



Department
for Environment
Food & Rural Affairs

Consultation on the implementation of Part IV of the Biodiversity Beyond National Jurisdiction Agreement concerning Environmental Impact Assessments in areas beyond national jurisdiction

Date: 21 November 2025



Department
for Environment
Food & Rural Affairs



Scottish Government
Riaghaltas na h-Alba
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We work closely with our 33 agencies and arm's length bodies on our ambition to make our air purer, our water cleaner, our land greener and our food more sustainable. Our mission is to restore and enhance the environment for the next generation, and to leave the environment in a better state than we found it.



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Executive summary

The Agreement under the United Nations Convention on the Law of the Sea on the Conservation and Sustainable Use of Marine Biological Diversity of Areas Beyond National Jurisdiction (the BBNJ Agreement) is an important step toward coordinated global action to tackle the climate and nature crisis. The Agreement demonstrates the ongoing role of multilateral institutions in facing global challenges and cements the UN Convention on the Law of the Sea (UNCLOS) as the cornerstone of ocean governance.

The BBNJ Agreement aims to ensure the conservation and sustainable use of marine biological diversity in Areas Beyond National Jurisdiction (ABNJ). Its ratification would demonstrate this Government's determination to reinvigorate the UK's wider international leadership on climate and nature.

Ratification of the Agreement would also support the UK's commitment (under the Kunming-Montreal Global Biodiversity Framework) to ensuring that at least '30 percent of areas of degraded terrestrial, inland water, and marine and coastal ecosystems are under effective restoration' by 2030.

To enable ratification, we must be in a position to implement all the obligations imposed by the Agreement. Therefore, we must comply with the Environmental Impact Assessment (EIA) obligations set out in the BBNJ Agreement. This will require amendments to the current domestic marine licensing regimes. Through this consultation, we are seeking views on the proposed approach, the amendments they would entail and evidence on what future activities are likely to occur in ABNJ and their potential impacts.

We propose to:

- extend the marine licensing regimes to cover additional activities occurring in ABNJ
- extend marine licensing exemptions to activities occurring in ABNJ
- update licensing exemptions where needed to appropriately reflect the division of licensing responsibilities between relevant authorities

We want the proposed approach to ensure the UK can meet BBNJ obligations while keeping regulation proportionate to the activities taking place in ABNJ. We also want to reassess the split of licensing activities in ABNJ across the two licensing regimes (see the section headed "Managing overlap with other regimes").

Introduction

This consultation concerns the implementation of the EIA requirements in Part IV of the BBNJ as they apply to activities within the remit of marine licensing. The proposed legislative changes in this consultation are further to provisions in Part 4 of

the Biodiversity Beyond National Jurisdiction Bill (BBNJ Bill) which was introduced in Parliament on 10 September 2025.¹ It is directed at anyone interested in the way marine activities under UK control or jurisdiction are regulated in ABNJ. ABNJ means the “high seas” (i.e. all parts of the sea that are not included in an Exclusive Economic Zone (EEZ), territorial sea or internal or archipelagic waters of any state) and the “Area” (defined in UNCLOS as the seabed and ocean floor and subsoil thereof, beyond the limits of national jurisdiction).

We especially welcome responses from anyone who may be required to apply for a marine licence, including:

- businesses and operators that carry out, or plan to carry out, these activities (including exempted activities) in ABNJ
- conservation bodies and other groups that are concerned about the effects of activities on the marine environment, navigational matters and human health
- businesses that may be involved with novel uses of the marine environment

Many other people and groups are also concerned about how activities in the ABNJ are regulated and may therefore have an interest in these proposals.

The consultation process

The timing and duration of this consultation

The consultation will start on 21 November 2025 and will be open for responses for four weeks. The consultation will end at 11:55pm on 19 December 2025.

Responses

The UK government will analyse the responses to this consultation and publish a summary of responses. If you do not wish for your response to be published, please make that clear in your reply.

The UK Government will share responses to this consultation with the Scottish Government to inform amendments to Scottish marine licensing legislation to ensure compliance with the BBNJ requirements throughout the UK.

In line with the government’s policy on openness, the information you submit may be made available to other parties, including personal information such as your name. If you do not consent to this, you must clearly request that your response be treated as confidential (except where disclosure is required by law). You should also be aware that there may be circumstances in which we will be required to communicate this information to third parties on request, in order to comply with our obligations under the Freedom of Information Act 2000, the Environmental Information

¹ [Biodiversity Beyond National Jurisdiction Bill](#)

Regulations 2004, the Freedom of Information (Scotland) Act 2002, and the Environmental Information (Scotland) Regulations 2004.

Response guidance

You are welcome to answer all questions in this consultation, or to answer questions that are specific to your areas of interest.

Please provide evidence to support your response, including citations of relevant published sources where appropriate. Please reference the page number of a document if you are drawing attention to a particular statement.

For the purposes of this consultation, we define 'evidence' as: personal experience, case studies, datasets, qualitative and quantitative research (including evaluations), organisational learnings and official documents.

This consultation document accompanies the questions on [Citizen Space](#).

We are interested in collecting the following information from those responding to this consultation:

- your name
- whether you are responding on behalf of an organisation
- your email address

You are not obliged to provide any or all of the above information or respond to all of the questions below.

Using and sharing your information

How we use your personal data is set out in the consultation and call for evidence exercise privacy notice which can be found here:

<https://www.gov.uk/government/publications/defras-consultations-and-call-for-evidence-exercises-privacy-notice>, with the following change:

Defra will be sharing your personal data collected under this privacy notice with the Scottish Government, to allow the Scottish Government to assist with the analysis the consultation responses.

Other Information

This consultation is being conducted in line with the Cabinet Office "Consultation Principles" and be found at:

- Part II: new obligations on notification of collection and utilization of Marine Genetic Resources (MGRs) from ABNJ and the sharing of the benefits of research into and utilization of MGRs
- Part III: a mechanism to establish Area-Based Management Tools (ABMTs), including Marine Protected Areas in ABNJ
- Part IV: provisions operationalising existing obligations under UNCLOS on EIAs for activities in ABNJ
- Part V: provisions strengthening capacity-building for developing States Parties, along with broader technology transfer

This consultation document summarises Part 4 of the BBNJ Bill which makes legislative changes to implement provisions in Part IV of the BBNJ Agreement on EIAs as they apply to licensable marine activities.

How the UK will address its commitments under Part IV of the Agreement on EIAs

This consultation covers proposed amendments to the marine licensing regimes in the UK (under the Marine and Coastal Access Act 2009 (MCAA) and the Marine (Scotland) Act 2010 (MSA)), including changes made in secondary legislation, which are required to ensure compliance with Part IV of the Agreement on EIAs as it applies to licensable marine activities. The legislative proposals in this consultation only apply to the marine licensing regime but there are activities under UK control or jurisdiction which are managed and assessed under other legislation (for example, activities falling within Part 6 of the Merchant Shipping Act 1995) or other legal frameworks or sectoral bodies.

Part IV of the Agreement (Articles 27-39) provides a transparent and modern regime for the conduct of EIAs of planned activities in ABNJ that gives effect to existing obligations under Articles 204-206 of UNCLOS. The authorisation of planned activities in ABNJ rests with the state who has jurisdiction or control over the activity. When determining whether the planned activity may proceed, full account should be taken of an EIA conducted under the BBNJ Agreement. A decision to authorise the planned activity must only be made when, taking into account mitigation or management measures, the country with jurisdiction or control has determined that it has made all reasonable efforts to ensure that the activity can be conducted in a manner consistent with the prevention of significant adverse impacts on the marine environment.

Article 30 (1) of the Agreement provides for a detailed screening process that is triggered when a planned activity “may have more than a minor or transitory effect on the marine environment, or the effects of the activity are unknown or poorly understood”. For the purposes of this consultation, we will refer to this threshold as the **De Minimis Threshold**. If the De Minimis Threshold is met, a Party must then assess the potential impacts of the activity through a screening process and decide

whether it has reasonable grounds to believe that the threshold for an EIA is met (the 'EIA threshold'), and therefore an EIA is required.

The **EIA Threshold** for a planned activity under the Agreement is the same threshold found in Article 206 of UNCLOS: "When States have reasonable grounds for believing that planned activities under their jurisdiction or control may cause substantial pollution of or significant and harmful changes to the marine environment, they shall, as far as practicable, assess the potential effects of such activities on the marine environment and shall communicate reports of the results of such assessments...".

For licensable marine activities in ABNJ, the EIA screening and assessment process will be done via the domestic EIA processes under the Marine Works (EIA) Regulations 2007 (MWR). The domestic EIA processes broadly align with the BBNJ requirements but certain amendments will be made in Part 4 of the BBNJ Bill³ to ensure full alignment. Information on planned activities which require an EIA or EIA screening will be shared with the Clearing House Mechanism via the public marine licensing register, and it is anticipated that equivalent changes will be brought forward in relation to the Scottish EIA regime. The Clearing House Mechanism serves as a centralised platform established under the BBNJ Agreement for Parties to access, share and disseminate information with respect to activities taking place pursuant to the provisions of the Agreement.

Changes being consulted on

The UK and Scottish governments are taking forward work needed to ratify the Agreement. To do this, amendments to the current respective marine licensing regimes under MCAA and MSA are necessary to implement BBNJ Part IV EIA requirements for licensable marine activities which take place in ABNJ.

Licensable marine activities that are under UK jurisdiction or control include some activities regulated under the Scottish marine licensing regime. Accordingly, all references to UK within this document are deemed to include Scotland, unless the context indicates otherwise.

To ensure that amendments to the current marine licensing regimes are effective and proportionate, we are seeking views on:

- proposals to extend marine licensing to additional activities in ABNJ
- proposals for exemptions for activities in ABNJ
- proposals for activity-specific regulatory approaches
- proposals for the application process and guidance for regulating activities in ABNJ

We are also seeking information on marine activities in ABNJ including:

³ See clause 15 of the BBNJ Bill which amends the MWR.

- what activities are taking place in ABNJ currently, and what activities may take place in ABNJ in future
- who is carrying out, or likely to carry out, these activities and what is their connection to the UK
- evidence on likely impacts of these activities

The intention is to meet the BBNJ EIA obligations while ensuring that regulation is proportionate and adaptive to future needs.

Activities in scope of the BBNJ EIA requirements

The relevant Part IV BBNJ Agreement EIA obligations will apply to planned activities under the control or jurisdiction of the UK that take place in ABNJ. Activities under the control or jurisdiction of the UK extend to UK persons (both natural persons, companies, and unincorporated bodies) carrying on or controlling an activity in ABNJ.

For certain activities it is not necessary to conduct a screening or EIA where their impacts have been assessed in accordance with the requirements of other relevant legal instruments or frameworks or by relevant global, regional, subregional or sectoral bodies and the requirements set out in Article 29(4) of the BBNJ Agreement are met. This includes activities which are regulated by other relevant legal instruments, frameworks or bodies under which:

- equivalent assessments are carried out and the results taken into account; or
- whose requirements or regulations or standards arising from the assessment are designed to prevent, mitigate or manage potential impacts below the BBNJ EIA threshold and have been complied with.

The UK can determine if an assessment under a different regime is sufficient and therefore a separate screening and EIA under BBNJ is not necessary. This could be applied to other regimes with a comprehensive EIA process, as well as for example the fishing and shipping sectors as these have standards and regulations intended to reduce their environmental impact.

Current Marine Licensing and EIA process

The Secretary of State has delegated marine licensing functions to the Marine Management Organisation (MMO) in relation to any area, and any licensable marine activity in that area, for which the Secretary of State is the licensing authority under MCAA.⁴ The MMO has responsibility for marine licensing in the English inshore and offshore region and the Northern Ireland offshore region, and in relation to any area in

⁴ The MMO has been delegated these licensing functions by the Secretary of State. See [The Marine Licensing \(Delegation of Functions\) Order 2011](#).

relation to which the Scottish Ministers, the Welsh Ministers or Department of Agriculture, Environment and Rural Affairs (DAERA) in Northern Ireland are not the appropriate licensing authority under MCAA.⁵ The responsible marine licensing authority in Scotland is the Marine Directorate – Licensing Operations Team (MD-LOT), which operates on behalf of the Scottish Ministers. This team is part of Marine Directorate of the Scottish Government. The Marine Directorate has responsibility for marine licensing in the Scottish inshore and offshore region and for activities in ABNJ that fall within devolved competence. Marine licensing aims to facilitate the sustainable use of the marine environment, so that activities can be permitted whilst minimising any environmental impacts and preventing interference with other legitimate uses of the sea, such as risks to navigation.

A person must not carry on a licensable marine activity, or cause or permit any other person to carry on such an activity except in accordance with a marine licence⁶, unless the activity is subject to an exemption. Licensable marine activities are set out in section 66 of MCAA and section 21 of MSA respectively. There are seven categories of activity that may need a marine licence in UK waters. Currently only deposits, scuttling and incineration are licensable in ABNJ.

Follow the links to MMO guidance below to find out more about the activities and the circumstances in which they may need a marine licence:

- [construction, alteration or improvement of works](#)
- [dredging](#)
- [deposit of any substance or object](#)
- [removal of any substance or object](#)
- [incineration of any substance or object](#)
- [scuttling \(sinking\) of any vessel or floating container](#)
- [use of explosives](#)

The Scottish Government has published separate guidance in relation to marine licensing requirements in Scottish inshore and offshore waters, which are available at: <https://www.gov.scot/collections/marine-licensing-and-consent/>.

Marine licensing exemptions are applied where: an activity is low risk; the activities are managed through other regulation; or in certain instances where urgent action is

⁵ Section 113 MCAA sets out who is the appropriate licensing authority for any area, and any licensable marine activity carried on in that area. Under section 113(8), the Secretary of State is the appropriate licensing authority in relation to any area not mentioned in subsection (2)(4) or (6) MCAA and is also the marine licensing authority for certain reserved and excepted matters (including certain oil and gas activities and defence activities) in the Scottish offshore region, the Wales inshore and offshore region and the Northern Ireland Inshore region.

⁶ The requirement for a licence is set out in section 65 MCAA and section 20 MSA.

required. Current exemptions applicable to activities for which the Secretary of State is the licensing authority are set out in the Marine Licensing (Exempted Activities) Order 2011 (the 2011 Exempted Activities Order).⁷ Exemptions applicable in the Scottish inshore and offshore regions respectively are set out respectively in [The Marine Licensing \(Exempted Activities\) \(Scottish Inshore Region\) Order 2011](#) and [The Marine Licensing \(Exempted Activities\) \(Scottish Offshore Region\) Order 2011](#). For certain activities, exemptions are applied subject to relevant qualifying criteria and conditions being met (including notification requirements).

The MWR and the Marine Works (Environmental Impact Assessment) (Scotland) Regulations 2017 (2017 regulations) (collectively referred to as the 'EIA Regulations') require licence applicants planning to carry out certain types of activities that have the potential to significantly affect the environment to submit an EIA before a marine licence decision is made. The aims of an EIA are to protect the environment and allow the public to play a part in making decisions by establishing a process for assessment of impacts and consultation. The appropriate licensing authority would then consider the EIA before deciding whether to approve or reject a licence application, or to approve a licence with conditions.

There is a screening process undertaken for activities to determine whether they fall within the remit of the respective EIA Regulations and would require an EIA. For an activity which is part of a project listed in Schedule A2 of the MWR (or Schedule 2 in the 2017 Regulations), the screening process will consider whether the project in question is likely (because of its size, nature or location) to have a significant effect on the environment and therefore needs an EIA. The MMO charges for any screening it undertakes.

Whether an activity requires an EIA or an EIA screening depends on the type of project of which it forms part:

- activities which form part of a project listed in Schedule A1 of the MWR (or 'schedule 1 works' in the 2017 Regulations) must have an EIA before a marine licence can be granted⁸
- activities which form part of a project listed in Schedule A2 of the MWR (or 'schedule 2 works' in the 2017 Regulations) require an EIA if they are likely, because of the project's size, nature or location, to have significant effects on the environment⁹
- an applicant can also agree with the MMO that an EIA will be carried out¹⁰

There are two options for an EIA screening:

⁷ [The Marine Licensing \(Exempted Activities\) Order 2011 \(legislation.gov.uk\)](#)

⁸ Regulation 7 from [The Marine Works \(Environmental Impact Assessment\) Regulations 2007](#)

⁹ Regulation 8 (exceptions can be found in regulations 9, 9A and 10 MWR) from [The Marine Works \(Environmental Impact Assessment\) Regulations 2007](#)

¹⁰ Regulation 5 from [The Marine Works \(Environmental Impact Assessment\) Regulations 2007](#)

- screening by Determination: The appropriate licensing authority reviews the project or activity and decides an applicant is required to complete an EIA as part of the marine licensing process
- screening by Agreement (MWR/MMO only) ¹¹: The applicant believes their project or activity is likely to have a significant effect on the environment and requires an EIA

In ABNJ, the changes we are seeking through the BBNJ Bill will mean that all licensable marine activities which meet the BBNJ De Minimis Threshold will require an EIA screening, regardless of whether they are being carried on as part of a project specifically listed in the Schedules to the respective EIA Regulations.

Outline of proposed approaches

The UK, including Scotland, will need to make some legislative changes to implement the BBNJ EIA requirements for licensable marine activities in ABNJ. Some of these changes are made in the BBNJ Bill itself, including technical amendments to MCAA and MSA and amendments to MWR to align EIA processes with BBNJ requirements, and some will be via secondary legislation.

BBNJ Bill

The UK has committed to ratifying the Agreement. The Foreign, Commonwealth and Development Office (FCDO) have introduced a BBNJ Bill to enable the UK to meet certain of its obligations under the BBNJ Agreement, which, along with new provision made in secondary legislation, would then enable ratification.

Part 4 of the BBNJ Bill¹² makes technical amendments to the existing powers in sections 66 and 74 MCAA and section 21 and 32 of MSA respectively (these are the existing order-making powers which can be used to add activities to marine licensing and specify exemptions respectively). It also amends the Levelling Up and Regeneration Act 2023 provisions on environmental outcomes reports (EOR) as necessary to enable any future EOR regulations for licensable marine activities in ABNJ to align with Part IV BBNJ Agreement requirements. It also gives the Secretary of State and Scottish Ministers regulation-making powers to implement future standards and guidelines on EIA requirements adopted by the Conference of Parties under the BBNJ Agreement. The main provisions in Part 4 are summarised as follows:

- Clause 14 (2) and 14(3) make technical amendments to the existing powers in sections 66 and 74 of MCAA, which are the powers to add new licensable marine activities and to add/amend exemptions respectively. The changes ensure those powers can be used to make consequential

¹⁰ Regulation 11(1) from [The Marine Works \(Environmental Impact Assessment\) Regulations 2007](#)

¹² [240302en.pdf](#)

etc. amendments to legislation, including MCAA itself, when adding new licensable marine activities for the purposes of meeting the UK's obligations under Parts III and IV of the BBNJ Agreement.

- Clause 14(4) provides the ability for cables to be regulated in ABNJ if needed. It does this by providing that, if any cabling activity is made a licensable activity for the purposes of meeting the BBNJ Agreement, the usual exemption in section 81 MCAA would not apply. This would allow such activities done in the course of laying or maintaining an offshore stretch of exempt submarine cable to be regulated as licensable marine activities and subject to the screening and EIA requirements under the MWR. Clause 17(4) makes equivalent changes to section 37 of the MSA.
- Clause 15 amends the MWR to align domestic EIA processes with BBNJ EIA requirements in relation to licensable marine activities in ABNJ. It includes amendments to screening processes and screening opinions and the content of EIA statements. The amendments to the MWR in Clause 15 include:
 - Ensuring that, where the need for a licence depends on the outcome of the EIA screening processes under the MWR, then the activity can be dealt with under those MWR processes even if ultimately it does not need a licence.
 - Setting out when the EIA authority (the MMO in this case), must determine that an EIA is required for an ABNJ activity (see new regulation 8A).
 - Taking these amendments together, this means for example that an exemption order could be made in future under MCAA to exempt an ABNJ activity from requiring a marine licence if it does not require an EIA under MWR. In this circumstance a screening under the MWR could still take place to determine whether an EIA is needed and then, if an EIA is not needed, the licence requirement would fall away because of the exemption.
 - Other amendments to the screening procedures and provision on screening opinions in the MWR to align them with BBNJ requirements.
 - Amendments to regulation 10 of the MWR which sets out when an appropriate authority can defer to another EIA, rather than carrying out a new separate assessment. These amendments relate to deferrals in respect of licensable marine activities in ABNJ subject to BBNJ requirements. In making such a deferral, the appropriate authority must be sure that the alternative assessment meets the requirements of the BBNJ Agreement.

- Amendments to regulation 11 MWR to align with the BBNJ Agreement, requiring a screening opinion if an activity has more than a minor or transitory effect on the marine environment, or the effects of the activity are unknown or poorly understood.
- Clause 16 enables the Secretary of State to make regulations to implement future standards and guidelines on EIA adopted by the Conference of the Parties under the BBNJ Agreement.
- Clause 18 empowers Scottish Ministers to make regulations concerning Scottish licensable marine activities in ABNJ to implement the UK's obligations under Part IV of the BBNJ Agreement (EIAs), including amending Scottish EIA regulations. The regulation-making power includes, amongst other things, the ability to make provision for the purpose of implementing Article 38 of the BBNJ Agreement.
- Clause 19 amends the Levelling-up and Regeneration Act 2023 to ensure that EOR regulations can make provision about planned marine activities in ABNJ. This ensures that Part IV BBNJ Agreement requirements on EIA can be implemented through any future EOR framework.

The clauses and an explanation of what they do can be found in the BBNJ Bill¹³ and the explanatory notes¹⁴ that accompany the BBNJ Bill.

The approaches detailed below propose amendments to the list of licensable marine activities in section 66 MCAA and section 21 MSA to capture additional activities in ABNJ, as needed to comply with Part IV BBNJ requirements. They also cover proposed exemptions in relation to activities in ABNJ.

The proposed amendments to the marine licensing regimes would only apply to activities in ABNJ (including existing licensable marine activities capable of being carried out in ABNJ such as deposits by UK vessels in ABNJ). There would be no changes to licensing activities in the UK or Scottish marine areas i.e. within the limits of the UK's EEZ extending up to 200 nautical miles or the UK extended continental shelf.

Approaches considered and details of preferred option

Our aim is to meet the BBNJ EIA requirements in a proportionate way, enabling the appropriate licensing authority to regulate the necessary activities effectively, without creating unnecessary regulatory burden.

¹³ [Biodiversity Beyond National Jurisdiction Bill](#)

¹⁴ [240302en.pdf](#)

As outlined in the 'Overview of the BBNJ Agreement' section, Part IV of the Agreement provides a regime for the conduct of EIAs for activities in ABNJ. The Agreement requires that an EIA screening must be undertaken when a planned activity meets the De Minimis Threshold.¹⁵ This means that the appropriate licensing authorities are obliged to carry out an EIA screening for an activity in ABNJ under UK jurisdiction or control if this threshold is met. A full EIA must be carried out for an activity which meets the EIA threshold.

In ABNJ, the appropriate licensing authority can currently only licence a narrow list of activities from the respective lists in Section 66 of MCAA¹⁶ and Section 21 of MSA¹⁷:

- deposit of any substance or object
- scuttling (sinking) of any vessel or floating container
- incineration of any substance or object

This means that there is not currently the ability to regulate or carry out an EIA screening or EIA for any other activities taking place in ABNJ that meet the BBNJ De Minimis Threshold.

Stakeholder engagement has been carried out to better understand potential activities in ABNJ and inform the development of policy options for meeting BBNJ EIA obligations. While we have had limited engagement from key stakeholders so far, a range of potential activities has been identified (see 'Potential activities taking place in ABNJ'). However, there is no firm consensus at this stage on which activities are likely to occur in the future or meet BBNJ thresholds, especially given limited evidence on impacts of activities in the high seas due in part to the current lack of regulation. This uncertainty makes it difficult to determine which specific activities should require a marine licence (and therefore be eligible for an EIA).

Given this, we propose that effective regulation at this stage would capture a broad range of activities and provide an assessment on a case-by-case basis of whether an EIA screening is required or not. This approach would both comply with BBNJ obligations and ensure that no activities which may meet the De Minimis Threshold are overlooked. A flexible approach would also be better suited to adapt to future needs and to EIA standards and guidelines adopted by the BBNJ Conference of Parties and would enable us to maintain proportionate regulation aligned with the scale and nature of each activity. We considered three options, set out below, and found that Option 1 would be the most proportionate approach to making UK (including Scottish) regulations compliant with the BBNJ Agreement Part IV requirements.

Option 1 (Preferred approach): EIA Threshold exemption

¹⁵ Defined in BBNJ Article 30(1) as: '*may have more than a minor or transitory effect on the marine environment, or the effects of the activity are unknown or poorly understood*'.

¹⁶ Section 66(1), items 2,3,5,6,12,13 from [Marine and Coastal Access Act 2009](#)

¹⁷ Section 21, items 2, 4, 10 from [Marine \(Scotland\) Act 2010](#)

Option 1 would extend the list of licensable marine activities in ABNJ in MCAA and MSA to include all those categories which are currently licensable only in UK waters. However, any such new activity whose impact would not meet the EIA Threshold, or which is not within UK control or jurisdiction, would be exempt from marine licensing. This would enable the appropriate licensing authority to extend licensing to all such activities in ABNJ which are in scope of the BBNJ Agreement, with appropriate carve-outs.

The proposed changes would expand the categories of activities which may require a marine licence in ABNJ under MCAA or MSA to include:

- dredging
- construction works (including maintenance, alteration or improvement of existing structures and assets)
- removal of any substance or object
- use of explosives

This is in addition to the categories of activity which already require a marine licence if carried out in ABNJ (see the above list of activities which can already be licensed in ABNJ). The proposed licensing changes would apply only to new planned activities listed above and marine licence applications made after the BBNJ Agreement comes into force for the UK.

As described above, to avoid disproportionate regulation where many activities would unnecessarily require a marine licence, activities whose impacts fall below the stated EIA Threshold would be exempt from a marine licence. If an activity's impact is above the De Minimis threshold, it would need to be screened. An EIA would be required if that screening indicated the EIA threshold is met. If the De Minimis or EIA threshold is not met, a licence would not be required, and the appropriate authority would provide a notice or screening opinion to the applicant to confirm that an EIA was not required.

There would be two routes to exemption:

- 1) an activity is determined to be below the EIA Threshold following a De Minimis Threshold screening or an EIA Threshold screening and would thus fall within an exemption category in the relevant exemptions order
- 2) an activity is listed on a pre-determined exemption list (i.e. a specific activity exempt as it is sufficiently low risk and understood)

For activities regulated by the MMO, we are exploring whether an online self-determination screening would be possible to screen for the De Minimis Threshold. Under a self-determination screening, an applicant would receive a notice that the proposed activity fell below the De Minimis Threshold. The activity would thus not require an EIA screening and would automatically fall within an exemption category. A self-determination screening would reduce administrative burden on both

applicants and the MMO and entail no costs for the applicant. Alternatively, the De Minimis Threshold screening could be carried out by the MMO.

If activities are above the De Minimis Threshold and require an EIA screening this screening would be carried out by the appropriate authority, who would use specific guidance to determine whether an activity should be 'screened in' to require an EIA or 'screened out' which would not require an EIA. If an EIA is not required, then the activity would fall within the marine licence exemption.

Activities that are already licensable marine activities in ABNJ (deposits, scuttling and incineration) would not be in scope of the new exemption and would follow current procedure and would therefore continue to be licensable marine activities even if they fall below the EIA Threshold. The licensing process for these activities is detailed in the links below:

- [deposit of any substance or object](#)
- [incineration of any substance or object](#)
- [scuttling \(sinking\) of any vessel or floating container](#)

Online guidance would be provided for applicants and the appropriate authority to help determine whether activities would require a De Minimis Threshold screening and potentially an EIA screening. We would be able to update this guidance to reflect any standards or guidelines adopted by the BBNJ Conference of Parties. Please see the section on 'Guidance used by the MMO' for further information on guidance.

The Option 1 approach would be implemented in secondary legislation under which the lists of licensable marine activities in MCAA and in MSA would be amended to add the new activities in ABNJ (dredging, construction works, removals and deposit or use of explosives). Separate secondary legislation would make the necessary changes to the respective marine licensing regimes under MCAA and MSA, using the respective powers in section 66 MCAA and section 21 MSA. Similarly, secondary legislation would be needed to make relevant exemptions under the two regimes using the powers in section 74 MCAA¹⁸ and section 32 of MSA respectively.

Relevant exemptions for option 1 are as follows:

Exemption for new ABNJ activities which do not meet the EIA Threshold: We propose that a new licensable activity in ABNJ would be exempted if the appropriate authority determined that an EIA was not required and gave the applicant a notice or screening opinion to that effect in accordance with the requirements of the MWR or the 2017 regulations as the case may be.

Exemption for new ABNJ activities not within UK control or jurisdiction: The BBNJ requirement to carry out an EIA on activities in ABNJ will apply to activities

¹⁸ Exemptions would be made in relation to the MCAA exemptions regime by way of an amendment to the Marine Licensing (Exempted Activities) Order 2011 (2011/409)

under the UK's jurisdiction or control. The government therefore proposes to exempt any activities which are not under UK jurisdiction or control i.e. do not have a qualifying UK connection. An activity will have a qualifying UK connection if the person carrying on or controlling the activity is a person residing or established in the UK. A qualifying UK connection can also be established in the following circumstances:

- in the case of construction works, if they are carried on in or from a British vessel/marine structure
- in the case of removals, if a British vessel, British aircraft, or British marine structure or a floating container¹⁹ is used for the removal
- in the case of dredging, if it is carried on from a British vessel or marine structure
- in the case of deposit or use of explosives, if the activity is carried on from or controlled by a British vessel, British aircraft, or British marine structure, (or if the deposit of explosives is from a floating container and the deposit is controlled from a British vessel/aircraft/marine structure)

For any new activities in ABNJ which are added to the list of licensable activities in section 21 MSA, similar provision would need to be made to carve out from licensing activities in ABNJ which do not have the requisite connection to Scotland.

An activity is considered to have a qualifying connection to Scotland if the individual or entity undertaking or exercising control over the activity is either established in Scotland or ordinarily resident there. A qualifying connection to Scotland can also be established in the following circumstances:

- in the case of construction works, if they are carried on in or from a Scottish vessel/aircraft/marine structure
- in the case of removals, if a Scottish vessel/aircraft/marine structure or a floating container is used for the removal
- in the case of dredging, if it is carried on from a Scottish vessel/marine structure
- in the case of deposit or use of explosives, if the activity is carried on from or controlled by a Scottish vessel/aircraft/marine
 - a "Scottish marine structure" is considered to have a qualifying connection to Scotland if it is owned by, or leased to, an individual who is ordinarily resident in Scotland, or to a body corporate that is incorporated in Scotland

Exemption to avoid double licensing of new activities in ABNJ under MCAA and MSA: It will also be necessary to make an exemption to avoid double licensing of new activities in ABNJ under the two marine licensing regimes. For example,

¹⁹ For the meaning of British vessel, British aircraft and British marine structure see section 115(1) MCAA and the Glossary.

extending licensing requirements under both MCAA and MSA to capture construction works in ABNJ could result in an activity being licensable under both licensing regimes (if, say, the works are carried on or controlled by a Scottish company or carried on from a Scottish vessel). To avoid double regulation, it is proposed that an exemption would be made by way of secondary legislation made under the exemptions power in section 74 MCAA in respect of proposed new licensable activities in ABNJ detailed above (dredging, construction works, removals and use of explosives) which will be licensable by the Scottish Ministers under MSA due to having a qualifying connection to Scotland.

Other options considered

These options were assessed as less suitable for meeting BBNJ EIA obligations while ensuring proportionate regulation.

Option 2: De Minimis Threshold exemption

Add new licensable marine activities in ABNJ to the lists of licensable activities under MCAA and MSA as for Option 1. Any activity on the list whose impact is above the De Minimis Threshold would require a licence. Any activity whose impact falls below the De Minimis Threshold would be exempt from a marine licence.

- Option 2 would effectively meet BBNJ obligations like Option 1 and would enable controls to be placed on activities that did not reach the EIA threshold through a marine licence. However, Option 2 would result in more activities in ABNJ requiring a marine licence than the preferred approach, placing additional burdens on both regulators and industry. The EIA Threshold screening requirements are higher than those of the De Minimis Threshold; in other words, some activities are likely to meet the De Minimis Threshold but then be 'screened out' from requiring an EIA by MMO because they do not meet the EIA Threshold. As a result, requiring a marine licence for all activities that meet the De Minimis Threshold as in Option 2 would bring a wider range of activities into scope of a marine licence.
- Under Option 2, the list of licensable marine activities in section 66 MCAA and section 21 MSA would be amended to add new activities in ABNJ as for Option 1. Secondary legislation made using powers to specify exemptions from licensing under section 74 MCAA and 32 MSA (an exempted activities order) would provide an exemption for those new activities in ABNJ where the appropriate authority has determined that the activity does not meet the De Minimis Threshold and has given a notice to the applicant that an EIA is not required. Similar to Option 1, an exempted activities order made under section 74 would also:
 - exempt the specified new activities in ABNJ which are not within UK jurisdiction or control.

- exempt any such new activities in ABNJ which are licensable by the Scottish Ministers under the MSA to avoid double licensing of those new activities under MCAA and MSA.

Option 3: Licensing extended to specific activities

Extend marine licensing only to certain new activities in ABNJ which we have identified are above, or expected to be above, the De Minimis Threshold. This option would specify activities whose impacts meet the De Minimis Threshold and only these activities would require an EIA screening and a marine licence in ABNJ.

- Option 3 would have low resource requirements and would be the most straightforward approach to regulation. This approach would, however, be less adaptable to future developments in activities or to any standards or guidelines adopted by the BBNJ Conference of Parties, creating a risk of the UK failing to meet its obligations under Part IV of the BBNJ Agreement and potentially requiring frequent updates to the current regulatory frameworks. Without a complete understanding of what activities are likely to take place in ABNJ, achieving proportionate regulation will be challenging as we do not currently know which activities will be above or below the BBNJ thresholds.
- The additional licensable marine activities in ABNJ would be specified within Section 66 of MCAA or Section 21 of MSA (by way of an amendment). Similar to Option 1, an exempted activities order made under section 74 would also:
 - exempt the specified new activities in ABNJ which are not within UK jurisdiction or control.
 - exempt any such new activities in ABNJ which are licensable by the Scottish Ministers under the MSA to avoid double licensing of those new activities under MCAA and MSA.

Option 4: Licensing extended to all activities

Extend the list of licensable marine activities in ABNJ in MCAA and MSA to include all those categories which are currently licensable only in UK waters. All licensable marine activities require an EIA screening and a marine licence.

- Option 4 would effectively fulfil BBNJ EIA obligations, as all activities would be subject to an EIA screening. However, this approach would be less proportionate than the preferred option. It would require a marine licence and that the appropriate licensing authority carry out EIA screenings for activities below the De Minimis Threshold. This is unnecessary and would place additional burden on both regulators and industry. This option would also create the risk of overlap with other regulatory regimes.

- Under Option 4, the list of licensable marine activities in section 66 MCAA would be amended to add new activities in ABNJ. Similar to Option 1, an exempted activities order made under section 74 would also:
 - exempt the specified new activities in ABNJ which are not within UK jurisdiction or control.
 - exempt any such new activities in ABNJ which are licensable by the Scottish Ministers under the MSA to avoid double licensing of those new activities under MCAA and MSA.

Illustration of Options considered

Figure 1: Option 1 (Preferred option) EIA Threshold exemption process map.

This process will not apply to activities in ABNJ which are already licensable in ABNJ or activities subject to an existing exemption.

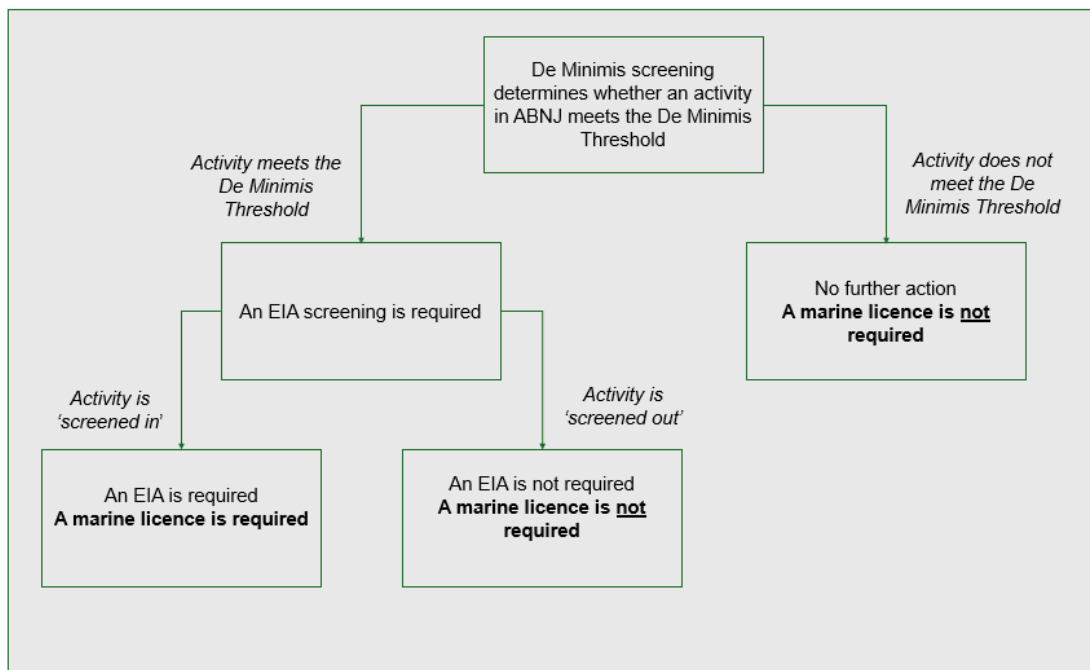


Figure 2: Option 2 De Minimis Threshold exemption process map

This process will not apply to activities in ABNJ which are already licensable in ABNJ or activities subject to an existing exemption.

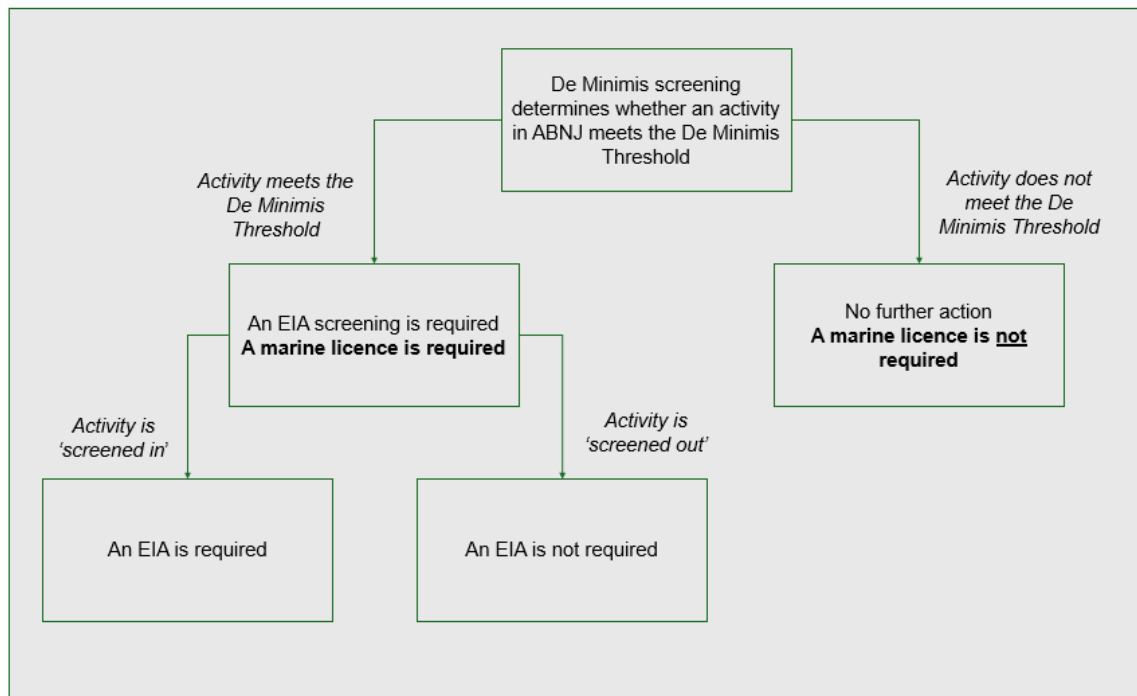


Figure 3: Option 3 Licensing extended to specific activities process map

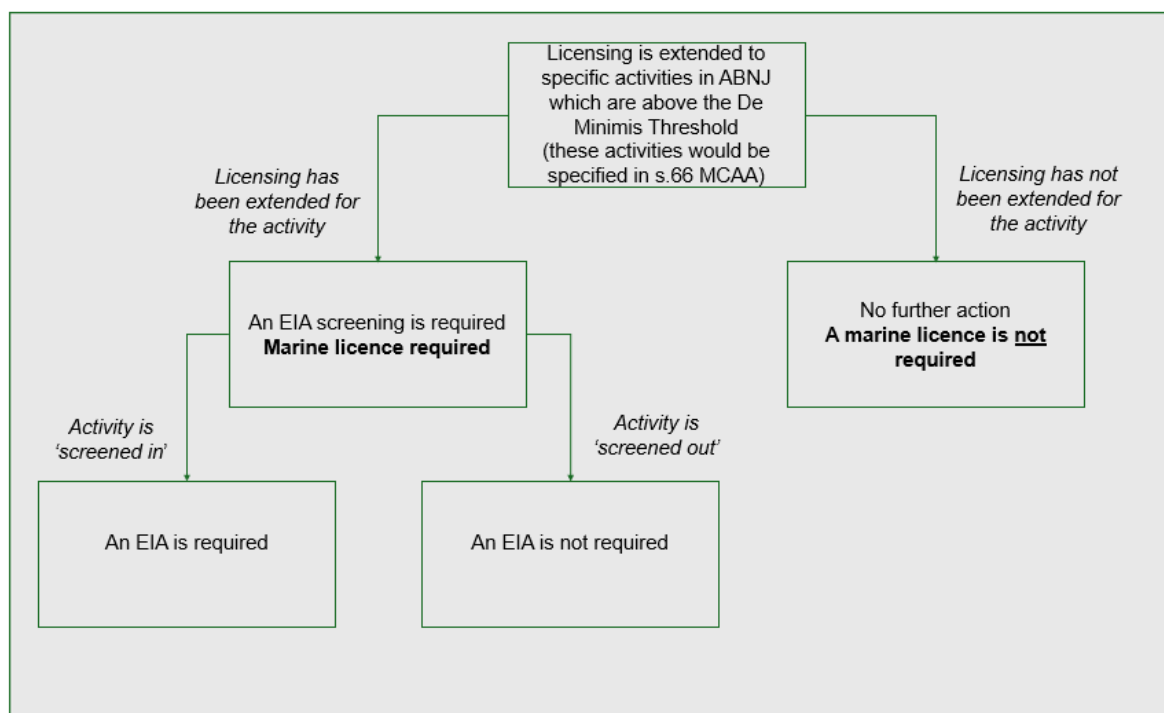
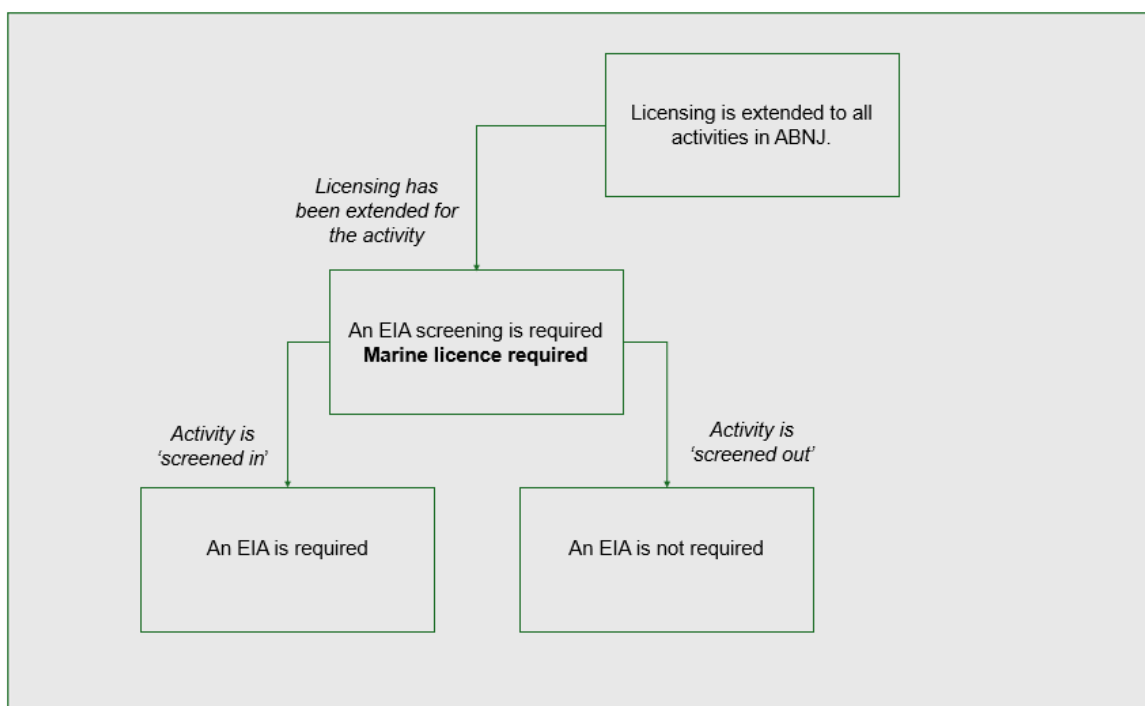


Figure 4: Option 4 Licensing extended to all activities process map



3. Do you agree that the preferred approach (Option 1) would work effectively for regulating activities in ABNJ while remaining proportionate and able to adapt to future needs?

Yes or No or Neither Agree nor Disagree

4. Do you agree that a self-determination screening could be used to determine if an activity meets the De Minimis Threshold?

Yes or No or Neither Agree nor Disagree

5. Do you have any comments on the other options considered (Option 2, 3 and 4)?

6. Do you have any further comments you wish to make on this proposal or the above questions, including any views on potential economic impacts?

Managing overlap with other regimes

We want to ensure that regulation is streamlined when we are extending the marine licensing regimes and that we are not duplicating assessments required elsewhere.

If an activity is a joint enterprise, under the control or jurisdiction of more than one State party to the BBNJ Agreement, and an equivalent EIA has been carried out under the requirements of another State party, the appropriate licensing authority

would be able to defer to that other EIA if satisfied that it meets the requirements and is compatible with the UK's obligations under Part IV of the BBNJ Agreement.

The appropriate licensing authority would also have the ability to defer to other equivalent EIAs undertaken by other bodies which meet the Part IV BBNJ requirements; for example, EIAs on marine scientific research undertaken from UK government vessels owned by the Natural Environment Research Council (NERC).

There are some activities in ABNJ under UK control or jurisdiction and within Scottish devolved legislative competence which may, following the legislative changes proposed in this consultation be regulated under the MSA marine licensing regime. For example, under the proposals to extend licensing to new activities in ABNJ detailed in options 1-4 above, new activities in ABNJ undertaken by Scottish companies may be licensable activities under both MSA and MCAA. Where this is the case, we will use exemptions to remove any duplication so that the activity will only be licensed under one regime. For example, an activity would be exempt under MCAA if a licence was separately required for that activity under MSA.

Responsible licensing authority for activities in ABNJ

Under the current marine licensing frameworks set out in section 21 of MSA and section 66 of MCAA, there is an acknowledged overlap in responsibilities between the UK Government and the Scottish Government for licensing marine activities that take place in ABNJ.

It was agreed that certain existing activities taking place outside the UK marine area would be exempted through secondary legislation. Specifically, the MMO was designated as the licensing authority for activities listed under items 2, 5, and 12 of section 66 of MCAA (deposits, scuttling, incineration), when carried out in ABNJ by or from British vessels, aircraft, or marine structures, including Scottish vessels, aircraft or marine structures. To give effect to this arrangement, Article 35 of the Marine Licensing (Exempted Activities) (Scottish Inshore Region) Order 2011 (SSI 2011/204) exempts these activities from licensing under MSA, for the purposes of avoiding double regulation.

With the implementation of the BBNJ Agreement, the licensing regime must be extended to cover a broader range of marine activities in ABNJ.

The UK Government and Scottish Government propose to update the division of responsibilities for licensing marine activities in ABNJ, including existing activities. It is proposed that Scottish Ministers will be the responsible licensing authority for activities in ABNJ that fall within devolved competence and the MMO will remain responsible for licensing all other activities in ABNJ.

This approach would require amendments to the current exempted activities regimes to ensure clarity, avoid duplication, and establish a clear split in licensing responsibilities for marine activities in ABNJ.

The following division of responsibilities is being considered:

- **Activities listed in section 66(1) MCAA, items 2, 5 and 12 (deposits scuttling and incinerations):** such activities would be exempted from licensing under MCAA if carried on by or controlled from a Scottish vessel, aircraft or marine structure. This exemption may be made by way of an exempted activities order made under section 74 MCAA.
- **Amendment to Article 35 of the Marine Licensing (Exempted Activities) (Scottish Inshore Region) Order 2011 No. 204:** This could be updated to reflect exemptions for activities in ABNJ that are currently regulated under section 66(1) of MCAA.

For details on the differences in fee structures for obtaining a marine licence between the MMO and Scottish Ministers, see section on 'Marine licensing fees for activities in ABNJ'.

List of activities exempt from licensing in ABNJ

In order to meet BBNJ requirements for ABNJ activities we can only exempt ABNJ activities which:

- fall under the De Minimis threshold and therefore don't need to be screened
- fall under the EIA threshold, though these would still need to be screened
- are appropriately regulated through another regimes
- are not under UK jurisdiction or control

The above section describes which activities would be exempt from a marine licence for each option. This section provides more detail on the pre-determined exemption list applicable in relation to all options described above.

There are certain low impact activities which will always fall below the De Minimis Threshold. This is because they are consistently low impact, regardless of location or scale. A pre-determined exemption list would permit certain activities to be carried out by a UK person or company without a marine licence and without the need for a screening.

Regulation, including in ABNJ, should be proportionate. Therefore, any activity which constantly falls below the De Minimis Threshold should be exempt from requiring a marine licence without any screening needing to be conducted by the MMO. This will help reduce unnecessary burden on regulators and industry.

Current marine licensing exemptions in relation to certain activities are set out in the 2011 Exempted Activities Orders; they include, for example, a deposit of tracer or reagent. These exemptions apply where an activity is considered to be low risk where there is dual regulation in UK waters; or in certain cases where urgent action

is required. We are proposing to maintain the scope of the current exemptions to maintain proportionality in regulation. When further EIA guidance is provided at the BBNJ Conference of the Parties or should new scientific evidence on impacts emerge we will review and amend the exemptions as appropriate.

The full list of activities currently exempt from a marine licence can be found in the following links:

- [Marine licensing exempted activities - GOV.UK](#)
- [Marine licensing - exempted activities: guidance - gov.scot](#)

Only current exemptions which do not have a geographic restriction will apply in ABNJ. Current exemptions which do not already apply to activities in ABNJ will not be extended.

7. Do you agree with maintaining the existing scope of exemptions until such a time as further guidance is provided by the Conference of Parties or there is more evidence on impacts?

Yes or No or Neither Agree nor Disagree

8. Do you have any views on the implementation of these proposals in relation to Scottish marine licensing or on the proposed update to the division of responsibilities for licensing marine activities in ABNJ?

9. Do you have any evidence indicating that any of the current exemptions should not apply in ABNJ? If so, please provide this evidence including relevant data.

10. Do you have any further comments you wish to make on this proposal or the above questions, including any views on potential economic impacts?

Potential activities taking place in ABNJ

We have identified a range of activities and projects which may occur in ABNJ, including ones which have a low likelihood of occurrence. These are listed below:

- marine geoengineering for climate and biodiversity (for example, carbon dioxide removal, solar radiation management)
- carbon capture and storage and exploration and production of oil and gas *
- activities related to energy generation (for example, offshore floating wind turbines, wave energy, floating solar, Ocean Thermal Energy Conversion)
- cable laying and cable maintenance
- cable removal
- activities related to Marine Scientific Research (MSR)
- rocket launches/debris

- aquaculture (for example, finfish, shellfish, crustaceans, algae)
- plastic/litter removal techniques
- construction
- dredging
- dumping of waste and other matter
- marine restoration
- archaeological Salvage
- pipelines

The BBNJ Agreement does not apply to warships, military aircraft or naval auxiliary and its EIA requirements also do not apply to other government vessels or aircraft used only on government non-commercial service (Article 4 of that Agreement). We are only considering activities which would come under the remit of marine licensing and would not fall to be regulated or assessed under regulatory frameworks of other Government departments or other relevant legal instruments or frameworks or by relevant global, regional, subregional or sectoral bodies.

*The UK does not currently have any plans to carry out oil and gas or carbon capture and storage activities in ABNJ. If in the event such activities become relevant in the future, other regulatory measures may be developed at that time.

11. Do you believe any activities that occur or could potentially occur in ABNJ are not included in this list? If so, please provide details.

12. Do you have any evidence on the likelihood of the listed activities occurring in ABNJ? If so, please provide this evidence including relevant data.

13. Do you have any evidence on the potential environmental impacts of the listed activities in ABNJ or any non-listed activities, including whether they would meet the BBNJ De Minimis Threshold? If so, please provide this evidence including relevant data.

14. Do you have evidence on the types of companies, institutions or persons who are likely to carry out activities in ABNJ and where are they likely to be registered or based?

Activity specific regulatory approaches

For certain activities, we propose a bespoke approach to regulation in ABNJ. This is due to existing regulatory frameworks and assessments, differing ways of meeting BBNJ obligations and varying levels of an activity's impact on the environment. The

section below outlines these activities, our proposed regulatory approach for each, and the rationale behind it.

Approach to regulation of sub-sea cabling activity

Marine licensing requirements do not apply to things done in the course of laying and maintaining the offshore stretch of “exempt” cables beyond the seaward limits of the territorial sea (see section 81 MCAA or section 37 MSA). In practice, these activities are considered to have little to no harmful impact on the marine environment. This exemption does not cover cable removals.

However, the appropriate licensing authority may need to be able to undertake EIA screening and EIAs in exceptional circumstances where evidence suggests that these activities may meet the De Minimis Threshold. We therefore are amending section 81 MCAA and section 37 MSA in the BBNJ Bill to enable licensing and EIA requirements to be applied to such cabling activities in ABNJ in future if this is necessary to comply with BBNJ EIA requirements.

Proposed approach

We do not currently intend to change the current exemption in relation to cable laying and maintenance as we consider that the environmental impacts of such activity are likely to be minimal in ABNJ.

Defra Arm's Length Bodies have extensive knowledge of the environmental impacts associated with cable projects in UK waters. As cables in ABNJ are often surface laid, rather than buried either in trenches and/or beneath cable protection, it is considered that the environmental impacts associated with cable projects are lower in ABNJ. We want to use this consultation to improve our understanding of the cabling activities undertaken in ABNJ that are not exempt, as well as the potential impacts associated with them. We will not change the current exemption unless we receive evidence through this consultation that this is necessary.

Cable removals, however, are not currently exempt. However, we will make them exempt in ABNJ if the evidence shows that their impact is understood to be sufficiently low risk. We are therefore seeking evidence on the impacts of cable removal in ABNJ. We would not regulate cable removals unless there is evidence that impacts are more than minor or transitory, or otherwise that the impacts are unknown or poorly understood. For example, we could provide a specific exemption for cable removal if there is sufficient evidence or we are also exploring whether a self-determination screening could include cable removal which would automatically exempt activities below the De Minimis Threshold (see ‘Process to be used to assess activities in ABNJ’ section on p33 for more detail on a self-determination process).

15. Do you agree with the proposed approach to keep cable laying and maintenance exempt in ABNJ?

Yes or No or Neither Agree nor Disagree.

Please provide any evidence on the environmental impacts of cable laying and maintenance in ABNJ to support your response.

16. Would you support a specific exemption for cable removals in ABNJ? Please provide any evidence on the environmental impacts of cable removal to support your response, in particular on if cable removals would meet the De Minimis Threshold.

Yes or No or Neither Agree nor Disagree

17. Do you have any further comments you wish to make on this proposal or the above questions?

Approach to regulation of Marine Scientific Research

As explained in 'Activities exempt from a marine licence in ABNJ' the current exemptions relevant to activities forming part of Marine Scientific Research (for example the exemptions relating to scientific instruments and the taking of samples in the Exempted Activities Orders) will apply to such activities when they take place in ABNJ, for example on scientific instruments.

Marine scientific research is often carried out from research vessels operated and controlled by Natural Environment Research Council (NERC), the Centre for Environment, Fisheries and Aquaculture Science (CEFAS), or the Scottish Government. We propose that each of these government organisations takes responsibility to meet the BBNJ EIA requirements on all research activities carried out from its vessels. On this basis, we propose to exempt this category of activity (i.e. research activity managed by NERC, Cefas or the Scottish Government in ABNJ) from the scope of the marine licensing regime under MCAA. This exemption would only apply to new licensable activities in ABNJ, not those categories of activity (deposits, scuttling, and incineration) already licensable in ABNJ under s66 MCAA. We will continue discussions with these government organisations to ensure that their EIA processes meet the BBNJ requirements.

18. Do you agree with our proposed approach to Marine Scientific Research?

Yes or No or Neither Agree nor Disagree

19. If you are aware of any, please provide the names of any other UK research vessels which could carry out their own EIA which the exemption could apply to?

20. Do you have any further comments you wish to make on this proposal or the above questions?

Approach to regulation of Spaceflight Activity Deposits

Spaceflight activity may involve marine deposits, which is currently a category of licensable activity under the MCAA and the MSA. Spaceflight activity licensed under the Outer Space Act 1986 (OSA) and the Space Industry Act 2018 (SIA) may be in scope of Part IV of the BBNJ Agreement, as Part IV will apply to debris deposited in ABNJ. The Government is satisfied that there are sufficient measures in the SIA and OSA to ensure our compliance with the BBNJ Part IV requirements.

The SIA requires all launch operators planning to launch a rocket or other craft capable of operating above the stratosphere to carry out an Assessment of Environmental Effects (AEE). The Government is satisfied that this requirement exceeds that of the EIA required by the BBNJ Agreement, so the additional impact for operators in the UK will be limited to publishing the AEE on the new clearing-house mechanism.

Under the BBNJ agreement, UK entities or nationals launching or returning overseas may have to carry out an EIA. The Government will work to limit duplication of requirements from the state or territory from which the launch is to take place.

DfT will work with the CAA to update the relevant guidance to reflect the new requirements.

21. Do you agree with our proposed approach to rocket launch deposits?

Yes or No or Neither Agree nor Disagree

22. Do you have any further comments you wish to make on this proposal?

Marine licensing fees for activities in ABNJ

Existing marine licensing fee structure - MMO

The MMO uses fee bands to calculate marine licence application fees. The current fees regime for marine licence applications, where the Secretary of State is the appropriate licensing authority, is set out in the Marine Licensing (Application Fees) Regulations 2014. Marine licence applications are assessed and categorised into fee bands as follows:

1. [Band 1](#) (Self-service):

A self-service marine licence costs a fixed fee of £50 and is determined through the online self-service portal without the need for determination from a marine licensing case officer.

2. [Band 2](#) (Standard marine licence):

Band 2 marine licence fee caps are currently set by reference to the overall cost of a desired project.

3. [Band 3](#) (Complex marine licence):

These have no fee maximum and are charged at a fixed hourly rate, as complex characteristics can make determining the licence a longer process, with the need for external consultation and investigations. A marine licence application is considered complex if it is part of a project requiring an EIA.

Defra has separately consulted on proposed changes to the current marine licensing fees. That consultation is now closed, and all responses received are under consideration. This consultation included proposals to increase fees for the marine licence (and EIA) service provided by the MMO, including increasing the hourly rate from £122 to £155.

- For more information, please refer to the consultation document available: [Marine licences: changes to fees, exemptions and self-service licences - Defra - Citizen Space](#)

Marine licensing fee structure – Scottish Ministers

Fees for marine licence applications to Scottish Ministers are set on 1 April each year in accordance with Regulation 6 of the Marine Licensing (Fees) (Scotland) Regulations 2011 (as amended) and are linked to the Consumer Price Index for February of the previous financial year.

Proposed licensing fees for activities in ABNJ

For the activities under the control of the MMO, activities in ABNJ would be categorised as Band 3, which refers to activities that are complex or higher risk. This is in line with the current approach for licensable marine activities in ABNJ. Activities in ABNJ are likely to be more complex and difficult to screen than those carried out in territorial waters.

The MMO would charge for their work carrying out the EIA screening, as well as any subsequent marine licence that may be required if an activity requires an EIA. However, activities which are listed on the pre-determined exemption list, or which are determined to be below the De Minimis Threshold by the self-determination screening, would not be charged for the De Minimis screening if needed.

For activities controlled by the Scottish Ministers, the fee banding is found in the Scottish marine licensing regulations and is based on the cost of the activity to be undertaken. Details can be found on the Scottish Government's Marine Directorate – Licensing Operations Team website ([Marine licensing and consenting: application fees - gov.scot](#)).

23. Do you agree with the proposed approach to fees?

Yes or No or Neither Agree nor Disagree

24. Do you have any other comments you wish to make on this proposal, including any views on potential economic impacts?

Process to be used to assess activities in ABNJ

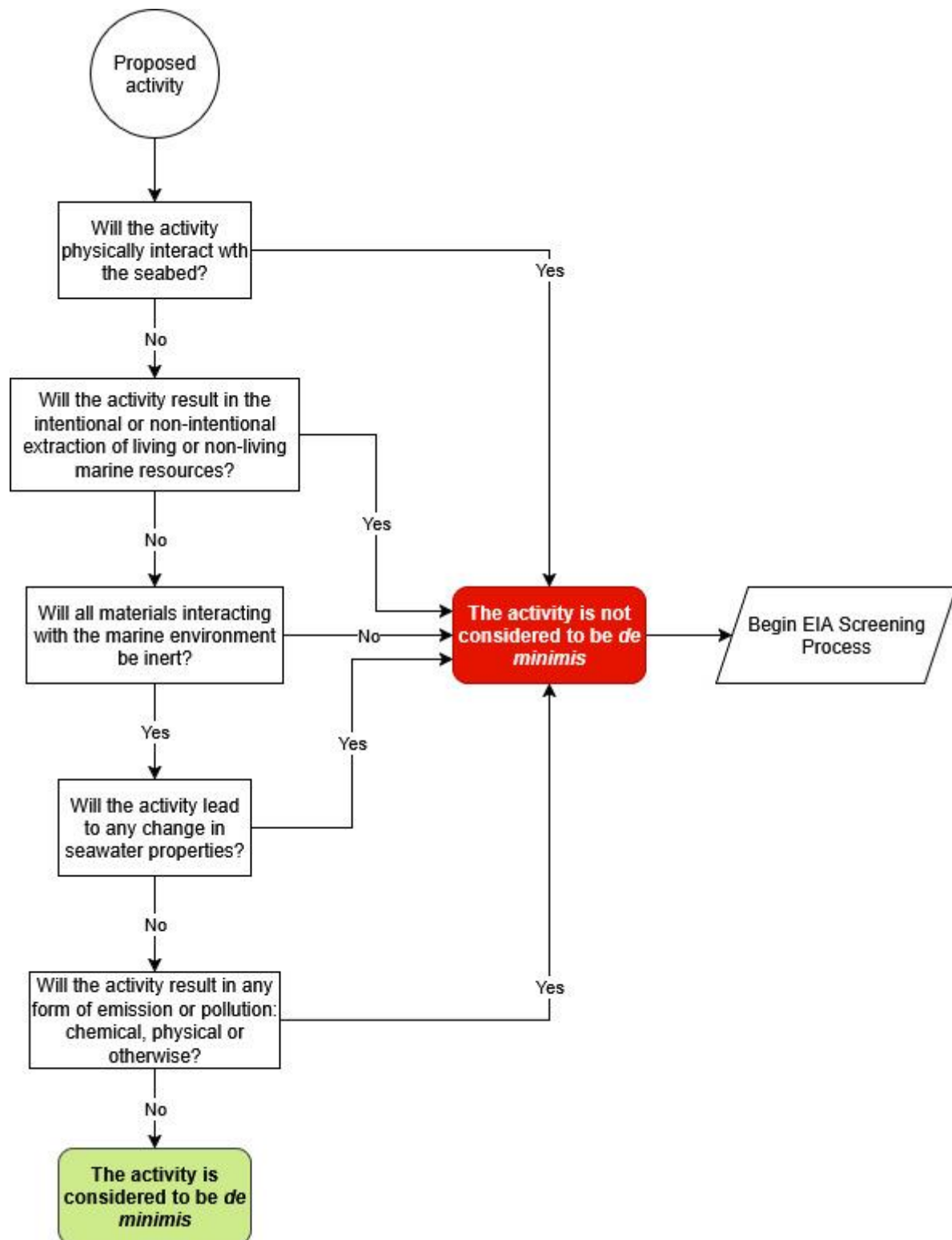
We are currently exploring options for the specific process by which the appropriate licensing authority would assess activities. Internal guidance for marine licensing case workers, as well as public guidance, would be updated with this process on how activities in ABNJ would be regulated.

Depending on available evidence we are considering a possible MMO self-determination screening in which the applicant can receive an automatic exemption notice if the screening determines the proposed activity is below the De Minimis Threshold. Any such self-determination screening process would need to be robust, evidence based and defensible such as to ensure that any uncertainty in the predicted impact of the activity is not sufficient to affect the conclusion that the De Minimis Threshold is not reached. We are working to ensure that criteria are robust and well-developed to mitigate the risk of inappropriate use by applicants.

If using a self-determination tool, where applicants are unsure of any of the impacts and effects of these activities (and are unknown or poorly known understood), then this will automatically progress to EIA screening. A draft example of what this process could look like is shown in Figure 5. Any finalised version of this would require moderation by, and consultation with, other technical bodies. Following the BBNJ CoP, this guidance would also be revised to incorporate any recommendations and any criteria established for determining thresholds.

This chart (Figure 5) is not intended to cover activities where the impact of an activity is well understood to be low risk and therefore exempt in its own right.

Figure 5: An example of a Self-determination tool for assessing whether an activity's impacts or effects meet the de-minimis threshold and therefore require EIA screening



The self-determination tool would assess whether the activities are potentially exempt from requiring an EIA under the marine licensing regime because they are covered under another relevant legal instrument or framework or a relevant global, regional, subregional or sectoral body. This is contingent on the status of other assessments under other different international agreements. If the planned activities

are not subject to monitoring and review under another relevant legal instrument or framework or a relevant global, regional, subregional or sectoral body then they will still require monitoring and review by the MMO and the monitoring and an exemption would be available if an activity has already been assessed under another international framework (for example, The International Convention for the Prevention of Pollution from Ships and International Seabed Authority regulations), and under that framework:

- the assessment meets BBNJ EIA standards, the results are taken into account and monitoring, and review are in place; or
- under that framework, the activity is managed to prevent, mitigate or manage impacts below the BBNJ EIA threshold

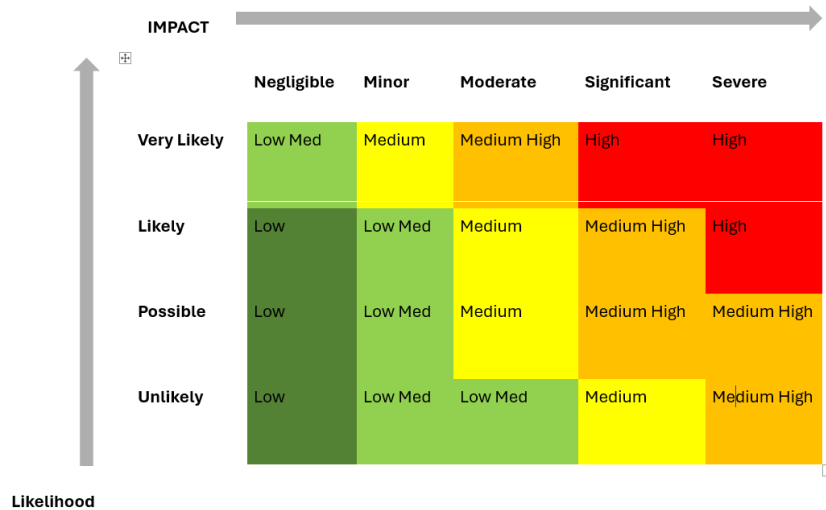
If these criteria were not met, then an EIA determination is required.

If no EIA is required, justification must be provided, including reference to prior assessments under other legal frameworks.

We are also considering the process required to determine whether an activity would meet the EIA Threshold. The EIA requirements under the BBNJ Agreement aim to achieve broadly equivalent outcomes to those in Areas Within National Jurisdiction regulated through the EIA Regulations. However, there may be material differences between both frameworks with respect to implementation and licensing requirements. The resultant EIA screening process for activities in ABNJ may be procedurally similar to the EIA Regulations, however modifications may be required due to several factors, including the difficulty of monitoring and enforcement by UK regulators in ABNJ, compared to domestic waters, and the greater uncertainty associated with receptor baselines, sensitivity and recoverability. The EIA screening would be carried out by the appropriate authority. Similar to the screening for the De Minimis Threshold, the guidance for EIA screenings would also be revised if needed to incorporate any recommendations made by the BBNJ CoP.

A risk assessment matrix would also be used by the licensing authority to determine what level of screening is required (see Figure 6). Any activity that meets the De Minimis Threshold would likely be assumed to be of Low risk and any activity Low-Medium or above would require EIA screening. For activities that lie between Low-Medium and Medium the MMO would need to undertake screening to determine whether an EIA is required. If any one of the assessed impacts of the activity are considered to be of Moderate concern or higher, then the project will require an EIA. This assessment would be on a weight-of-evidence basis to determine whether there were grounds for believing that the activity could meet the EIA Threshold. This assessment could incorporate a standard mitigation hierarchy (for example, avoidance, mitigation, compensation).

Figure 6: Risk assessment matrix classifying risk based on impacts and likelihood



Consideration of relevant Screening Criteria the licensing authority would use to determine whether an activity would meet the EIA Threshold:

1. Characteristics of the Projects:

- size and design of the whole project
- cumulative effects with other existing or approved projects
- use of natural resources, living and non-living marine resources
- waste production
- pollution and nuisances, including emissions to air, water, soil, noise, vibration, light, heat
- risk of major accidents and/or disasters, including those caused by climate change
- risks to human health

2. Location of the Projects:

- environmental sensitivity of geographical areas likely to be affected

3. Characteristics of the Potential Impact:

- extent of the impact (geographical area and population affected)
- transboundary nature of the impact
- magnitude and complexity of the impact
- probability of the impact
- duration, frequency, and reversibility of the impact

Decisions on the screening would be forwarded to the Clearing-House Mechanism, who would:

- publish EIA documents
- facilitate public consultation and stakeholder engagement
- ensure decisions are transparent and based on scientific evidence

Public guidance

We would also update online guidance to aid applicants in understanding how the regulatory process in ABNJ is carried out. The existing licence application and EIA process will be applied to new ABNJ activities, with some changes to ensure that activities are screened and EIA are conducted as necessary to meet BBNJ requirements. The guidance on GOV.UK would provide applicants with information:

- how the ABNJ process differs from the domestic marine licensing process
- how to tell whether their activity is exempt from a marine licence
- how and when to use the self-service De Minimis Threshold screening
- the applicable fees process

25. What information or criteria should be considered when deciding whether an activity meets the De Minimis Threshold?

26. Do you agree with the criteria used by the Self-determination screening?

Yes or No or Neither Agree nor Disagree

27. What other information would be helpful for applicants to understand the regulatory process in ABNJ?

28. Do you have any further comments you wish to make on this proposal?

Consultee feedback on online survey

Dear Consultee,

Thank you for taking your time to participate in this online survey. It would be appreciated, if you can provide us with an insight into how you view the tool and the area(s) you feel is in need of improvement, by completing our feedback questionnaire.

Overall, how satisfied are you with our online consultation tool?

1. Very satisfied
2. Satisfied
3. Neither satisfied nor dissatisfied
4. Dissatisfied
5. Very dissatisfied
6. Don't know

Please give us any comments you have on the tool, including suggestions on how we could improve it.

How to respond and next steps

The closing date for this consultation is 19 December 2025. Responses received by this date will be analysed and shared with Scottish Government. The representations will be considered by UK Ministers and Scottish Ministers in their considerations of the proposals for amending the respective marine licensing exemptions and, where applicable, self-service permits. Scotland will consider consultation responses only in respect of the legislative reforms within Scottish legislative competence.

To submit your consultation response, please use: **Citizen Space** (our online consultation tool).

If you are unable to respond through Citizen Space, you can submit your response via email to marine.licensing@defra.gov.uk

We have asked you a number of specific questions in this document. If you have any other views on the subject of this consultation, which have not been addressed, you are welcome to provide us with these views in your response.

During this consultation, if you have any enquiries, please contact:
marine.licensing@defra.gov.uk

Acronyms and Glossary

Acronyms

2017 Regulations: The Marine Works (Environmental Impact Assessment) (Scotland) Regulations 2017

ABMT: Area-Based Management Tools

ABNJ: Areas Beyond National Jurisdiction

BBNJ: Biodiversity Beyond National Jurisdiction

EEZ: Exclusive Economic Zone

EIA: Environmental Impact Assessment

EIA Regulations: The Marine Works (Environmental Impact Assessment) Regulations 2007 and the Marine Works (Environmental Impact Assessment) (Scotland) Regulations 2017 taken together

EOR: Environmental Outcomes Reports

FCDO: The Foreign, Commonwealth and Development Office

MCAA: The Marine and Coastal Access Act 2009

MGRs: Marine Genetic Resources

MMO: The Marine Management Organisation

MSA: Marine (Scotland) Act 2010

MWR: Marine Works (Environmental Impact Assessment) Regulations 2007

The 2011 Exempted Activities Order: Marine Licensing (Exempted Activities) Order 2011

UNCLOS: United Nations Convention on the Law of the Sea

Glossary

British aircraft: an aircraft registered in the United Kingdom.

British marine structure: a marine structure owned by or leased to an individual residing in, or a body corporate incorporated under the law of, any part of the United Kingdom.

A “marine structure” means a platform or other artificial structure at sea, other than a pipeline.

British vessel: a vessel—

(a) which is registered in the United Kingdom,

(b) which falls within section 1(1)(d) of the Merchant Shipping Act 1995 (c. 21) (small ships), or

(c) which is exempt from registration under section 294 of that Act.

A “vessel” includes—

(a) hovercraft, and

(b) any other craft capable of travelling on, in, or under water, whether or not self-propelled.

De Minimis Threshold: When a planned activity may have more than a minor or transitory effect on the marine environment, or the effects of the activity are unknown or poorly understood.

EIA Threshold: When States have reasonable grounds for believing that planned activities under their jurisdiction or control may cause substantial pollution of or significant and harmful changes to the marine environment, they shall, as far as practicable, assess the potential effects of such activities on the marine environment and shall communicate reports of the results of such assessments....

Consultation questions list:

1. Would you like your response to be confidential?
2. Would you be happy to be contacted by Defra or Scottish Government on detail of responses if needed?
3. Do you agree that the preferred approach (Option 1) would work effectively for regulating activities in ABNJ while remaining proportionate and able to adapt to future needs?
4. Do you agree that a self-determination screening could be used to determine if an activity meets the De Minimis Threshold?
5. Do you have any comments on the other options considered (Option 2, 3 and 4)?
6. Do you have any further comments you wish to make on this proposal or the above questions, including any views on potential economic impacts?
7. Do you agree with maintaining the existing scope of exemptions until such a time as further guidance is provided by the Conference of Parties or there is more evidence on impacts?
8. Do you have any views on the implementation of these proposals in relation to Scottish marine licensing or on the proposed update to the division of responsibilities for licensing marine activities in ABNJ?
9. Do you have any evidence indicating that any of the current exemptions should not apply in ABNJ? If so, please provide this evidence including relevant data.
10. Do you have any further comments you wish to make on this proposal or the above questions, including any views on potential economic impacts?
11. Do you believe any activities that occur or could potentially occur in ABNJ are not included in this list? If so, please provide details.
12. Do you have any evidence on the likelihood of the listed activities occurring in ABNJ? If so, please provide this evidence including relevant data.
13. Do you have any evidence on the potential environmental impacts of the listed activities in ABNJ or any non-listed activities, including whether they would meet the BBNJ De Minimis Threshold? If so, please provide this evidence including relevant data.
14. Do you have evidence on the types of companies, institutions or persons are likely to carry out activities in ABNJ and where are they likely to be registered or based?

15. Do you agree with the proposed approach to keep cable laying and maintenance exempt in ABNJ? Please provide any evidence on the environmental impacts of cable laying and maintenance to support your response.
16. Would you support a specific exemption for cable removals in ABNJ? Please provide any evidence on the environmental impacts of cable removal to support your response, in particular on if cable removals would meet the De Minimis Threshold.
17. Do you have any further comments you wish to make on this proposal or the above questions?
18. Do you agree with our proposed approach to Marine Scientific Research?
19. If you are aware of any, please provide the names of any other UK research vessels which could carry out their own EIA which the exemption could apply to?
20. Do you have any further comments you wish to make on this proposal or the above questions?
21. Do you agree with our proposed approach to rocket launch deposits?
22. Do you have any further comments you wish to make on this proposal?
23. Do you agree with the proposed approach to fees?
24. Do you have any other comments you wish to make on this proposal, including any views on potential economic impacts?
25. What information or criteria should be considered when deciding whether an activity meets the De Minimis Threshold?
26. Do you agree with the criteria used by the Self-determination screening?
27. What other information would be helpful for applicants to understand the regulatory process in ABNJ?
28. Do you have any further comments you wish to make on this proposal?