
STATUTORY INSTRUMENTS

2017 No. 1013

**The Conservation of Offshore Marine
Habitats and Species Regulations 2017**

PART 4

**ADDITIONAL PROTECTION OF HABITATS
AND WILD ANIMALS AND PLANTS**

Duties relating to surveillance and monitoring

Surveillance of conservation status of habitats and species

50.—(1) In relation to the offshore marine area, the Secretary of State must make arrangements in accordance with paragraphs (9) to (11) for the surveillance of the conservation status of natural habitats of Community interest and species of wild flora and fauna of Community interest, and in particular priority natural habitat types and priority species.

(2) In relation to the Scottish offshore region, the Scottish Ministers must make arrangements in accordance with paragraphs (9) to (11) for the surveillance of the conservation status of natural habitats of Community interest and species of wild flora and fauna of Community interest, and in particular priority natural habitat types and priority species.

(3) In relation to the Welsh offshore region, the Welsh Ministers must make arrangements in accordance with paragraphs (9) to (11) for the surveillance of the conservation status of natural habitats of Community interest and species of wild flora and fauna of Community interest, and in particular priority natural habitat types and priority species

(4) Before the Secretary of State makes any arrangements under paragraph (1) for surveillance in relation to the Scottish offshore region or the Welsh offshore region, the Secretary of State must consult the Scottish Ministers or the Welsh Ministers, respectively.

(5) The Secretary of State must from time to time—

- (a) consult the devolved administrations about the arrangements made under paragraph (1);
- (b) provide the devolved administrations with such information as the Secretary of State considers appropriate that has been derived from the surveillance arranged under paragraph (1); and
- (c) review the arrangements made under paragraph (1) and, if the Secretary of State thinks it appropriate, revise those arrangements.

(6) The Scottish Ministers must from time to time—

- (a) consult the other devolved administrations and the Secretary of State about the arrangements made under paragraph (2);
- (b) provide the other devolved administrations and the Secretary of State with such information as the Scottish Ministers consider appropriate that has been derived from the surveillance arranged under paragraph (2); and

- (c) review the arrangements made under paragraph (2) and, if they think it appropriate, revise those arrangements.
- (7) The Welsh Ministers must from time to time—
 - (a) consult the other devolved administrations and the Secretary of State about the arrangements made under paragraph (3);
 - (b) provide the other devolved administrations and the Secretary of State with such information as the Welsh Ministers consider appropriate that has been derived from the surveillance arranged under paragraph (3); and
 - (c) review the arrangements made under paragraph (3) and, if they think it appropriate, revise those arrangements.
- (8) The Joint Committee must—
 - (a) assess how and to what extent surveillance of the conservation status of each relevant habitat and species needs to be carried out, having regard to—
 - (i) whether a habitat or species is a priority natural habitat type or priority species; and
 - (ii) the conservation status of the habitat or species; and
 - (b) advise the relevant administration as to the need for such surveillance.
- (9) The relevant administration must ensure that the necessary surveillance is carried out on an ongoing basis.
- (10) Surveillance for the purposes of this regulation may be carried out by—
 - (a) the Joint Committee; or
 - (b) any other person acting pursuant to, and in accordance with, an agreement with the relevant administration or the Joint Committee.
- (11) In this regulation—
 - (a) a “relevant” habitat or species means a habitat or species in the offshore marine area of a type referred to in paragraph (1), (2) or (3);
 - (b) “the relevant administration” means—
 - (i) in relation to surveillance under paragraph (1), the Secretary of State;
 - (ii) in relation to surveillance under paragraph (2), the Scottish Ministers; and
 - (iii) in relation to surveillance under paragraph (3), the Welsh Ministers.

Protection of certain animals and plants from exploitation

51.—(1) The Secretary of State must, as required in the light of information derived from surveillance carried out under regulation 50 or otherwise arranged for the purposes of Article 11 of the Habitats Directive, ensure that measures are taken for the purpose described in paragraph (2).

(2) The purpose referred to in paragraph (1) is to ensure that—

- (a) the taking in the wild of specimens of a species listed in Annex V to the Habitats Directive, and
- (b) the exploitation of any such specimens in the waters comprising the offshore marine area, are compatible with that species being maintained at a favourable conservation status.

(3) Where measures are required under paragraph (1), the Secretary of State must make arrangements for surveillance for the purpose of establishing whether the taking in the wild of specimens of the species concerned, and the exploitation of specimens of that species, are compatible with the maintenance of the species at a favourable conservation status.

(4) In so far as arrangements for measures mentioned in paragraph (1) may be made by either the Scottish Ministers or the Welsh Ministers in the exercise of any of their respective functions for the purpose mentioned in paragraph (2), paragraph (1) applies to the Scottish Ministers and the Welsh Ministers as it applies to the Secretary of State.

(5) The obligation of the Secretary of State under paragraph (1) is to be treated as satisfied in so far as it has been met by either the Scottish Ministers or the Welsh Ministers.

(6) Insofar as arrangements for measures mentioned in paragraph (1) may be made by any Northern Ireland department in the exercise of any of its functions for the purpose mentioned in paragraph (2), paragraph (1) applies to that department as it applies to the Secretary of State.

(7) The obligation of the Secretary of State under paragraph (1) is to be treated as satisfied insofar as it has been met by any Northern Ireland department.

(8) Before the Secretary of State exercises any relevant function for the purpose of complying with paragraph (1), the Secretary of State must first consult—

- (a) the Scottish Ministers, in the case of a relevant function exercisable for the purpose referred to in paragraph (9)(a);
- (b) the Welsh Ministers, in the case of a relevant function exercisable for the purpose referred to in paragraph (9)(b); or
- (c) the DAERA, in the case of a relevant function exercisable for the purpose referred to in paragraph (9)(c).

(9) In this regulation, “relevant function” means any function of the Secretary of State exercisable for the purpose of—

- (a) securing any result which may instead be secured by the exercise of any function of the Scottish Ministers;
- (b) securing any result which may instead be secured by the exercise of any function of the Welsh Ministers; or
- (c) securing any result which may instead be secured by the exercise of any function of any Northern Ireland department.

Monitoring incidental capture and killing

52.—(1) The relevant administration must make arrangements in accordance with paragraphs (4) and (5) to establish a system for monitoring—

- (a) the capture of animals of any species listed in Annex IV(a) to the Habitats Directive, and
- (b) the killing of any such animals,

which (in either case) is incidental to any activity that takes place in the waters comprised in the offshore marine area.

(2) The relevant administration must, from time to time—

- (a) consult the other administrations about the arrangements made under paragraph (1);
- (b) provide the other administrations with such information as it considers appropriate derived from the monitoring arranged under paragraph (1); and
- (c) review the arrangements made under paragraph (1) and, if it thinks it appropriate, revise those arrangements.

(3) The Joint Committee must, in relation to the species of animals listed in Annex IV(a) to the Habitats Directive which are found in the offshore marine area—

- (a) identify the risks of incidental capture and killing to which those species are subject, and the activities which give rise to such risks;

- (b) maintain a record of instances of incidental capture or killing of animals of those species of which the Joint Committee is aware as a result of the surveillance carried out under regulation 50, the monitoring carried out under this regulation, or otherwise;
 - (c) assess to what extent monitoring of incidental capture and killing is needed, having regard to—
 - (i) the risks identified under sub-paragraph (a);
 - (ii) the instances of incidental capture or killing recorded under sub-paragraph (b);
 - (iii) whether the species is a priority species; and
 - (iv) the conservation status of the species; and
 - (d) advise the relevant administration as to the need for such monitoring.
- (4) The relevant administration must ensure that the necessary monitoring of incidental capture and killing is carried out.
- (5) Monitoring for the purposes of this regulation may be carried out by—
- (a) the Joint Committee;
 - (b) any other competent authority;
 - (c) any other person acting pursuant to, and in accordance with—
 - (i) an agreement with the relevant administration or the Joint Committee; or
 - (ii) a condition of a licence or other authorisation granted by a competent authority.
- (6) Before the Secretary of State exercises any functions under this regulation in relation to a matter in relation to which functions are also exercisable by the Scottish Ministers or the Welsh Ministers, the Secretary of State must consult the Scottish Ministers or Welsh Ministers, respectively.
- (7) The obligations of the Secretary of State under this regulation in relation to the Scottish offshore region or the Welsh offshore region are to be treated as satisfied in so far as corresponding obligations of the Scottish Ministers or the Welsh Ministers, respectively, have been met by them.
- (8) In this regulation—
- (a) “the other administrations” means the administrations other than the relevant administration, and for this purpose “the administrations” means the Secretary of State and the devolved administrations; and
 - (b) “the relevant administration” means—
 - (i) in relation to the monitoring of activity taking place in the offshore marine area, the Secretary of State;
 - (ii) in relation to the monitoring of activity taking place in the Scottish offshore region, the Scottish Ministers; and
 - (iii) in relation to the monitoring of activity taking place in the Welsh offshore region, the Welsh Ministers.

Protection from incidental capture and killing

53.—(1) The Secretary of State must, as required in the light of information derived from monitoring carried out under regulation 52 or otherwise arranged for the purposes of Article 12(4) of the Habitats Directive, make arrangements for further research, or ensure that conservation measures are taken, for the purpose specified in paragraph (2).

(2) The purpose referred to in paragraph (1) is to ensure that the capture or killing (as the case may be) of animals of a species listed in Annex IV(a) to the Habitats Directive which is incidental to any activity that takes place in the waters comprised in the offshore marine area does not have a significant negative impact on that species.

(3) In so far as arrangements for further research or conservation measures mentioned in paragraph (1) may be made by the Scottish Ministers, the Welsh Ministers or any Northern Ireland Department in the exercise of any of their functions for the purpose mentioned in paragraph (2), paragraph (1) applies to the Scottish Ministers, the Welsh Ministers and that Northern Ireland Department, as the case may be, as it applies to the Secretary of State.

(4) The obligation of the Secretary of State under paragraph (1) is to be treated as satisfied in so far as it has been met by the Scottish Ministers, the Welsh Ministers or any Northern Ireland Department.

(5) Before the Secretary of State exercises any relevant function for the purpose of complying with paragraph (1), the Secretary of State must first consult—

- (a) the Scottish Ministers, in the case of a relevant function exercisable for the purpose referred to in paragraph (6)(a);
- (b) the Welsh Ministers in the case of a relevant function exercisable for the purpose referred to in paragraph (6)(b); or
- (c) in Northern Ireland, the DAERA in the case of a relevant function exercisable for the purpose referred to in paragraph (6)(c).

(6) In this regulation, “relevant function” means any function of the Secretary of State exercisable for the purpose of—

- (a) securing any result which may instead be secured by the exercise of any function of the Scottish Ministers;
- (b) securing any result which may instead be secured by the exercise of any function of the Welsh Ministers; or
- (c) securing any result which may instead be secured by the exercise of any function of any Northern Ireland department.

Introduction of new species

Introduction of new species

54.—(1) Subject to regulation 55(11)—

- (a) a person on an offshore marine installation commits an offence if that person deliberately introduces into any relevant part of the waters in any area designated under section 1(7) of the Continental Shelf Act 1964(1) any live animal or plant of a kind having a natural range that does not include those waters; and
- (b) a person in, or on board a ship in, any relevant part of the waters comprised in the offshore marine area commits an offence if, other than in accordance with paragraph (3), that person deliberately introduces into any part of those waters any live animal or plant of a kind having a natural range that does not include those waters.

(2) For the purposes of paragraph (1), “relevant part” means any part where the introduction would give rise to a risk of prejudice to natural habitats within their natural range or a risk of prejudice to wild native flora or fauna (whether in the place of introduction or elsewhere).

(3) An introduction is in accordance with this paragraph if—

- (a) it resulted from a discharge of water carried as ballast and the discharge was necessary for the purpose of protecting the safety of any person or ship; and

(1) 1964 c. 29. Section 1(7) was amended by the Oil and Gas (Enterprise) Act 1982 (c. 23) paragraph 1 of Schedule 3. Areas have been designated under section 1(7) by S.I. 1987/1265, 2000/3062 (revoked by S.I. 2013/3162), 2001/3670 (revoked by S.I. 2013/3162), and 2013/3162.

- (b) all reasonably practicable steps were taken—
 - (i) to avoid its occurring in an area where it would give rise to a risk of prejudice to natural habitats within their natural range or a risk of prejudice to wild native flora or fauna (whether in the place of introduction or elsewhere); and
 - (ii) to minimise any risk of such prejudice.
- (4) In any proceedings for an offence under paragraph (1)(b), a court must have regard to any guidance about steps which may be taken to avoid committing an offence under paragraph (1)(b) which is issued for the purposes of this paragraph by the Secretary of State, or—
 - (a) in relation to the Scottish offshore region, by the Scottish Ministers; or
 - (b) in relation to the Welsh offshore region, by the Welsh Ministers.
- (5) The Scottish Ministers or the Welsh Ministers may only issue guidance under paragraph (4) with the agreement of the Secretary of State.
- (6) In any proceedings for an offence under paragraph (1)(b), it is for the defendant to show that the introduction in question was in accordance with paragraph (3).
- (7) A person guilty of an offence under this regulation is liable, either on summary conviction or on conviction on indictment, to a fine.
- (8) This regulation does not apply to a person on board a third country ship.