National Oceanography Centre
NATURAL ENVIRONMENT RESEARCH COUNCIL

Marine and Coastal Access Act 2009: Consultation on Secondary Legislation for the Marine Licensing System

8th October 2010

Introduction

The National Oceanography Centre, with additional input from scientists based at institutes across the UK including the University of Durham, Plymouth Marine Institute and the University of Southampton's School of Ocean and Earth Science, welcomes the opportunity to respond to this consultation. The UK marine science community operates in the full range of coastal and deep ocean waters and is at the forefront of the development and use of oceanographic measurement techniques and technologies. These include the deployment of scientific instrumentation and autonomous vehicles from research ships and the placement and recovery of moorings. Our research has identified many of the ecosystem problems that are now known to exist and we believe that relatively free continued access to the marine environment to undertake scientific research is critical to furthering the understanding and stewardship of the oceans, hence we are very much in favour of maintaining the exemption of licensing for marine scientific research discussed below in Question 15.

Views were obtained by circulating the links to the Defra consultation across all staff and postgraduate students at our laboratories in Southampton and Liverpool, and discussion with colleagues at other locations.

Before answering the questions laid out in the consultation, we would like to add an important qualifier – Under 'Geographical Scope' paragraph 3.12 of the document makes it clear that licensing activities will 'also apply to certain activities done or controlled by British vessels, aircraft or structures anywhere at sea'. This raises several important points –

1. Does 'British vessel' etc. mean British owned, or British registered, or both? What are the 'certain activities'?

2. 'Anywhere at sea' raises questions about the rights of Coastal States in waters between 12-200 nautical miles under the UN Convention on the International Law of the Sea. If the Coastal State has a more stringent licensing regime than the UK a British vessel, aircraft or structure would be expected to comply with the more stringent regime.

3. Similarly foreign-flagged or owned vessels, aircraft or structures operating within the UK EEZ should operate under the licensing regime being proposed under this Secondary Legislation.

Q1. Do you agree that the average cost to undertake an Environmental Impact Assessment or Appropriate Assessment is £50,000?

Insufficient knowledge of average costs to comment.

Q2. Do you agree that by front-loading much of the work on applications, savings could be made to the length of time the MMO takes to determine a licence?
This places the onus on the applicant to deliver supporting evidence for the application in advance, so it is reasonable to assume that savings would be made in the time it will take the MMO to determine a license provided that the correct evidence is supplied. Therefore it is essential that applicants are fully briefed as to exactly what is required of them in a timely and detailed manner.

Q3. What monetary value would you place on being able to obtain your marine licence sooner?
No comment

Q4. Do you agree with the overall costs and savings identified in the Impact Assessment? If not, why not?
No comment

Q5. Do you agree with the proposals outlined above for a pre-application service? Is there anything else that you think would provide extra support to potential applicants during this stage?

5.1 Yes, the proposed system is designed to enable operators proposing a marine project or activity to find out the information they need at the earliest stage.

5.2 Where the proposed activity straddles the marine territory of different UK devolved administrations so that the MMO is no longer the sole licensing body there needs to be a straightforward system for ensuring consistent decision making.

5.3 Will the web-based support tool to be operated by the MMO contain global geographical coverage? This is important because under para 3.12 it is stated that the Marine Licensing provisions will apply to ‘certain activities done or controlled by British Vessels, aircraft or structures anywhere at sea’.

5.4 Under UNCLOS Part XIII, Marine Scientific Research activities are permitted in the waters of other Coastal States but it is necessary to allow six months for the application process to take place. The six-month timeframe needs to be taken account of in the application process for British vessels intending to carry out work in other Coastal States waters, and also for foreign vessels wishing to operate in our waters.

Q6. Do you agree with the proposals outlined above for the marine licence application process? Is there anything else that you think would provide extra support to applicants during this stage?

6.1 In some instances there will not be adequate pre-existing marine scientific evidence to fully inform the decision making progress. It would be helpful if applicants can be given contact details for organisations able to provide unbiased scientific help and advice.

6.2 If there is inadequate scientific evidence to what extent will applicants be expected to bear the cost of acquiring the required evidence?

6.3 With reference to para 5.29 the MMO may need to consult internationally in the case of British vessels, aircraft or structures who require licensing for activities anywhere at sea under the para 3.12 geographical scope.

Q7. Do you foresee any difficulties with our proposed approach for updating and repealing existing EIA Regulations and updating Conservation Regulations?

No, the new approach streamlines the existing system and tries to avoid duplication. However given the international geographical scope under paragraph 3.12 account needs to be taken of OSPAR, UNCLOS and other international treaties and obligations.

Q8. Do you foresee any difficulties with this approach?
No comment in paras 5.48-50

Q9. Do you think that the intended approach is appropriate? If not, why not?
With the caveat that ideally oil and gas related activities ought to be included in a fully integrated marine spatial planning system, the intended approach is appropriate.

Q10. Do you agree that eight weeks is sufficient time for an appellant to lodge an appeal?
Yes

Q11. Do you agree with this approach?
Yes

Q12. Do you agree with the proposed time limits within the appeals process?
Yes, provided that an appeal can be re-lodged if new scientific data becomes available that suggests the original decision is no longer tenable.

Q13. Are there waste management activities other than ship breaking that are better regulated under the Environmental Permitting Regulations than under marine licensing?

No comment

Q14. Have we correctly identified the cases where an exemption (subject to MMO approval) for emergency action is needed?
Yes

Q15. We welcome your views on the proposed exemptions, in particular:-
(a) Do you agree with the proposed exemptions as drafted?

Q15.1 Yes. In particular we are strongly supportive of the proposal under paras 7.47-49 to retain an exemption from licensing for marine scientific activities.

Q15.2 We note in the present draft that scientists will need to remove their equipment from the '*sea*' rather than the '*sea floor*' or '*sea bed*'. The Marine Licensing (Exempted Activities) Order 2010 section 18 does specify sea bed. Is the water column as well as the sea bed included in the requirement to remove instruments after use? If so In some instances such as the use of autonomous oceanographic drifters and floats it will not be feasible or cost effective to remove all equipment as it is free-floating within the water column. For example currently there are over 3000 Argo floats (see http://www.argo.net/) in operation across the global ocean, operating for several years outside shelf sea areas so normally outside the boundary of the shallow seas mostly covered by the proposals. These kinds of instruments are often deployed in international waters with no control over the final destination, and pose negligible environmental harm potential. Given the additional operational constraints of foul weather or equipment failure preventing the recovery of equipment deployed on the sea bed, could words along the lines of 'best endeavours' or 'all reasonable measures' be used to describe the effort required by scientists to retrieve their equipment?

Q15.3 Due to the day-to-day realities of working in the marine environment, scientists cannot guarantee retrieval of all deployed items of equipment. For example the commonly used expendable bathythermograph (XBT) instrument is designed for single-use. Almost all mooring designs employ some form of drop weight (usually metal or concrete) to enable recovery of the system. – though some designs for shallower water (typically less than 50-100m) have a spooler system to allow subsequent recovery of the drop weight. We request that the proposed exemptions take into account that some items are left in the ocean as an operational consequence of undertaking measurements of the marine environment. Future designs may be able to reduce or eliminate the need to leave any weights behind. Ballast weights can be designed to ensure minimal possible harm to the marine environment – and with appropriate design features (holes, empty spaces, correct surface texture) may be able to contribute to habitat opportunities for marine life-forms.

Q15.4 The following comment was made by members of the offshore geophysics research community:

"1. Use of ocean-bottom instrumentation (e.g. Ocean Bottom Seismometers to record seismic data or earthquakes); these deployments can last for a few days up to a year or so. We inevitably leave behind a bottom weight (usually iron, or cast concrete slab) and if the instrument does not respond to return signals, then the whole instrument package may remain on the seabed afterwards. Given that parts of the instrument (nuts and bolts etc) always corrode during long deployments we could be said to be leaving substances the area, although clearly with only trace amounts of material. Over time the bottom weight would also react with the surroundings to some degree.

2. Use of disposable probes (eg XBTs, or sonobuoys to record seismic data). These clearly leave an object in the environment; XBT or similar goes immediately to the seabed, although sensor wires may presumably take hours to do this, sonobuoys are self-sinking after some time interval (usually 6 hours from deployment). Sonobuoys usually have a seawater-based battery system (ie trace chemical release) and some expendable systems (eg XSV, XCDT) have batteries inside them that might eventually be released into the environment, although again in small quantities.

Most science experiments doing large-scale geophysics use both of these techniques, and it is not uncommon to plan surveys with 100 ocean-bottom deployments. To have to permit each one individually would pose a significant administrative burden so it is essential to the UK marine geophysics community that the science exemption is retained for both instrumentation and for small amounts of substances."

Q15.5 Some clarification is needed on how the exemption will be restricted within Marine Conservation Zones and the other areas listed in 7.47, as these are the areas most in need of regular scientific investigation. Under the Marine Licensing (Exempted Activities) Order 2010 section 17 (6) and 18 (3) and (4) the implication is that licensing is only required if the activity will have a 'significant effect' on the European site, Ramsar site or is capable of affecting (other than insignificantly) the protected features of an MCZ or any ecological or geomorphological proess on which the conservation of any protected feature of an MCZ is (wholly or in part) dependent. These are important clarifications which would exempt the majority of marine scientific activities from licensing within MCZs or European Sites.

Q15.6 We note that substances approved via the MMO as tracers can be used within a separate exemption. We would add that some automated sampling systems release very small quantities of chemical reagents or other 'exhausts' as a by-product of the sampling chemistry process. Quantities involved are very small volumes (a few cc's). We would ask that the wider marine scientific community is consulted by CEFAS in defining the list of exempted tracer chemicals. CEFAS need to know the full range of chemicals and tracers that are currently in use or proposed for use in the near future.

Q15.7 We welcome the use of the broad term ‘vehicles’ within section 18.1 of the Marine Licensing (Exempted Activities) Order 2010 as it implies that marine scientific platforms include ships, submersibles and autonomous systems.

Q15.8 In reference to maintenance dredging we agree that a transitional period should be used to develop new simplified licensing processes.

Q15.9 Responsible scientific sampling of the seafloor is essential. The ‘InterRidge’ programme has taken a lead in setting up a Code of Conduct for responsible research around hydrothermal vents, which might serve as a template for a broader system. The InterRidge "Statement of commitment to responsible research practices at deep-sea hydrothermal vents" is available at http://www.interridge.org/IRStatement

(b) Are there other activities that we have not included that you feel should be included?
It is possible that research into methods of geo-engineering (processes such as ocean fertilization, nutrient enrichment, albedo alteration, cloud seeding etc.) will take place in future, generally in deep international waters, and experiments might need to be on a sufficiently large scale to demonstrate if the proposed process is effective or not. If such experiments were to take place from a British-owned or registered ship, the operators of the proposed licensing system will need to be aware of the nature of these sort of experiments and have access to consultation or expert advice – both scientific and legal – so as to be able to either license or exempt the activity.

Q16. Will the draft Regulations provide the right level of detail on the Public Register? If not what information should be added or removed from the requirements?
The Public Register is a good concept that the marine scientific community supports. We would like to clarify if exempted activities under marine scientific research would still be listed in the public register as ‘taking place, but subject to an exemption from licensing’? This could be to allay public fears that science exemptions are being used to hide activities.

This response prepared by:

Stephen Hall *CSci CMarSci FIMarEST*
National Marine Coordination Office
National Oceanography Centre
European Way
Southampton SO14 3ZH
sph@noc.ac.uk