

CONSULTATION

Proposed amendments to The Marine Licensing (Exempted Activities) Order (Northern Ireland) 2011

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Purpose of this consultation

This consultation paper seeks your comments on proposed amendments to the Marine Licensing (Exempted Activities) Order (Northern Ireland) 2011 (which will be referred to as the Exempted Activities Order from this point). The provisions of this Order apply to Northern Ireland's inshore region (out to 12 nautical miles) for which the Department of Agriculture, Environment and Rural Affairs (DAERA) is the licensing authority. The Exempted Activities Order specifies activities which either do not need a marine licence or do not need a marine licence if conditions specified in the Order are satisfied.

The Exempted Activities Order allows DAERA to be proportionate in its regulation of the marine environment. The Order makes the marine licensing process more efficient and cost effective for users of the marine environment.

Who will be affected by the proposals?

This consultation is aimed at anyone who has an interest or is involved in activities that take place in the marine environment. It may be of particular interest to those involved in the following marine activities:

- Beach cleaning
- Coastal protection
- Emergency repairs
- Fisheries
- Recreational diving
- Recreational sailing
- Removal of accidental deposits
- Shellfish farming
- Scientific surveys
- Temporary markers
- Cleaning of boat hulls

It is expected that this consultation will be of interest to businesses, operators, clubs/associations and individuals, conservation bodies and environmental groups that are concerned about man's impact on the marine environment, navigational safety and human health.

Timing and duration of this consultation

The consultation will commence on the 28th May 2021 and close on the 30 July 2021.

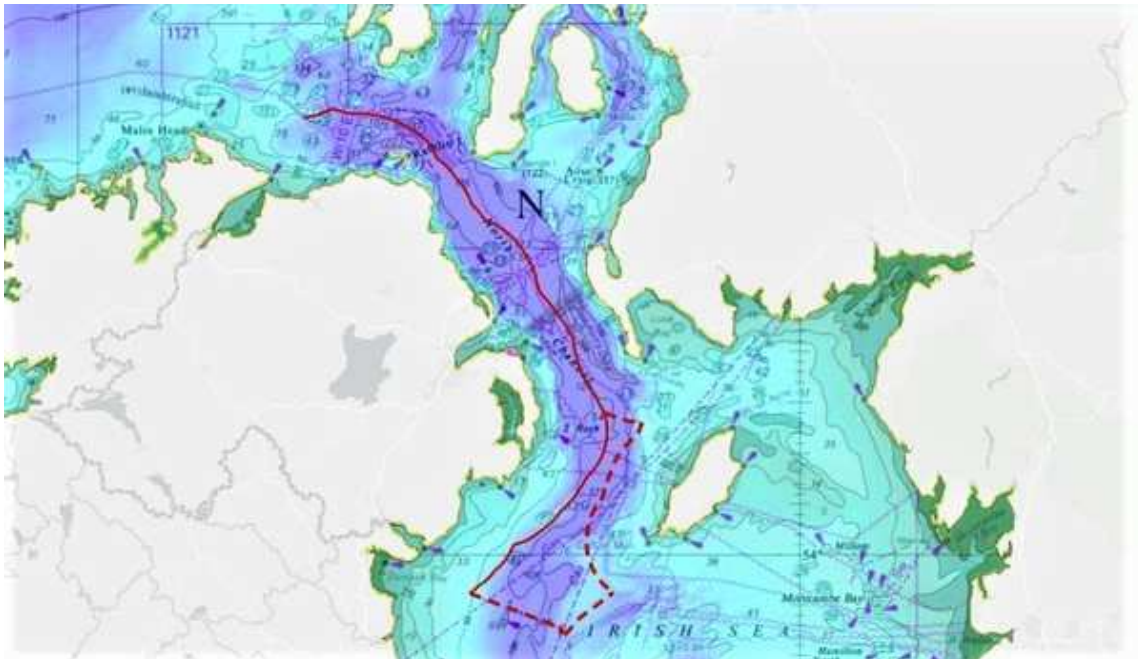
Introduction

Primary legislation

The Marine and Coastal Access Act 2009 (MCAA) is designed to help achieve clean, healthy, safe, productive and biologically diverse seas, in line with the UK vision. It provides for the sustainable use of marine resources and an integrated planning system for the marine area. [Our seas, a shared resource](#)

Part 4 of the MCAA introduced a streamlined licensing system that came into effect in April 2011. The aim is to enable consistent and sustainable decision making on activities within the marine area. In making those decisions, the Department must balance the need to protect the environment, the need to protect human health, the need to prevent interference with legitimate uses of the sea and any other such matter that that Department considers relevant.

DAERA is the Licensing Authority for the Northern Ireland inshore region (0 to 12 nautical miles). The Secretary of State (SoS) is the Licensing Authority for the Northern Ireland offshore region (12 nautical miles to the boundary with other jurisdictions) as set out in Section 113 of the MCAA.



Boundary of inshore region **—————**

Boundary of offshore region **- - - - -**

Provisions at section 74 of the MCAA enable DAERA, as the licensing authority for the Northern Ireland's inshore region, to exempt certain activities from the requirement to obtain a marine licence. This is achieved through the Exempted Activities Order.

What is meant by licensable activity?

Section 66 of the MCA Act lists those types of activities that are licensable. Examples of such activities include those linked to construction or placement and removal of

- moorings
- harbours
- marinas
- jetties
- piers
- sea outfalls
- scour protection
- rock armouring
- beach replenishment
- land reclamation
- objects from the seabed

Both navigational and capital dredging of ports, harbours and marinas and associated sea disposal of dredged material are also licensable activities.

Please note that this list should not be regarded as exhaustive. For guidance on licensable activities please see <https://www.DAERA-ni.gov.uk/articles/marine-licensing#toc-1>

The Exempted Activities Order

Function

The function of the Exempted Activities Order is to identify activities that do not require a marine licence. The Exempted Activities Order exempts activities that are appropriately regulated under other licensing systems such as waste or aquaculture. It also enables day-to-day activities (for example, anchoring a vessel) to continue without the need for a licence and enables emergency action to be carried out without delay. Typically, these activities are either small scale and pose little environmental risk, or where a requirement to obtain a marine licence would constitute an excessive regulatory burden.

Non-compliance with conditions specified in the Order

The Department wishes to stress that many of the exemptions are conditioned to each particular circumstance. Each Article in Part 3 of the Exempted Activities Order has been tailored to meet a particular situation and failure to meet all of the requirements will mean that an exemption has not been obtained. In these circumstances, the person undertaking the activity will be treated as not having obtained a marine licence which may result in enforcement action and subsequent sanction. The Department is always happy to advise on individual circumstances around an exemption.

Notification

Marine licensing exemptions require differing levels of notification and are split into three categories:

1. exemptions for which no notification is required,
2. exemptions which require notification to be given to DAERA, and
3. exemptions which require approval from DAERA.

Why amend?

The Northern Ireland Exempted Activities Order has not been significantly amended since its inception in 2011. There is therefore a risk that it may become dated and not adequately responsive to the needs of users of the marine environment.

It is important that, where possible, there is a consistent approach to marine licensing across Northern Ireland waters and the wider UK. Inconsistencies in the decision making process on which activities require a marine licence are undesirable for business. A number of the proposed amendments reflect those which apply to the Northern Ireland offshore region for which the Secretary of State through the Marine Management Organisation is the licensing authority.

Objective

The proposed changes to the Exempted Activities Order are intended to ensure that the marine licensing system remains proportionate to the risk to the environment, human health and other uses of the sea and that its operation is efficient and coherent.

Extent of proposed amendments

This review and amendment of the Exempted Activities Order is extensive in nature. Aside from minor technical changes, DAERA proposes to make substantive amendments to nine existing articles and to add an additional seven within Part 3 of the Order.

Note:

Please see below links to the equivalent Exempted Activities Orders in other UK marine areas.

- The Marine Licensing (Exempted Activities) Order 2011 No. 559; [2011 Order](#)
- The Marine Licensing (Exempted Activities)(Amendment) 2013 Order No. 526; [2013 Order](#)
- The Marine Licensing (Exempted Activities)(Amendment) 2019 Order No. 893; [2019 Order](#)
- The Marine Licensing (Exempted Activities)(Scottish Inshore Region) Order 2011 No. 204. [2011 Order Scotland](#)
- The Marine Licensing (Exempted Activities)(Scottish Inshore And Offshore Regions)(Amendment) Order 2012 No. 25. [2012 Order Scotland](#)
- The marine Licensing (Exempted Activities) (Wales) Order 2011 No 559 [2011 Order Wales](#)

Proposed amendments to particular articles

Article 3 Interpretation (Amendment of existing Article)

This article contains definitions and information on a number of terms used throughout the Order. It is therefore necessary to make a number of technical amendments to this article to facilitate the changes proposed to Part 3 of the Order.

The most significant of these include but are not limited to:-

- the insertion of a definition of Areas of Special Scientific Interest (ASSIs) and Marine Conservation Zones (MCZs). This will mean that a number of exemptions will no longer apply to these areas, thereby facilitating protection of the marine environment;
- the insertion of a definition of beach profiling and recycling,
- the insertion of a definition of marine litter which will provide for the inclusion of a new exemption for the removal of marine litter by divers, and
- the insertion of a definition of a competent authority.

Article 12 Fishing operations (Amendment of an existing Article)

Overview

The exemption provided for in article 12(1)(c) was intended to allow fishermen to return permitted discards of unwanted fish, or other unwanted objects, to the sea immediately after sorting on board the vessel whilst it is still at sea. It was not intended to permit fish or other objects that had been landed to be taken back to sea and disposed of in an unregulated manner. There is a risk that unwanted landed fish or other objects may be taken back out to sea and dumped in order to avoid regulated waste disposal and potential extra cost.

The proposed amendment would prohibit fish and other objects that have been landed from being returned to the sea and potentially causing damage to the marine environment or human health, for example fish by-product waste washing up on beaches, or polluting the sea floor or obstacles that could cause a hazard to navigation.

Proposed Amendment

It is proposed to add a qualification to sub-paragraph (1)(c) setting out a condition which only allows for fish or other objects to be returned to the sea if they have not previously been landed.

Notification

No change proposed – There is no requirement to notify or seek prior approval from DAERA.

Do you agree with the proposed amendment to this exemption?

Do you have any further comments you wish to make on this amendment?

Article 13 Shellfish propagation and cultivation (Amendment of an existing Article)

Overview

The exemption applies to aquaculture which is regulated through a separate licensing regime under Section 11 of the Fisheries Act 1966.

Proposed Amendment

It is proposed to amend Article 13 with the addition of the word “marker” to subparagraph (1)(a). This will allow the placement of markers without requiring a marine licence for activities such as delineating the extent of the aquaculture site and other operational reasons. The amendment will replicate changes made to the Marine Licensing (Exempted Activities) Order 2011 as amended, which applies to the Northern Ireland offshore region. This will give legislative consistency across both of Northern Ireland’s marine regions. No notification to the marine licensing authority is required. However, prior approval from the Maritime and Coastguard Agency and the Commissioner of Irish Lights will be required to obtain an aquaculture licence.

Notification

No change proposed – There is no requirement to notify or seek prior approval from DAERA.

Do you agree with the proposed amendment to this exemption?

Do you have any further comments you wish to make on this amendment?

Article 15 Deposits of marine chemical and marine oil treatment substances etc. (Amendment of an existing Article)

Overview

It is proposed to simplify Article 15 through the removal of paragraphs 5 and 6 which set out specific physical conditions which may not be contravened without the approval of the licensing authority. These include geographical conditions linked to the depth of waters, distance from the coast and sub-surface use. Prior approval for the use of the chemicals and oil treatment substances and the detail of their use is already controlled by the licensing authority. The additional conditions are therefore superfluous. This amendment will also provide legislative consistency with the Northern Ireland offshore region.

Proposed Amendment

It is proposed to add a new paragraph 5 which requires prior approval from the licensing authority which will encompass both the treatment substance and its use. All decisions on the specifics of the use of the chemicals/dispersants and whether or not they are to be used would be a matter for Departmental consideration.

Notification

Proposed changes – The current Article sets conditions on the substances to be used and specifies physical parameters such as depth of water and distance from coast. The Department proposes to simplify the process and require that prior approval be obtained before this activity can commence.

Do you agree with the proposed amendment to this exemption?

Do you have any further comments you wish to make on this amendment?

Article 17 Scientific instruments etc

(Amendment of an existing Article)

Overview

Article 17 applies to the deposit and removal of scientific instruments and the deposit of reagents and tracers.

Scientific instruments are devices placed in the marine environment for research or scientific purposes. The deployment of scientific instruments is currently exempt from the requirement to have a marine licence, as set out in Regulation 17(1) of the Exempted Activities Order. Such activities are not exempt where they involve a deposit made for the purposes of disposal or that causes or is likely to cause obstruction or danger to navigation.

A deposit or removal activity is also not exempt where it could have a significant effect on a European marine Site (SAC or SPA) or a Ramsar site. This requires a risk assessment of the activity. Significant amendment has been made to the equivalent Article in the Defra Order and this is reflected in a similar level of proposed amendment to this Article in the Exempted Activities Order.

The assessment of whether the deposit causes a danger to navigation is currently left to those deploying the scientific instrument. There is, however, growing concern that those undertaking the assessment do not have the relevant knowledge or expertise to make that assessment, or have not sought expert advice prior to taking a view. As a consequence there may be scientific instruments deployed in the marine area, in reliance of the current exemption, but which the Maritime and Coastguard Agency (MCA) or the Commissioner of Irish Lights (Irish lights) may deem to be a potential risk to the safety of navigation. MCA and Irish Lights have advised that the scientific instruments that cause the main concern are those that are tethered to the sea bed or which reduce the depth by more than 5% from chart datum.

It is proposed to amend the current exemption to exclude scientific instruments that pose the greatest risk to the safety of navigation - those which are tethered to the seabed or that reduce navigational clearance by more than 5% from Chart Datum. Chart Datum is the level of water below which all depths on a nautical chart are measured from. By international agreement Chart Datum is defined as a level so low that the tide will not frequently fall below it. This level is normally approximately the level of Lowest Astronomical Tide. Prior notification will be required to be given to the licensing authority before the activity is begun. The draft amendments will also require a similar condition to be applied where a reagent or tracer is deposited. This means that the reagent or tracer must be of an approved type and that the reagent or tracer be used in accordance with any conditions to which an approval is subject.

In the case of the European marine sites, it is often the Department that is the competent authority under the Habitats Regulations, and therefore it is key that the Department has considered the potential of any instrument placement to have a significant effect on protected habitats and species. This requires notification to ensure the risk assessment is completed to the satisfaction of the competent authority. It is also proposed that disapplication of Article 4 is applied in instances where an impact on a RAMSAR site, protected features of an MCZ or an ASSI may occur. This reflects the similar drafting in the Defra Order.

Proposed Amendment

It is proposed to amend the notification required for the placement and removal of scientific instruments and the use of reagents and tracers to require prior notification from the licensing authority before the exemption may be applied.

Notification

Proposed changes – The current Article sets conditions on the substances to be used as reagents or tracers from a controlled list. Prior notification is not required. There is also no requirement to notify the licensing authority when placing or removing of scientific instruments. The Department proposes to require that prior notification be obtained before the use of any reagents or tracers. It also proposes to require notification of the placement or removal of any scientific instruments to ensure the correct risk assessments can be completed.

Do you agree with the proposed amendment to this exemption?

Do you have any further comments you wish to make on this amendment?

Article 17A samples for testing and analysis (Proposed new Article)

Overview

It is proposed to exempt most sediment sampling from the requirement for a marine licence. This exemption would apply to removals which are less than one cubic metre. As with several existing exemptions, a condition of the exemption would be that the activity is not likely to have a significant effect on a European marine site, Ramsar site, MCZ or ASSI. The definition of sediment samples would include activities such as intertidal cores and sub-tidal sediment coring from a vessel as well as grab sampling. Before an activity is carried out, operators would need to notify the relevant licensing authority of the locations and numbers of works.

This exemption was added to the Defra Order in 2013 and is new to the Exempted Activities Order. It has proved successful in that it has provided a reduction of regulatory burden to the applicant, with a resultant reduction in time and resource needed for this activity. No minimum or maximum volume is specified in the Marine and Coastal Access Act and therefore all such removals, regardless of scale are potentially licensable. The current Exempted Activities Order exempts a number of activities that are considered to pose minimal risk. It is proposed that as this activity is also low risk in nature and poses minimal or no risk to the environment, human health or other users.

Proposed amendment

It is proposed that prior notification to the licensing authority be required to avail of this exemption.

Noise Pollution

Applicants for a marine licence, or those seeking to apply an exemption for proposed works, need to be fully cognizant of the effects of noise on the marine environment. Applicants should be aware of the need to reduce noise in the design and completion of proposals and that consideration of possible noise pollution will be an aspect of all licensing decisions made by the Department.

The UK Marine Strategy Regulations 2010 require the UK to take the necessary measures to achieve or maintain Good Environmental Status (GES) through the development of a UK Marine Strategy. The UK Marine Strategy sets out a comprehensive framework for assessing, monitoring and taking action across our seas to achieve the UK's shared vision for 'clean, healthy, safe, productive and biologically diverse ocean and seas'.

Part Two of the Strategy sets out the monitoring programmes needed to monitor progress against the targets and indicators. There are 11 qualitative descriptors to help assess progress towards GES; of which D11 is the introduction of energy, including underwater noise. Defra and JNCC have developed the [Marine Noise Registry](#) (MNR) to record human activities in UK seas that produce loud, low to medium frequency (10Hz – 10kHz) impulsive noise.

Underwater noise from human activities can affect marine organisms from fish to marine mammals in a variety of ways, from masking sounds used to communicate and find food, to physical injury and even death. Understanding when and where noisy activities take place will help us define the baseline level for impulsive noise in UK

waters and will inform research on the effects of noise, particularly on vulnerable species like cetaceans.

Activities include impact pile driving, geophysical surveys (seismic, sub bottom profiling and multibeam echosounders), explosives and some acoustic deterrent devices. The MNR also collects, where available, source property data (in line with [TG noise guidance](#)) including frequency, maximum airgun volume, maximum hammer energy, TNT equivalent, sound pressure level and sound exposure level. Developing this Registry was a commitment made in the [UK Marine Strategy](#).

Maps will be produced annually showing the spread of activities in ‘pulse block days’ (the number of days within a set period of time that impulsive noise has been generated within each UK oil and gas licensing block). These maps will be available from: <https://data.gov.uk/>. You can also contact mnr@jncc.gov.uk for any questions and comments on the MNR.

Data in the Registry are also fed into a Europe-wide registry through OSPAR (the Oslo and Paris Convention for the Protection of the North-East Atlantic).

Notification

Proposed –The Department proposes to require that prior approval be obtained before the commencement of any activity.

Do you agree with the proposal to add this new Article?

Do you have any further comments you wish to make on this amendment?

Article 17B Accidental deposits – removal activity (Proposed new Article)

Overview

This exemption was added to the Defra Order in 2013 and is new to the Exempted Activities Order. During the normal course of many marine activities, it is not unusual for equipment to be lost overboard from a vessel or a marine structure such as a fish farm or offshore platform. Currently, the use of a vehicle or vessel to retrieve such items would technically constitute a licensable activity even though the risks to the environment, human health and safety would normally be very small.

Proposed amendment

It is proposed that this Article be replicated in the Exempted Activities Order and follow a similar approach to that taken by Defra in exempting the recovery of objects which have been accidentally deposited on the seabed. This exemption includes a number of conditions which would be replicated; these include advance notification (to the licensing authority), that the activity is not likely to have a significant effect on a European marine site, Ramsar site, MCZ or ASSI and avoid risks to navigation. The removal activity would need to take place within a year of the item being lost.

Notification

Proposed –The Department proposes to require that prior notification be given to it before the commencement of any activity.

Do you agree with the proposal to add this new Article?

Do you have any further comments you wish to make on this amendment?

Article 19 Maintenance of coast protection, drainage and flood defence works (Amendment of an existing Article)

Overview

This Article provides for an exemption for any activities carried on to maintain any coast protection works, drainage and flood defence works. It is proposed to amend this Article to provide greater clarity on which beach maintenance activities would be exempt from a need to obtain a marine licence, which is not explicit in the current wording of the exemption. This will be amended to provide clarification and avoid misinterpretation. The proposed amendment will include clarification on the scope of coastal protection works and defines beach profiling and recycling.

It is also proposed that disapplication of an exemption (Article 4) is applied in instances where an impact on a RAMSAR site, protected features of an MCZ or an ASSI may occur. This reflects the similar drafting in the Defra Order.

Notification

Proposed changes – The current Article does not require any form of notification or prior approval to be completed. It is proposed that competent authorities such as local authorities be required to notify the Department and all other be required to seek prior approval. This is important to gain better information on how the coastline of Northern Ireland is changing in the context of climate change. The requirement for better information is recognized in the Climate Change Risk Assessment (NI) Report, produced by the Committee for Climate Change, and the need is also recognized by the AERA and Infrastructure Ministers in the establishment of a Coastal Forum and in the report ‘Baseline Study and Gap Analysis of Coastal Erosion Risk Management in Northern Ireland’, commissioned by Ministers. Link below

[Baseline Study and Gap Analysis of coastal erosion risk management NI \(infrastructure-ni.gov.uk\)](https://www.infrastructure-ni.gov.uk)

Do you agree with the proposed amendment to this exemption?

Do you have any further comments you wish to make on this amendment?

Article 20 Emergency works in response to flood or flood risk (Amendment of an existing Article)

Overview

This current exemption applies to activities carried out by or on behalf of responders for the purpose of executing emergency works in response to any flood or the imminent risk of flood. Currently this activity may only be carried out if the licensing authority is notified in advance. The Department considers that in the case of an emergency, responders will be focused on the emergency response at hand and it may be impractical to seek prior approval from the licensing authority. It is proposed to introduce a requirement for those responding to an emergency situation to notify the licensing authority of emergency works undertaken pursuant to the exemption, within 3 working days of emergency works commencing. This notice would detail works undertaken and the circumstances of the emergency.

Notification

Proposed changes – The current requires prior notification to be given to the Department. It is proposed that notification need only be given within 3 working days of the commencement of works.

Do you agree with the proposed amendment to this exemption?

Do you have any further comments you wish to make on this amendment?

Existing Article to be amended.

Article 21 Use of vehicles to remove litter or seaweed from beaches

(Amendment of an existing Article)

Overview

We are proposing that this article is amended to include:

- to extend the list of items that may be removed from a beach by a Local Authority to include dead animals;
- the extension of the areas from which litter and seaweed may be removed to include intertidal areas;
- the inclusion of a condition to reinforce protection of archaeological or historical features, and
- amendment to the condition linked to possible impacts on protected environmental sites to ensure that all designated locations are covered.

The removal of the remains of large animals, such as cetaceans, sharks, turtles, cattle and sheep, that have become stranded on the sea shore will generally require the use of lifting machinery and as such is currently likely to require a marine licence. Given the public health issues, the priority is to ensure that the removal and disposal is done as safely, quickly and efficiently as possible. It is proposed to exempt this activity where it is carried out by or on behalf of a Local Authority. Rather than seek a marine licence, Local Authorities would be required to notify the licensing authority in advance of removing and disposing of a carcass so that the Licensing Authority can be satisfied that there are unlikely to be significant impacts on protected sites and can advise on disposal. This will also help to ensure that the Local Authority is aware of other relevant legal obligations.

It is also proposed to extend the areas of foreshore where this exemption can be applied to include intertidal areas. This will allow Local Authorities to quickly manage similar situations in all coastal locations for which they are responsible.

The addition of a condition relating to archaeological and historic features will help ensure that these aspects are fully considered and respected. Amenity beaches can hold sites of archaeological or historic interest within their confines and the enlargement of this exemption to include intertidal areas could increase the incidence of situations where damage to heritage assets may occur. This condition will help minimise that risk.

It is also proposed to add a condition relating to protected areas which would disapply the exemption (Article 4) in circumstances impacting these locations. The Department intends to replicate similar text used in the Defra legislation with an additional reference to ASSIs.

Notification

Proposed changes – The current Article does not require any form of notification or prior approval to be completed. It is proposed that prior notification be required before the commencement of works when removing dead animals.

Do you agree with the proposed amendment to this exemption?

Do you have any further comments you wish to make on this amendment?

Article 21A Recovery of marine litter etc. (Proposed new Article)

Overview

This exemption was added to the UK Order in 2019 and is new to the Exempted Activities Order. Under the MCAA it is a licensable activity to use a vehicle, vessel, aircraft, marine structure or floating container to remove a substance or object from the seabed in the UK marine area. Divers often remove objects such as marine litter and abandoned, discarded or lost fishing gear (or “ghost gear”) from the marine environment during the course of diving activities. A marine licence is currently required for this activity in certain circumstances. Concern has been expressed that the requirement to obtain a marine licence is costly and risks deterring divers from undertaking these voluntary removal activities which deliver a clear public benefit.

The proposed new exemption will permit divers to remove marine litter and abandoned, discarded or lost fishing gear from the marine environment during the course of diving activities and to do so without a disproportionate regulatory burden. Marine litter is defined as any persistent, manufactured or processed solid material discarded, disposed of or abandoned in the marine and coastal environment.

It is proposed that the exemption will be worded to ensure the protection of protected species and habitats and items of archaeological or historical interest and require prior notification be given to the licensing Authority.

Notification

Proposed –The Department proposes to require that prior notification be given before the commencement of any activity.

Do you agree with the proposal to add this new Article?

Do you have any further comments you wish to make on these amendments?

Article 24A Use of a device, vehicles or vessels to remove marine litter and debris (Proposed new Article)

Overview

Harbour Authorities use devices, vehicles and vessels to remove marine debris and litter from harbour areas in order to keep the navigational channel and intertidal area clear. Under current arrangements, Harbour Authorities are permitted to take action to remove objects that present an immediate risk of obstruction or danger to navigation. These powers currently do not apply to marine litter where it does not pose any obstruction or danger to navigation.

It is proposed to permit Harbour Authorities to carry out activities to remove marine debris and litter (defined as any persistent, manufactured or processed solid material discarded, disposed of or abandoned in the marine and coastal environment) from their jurisdiction. It is proposed that there is no requirement to notify the licensing authority.

The exemption will be worded to ensure the protection of protected species and habitats and items of archaeological or historical interest. For the purposes of this exemption, "Harbour Authority" has the meaning given by section 38(1) of the Harbours Act (NI) 1970.

Notification

Proposed –The Department proposes that there be no requirement for any notification be given to it before the commencement of works.

Do you agree with the proposal to add this new Article?

Do you have any further comments you wish to make on this amendment?

Article 25A Markers for European marine sites and marine conservation zones (Proposed new Article)

Overview

It is proposed to exempt DAERA from the requirement to obtain a marine licence in instances where the Department's Marine Conservation team need to erect or remove markers. This will enable the more efficient management and protection of European marine sites. Buoys can be used for a range of purposes where users need to be able to easily identify the location of important marine features. This will also assist with the operation of enforcement functions.

We therefore propose to exempt the deposit and removal of markers buoys and their associated weights by the Department, where this activity does not obstruct or cause a danger to navigation.

Notification

Proposed –The Department proposes that there be no requirement for any notification be given to it before the commencement of works.

Do you agree with the proposal to add this new Article?

Do you have any further comments you wish to make on this amendment?

Article 25B Temporary markers (Proposed new Article)

Overview

Temporary marker buoys are also sometimes used for a range of recreational activities such as sailing races, swimming and diving. As with the existing exemptions, the use of such marker buoys is considered to be very low risk to navigation and to the environment.

We therefore propose to exempt the deposit and removal of markers buoys and their associated weights for recreational activities where the marker is temporary and the activity does not obstruct or causes a danger to navigation. A temporary marker buoy could be defined as “not permanently fixed to the seabed” and deposited for less than 28 days to allow for seasonal activities. In order to satisfy the navigational safety condition the operator would need to notify the licensing authority.

The exemption will be worded to ensure the protection of protected species and habitats and items of archaeological or historical interest. Prior notification to the licensing authority will be required.

Notification

Proposed –The Department proposes to require that prior notification be given to it before the commencement of any activity.

Do you agree with the proposal to add this new Article?

Do you have any further comments you wish to make on this amendment?

Article 27A Deposit of a substance arising from the cleaning of vessels Proposed new Article

Overview

This proposed amendment is new to the Exempted Activities Order. This exemption is proposed to enable in-water cleaning of light fouling whilst achieving good biosecurity practice which requires that any more significant fouling is not released to the water.

The Department wishes to emphasise that only the equipment specified in the amending Article is;

- a soft cloth,
- a sponge,
- the bristles of a soft brush, and
- sandpaper, the grit size of which is at least P2000.

Rinsing or cleaning with any type of powered/pressure or additional equipment would need a marine licence. The usage of equipment of that nature without obtaining a marine licence could result in enforcement action. This proposed amendment mirrors that in the Defra Order.

The objective of the new exemption is to balance the risk of in-water cleaning of lightly fouled vessels while reducing the risk of marine invasive non-native species (INNS) being introduced or spread on the hulls of vessels. An example of this is the invasive non-native carpet sea-squirt (*Didemnum vexillum*), which is a significant threat to reef biodiversity and an aquaculture nuisance. It spreads as a fouling agent and its distribution in the UK suggests boating has played a significant role. This and other non-native species are now established in NI with the potential to be spread by vessels and threaten native species.

Stakeholders have expressed concerns that it is unreasonable to be expected to haul out and clean lightly fouled vessels with the costs associated with this activity being prohibitive. This has led to some vessel owners continuing the practice of in-water cleaning without obtaining a marine licence despite it being an offence which could lead to prosecution.

The risk to the marine environment of undertaking gentle cleaning of lightly fouled hulls in-water is considered low, provided that the anti-foul coating is not damaged. Whereas the risk associated with heavier fouling can be high. If more significant fouling is allowed to develop, the affected vessel must be removed from the water and scrapings from the hull deposited in landfill to minimise the risk of introducing or spreading invasive non-native species. No notification requirement is proposed.

Notification

Proposed –The Department proposes that there be no requirement for any notification be given to it before the commencement of works.

Do you agree with the proposal to add this new Article?

Do you have any further comments you wish to make on this amendment?

Article 29 Diver trails within restricted areas (Existing Article to be amended)

Overview

It is proposed to amend this exemption by extending it to include wrecks protected under the Historic Monuments and Archaeological Objects (Northern Ireland) Order 1995 (HMAO) and under section 1(2)(b) of the Protection of Military Remains Act 1986. In effect it would mean that the exemption would be extended to cover heritage assets under the relevant legislation and not limited just to shipwrecks protected under the Protection of Wrecks Act 1973.

This is a pragmatic approach that will benefit the public and help people better appreciate the value of the marine environment, its natural and cultural heritage and its resources and act responsibly (see UK High Level Marine Objectives 2008).

Future diver trails at protected sites would, however, continue to be subject to licensing under the Protection of Wrecks Act 1973 and/or scheduled monument consent under the HMAO. No notification to the licensing authority is required.

Notification

No change proposed – There is no requirement to notify or seek prior approval from DAERA.

Do you agree with the proposed amendment to this exemption?

Do you have any further comments you wish to make on this amendment?

Article 32 Cables and pipelines – authorised emergency inspection and repair (Existing Article to be amended)

The current exemption applies to deposit, removal or dredging activities for the purposes of emergency inspection or repair works to any cable or pipeline for which prior approval from the Licensing Authority is required.

Feedback from the cabling industry is that in an emergency, they are focused on matters at hand. It is proposed to amend the current requirement to obtain prior approval from the Licensing Authority and replace this with a requirement to notify the Licensing Authority within 1 working day of the commencement of the emergency works.

However, neither the amendment nor the current exemption are applicable to cable and pipeline protection (through deposit of rock and by other means) activity because they are;

- (a) ancillary to the repair of the pipeline or cable; and
- (b) the emergency has ended by the time the protection activity takes place.

Paragraph 3 will be amended to clarify that this exemption does not apply to cable and pipeline protection works, such as a deposit made for the purpose of providing rock protection or maintenance. Deposit of rock protection will require a marine licence.

Notification

Proposed changes – The current Article requires prior approval to be obtained from the Department. The Department proposes that this change to notification within one working day of the commencement of works.

Do you agree with the proposed amendment to this exemption?

Do you have any further comments you wish to make on this amendment?

Additional Matters

Duration between Licensing Decision and Commencement of Licence

The Department would like your views on introducing a maximum duration of five years between when a licensing decision is taken (the issue of the draft licence) and commencement of works. This is to ensure that the assessments that underpin the licensing decision are current and reflect all the current nature conservation assessments that underpin the decision. It would be a maximum timeframe which could in reality be shorter, where a new designation or new science information becomes available.

The Department already has the powers to vary, suspend, revoke or transfer a licence under Section 72 of the Act, but has not previously used a maximum allowable time period to start the licensable works. The need for this has arisen as some licensees are currently taking more than 5 years to start works. In some cases, new assessments have been required and the Department's view is that the cost of reassessment needs to be met by a new application, and should not be funded by the public purse.

Do you have any comments you wish to make on this policy change?

HOW TO RESPOND

You can view this stakeholder consultation on line at the Northern Ireland Hub - [Citizen Space](#). This includes a facility to respond on-line. Alternatively, you may also send written responses to;

Susan Cramer

Marine Strategy and Licensing Team
Marine & Fisheries Division
Department of Agriculture, Environment and Rural Affairs Northern Ireland
1st Floor Klondyke Building Cromac Avenue
Gasworks Business Park Belfast
BT7 2JA

You may also forward your comments on the proposed amendments to:
MarineLicensingTeam@DAERA-ni.gov.uk

This consultation will run for 9 weeks from 28 May 2021 and will close on 30 July 2021.

Responses should reach us by **30 July 2021**, although earlier responses would be appreciated.

A summary of the responses received will be issued after the consultation has closed and will be published on the DAERA website.

We will not respond individually to points raised nor will we acknowledge receipt of individual responses unless requested.

The consultation document is also available on the Department's webpage listing current consultations - <https://www.DAERA-ni.gov.uk/consultations>

Additional copies of this consultation paper are available on request to the above address, email or by phone

Email: Jim.ramsey@DAERA-ni.gov.uk

Direct Dial: 028 90 569290

Copies of this consultation document can be obtained in other formats by contacting the above address, emailing or phoning.

CONFIDENTIALITY OF CONSULTATIONS

The Department takes data protection, freedom of information and environmental information issues seriously. It takes care to ensure that any personal information received from you is dealt with in a way which complies with the requirements of the UK General Data Protection Regulation and the Data Protection Act (2018). Click on the [DAERA Privacy Statement for more information](#).

At the end of the engagement, the Department intends to publish a summary of responses following the closing date for receipt of views. Your response, and all other responses to this Stakeholder Consultation on the amendment of the Marine Licensing (Exempted Activities) Order (Northern Ireland) 2011 may be disclosed on request.

The Department can only refuse to disclose information in exceptional circumstances. Any confidentiality disclaimer generated by your IT system in e-mail responses will not be treated as such a request. Section 8(e) of the Data Protection Act 2018 permits processing of personal data when necessary for an activity that supports or promotes democratic engagement.

Information provided by respondents to this stakeholder engagement exercise will be held and used for the purposes of the administration of this current exercise and subsequently disposed of in accordance with the provisions of the Data Protection Act 2018 and UK General Data Protection Regulation.

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 stakeholder engagement exercise. The Department cannot automatically consider as confidential information supplied to it in response to a stakeholder engagement exercise. However, it does have the responsibility to decide whether any information provided by you in response to this stakeholder engagement exercise, including information about your identity, should be made public or be treated as confidential. If you do not wish information about your identity to be made public, please include an explanation in your response.

This means that information provided by you in response to the stakeholder engagement 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 the exercise of 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 confidentiality of responses please contact the Information Commissioner's Office (or see web site at: <https://ico.org.uk/>)

Equality/Human Rights/Rural Proofing Issues

Equality Impact Assessment

Under Section 75 of the Northern Ireland Act 1998, public authorities have a statutory duty to promote equality of opportunity. Preliminary screening exercises have been undertaken and there is no evidence that the proposed measures will have any impact on any of the groups specified in Section 75. Therefore, the Department does not consider a full Equality Impact Assessment to be necessary.

Copies of all screened policies are available from the website at:

<https://www.DAERA-ni.gov.uk/DAERAs-equality-scheme>

The Equality Commission will receive copies of this consultation document as part of the consultation exercise. Any comments that the Commission might have will be taken into account.

Human Rights Issues

The Human Rights Act 1998 implements the European Convention on Human Rights which makes it unlawful for any public authority to act in a way that is incompatible with these rights. The Department considers that the proposals contained in this consultation paper are compatible with the Human Rights Act 1998.

Rural Needs

A Rural Needs Impact Assessment has been undertaken. The RNIA Template provides stakeholders with information on rural needs relevant to the activity being undertaken.



RNIA- A

guide-to-rural-need

Regulatory Impact Statement

The Department undertook a screening process and has determined that the policy does not have an impact (positive or negative) on the wider business community and as such a Regulatory Impact Assessment does not need to be completed. Changes to the legislation will not result in any direct costs for business.

A Regulatory Impact Assessment has not, therefore, been undertaken.