

Northern Ireland Guidance on Marine Licensing

Environmental Impact Assessment, under Part 4 of the Marine and Coastal Access Act 2009

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Department of
**Agriculture, Environment
and Rural Affairs**

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1.0 The Marine Works (Environmental Impact Assessment) Regulations

The licensing regime under Part 4 of the Marine and Coastal Access Act 2009 (MCAA) largely replaces a number of previous regulatory regimes including those under:

- Part 2 of the Food and Environment Protection Act (FEPA) 1985;
- The Environmental Impact Assessment and Natural Habitats (Extraction of Minerals by Marine Dredging) (England and Northern) Regulations 2007.

Council Directive No 85/337/EEC, the Environmental Impact Assessment Directive (as amended) on the assessment of the effects of certain public and private projects on the environment seeks to ensure that the authority giving the primary consent has knowledge of any likely significant effects on the environment. The Environmental Impact Assessment (EIA) Directive sets out a procedure that must be followed for certain types of project before they can be given 'development consent'. This procedure, known as EIA, is a means of drawing together, in a systematic way, an assessment of a project's likely significant environmental effects. This helps to ensure that the importance of the predicted effects, and the scope for reducing them, are properly understood by the public and the relevant competent authority before it makes its decision.

Prior to April 2011 the relevant Regulations that transposed the requirements of the EIA Directive into UK law included:

- The Marine Works (Environmental Impact Assessment) Regulations 2007 (as amended) (MWRs);
- The Environmental Impact Assessment and Natural Habitats (Extraction of Minerals by Marine Dredging)(England and Northern Ireland) Regulations 2007;

Amendments to these regulations were made and came into force in April 2011 under the Marine Works (Environment Impact Assessment) (Amendment) Regulations 2011, so that the regulations now refer to and apply to marine licences under the MCAA. By amending the regulations it allowed streamlining of the regulatory process, bringing together deposits, navigational activity and harbour works and marine minerals dredging. The Environmental Impact Assessment and Habitats (Extraction of Minerals by Marine Dredging) (England and Northern Ireland) Regulations 2007 are repealed by the 2011 amendments to the MWRs.

Before a licence can be granted, DAERA's Marine and Fisheries Division must ensure that applications are subject to EIA where necessary. The EIA Directive states that the effects of a project on the environment must be assessed in order to take account of concerns to protect **human health**, to contribute by means of a **better environment** to the quality of life, to ensure **maintenance of the diversity of species** and to maintain the **reproductive capacity** of the ecosystem as a basic resource for life.

Whether or not EIA is required in respect of a particular project will depend on its type, scale, location and potential impact on the environment, including in particular any protected habitats.

There are three broad stages to the procedure:

- Screening;
- Scoping;
- Environmental statement review and submission.

2.0 Need for Environmental Impact Assessment

Marine Works (Environment Impact Assessment) (Amendment) Regulations 2011 (MWRs) refer to Annex I and Annex II of the European Council Directive on EIA (Directive 85/337/EEC, as amended). Annex I provides a list of projects or activities for which an EIA is mandatory. Those listed under Annex II of the EC Directive 97/11/EC may require EIA if it is concluded that the project will exceed certain limits or thresholds.

Changes or extensions to Annex I or Annex II projects which may have significant adverse effects on the environment may also fall within the scope of the EIA regime. A particular marine licensing proposal should not be considered in isolation if, in reality, it is properly to be regarded as an integral part of a more substantial plan or project. For example, some marine licensable activities may form part of a plan or project that requires an Environmental Impact Assessment under The Marine Works (Environmental Impact Assessment) Regulations 2007 (as amended). However, the same proposal may also require an Environmental Impact Assessment for the onshore development under The Planning (Environmental Impact Assessment) Regulations (Northern Ireland) 2015. In such cases, Marine and Fisheries Division and Planning Authorities should work together to ensure that only one Environmental Impact Assessment is required from the applicant and unnecessary duplication is avoided. This is not to say that all applications which form part of some wider scheme must be considered together. It is important to establish whether each of the proposed activities could proceed independently and whether the aims of the Regulations and Directive are being frustrated by the submission of multiple planning applications. Ultimately it is a matter of judgement for the competent authority, in most cases Marine and Fisheries Division, to decide whether one or more separate projects should be considered together to determine whether an EIA is required.

3.0 The prohibition on Granting a Marine Licence in the Absence of an EIA Consent

Where an EIA is required, either because the proposal falls within Annex I to the Directive, or because the proposed falls within Annex II and is likely to have a significant environmental effect, by virtue of regulation 4 Marine and Fisheries Division may not grant a licence for that activity (and the applicant may not commence that activity) until the appropriate authority, which is the regulator and therefore will be Marine and Fisheries Division in most cases, has granted 'EIA consent'. EIA consent is a consent granted on the basis of assessment of the effects of the proposed activity on the environment, including consideration of any representations made by statutory consultees and members of the public.

4.0 Environmental Impact Assessment Screening

Screening is the process whereby an applicant may seek a determination from Marine and Fisheries Division as to whether an Environmental Impact Assessment is required.

In requesting a screening opinion the applicant should provide Marine and Fisheries Division with the key information on the proposed project, including:

- A brief description of the project;
- A statement of the working methods to be used in the course of the project;
- Information on the size/scale/nature of the project;
- Area(s) under consideration for development and the wider development (offshore and onshore requirements/terrestrial and marine footprints);
- Relevant maps, plans, charts or site drawings;
- An idea of timescale and duration of the development;
- A summary of all discussions already held with primary advisors and consultees;
- A statement of any navigational issues envisaged;
- Any other information as the applicant may wish to provide.

A period of **28 days** from the date of request **for screening** is required for consultation with primary advisors and consultees.

Following a decision, Marine and Fisheries Division will provide the applicant with a screening opinion in writing. This will include:

- Whether or not an EIA is required;
- Information on any specific sensitivity at the planned site(s); and
- Any other information deemed appropriate.

If the screening opinion determines that an EIA is required the applicant should then request a 'scoping' opinion from Marine and Fisheries Division.

Regulation 5 of the MWRs gives provision for the requirement of EIA assessment by agreement if the applicant and the appropriate authority agree that is the case; the appropriate authority for these purposes is Marine and Fisheries Division. In essence the effect of this provision is that where an applicant agrees to undertake an EIA, the proposal is thereafter treated as one for which EIA is required by law.

There may be circumstances in which, although a screening opinion has determined that EIA is not required, before the regulatory body has granted the necessary licence or other consent information comes to light which suggests that EIA should be required. In those circumstances a regulatory body such as Marine and Fisheries Division should consider whether its earlier screening opinion is no longer valid, and it can require that EIA is undertaken¹.

5.0 Environmental Impact Assessment Scoping

Scoping highlights the issues that will need attention and focuses the content of the Environmental Statement (ES) which the applicant is then required to produce by the MWRs. Under the MWRs an applicant can request a formal scoping opinion from Marine and Fisheries Division. Scoping is dealt with in regulation 13 and Schedule 4 of the MWRs.

¹ Evans v First Secretary of State (2004) Env LR 17

The purpose of scoping is to draw together, in a systematic manner, the main subject areas which require consideration in order that there is a comprehensive assessment of the proposed project's likely significant environmental effects.

In summary, scoping determines what sort of information should be included within the ES.

Applicants should provide information on the proposed project with their scoping request. This should be provided in a scoping report and should include:

- Description of the project, providing further detail to that provided at screening;
- Summary of the installation and decommissioning methods, including removal or leaving in situ, if appropriate.
- Project location, including a location map, for all aspects of the project;
- List of the receptors likely to be affected by different stages or activities of the project;
- Identification of the potential environmental issues with an estimation of their likelihood and potential severity;
- Details/plan for conducting technical studies, methodologies and resources to be used;
- Address any comments received as feedback from the screening stage.

Other useful details for inclusion in the scoping report include:

- Suggested alternatives to the development;
- Details of the baseline surveys and monitoring being processed;
- Proposed stakeholder consultation strategy, including a proposed list of consultees;
- Suggested structure, content and length of the ES;
- List of the key regulators, their roles and relevant legislation;
- Known data gaps.

A period of **28 days** from the date of request **for scoping** is required for consultation with primary advisors and consultees.

If Marine and Fisheries Division considers that the applicant had not provided all of the information necessary in order for it to produce a scoping opinion, Marine and Fisheries Division, will notify the applicant in writing that further information is required, within a reasonable period of time. If that information is not provided within the specified period Marine and Fisheries Division is entitled not to deal further with the application until that information is provided. If the requested information is still not provided Marine and Fisheries Division may treat the application as having been withdrawn.

Where all of the information requested by Marine and Fisheries Division has been provided, Marine and Fisheries Division is required to provide a scoping opinion 'as soon as reasonably practicable'. Should a project be located close to a national boundary, Marine and Fisheries Division will consult with relevant cross border authorities. Marine and Fisheries Division will collate responses on the scoping document and return this to the applicant in the form of a scoping opinion.

Applicants may wish to undertake a wider informal scoping exercise to establish good communication channels with primary advisors and consultees at an early stage in the project. This will help identify potential impacts of the project and potential objections which if dealt with could reduce the potential for project delays. Marine and Fisheries Division will need to be involved and in some circumstances may coordinate this process.

The statutory nature conservation advisors may advise the competent authority that there is a requirement to undertake the Habitat Regulation Assessment (HRA) process regarding nature conservation issues and the scope of evidence needed to complete the HRA.

Applicants are also encouraged to assess the proposed project against all relevant WFD objectives as early in the process as possible. If possible, these can be incorporated into the EIA process and included in any environmental statement produced.

The MWRs provide that an application for a marine licence (or other consent) may not be determined by Marine and Fisheries Division until the applicant has submitted an ES which contains all of the information specified in the scoping opinion.

6.0 Environmental Statement Background

Scoping guides applicants on the type of matter which should be addressed in the ES for their proposal. The next stage is to document comprehensively the environmental baseline so that potential changes to that baseline, as a result of the applicant's proposal, can be identified and assessed.

Environmental impacts must be assessed in regard to the project in its entirety and not in a segmented fashion and therefore, joint consideration should be given to both offshore and onshore aspects of a project/marine and terrestrial footprints, e.g. a 'whole project' EIA is required by Marine and Fisheries Division.

In assessing the likely environmental impact developers should consider any in-combination/cumulative and cross-border issues that may be associated with the proposal.

7.0 Content and Format of Environmental Statement

Schedule 3 to the MWRs sets out the minimum requirements for the information to be provided in an ES.

The ES is the written output of the EIA process and should be presented as a complete and independent document, which the applicant is responsible for producing. The ES sets out all the information gathered during the EIA process in a clear and logical manner for consideration and comment by Marine and Fisheries Division, primary advisors and consultees and the general public, and will be used by Marine and Fisheries Division when making their decision on whether or not to grant approval for the development.

The key elements that an ES should achieve are:

- Provide sufficient details to allow readers to make an independent decision on the impacts associated with the proposed development;
- Provide an unbiased report of the EIA process;
- Avoid technical jargon unless absolutely necessary as findings should be presented in non technical language.

Applicants have a statutory duty to include certain information within the ES:

- A non technical summary (NTS);
- A description of the development;
- A description of the mitigation measures;
- The data required to identify and assess the main effects which the development is likely to have on the environment.
- An outline of the main alternatives considered.

8.0 Best Practice

There are no statutory requirements concerning the format of an ES, but it must contain the information required to assess the environmental effects of the project and which the applicant can, having regard in particular to current knowledge and methods of assessment, reasonably be required to compile.

9.0 Submission of the Environmental Statement

The applicant must submit the ES with their application to Marine and Fisheries Division. Once a fully submitted application has been received with all supporting information, there are several specific duties that both the applicant and Marine and Fisheries Division must carry out under the EIA regulations.

The applicant must submit sufficient copies of the ES as directed by Marine and Fisheries Division. If the applicant submits their ES electronically then this may suffice. However, if the ES is large, or some specific projects may require additional hard copies submitted to Marine and Fisheries Division. We will advise accordingly.

The applicant is responsible for advertising the ES and the application. Marine and Fisheries Division will send out instructions and a template detailing how the applicant should do this. The advertising guidelines are attached (see Appendix 1).

A copy of the application and the ES will be available at this office (see contact details below) which is open during normal office hours so that members of the public can view them free of charge.

Marine and Fisheries Division will ensure that primary advisors and consultees have a copy of the ES during the application consultation process.

10.0 Stakeholder and Public Consultation

It is important to ensure that projects give due consideration to stakeholder concerns and opinions, and integrate them into the project decision-making process. Stakeholder consultation (pre-application, during the EIA process and once an application had been submitted) is essential to ensure that the licensing process runs as smoothly as possible and all concerns are noted and addressed in an open and transparent manner.

One of the aims of the streamlined licensing process is to ensure that consultation at all levels is with the right party and progressed at the right time. Although Marine and Fisheries Division should be a primary point of contact for all queries related to the licensing of a proposed development, detailed consultation between applicants and the relevant parties is still very strongly encouraged.

Under the MWRs the ES is required to undergo a formal public consultation process (regulations 16 and 17). This ensures that appropriate consideration is given to all stakeholder concerns, including concerns of members of the public, and that relevant opinions are taken account of in the decision-making process on a licence application. Consultation responses from members of the public are dealt with in accordance with the procedure detailed in Schedule 5 of the MWRs.

11.0 EIA Consent Decision

Before a licence decision can be made and a licence issued an EIA consent decision must be produced and placed on Marine and Fisheries Divisions public register.

Marine and Fisheries Division will send written confirmation of the EIA consent decision to:

- The applicant;
- Any person from whom representations were received;
- Any primary advisor/consultee body that responded to the consultation; and
- The authorities of any EEA State who were consulted.

The written confirmation will include the following:

- A reference to the environmental information that has been taken into consideration;
- The main reasons and considerations on which the EIA consent decision was based; and
- If the EIA consent decision involves giving EIA consent, a description of the measures that must be taken in consequence of the EIA consent decision to avoid, reduce and, if possible, offset the principle adverse effects of the regulated activity.

12.0 EIA Deferral

Regulation 10(1) (b) (ii) of the MWRs permits Marine and Fisheries Division to defer to another authority's EIA consent decision.

To ensure EIA deferral, discussions must be started as early in the process as possible, ensuring both Marine and Fisheries Division and the other regulatory body are aware of the process and understand each other's requirements.

If Marine and Fisheries Division is planning to defer to another authority's EIA consent decision then there is no requirement for Marine and Fisheries Division to ask for an EIA notice or to issue an EIA consent decision.

Before a deferral can be issued, Marine and Fisheries Division must be happy with the process undertaken by the authority making the EIA consent decision and that all relevant marine aspects have been taken into account.

Marine and Fisheries Division can only issue a deferral once the other authority has issued their EIA consent decision.

Contact Details:

If wish to contact us with any questions or feedback regarding this guidance document, please contact us at:

Marine Licensing Team
DAERA Marine and Fisheries Division
2nd Floor, Klondyke Building
Cromac Avenue
Belfast
BT7 2JA

Tel: 028 90569247

Email: MarineLicensingTeam@daera-ni.gov.uk

APPENDIX 1

Notes for Marine Licence applicants

- Marine Licence applicants should advertise in 2 local newspapers in the council area where the works shall be carried out (3 local papers for Belfast Area). The advertisement should be placed in the 'Public Notices' section of the newspaper.
- The applicant **must** forward the Department an electronic copy of the completed advert to be reviewed (see example below, Fig A) at least 1 week prior to the advert appearing in the newspaper.
- The applicant shall inform the Department of the date when the advert shall appear in the newspapers. As this project contains an Environmental Statement, the public consultation shall remain open for 42 days.
- The applicant shall copy the entire page of each newspaper where the advertisement is placed, and send it to the Department.
- The applicant should refer to the list below to obtain the names of the relevant newspapers where the advertisement is to be placed.

EXAMPLE OF PUBLIC NOTICE

APPLICATION FOR A (MARINE CONSTRUCTION LICENCE) UNDER PART 4 OF THE MARINE AND COASTAL ACCESS ACT 2009.

A Marine Licence application has been made by **(enter name of applicant/company)** to **(enter description of work)** in the location of **(enter location)**.

Marine and Fisheries Division DAERA, is the Marine Licensing authority for Northern Ireland, and controls the deposit of materials from the high water mean spring tide mark out to 12 nautical miles.

You may contact Marine and Fisheries Division to arrange to view the application, Environmental Statement, or to request a copy

–
Tel (028) 90 569247

Written representations may be made within the next 42 days to:

DAERA Marine and Fisheries Division
2nd Floor, Klondyke Building
Cromac Avenue
Malone Lower
Belfast
BT7 2JA

Comments received may be supplied to any

LIST OF NEWSPAPERS

COUNCIL AREA	NEWSPAPERS	PUBLICATION DAY
ANTRIM	BALLYMENA CHRONICLE	Thursday
	BALLYMENA GUARDIAN	Thursday
	BALLYMENA & ANTRIM TIMES	Tuesday
ARDS	BANGOR SPECTATOR	Thursday
	NEWTOWNARDS CHRONICLE	Thursday
ARMAGH	ARMAGH OBSERVER	Thursday
	PORTADOWN TIMES	Friday
	ULSTER GAZETTE	Thursday
BALLYMENA	BALLYMENA CHRONICLE	Thursday
	BALLYMENA GUARDIAN	Thursday
	BALLYMENA & ANTRIM TIMES	Tuesday
BALLYMONEY	BALLYMENA GUARDIAN	Thursday
	BALLYMENA & ANTRIM TIMES	Tuesday
	COLERAINE CHRONICLE	Thursday
BANBRIDGE	BANBRIDGE CHRONICLE	Wednesday
	DROMORE LEADER	Tuesday
	OUTLOOK PRESS	Wednesday
BELFAST CITY	ANDERSONSTOWN NEWS	Thursday
	BELFAST TELEGRAPH	Friday
	IRISH NEWS	Friday
	NEWS LETTER	Friday
	NORTH BELFAST NEWS	Friday
	SOUTH BELFAST NEWS	Friday
CARRICKFERGUS	BALLYMENA GUARDIAN	Thursday
	LARNE & CARRICKFERGUS TIMES	Thursday
CASTLEREAGH	ANDERSONSTOWN NEWS	Thursday
	BELFAST TELEGRAPH	Friday
	IRISH NEWS	Friday
	NEWS LETTER	Friday
	NORTH BELFAST NEWS	Friday
	SOUTH BELFAST NEWS	Friday
COLERAINE	COLERAINE CHRONICLE	Thursday
COOKSTOWN	MID-ULSTER MAIL	Thursday
	MID-ULSTER OBSERVER	Wednesday
	TYRONE COURIER	Wednesday
	TYRONE DEMOCRAT	Thursday
CRAIGAVON	LURGAN & PORTADOWN EXAMINER	Thursday
	LURGAN MAIL	Thursday
	PORTADOWN TIMES	Friday
DERRY CITY	DERRY JOURNAL	Tuesday
	LONDONDERRY SENTINEL	Wednesday
DOWN	DOWN RECORDER	Wednesday
	MOURNE OBSERVER	Wednesday

COUNCIL AREA	NEWSPAPERS	PUBLICATION DAY
DUNGANNON	DUNGANNON OBSERVER	Friday
	TYRONE CONSTITUTION	Thursday
	TYRONE COURIER	Wednesday
	TYRONE DEMOCRAT	Thursday
FERMANAGH	FERMANAGH HERALD	Wednesday
	FERMANAGH NEWS	Friday
	IMPARTIAL REPORTER	Thursday
LARNE	BALLYMENA GUARDIAN	Thursday
	LARNE & CARRICKFERGUS TIMES	Thursday
LIMAVADY	DERRY JOURNAL	Tuesday
	LONDONDERRY SENTINEL	Wednesday
	COLERAINE CHRONICLE	Thursday
LISBURN CITY	ANDERSONSTOWN NEWS	Thursday
	DROMORE LEADER	Tuesday
	ULSTER STAR	Friday
MAGHERAFELT	MID-ULSTER MAIL	Thursday
	MID-ULSTER OBSERVER	Wednesday
	TYRONE COURIER	Wednesday
MOYLE	BALLYMENA GUARDIAN	Thursday
	BALLYMENA & ANTRIM TIMES	Tuesday
	COLERAINE CHRONICLE	Thursday
NEWRY & MOURNE	ARMAGH & DOWN OBSERVER	Thursday
	CROSSMAGLEN EXAMINER	Monday
	MOURNE OBSERVER	Wednesday
	NEWRY REPORTER	Thursday
	OUTLOOK PRESS	Wednesday
NEWTOWNABBEY	ANDERSONSTOWN NEWS	Thursday
	BELFAST TELEGRAPH	Friday
	IRISH NEWS	Friday
	NEWS LETTER	Friday
	NORTH BELFAST NEWS	Friday
	SOUTH BELFAST NEWS	Friday
NORTH DOWN	BANGOR SPECTATOR	Thursday
	NEWTOWNARDS CHRONICLE	Thursday
OMAGH	TYRONE CONSTITUTION	Thursday
	ULSTER HERALD	Thursday
STRABANE	STRABANE CHRONICLE	Thursday
	STRABANE WEEKLY NEWS	Thursday
	TYRONE CONSTITUTION	Thursday
	ULSTER HERALD	Thursday