



Department
for Environment
Food & Rural Affairs

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Red Tape Challenge – Water and Marine Theme

Marine Proposals

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better.regulation@defra.gsi.gov.uk

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Introduction

The Red Tape Challenge (RTC) is a Cabinet Office led initiative designed to draw on the experience and ideas of both business and individuals to assist Departments in a review of the regulatory stock, to ensure that the regulations are fit for purpose in the 21st century. This includes the consideration of a range of outcomes including scrapping, simplifying and retaining the existing regulations.

Due to the large number of regulations being taken forward under this initiative and to make the discussion more focused, only a select number of regulations are being taken forward for review at any one time, with these being grouped on a thematic basis e.g. Water & Marine regulations. The Water & Marine theme is the second Defra led theme and covers some 371 Regulations, with the Department having already announced its proposals for the Environment theme in March 2012.

The Water and Marine theme covers drinking water quality, flood management, inland waterways, marine conservation and fisheries. As with the Environment theme, the review of Defra's Water & Marine regulations has sought to deliver a balance between the removal of regulations that are creating unnecessary barriers to innovation and efficiency, whilst at the same time continuing to protect the health of our rivers and seas, maintaining the diversity of aquatic life and managing our water and marine resources effectively.

This paper focuses on the Marine element of the RTC theme and covers 196 regulations in three areas: Conservation and Use of the Marine Environment, Freshwater and Migratory Fisheries and Sea Fisheries.

The website spotlight ran for 8 weeks from 12 February, with the Marine part of the theme attracting around 100 website comments. The majority of comments posted were general in nature and did not identify specific regulations or burdens for removal or examples where the regulations could be strengthened. More than two thirds related to conservation of the Marine environment, calling for additional environmental protection. The relatively low number of responses relating to measures covering the fishing industry reflects the industry's understanding that the current process to reform the Common Fisheries Policy (CFP) is likely to generate regulatory change and improvements will be made as part of this work.

Over the past eight months, Defra has put each of the regulations through a vigorous challenge process incorporating crowd-sourced comments, inbox submissions, and views from our Sounding Board of key stakeholders and environmental organisations. Defra's reviews, allied to evidence gathered through the RTC process, have formed the basis for the package presented in this paper.

Out of 196 instruments, we are proposing to scrap or improve 64% of the regulations:

Scrap 63 (32%) mainly obsolete regulation

Improve 62 (32%) mainly through simplification and consolidation, and improving implementation on the ground

Keep 71 (36%) combination of measures either supported by business, providing consumer protection in terms of affordability and supply, or preserving environmental protections

Please note: Many of these proposals are subject to further public or stakeholder consultation

This paper only sets out the proposals for the Marine element of the theme. The Water element of the theme was announced in December 2012, and an implementation plan for all 235 regulations that are being either scrapped or improved has been published alongside this paper. This provides an indication as to the timings as to when all of the changes are to be implemented.

This paper should be read in conjunction with the Better Regulation Executive's Focus on Enforcement review on [coastal projects and investments](#). This complimentary initiative focuses on the implementation and enforcement of regulation, which has a degree of overlap with the Red Tape Challenge, as a significant number of the proposed changes relate to the implementation/application of the regulations rather than the regulations themselves.

Conservation and Use of the Marine Environment

These regulations deal with conservation of our marine ecosystems and aquatic life (habitat protection), and include a comprehensive licensing system for potentially damaging marine activities.

Of the 25 regulations in this area, we propose to:

Scrap 1 (4%) obsolete regulations

Improve 13 (52%) mainly by improving implementation on the ground and through consolidation of regulations

Keep 11 (44%) to maintain important environmental and public protections

Marine Licensing

Part IV of the Marine and Coastal Access Act 2009 (MCAA) introduced a streamlined marine licensing system for territorial waters around England, Wales and Northern Ireland and for all UK waters beyond 12 nautical miles as measured from the baseline of the territorial sea and for certain activities done or controlled by British vessels, aircrafts or structures anywhere at sea. It is a relatively new Act which merged and simplified previous licensing regimes. The Marine Scotland Act 2010 applies to Scottish territorial seas. Most marine licensing functions in England including enforcement have been delegated from the Secretary of State to the Marine Management Organisation (MMO).

Regulations made under the MCAA establish the framework for facilitating the sustainable use of the marine environment by enabling development to proceed whilst protecting the environment and human health and preventing interference with other legitimate users of the sea. Several of the regulations confer rights on people, e.g. by exempting activities, requiring the MMO to maintain a register, or establishing appeals procedures. These regulations were also discussed in tandem with the Better Regulation Executive's review of coastal investments and projects which incorporated some aspects of the marine licensing system.

Financial benefits and savings will emerge as part of the normal impact assessment processes as the implementation plan is taken forward. However, some initial benefits have already been identified, for example a reduced regulatory framework.

Proposed Action: Scrap redundant regulation

Deposits in the Sea (Exemptions) Amendment (England and Wales) Order 2010 will be scrapped as it is totally redundant.

Proposed Action: Improve regulations by consolidation; regulations remain largely the same in content

Defra concluded that there is merit in consolidating the marine licensing measures relating to 'Environmental Impact Assessments' and those instruments relating to 'Exemptions' and will aim to do so within the next 2.5 years. It will also consider, by September 2013, the possibility of consolidating other marine licensing measures where practicable. Defra will aim to complete any consolidation arising from this work by Spring 2015.

Proposed Action: Improved Implementation by extending the number of activities for which a marine license is not required

The Marine Licensing (Exempted Activities) Order 2011 has been amended to extend the range of exemptions for licensable activities. A number of activities are considered low risk and capable of exemption (subject to certain conditions). The policy objective is to reduce the regulatory burden on marine users while maintaining the Government's wider goals for the marine environment. Defra consulted on options between August and October 2012. New exemptions include minor maintenance dredging operations (for example small scale works carried out by marinas), deposit of temporary buoys, removal of animal carcasses from the shoreline, recovery of lost objects, taking of samples, and pontoons. The Order applies from 6 April 2013.

Habitat Protection

Review of the Habitats and Wild Birds Directives

The UK's coastal and marine environments are important and sensitive, and marine developments may therefore need to take account of the provisions of the Habitats and Birds Directives. The Government undertook the Habitats and Wild Birds Directives Implementation Review between November 2011 and March 2012. The review identified 28 measures to help improve the implementation of the Directives, for the benefit of both the economy and the environment.

This paper does not describe those measures in detail, but several will benefit marine and coastal developments including:

- A cross-Government Major Infrastructure and Environment Unit to work at the pre-application stage with major infrastructure projects.
- A new process for agreeing upfront evidence requirements for nationally significant infrastructure projects.
- A new Habitats and Wild Birds Directives Marine Evidence Group to address evidence gaps which can be barriers to effective decision making.
- Simplification of guidance on the Directives.

Proposed Action: Improve/reduce number of regulations by consolidation; the regulations remain largely the same in content

Three additional measures, namely, the Offshore Marine Conservation Regulations 2007 and its two amendment Regulations will also be consolidated. These Regulations transpose the Habitats Directive and Birds Directive in offshore waters (beyond 12 nautical miles/territorial waters).

Marine Conservation Zones

Part V of the Marine and Coastal Access Act 2009 establishes the legislative framework for the introduction of Marine Conservation Zones and has not yet been implemented. The consultation exercise regarding designation of zones commenced in December 2012 to the end of March 2013.

Other Habitat Protection Measures

Other habitat protection measures to be kept include the Marine Strategy Regulations 2010 which establish the framework for marine environmental policy in the UK transposing EU Directive 2008/56. 4 other measures to be kept include regulations that prohibit dredging for shellfish and/or demersal trawling in specific areas in order to preserve stocks and encourage sustainability.

Freshwater and Migratory Fisheries

The overall aim of migratory (e.g. salmon and sea trout) and freshwater fisheries policy is to promote the conservation, restoration and sustainable management and exploitation of migratory and freshwater fish stocks. Migratory and freshwater fisheries are governed by a mixture of measures including legislation at European, national and local level. Byelaws in particular are used to address local issues.

Of the 25 regulations in this area, we propose to:

Improve 17 (68%) mainly by improving implementation on the ground and through consolidation of regulations

Keep 8 (32%) to maintain important environmental and public protections

Proposed Action: Improved implementation

A new 'Prohibition of Keeping Live Fish (Specified Species) (Amendment) Order' will revoke and replace the existing 1998 Import of Live Fish Act Order and its 2003 amendment that prohibits the keeping and release of specified non-native freshwater fish species except under licence with a single 2013 Order. General licences (to be held by Cefas) will be issued to facilitate free trade in tropical and sub-tropical species currently considered to pose a low risk. Individual site licences for species capable of surviving in UK waters will be issued only following an assessment of the risk they pose to native species and habitats. Licences will carry conditions regarding permitted use and site biosecurity. Any established trade in species assessed as 'low risk' and those of tropical/sub-tropical origin will immediately be cleared for trade on a general licence permitting their keeping as ornamental animals under appropriate conditions.

Defra originally consulted on the proposed changes in 2010. The majority of respondents supported the need for better control of non-native species. Defra has written to all the original respondents in April 2013 to formally ask them to reaffirm their views on the proposed changes.

Proposed Action: Improved implementation, regulations remain largely the same in content

Defra is also planning to introduce legislation which deals with measures to control the keeping, release and removal of live fish into inland water. It is proposed to introduce a permit system which is risk based and therefore will reduce the burden on the fisheries industry. This will replace the current fish stocking and removal authorisations administered by the Environment Agency and licences to keep non

native fish in the wild. The new scheme will reduce the paperwork for fishery managers and fish suppliers by reducing the regulation of routine, low risk fish transfers. Instead it will allow the Environment Agency to focus on higher risk movements.

Proposed Action: Improve regulations by consolidation; the regulations remain largely the same in content

The current ban on fishing for salmon and trout in deep sea areas is well understood by stakeholders and appears to have achieved the desired behavioural change as there is little evidence of significant non compliance. However, 10 regulations which relate to the conservation of salmon are to be consolidated to simplify the legislative landscape. This will have limited impacts on the various affected parties as the regulations will remain largely the same in content.

Sea Fisheries

The majority of these measures regulate the sea fishing industry and include provisions on sustainable harvesting of fish and shellfish stocks; monitoring and enforcement of fishing activities; by catch; fishing vessels and technical provisions (e.g. fishing gear and species sizes).

This subtheme also includes regulations relating to the protection of marine species (e.g. whales, dolphins, sharks and seals). Wildlife legislation on the protection of marine species has already been examined under the Environment Theme.

Of the 146 regulations in this area, we propose to:

Scrap 62 (42%) obsolete regulations of which 13 duplicate or overlap with another regulation

Improve 32 (22%) by improving implementation on the ground; through simplifying / consolidating regulations; partially repealing regulations or renegotiation at EU level

Keep 52 (36%) to maintain important environmental and public protections

Species Protection

12 regulations/acts relate to species protection. This legislation relates to specific actions for marine species, (whales, dolphins, sharks and seals) in addition to wider wildlife legislation already examined under the Environment theme.

Proposed Action: Scrap redundant regulation

The proposal is to scrap 9 measures which are redundant and archaic either because they have been superseded or are no longer relevant. There is no reduction in protection afforded to these species.

EU Related Regulations

A large proportion of the measures under this subcategory either stem from or implement EU legislation. A number of these regulations have been identified for improvement or repealed as they have either been superseded or replaced by directly applicable regulations.

European Legislative Framework

Within the Marine theme, European provisions such as the Common Fisheries Policy, the Habitats Directive and the Wild Birds Directive place limits on the scope to reform regulations. The UK is playing a lead role in efforts to fundamentally reform the CFP, seeking to overcome its long standing structural failures, and pressing for closer integration between fisheries and marine conservation policies. In addition, measures put in place following the Government's 2012 review of the Habitats and Birds Directives will contribute to better regulation in the marine environment.

More generally, the Marine Strategy Framework Directive (MSFD) sets an overall framework for achieving 'Good Environment Status' in Europe's seas by 2020. In transposing MSFD into UK law in 2010, the Government and Devolved Administrations retained significant discretion in future implementation and we will ensure that this is done in line with better regulation principles. The UK's targets and indicators for Good Environmental Status were agreed across Government in December 2012 and submitted to the European Commission.

Proposed Action: Scrap redundant regulation

17 Regulations/Orders which enabled relevant EU fisheries legislation to be applied and enforced in England and in respect of English vessels are redundant following changes made to the Fisheries Act 1981. These measures are being included in a Control Regulations Revocation Order which is currently being prepared. They can now be repealed since the Marine and Coastal Access Act 2009 amended section 30(1) of the Fisheries Act 1981 to make the EU legislation directly applicable. A further 16 measures have either been replaced or have lapsed because they relate to funds or schemes that no longer exist.

Proposed Action: Improve, mainly by simplifying and consolidating regulations

Of the 23 measures to be improved, the improvements largely relate to merging regulations which are of a similar nature. A further review of many of these measures will take place when the regulatory framework for Common Fisheries Policy reform has been established.

Non Regulatory Approaches

In addition to the regulatory proposals, Defra and the MMO continue action to reduce the regulatory burden on businesses.

The MMO seeks to incentivise compliant activity in accordance with better regulation principles through education, advice and guidance wherever possible, including regular meetings with those it regulates. Guidance notices, such as those issued for the introduction of financial administrative penalties, are posted on its website and individual vessel owners receive written advice about forthcoming EU legislation, specifying what action they need to take in order to be compliant.

Other activities include:

- (i) A **net measuring programme** for vessels participating in catch quota trials. We also intend to work with industry to develop a national voluntary scheme. This reduces the need for net inspections at sea, minimising disruption to fishermen and their businesses.
- (ii) The current voluntary **catch quota trials**, where participants are allocated increased quota and are not permitted to discard, is a key area where we are working on practical solutions to regulatory problems, working with the fishing industry to encourage more sustainable fishing while providing valuable data for Common Fisheries Policy (CFP) reform. This is a clear incentive for fishermen to work with us to find a shared solution to current regulatory issues that have arisen under the CFP.
- (iii) Actions which seek volunteers to carry out trials such as the **Lyme Bay trial**. As management measures for Marine Protected Areas (MPAs) are rolled out, the MMO will continue to work with industry to see where 'nudge' as well as regulatory action provides the best solutions.

Future Action to Reduce the Regulatory Burden, Including UK Activity to Influence EU Policy

The recent approach taken by Defra in developing policy and management measures, as well as that taken by the Marine Management Organisation (MMO) in ensuring compliance, is to engage directly and frequently with professional fishermen and their representative bodies at all stages in the process through formal and informal consultation.

A high proportion of this engagement takes place through meetings, workshops, local surgeries on the coast and elsewhere, as well as directly by mail including written updates and regular news placed in the trade and industry publications as well as Defra's own Fishing Focus publication. Feedback from this engagement increases understanding of how existing and new measures are affecting different parts of the fleet and particular fishing operations. This ensures that the practical experience and expertise of practising fishermen is drawn upon as effectively as possible.

Effective management is generally appreciated by fishermen, who mostly recognise that Defra and the MMO are constrained in pursuing as flexible and outcome focussed approach as we would wish by the heavily prescriptive and detailed process provisions of the EU legislation and Commission interpretation.

To the greatest practicable extent possible within the constraints of a prescriptive regime, we seek to maximise the extent to which fishermen themselves take responsibility for managing aspects of that regime and are held to account in so doing. For example:

- The fishermen run Producer Organisations that are responsible for managing the fishing quota allocations for their membership (mostly comprising larger vessel owners, though nearly all are still micro-businesses) and who are responsible for making their own quota management decisions on leasing and arranging quota swaps during the year.
- The current pilot scheme of a group of fishermen of small scale inshore vessels, under 10m in length, managing their own quota rather than fishing against monthly catch limits from a national quota pool administered by the MMO.
- More recently, an industry-led group has been set up to make recommendations to the UK Fisheries Administrations on allocation of days at sea for vessels over 15m in length targeting scallops (a non-quota species), to ensure compliance with the EU effort regime for scalloping in the water area concerned.

Reform of Common Fisheries Policy (CFP)

The UK is committed to radical reform to achieve healthy fish stocks, a prosperous fishing industry and a healthy marine environment by tackling the waste of discards, moving away from ineffective, centralised micro-management and setting sustainable fishing rates.

The UK's key priorities for reform of the CFP, which is subject to co-decision by the European Fisheries Council and the European Parliament, are:

- Eliminating discards through a **regulatory framework that** discourages discards rather than causing them.
- **Genuine decentralisation and simplification of decision making** to enable Member States to cooperate on management plans, and implement measures appropriate to their fisheries.

- **Integration of the CFP with other marine environmental policies** to contribute to the delivery of Good Environmental Status under the Marine Strategy Framework Directive.
- Achieving **Maximum Sustainable Yield** in line with existing commitments, by 2015 where possible, taking into account the complexities of mixed fisheries.
- Looking beyond Europe, applying the **same principles of sustainable use of marine resources outside EU waters as within.**
- A partial General Approach (supported by the UK) was agreed by European Council of Fisheries Ministers in February 2013 and included a genuine process of regionalised decision-making, legal binding commitments to setting sustainable fishing rates and the elimination of discards.
- A provisional political agreement was reached between the Presidency, Parliament and Commission on 30 May 2013. This has now been approved by Member States at Coreper and Fisheries Committee and now awaits a full vote of the European Parliament Plenary. We are now close to securing an outcome to the reform process that delivers our top priorities.

As part of the Red Tape Challenge we made an initial assessment of those Regulations under the Sea Fisheries sub theme we believe may be affected by CFP reform. These assessments may change as discussions conclude and when we start to liaise with lawyers about development and implementation of the new regulatory framework.