



Centre for Environment
Fisheries & Aquaculture
Science



Department
for Environment
Food & Rural Affairs



Marine
Management
Organisation

Version 3: 30.03.2020. Previous guidance has been reviewed, and this latest version has been produced by Cefas and approved by Defra

Clarification and guidance on the shellfish exemption from marine licensing and subsequent variations to licences

Background / Rationale

It is anticipated that over the coming decades there will be growth in offshore and coastal aquaculture in England. Currently only a limited number of shellfish sites have moved offshore, and for some there has been difficulty in establishing clarity on whether or not a marine licence is required and any requirement for subsequent variations.

Objective

The objective of this document is the clarification of when and where shellfish farmers require marine licences and when the exemptions apply. In addition, it will seek to clarify how variations to the shellfish marine licences are dealt with.

Legislation and Responsibility for Marine licences

The Marine and Coastal Access Act (MCAA) 2009, Section 4 provided for a system of marine licensing. Anyone undertaking an activity mentioned in section 66 needs to obtain a licence from the appropriate licensing authority, subject to any exemption provided for in the Act.

The Marine Management Organisation (MMO) is the responsible body for implementing marine licensing in English inshore and offshore areas and for Welsh and Northern Ireland offshore areas.

The inshore areas include any area which is submerged at mean high water spring tide up to the territorial limit. They also include the waters of every estuary, river or channel where the tide flows at mean high water spring tide. Even waters in areas which are closed permanently or intermittently by a lock or other artificial means against the regular action of the tide are included, where seawater flows into or out from the area.

The offshore areas include waters beyond the territorial limit in so far as they comprise the exclusive economic zone and the UK sector of the continental shelf, whichever is furthest offshore at that location.

It also includes the bed, and subsoil of the sea within those areas.

Guidance is provided by the MMO on the types of activity where a marine licence is required

<https://www.gov.uk/guidance/do-i-need-a-marine-licence>

Exemptions for certain activities

Subsequent to the MCAA 2009 provisions have been made for the exemption of certain activities under The Marine Licensing (Exempted Activities) Order 2011. Shellfish propagation and cultivation are exempted from Marine Licensing under this order.



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<http://www.legislation.gov.uk/uksi/2011/409/made>

There has subsequently been an amendment relevant to shellfish culture under the Marine Licensing (Exempted Activities) (amendment) Order 2013.

<http://www.legislation.gov.uk/uksi/2013/526/article/4>

Further information and guidance and information has been provided:-

<https://www.gov.uk/government/publications/marine-licensing-exempted-activities/marine-licensing-exempted-activities#shell>

In summary, exemptions apply to shellfish farms under Article 13 of the Order.

The exemptions for a marine licence for shellfish propagation and cultivation apply to:-

- a) The deposit and removal of any shellfish, trestle, cage, pole, rope, marker or line in the course of propagation and cultivation of shellfish does not require a licence.

Conditions of this exemption:

- the deposit is not for the purpose of disposal
- the deposit is not for the purpose of creating, altering or maintaining a reef
- notification is submitted to the MMO
- the deposit does not cause or is likely to cause obstruction or risk to navigation

The exemption does not apply to:

- construction activities related to shellfish propagation, for example digging a trench or building a jetty to access shellfish beds
- the use of artificial reefs in shellfish propagation and cultivation
- No licence is required to remove or dredge shellfish (e.g. mussels) to re-lay them elsewhere.

Under the order “shellfish” includes crustaceans and molluscs of any kind and any part of a shellfish;

The application of exemption to different types of shellfish aquaculture

Shellfish aquaculture consists of many different methods of cultivation some of which may be covered by the exemption. The MMO advise best practice is to consult with MCA and Trinity House or Harbour Authority (as appropriate) with regards to the navigational risk. If any doubt on navigational risk then best advised to apply for marine licence.

Shellfish cultivation systems can include:

Type of system	Description of system	Risks to navigation	Marine Licence required
Sub littoral cultivation	Shellfish are relayed or cultivated directly on the sea-bed	Zero	No



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Ranching	Shellfish are stocked and managed on a controlled and protected area of the sea bed	Zero	No
Trestles	Shellfish are grown in bags on trestles in intertidal zones	Possibly at certain stages of the tide.	Consult with MCA & Trinity House or Harbour authority.
Bouchet Poles	Shellfish are grown on poles and wrapped in protective netting in intertidal zones	Possibly at certain stages of the tide.	Consult with MCA & Trinity House or Harbour authority.
Swinging baskets	Shellfish are grown in swinging baskets suspended from ropes hung between posts in intertidal zones	Possibly at certain stages of the tide.	Consult with MCA & Trinity House or Harbour authority.
Cages or containers placed on the sea bed	Shellfish grown in rigid cages that are placed on the sea bed.	Possibly at certain stages of the tide.	Consult with MCA & Trinity House or Harbour authority.
	Shellfish containers or cages for flood defence or creation of multi-purpose reefs	Possibly at certain stages of the tide.	Yes
Suspended Rope grown	Shellfish are grown on vertical ropes suspended from horizontal surface ropes hung between buoys	Yes, dependant on scale and position.	Yes
Suspended baskets or containers	Shellfish are grown in containers, lantern or pearl nets suspended from horizontal surface ropes hung between buoys	Yes, dependant on scale and position.	Yes

The disposal of shellfish cultch at sea.

This process currently does not have an exemption as the MMO clasifies this as disposal of waste. Seafish have provided guidance documents covering this area.

http://www.seafish.org/media/Publications/FS55_6_10_mollusc_shell_waste.pdf

Notifying the MMO of an exemption

Shellfish culture is classified as a category 2 exemption where notification is required. If a prospective / new farmer thinks that an exemption may apply to their proposed business then they need to create an account through the MMO case management system and submit notifications online. It is important to note that Cat 2 exemptions are not reviewed by case officers (Consequently, if not sure whether an exemption applies, an enquiry should be submitted to the MMO).

https://marinelicensing.marinemanagement.org.uk/mmofox5/fox/live/MMO_LOGIN/login



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At the point of notification the MMO will require detail about the farming system, its scale and area, where it will be located and how it will be moored. It is advised that the notification to the MMO should provide comprehensive information on the type of farming system and how it will operate. It is unlikely that in the case of shellfish any feeding or medicines will be required. However, it will be worth clarifying this as part of the notification.

Within the notification you must describe the nature of the proposed activity and the need for it. You must also clearly demonstrate which of the exemptions you are relying on and how you meet each of the conditions.

Applying for a marine licence

If prospective farmers think that they will require a marine licence (for example it might cause an obstruction or risk to navigation) they should follow the guidance within the MMO case management system.

<https://www.gov.uk/guidance/make-a-marine-licence-application>

The MMO are responsible for licensing the farming structures being placed in the water rather than the species being farmed. Consequently, it is the detail around the methods of farming and structure being placed in the water that is of prime importance for the granting of a Marine licence. However, as part of the application for a marine licence it is advised to apply based on all the native shellfish species to be farmed or likely to be farmed in the systems from the outset.

For those marine licence applications that fall within a designated or European site the responsibility for any habitats regulation assessment required would fall to the MMO and the FHI would subsequently automatically authorise the species listed.

(Where shellfish farming projects don't require Marine Licences but still fall within designated or European sites, any requirement for carrying out HRA's fall to the FHI as part of authorisation under the aquatic animal health regulations).

Variation of a marine licence

An authorised aquaculture business that already has a marine licence can apply for a variation to their business within the MMO case management system. For aquaculture businesses such as shellfish farms these would be required for changes in the structures being placed in the water.

Any change in the species being farmed would NOT require a variation unless the change resulted in a change of structure and risk to navigation.

The MMO can also vary, suspend or revoke a marine licence on any relevant grounds such as:

- a breach of any conditions
- a change in circumstances relating to the environment or human health



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- a change in scientific evidence
- navigational safety

The procedure to appeal a variation notice is set out in the Marine Licensing (Notices Appeals) Regulations 2011.

Contacts for consulting

For general contacts please see the regulatory toolbox for England

<http://www.seafish.org/industry-support/aquaculture/aquaculture-regulatory-toolbox-for-england>

For specific navigational enquiries

Marine and Coast Guard Agency (MCA) = navigationsafety@mcga.gov.uk

Trinity House = navigationsafety@mcga.gov.uk

Relevant local Harbour authority = See local area contacts.

Best practice measures advised for new works

1. Undertakers of any works should update the UKHO for the purpose of updating nautical charts (both for new and existing aquaculture businesses)

The Source Data Receipt Team

UK Hydrographic Office, Taunton, Somerset, TA1 2DN

Email:sdr@ukho.gov.uk

Tel 01823 337900

2. Issue a Notice to mariners prior to commencing of any works

Note Within harbour limits the harbour authority is responsible for issuing notice to mariners and notifying the UKHO of activities for the updating of nautical charts.