strategy. It is unclear whether the site of the current proposal for the NAZ is in line with the Strategy's criteria for tuna farms which require that "tuna farms on near shore sites should be relocated to sites with more than 50m water depth and more than 1nm from shore to limit impacts." This issue and the relationship between the proposed Strategy and the site alternative assessment carried out for the NAZ should be clarified further in the Environmental Report.
3. The scoping report refers to the term "one nautical mile" and suggests that this is measured from the shore. Officially designated boundaries at sea, such as coastal waters under the Water Framework Directive (WFD) and territorial waters under the Law of the Sea are measured from the baseline rather than the physical coast or shore. In particular, the provisions of the WFD apply to coastal waters which extend up to one nautical mile from the baseline. Therefore, it is recommended that both the Aquaculture Strategy and the Environmental Report should adopt the boundary of coastal waters as defined and established under the WFD (i.e. one nautical mile from the baseline).
4. The scoping report suggests that all environmental issues listed in Schedule 1(f) to L.N. 497 of 2010 will be assessed in detail as part of the Environmental Report. The SEA Directive and L.N. 497 of 2010 require the strategic assessment to focus on the relevant main environmental issues. This will ensure that the assessment of the potential significant

environmental impacts of the Strategy is not diluted by other less important considerations.

5. It is not clear whether the Scoping Report is taking into sufficient consideration any foreseeable development, extension, relocation or decommissioning of on-shore based facilities. Such interventions often raise important environmental implications, whereas in the case of already-existing installations opportunities for relocation or decommissioning may need to be sought.

## **Table 2: Analysis of Related Plans, Programmes, and Legislation**

6. The section on *The Protocol of the Barcelona Convention concerning Specially Protected Areas and Biological Diversity in the Mediterranean, 1999* states that “To date, no SPAs have been designated in Malta under this Protocol”. Malta has four such sites: L-Għadira, Il-Gzejjer ta' San Pawl, Filfla & surrounding islets and Il-Ġebbla tal-General. These sites are designated under the Protocol for Specially Protected Areas under the UN Barcelona Convention (Convention for the Protection of the Mediterranean Sea Against Pollution).
7. With respect to the Water Catchment Management Plan, the report states that “The Strategy must ensure an integrated approach with regards, in particular to the programme of measures and monitoring programme of the WCMP. The SEA considers impacts of the Strategy on water quality”. The environmental assessment should not be limited to impacts on water quality and should cover all relevant requirements of the WFD and WCMP, including impacts on water-related ecology. With regard to Legal Notice 194 of 2004, Water Policy Framework Regulations, 2004 (page 36), the description provided should also indicate that the Water Policy Framework Regulations (LN 194 of 2004, as amended by LN 24 of 2011) requires that designated surface waters must achieve good ecological and chemical status by 2015 and that this status is to be maintained.
8. With regard to Legal Notice 311 of 2006, the report states that “The Strategy must ensure that it does not threaten areas designated as protected areas”. The SEA should not be limited to impacts on designated areas. The environmental assessment should also take into consideration potential impacts on wild species, especially those protected under international and national legislation. Furthermore, the assessment should also take into consideration the potential impacts of the proposed Strategy on Special Protection Areas designated under the EU Birds Directive and other important bird sites or areas both on land and at sea.

9. The Scoping Report did not assess the implications in light of the 1976 Protocol for the Prevention of Pollution in the Mediterranean Sea by Dumping from Ships and Aircraft to the Barcelona Convention and its 1995 amendments. These two protocols should also be evaluated in the Environmental Report.
10. The Scoping Report should also mention the E-PRTR regulation, which requires annual reporting by certain aquaculture operators (EC 166/2006 and LN 152/07).
11. It is recommended that the Scoping Report also refers to MEPA's proposed legislation on environmental permitting, which would also regulate fish farms; details on the proposal are available at: <http://www.mepa.org.mt/environmentalpermitting>

## **Baseline Data**

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12. The scoping report states that “Schedule 3 of the SEA Regulations indicates that the scoping report may include baseline information, either already collected or pending data collection, with notes on sources and any problems encountered”. This statement seems to refer to Schedule 3 of the repealed L.N. 418 of 2005. This should refer to the new SEA Regulations (L.N. 497 of 2010) which came into force in 2010.
13. Moreover, the report highlights that “the SEA baseline will focus on the parameters listed under Schedule 1(f) of the SEA Regulations, 2010”. Whilst we agree with this statement, it is important to note that Schedule 1(b) refers to “the relevant aspects of the current state of the environment...”, 1(c) refers to “the environmental characteristics of areas likely to be significantly affected” and 1(d) refers to “any existing environmental problems which are relevant to the plan or programme...”. Therefore, further to paragraph 4 above, we would reiterate that the baseline environmental information and the assessment should focus on the potential significant environmental issues which are relevant to the Strategy, in line with Regulation 6(1) of the Regulations. Particular environmental issues identified in Schedule 1(f) of the SEA Regulations may not be relevant to the Strategy or are unlikely to be significantly affected. For example, it is unclear how the proposed Strategy could result in a significant impact on air quality. We would expect sieving of such issues at the scoping stage of the SEA process in order to determine the scope and level of detail of the information to be included in the Environmental Report. This will ensure that the assessment focuses on specific issues which are most relevant to the Strategy and to the SEA process. In this regard, we would reiterate the main

environmental issues highlighted in our comments on the Screening Template for the Aquaculture Strategy.

14. Areas, habitats and species which are not formally protected but may still merit conservation are not currently included in table 3 of the Scoping Report. This needs to be rectified.

## **SEA Objectives**

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15. In paragraph 24, the scoping report states “The SEA Directive does not specifically require the use of objectives or indicators in SEA, although they are a recognised way through which environmental effects can be described, analysed, and compared”. However, we would highlight that Schedule 1(e) of the SEA Regulations requires the Environmental Report to include environmental protection objectives which are relevant to the plan or programme, and an assessment of the way that these environmental objectives and any environmental considerations have been taken into account during the preparation of the Plan. These environmental objectives are relevant to the strategic assessment.
16. Paragraph 27 refers to the State of the Environment Report (SOER) of 2005. We recommend that all relevant SOERs (particularly the latest version) and the National Environmental Policy should be taken into account during the collection of information and carrying out of the assessment.
17. In table 4 of the Scoping Report, the effect on biodiversity does not seem to take account of the fish that is utilised as fodder (fish bait). The capturing from the wild of such fish to feed fish grown in aquaculture establishments may have an impact on the ecosystem. Furthermore the potential of the spread of disease from stock to wild fish should also be elaborated.

## **Likely Significant Effects and Constraints**

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18. The report states that “Significance will also be assessed in accordance with the criteria listed in Schedule 4 of the SEA Regulations, 2005”. This should refer to the new SEA Regulations which came into force in 2010.

## Appendix 1

### TERMS OF REFERENCE FOR THE PREPARATION OF AN APPROPRIATE ASSESSMENT

#### PREPARATION OF AN AQUACULTURE STRATEGY FOR MALTA

27.07.12

- Note 1** This document is intended to set out minimum specifications that need to be satisfied in order to determine whether the proposed intervention/s or any part thereof will have a significant impact on the integrity of any relevant protected sites, ecosystems, habitats and species covered by the provisions of Legal Notice 311 of 2006 and its amendments.
- Note 2** The applicant is to propose consultants for MEPA approval prior to the commencement of the Appropriate Assessment (AA) studies.
- Note 3** It is the consultants' responsibility to adopt and justify the appropriate methodologies and areas of influence. Furthermore, in the interest of optimising the assessment process, the proposed methodology is to be discussed with MEPA prior to actual commencement of the studies,
- Note 4** Unless otherwise specified in these Terms of Reference (TORs) and in the absence of any site-specific conservation objectives drawn up by MEPA, the assessment shall be guided by the following environmental objectives:
- Where the conservation status is favourable, this is retained and not reduced; and
  - Where the conservation status is not favourable, this is improved.
- Note 5** The requirement for further AA studies needs to address the issues outlined in the screening carried out by MEPA (Section three of EPD comments of 30<sup>th</sup> April 2012), as well as any other AA-relevant impacts identified by the consultants. Should further surveys be deemed necessary by the consultants, MEPA is to be informed of such need PRIOR to the commencement of such surveys.
- Note 6** Wherever available, already-existing information should be made use of without any unnecessary duplication of work. Any uncertainties and gaps in information should be acknowledged.
- Note 7** The consultants should refer to the appropriate EU guidance documents, and should clearly quote such sources accordingly.
- Note 8** MEPA reserves the right to question (or disagree with) the methodologies and area of influence, to request revisions thereof, and to request additional information or studies at any stage prior to, during and following completion of the AA.
- Note 9** These TORs are primarily intended to guide the AA investigations rather than as a basis for tendering or other non-MEPA processes. In this regard any use for such purposes is at the sole risk of the applicant, as requirements may vary following technical negotiations, updating of legislation or standards, changes to the proposed project, or other circumstances.

**The Appropriate Assessment report should follow the following format:**

**1. Executive Non-Technical Summary**

A description of the salient points of the AA study including any surveys, impacts and their significance, proposed revisions, and any residual impacts.

**2. Plan Description**

A description of the proposed plan, with particular emphasis on those elements that are likely to give rise to potentially significant effects on the integrity of protected sites, or on other relevant habitats, species and ecosystems. The description shall also address any foreseeable consequential requirements or implications of the proposal (e.g. need for new or altered access or infrastructure).

**3. Impact Assessment**

This section should identify all relevant protected sites<sup>1</sup> that are likely to be affected by the plan or by any of its ancillary projects and proposals, both directly and indirectly.

Interventions proposed within the plan that have the potential to affect protected sites or other relevant habitats, species or ecosystems, but for which no detailed information is as yet available due to the strategic nature of the plan, must be acknowledged.

Interventions that are clearly proposed within the plan should be assessed to identify which protected sites are likely to be affected by their implementation. The AA should also discuss how these protected sites will be affected and to what extent, i.e. whether such impacts are considered to affect the integrity of the protected sites, their habitats and species, or otherwise. An exhaustive discussion, in so far as possible, is required in this regard.

Impact assessment should also take into account practical implications (e.g. conflicts with site protection or management plan implementation, any foreseeable constraints on future management plan formulation, implications arising via the displacement of other land/sea uses, etc.)

**4. Alternatives**

The AA should evaluate alternatives to those aspects of the plan that may give rise to significant impacts as identified in the section above. The zero-option (do-nothing scenario) should also be considered. Each alternative should be thoroughly assessed by comparing it with the respective plan content, clearly indicating the relative effects on relevant habitats, species, and protected sites as a whole.

This section should conclude with a set of recommended revisions to the plan.

**5. Residual Impacts**

The report should include a prediction of residual impacts and implications of the proposed plan on relevant species, habitats and ecosystems, following the implementation of the proposed revisions. The report shall also evaluate the significance of such residual impacts and implications.

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<sup>1</sup> As defined in Subsidiary Legislation 504.73. Flora, Fauna and Natural Habitats Protection Regulations, Legal Notice 311 of 2006 as amended.