



**Isle of Man
Government**

Reilts Ellan Vannin



Department of Environment, Food and Agriculture

Consultation on the introduction of a consenting
process for seismic surveys
in Manx waters

11 October 2016

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Section1: Background

Seismic surveys are used by offshore industries to understand the composition of the seabed. They are used in oil and gas exploration and in surveying sites for developing wind farms, tidal turbines and other infrastructure.

A range of types of seismic surveys are used, with varying levels of impact on the marine environment. Seismic survey produces underwater noise which can impact on marine life, in particular on whales, dolphins, porpoises and seals which are protected species under Isle of Man law. The noise can also impact on commercially important species such as herring, which aggregate in Manx waters in the late summer to spawn in autumn. Impacts of seismic surveys have been observed on sand eels, which are an important source of food for many species of fish, marine mammals and birds. Seismic surveys also contribute to the cumulative impact of noise from various man-made sources which now impact on the marine environment.

The Department of Infrastructure's new Marine Infrastructure Management Act provides a consenting process for large marine infrastructure projects including offshore wind farms, oil and gas extraction and aggregate extraction. This Act gives DEFA the power to make regulations to establish a consenting regime for seismic surveys. Notification of other geophysical surveys is also good practice and it is proposed that this will be possible using the same application form.

If potential impacts can be assessed at the planning stage of a seismic survey, measures can be put in place to ensure the survey can be carried out with minimal impact on the marine environment and other users of the sea.

Overview of the proposed consenting process

The proposed process requires developers to apply to DEFA at least 60 days in advance of the start of their planned seismic survey. Their application will be considered by a nominated officer within DEFA who will determine the application and set any appropriate conditions. DEFA will consult with the Wildlife Committee (a statutory committee under the Wildlife Act) and other appropriate specialists. The draft Byelaws under the Wildlife Act can be found in [Section 2](#). There will be an appeal process should a developer wish to appeal against the decision made on their application.

In their application, the developer will need to give details of their proposed seismic survey and any other geophysical surveys, and also assess the potential impact of the survey on protected marine species (all marine mammals, basking sharks and turtles) and other marine species, including those of commercial importance. The application form will be closely based on the equivalent form used by the Marine Management Organisation in the UK.

The process will also encourage applicants to liaise with the fishing industry and issue a notice to mariners regarding their survey. Notification of seismic surveys will assist fishermen, divers and other users of the sea, and minimise impacts of surveys on these users.

Why a consenting process is needed

Marine mammals such as harbour porpoise, minke whale and Risso's dolphins are very vulnerable to underwater noise. These species are protected under the Wildlife Act and also under international conventions to which the Isle of Man is a signatory, so we have a responsibility to ensure these species are not subject to damaging impacts. Seismic activity can have a serious impact on the marine environment and has been associated with preventing marine mammals communicating, finding food and finding mates.

There have also been impacts on the behaviour of commercial species, which can then impact on fisheries and has an economic impact on the fishing industry.

By working with developers to minimise the impact of their seismic surveys by avoiding critical times and places for marine species, we can ensure that they can collect the information they need with minimum impact on other users and the marine environment.

It is unlikely that this consenting process would lead to applications for seismic survey being turned down, but the capacity to set legally binding conditions regarding seismic surveys will enable DEFA to protect vulnerable species at important times. For example, developers would be made aware of the need to plan high impact seismic surveys to avoid impacting on the herring aggregation and spawning period from August to November, particularly for works taking place on the east of the Manx waters. Other conditions could include a requirement to have a marine mammal observer on board the survey vessel so that work does not start in an area where marine mammals are present. Conditions would be developed based on available knowledge of marine mammals and commercial species in Manx waters, guidance from the Joint Nature Conservation Committee¹ who advise on seismic surveys in the UK and would also be informed by the protected species assessment to be carried out by the developer.

Consultation process

In this consultation we present the draft Byelaws for this proposed consenting process and we encourage anyone with an interest or knowledge of this area to respond. We would particularly welcome input from representatives of organisations likely to undertake seismic surveys in Isle of Man waters and from scientific experts with experience of the impact of seismic activities on the marine environment.

¹ ***JNCC guidelines for minimising the risk of injury and disturbance to marine mammals from seismic surveys*** http://jncc.defra.gov.uk/pdf/jncc_guidelines_seismic%20guidelines_aug%202010.pdf

Section 2: Draft Byelaws

Statutory Document No.

WILDLIFE ACT 1990

CONTROLLED MARINE AREA (SEISMIC SURVEY WORKS) BYELAWS 2016

<i>Laid before Tynwald</i>	2016
<i>Coming into operation</i>	2016

The Department of Environment, Food and Agriculture makes these Byelaws under section 33 of the Wildlife Act 1990², as modified by the Controlled Marine Area (Seismic Survey Works) Regulations 2016³.

1. Title

The title of these Byelaws is the Controlled Marine Area (Seismic Survey Works) Byelaws 2016.

2. Commencement

These Byelaws come into operation on 2016.

3. Interpretation

In these Byelaws —

"airgun" means any device designed or adapted to cause a sudden and rapid discharge of air or another gas or mixture of gases at high pressure into water;

"the controlled marine area" has the meaning given by section 7 of the Marine Infrastructure Management Act 2016⁴;

"the Department" means the Department of Environment, Food and Agriculture;

"the nominated officer" means the officer nominated under byelaw 6(1);

"permit" means a permit issued under byelaw 6 or 8(7)(a) authorising the carrying out of seismic survey works;

"protected species" means any species listed in Schedule 1;

"sea-fish" means fish of any description found in the sea, including —
(a) shellfish;

² 1990 c.2

³ SD 2016/

⁴ 2016 c.7

(b) salmon; and

(c) sea trout;

and includes spawn of any such fish;

"seismic survey works" has the meaning given by regulation 2 of the Controlled Marine Area (Seismic Survey Works) Regulations 2016, namely any activity —

(a) carried out for the purpose of acquiring geological data relating to the seabed, and the strata beneath the seabed, of any area within or adjoining the controlled marine area, and

(b) consisting of or including the operation of one or more airguns;

"the Wildlife Committee" means the committee constituted by Schedule 1 to the Endangered Species Act 2010⁵.

4. Prohibition of unauthorised seismic survey

- (1) Any person who carries out, or causes or assists in the carrying out of, a seismic survey anywhere in the controlled marine area, otherwise than in accordance with a permit, is guilty of an offence.
- (2) Any person who, in the course of carrying out, or causing or assisting in the carrying out of, a seismic survey anywhere in the controlled marine area contravenes or fails to comply with a condition subject to which a permit is issued is guilty of an offence.

5. Application for permit

- (1) An application for a permit —
 - (a) must be made in writing to the Department in the form set out in Schedule 2;
 - (b) must contain the information specified in the form; and
 - (c) may not be made less than 60 days before the proposed start of the seismic survey.
- (2) An application for a permit must be accompanied by the fee prescribed for the purpose under the general fee power (within the meaning of the Interpretation Act 2015⁶).
- (3) Until the coming into operation of section 81 of the Interpretation Act 2015 the reference in paragraph (2) to the general fee power shall be read as a reference to the Fees and Duties Act 1989⁷.

6. Determination of application

- (1) Subject to byelaw 8, an application for a permit shall be referred to and determined, after consultation with the Wildlife Committee, by an officer of the Department nominated for the purpose by the Department.
- (2) If the nominated officer considers that he or she needs further information in order to determine the application, he or she must —

⁵ 2010 c.7

⁶ 2015 c.11

⁷ 1989 c..12

- (a) notify the applicant of the information required, and
 - (b) defer consideration of the application until the information is provided.
- (3) In determining the application the nominated officer must have regard to the effect which the proposed seismic survey works will have on protected species and sea-fish.
- (4) The nominated officer must determine the application and notify the applicant in writing of the determination not later than one month after —
- (a) the date on which the application is referred to the nominated officer, or
 - (b) if a notification under paragraph (2)(a) is given, the date on which the information required is provided.
- (5) If the nominated officer determines to issue a permit —
- (a) the notification under paragraph (4) must state —
 - (i) the conditions included in it;
 - (ii) the nominated officer's reasons for imposing the conditions;
 - (iii) if the nominated officer determines to issue a permit for some (but not all) of the works specified in the application, his or her reasons for refusing a permit for the rest of those works; and
 - (iv) the right of appeal conferred by byelaw 8; and
 - (b) the permit must be issued with the notification or as soon as practicable thereafter.
- (6) If the nominated officer determines to refuse a permit, the notification under paragraph (4) must state —
- (a) the nominated officer's reasons for refusing it; and
 - (b) the right of appeal conferred by byelaw 8.

7. Conditions of permits

- (1) A permit —
- (a) must include a condition that the JNCC guidelines must be complied with, so far as they are applicable to the seismic survey works in question; and
 - (b) may include such other conditions as the nominated officer considers appropriate.
- (2) A condition imposed under paragraph (1)(b) or byelaw 8(7)(c) or 9(1)(c), or as varied under byelaw 8(7)(b) or 9(1)(b), must not be inconsistent with the JNCC guidelines.
- (3) In this byelaw "the JNCC guidelines" means the document entitled *JNCC guidelines for minimising the risk of injury and disturbance to marine mammals from seismic surveys* issued August 2010 by the Joint Nature Conservation Committee constituted under the Natural Environment and Rural Communities Act 2006 (an Act of Parliament)⁸.

8. Appeal against determination

- (1) An applicant for a permit may by notice in writing appeal to the Department against —

⁸ 2006 c.16

- (a) the refusal of the permit;
 - (b) the issue of a permit for some (but not all) of the works specified in the application; or
 - (c) a condition of the permit (other than the condition required by byelaw 7(1)(a)).
- (2) A notice under paragraph (1) must —
- (a) be given within 14 days of the date on which the notification under byelaw 6(4) is given;
 - (b) specify the decision in respect of the appeal is made; and
 - (c) specify the grounds of the appeal.
- (3) On receipt of a notice under paragraph (1) the Department must —
- (a) appoint a person (not being the nominated officer or a member or officer of the Wildlife Committee) appearing to it to be suitably qualified to advise on the appeal, and
 - (b) refer the appeal to that person for consideration and report.
- (4) On an appeal under this byelaw the appointed person must as soon as practicable consider (in consultation with the Wildlife Committee, if he or she thinks fit), and report to the Department in writing on, the nominated officer's decision, the stated reasons for it and the grounds of the appeal.
- (5) The Department, after considering the appointed person's report, must —
- (a) either reject or allow the appeal, and
 - (b) give to the appellant a notice in writing of its decision and its reasons for it, and a copy of the appointed person's report.
- (6) The Department may not allow the appeal unless it considers that the nominated officer in making the decision in question —
- (a) erred in law;
 - (b) based the decision on an incorrect material fact;
 - (c) exercised his or her discretion in an unreasonable manner; or
 - (d) otherwise acted beyond his or her powers.
- (7) In allowing the appeal the Department may, as appropriate, —
- (a) issue a permit;
 - (b) vary a permit (including cancelling or varying a condition of the permit); or
 - (c) impose such new or additional condition as the Department thinks appropriate.

9. Cancellation or variation of permit

- (1) The Department may at any time by notice in writing to the holder of a permit —
- (a) cancel or vary the permit, or
 - (b) cancel or vary a condition of the permit, or
 - (c) impose such new or additional condition as the Department thinks appropriate.

- (2) The Department may not take action under paragraph (1), except with the consent of the holder of the permit, unless it appears to the Department that —
- (a) the holder, or a person acting on behalf of the holder, is carrying out, or has carried out or is about to carry out, seismic survey works —
 - (i) in a place other than that in which such works may be carried out by virtue of the permit;
 - (ii) of a kind, in a place or to a degree not permitted by the permit; or
 - (iii) in contravention of a condition of the permit; or
 - (b) the works permitted by the permit are having or will have a serious adverse impact on protected species or sea-fish which was not foreseen when the permit was issued.
- (3) A notice under paragraph (1) must state the Department's reasons for taking the action in question.
- (4) The holder of a permit may by notice in writing appeal against any action taken under paragraph (1); and byelaw 8(2) to (7) applies, with any necessary modifications, to an appeal under this paragraph as it applies to an appeal under byelaw 8(1).

MADE

2016

Minister for Environment, Food and Agriculture

SCHEDULE 1

PROTECTED SPECIES

<i>Common name</i>	<i>Scientific name</i>
Dolphin, Bottle-nosed	<i>Tursiops truncatus</i> or <i>Tursiops tursio</i>
Dolphin, Common	<i>Delphinus delphis</i>
Porpoise, Common or Harbour	<i>Phocaena phocaena</i>
Seals (all species)	<i>Pinnepedia</i>
Shark, Basking	<i>Cetorhinus maximus</i>
Turtles (marine) (all species)	<i>Dermochelyidae</i> and <i>Cheloniidae</i>
Whales (all species)	<i>Cetacea</i>

NOTE: The common names given in this Schedule are included by way of guidance only. In the event of any dispute or proceedings, the scientific name or names shall prevail and the common name or names shall not be taken into account.

SCHEDULE 2

APPLICATION FOR PERMIT TO CARRY OUT SEISMIC SURVEY

This is an application for consent to carry out seismic surveys under the Controlled Marine Area (Seismic Survey Works) Byelaws 2016. The Department of Environment, Food and Agriculture (DEFA) will consider the environmental and fisheries implications of the surveys and, where appropriate, grant consent with any conditions required (which will include compliance with the *JNCC guidelines for minimising the risk of injury and disturbance to marine mammals from seismic surveys*).

The completed form must be received at least 60 days in advance of the start of the survey. Please contact DEFA for assistance in completing this form to ensure that all essential information is submitted on first application.

We also encourage developers to put in place a notice to mariners and submit details of the survey to the fortnightly Kingfisher Bulletin, currently maintained by SeaFish.

Isle of Man Protected Species

A protected species risk assessment is required to show that the proposal does not carry a risk of disturbance or injury to any protected species. This assessment should not be demanding but should acknowledge that there could be a risk of an effect of a protected species and provide an audit trail that the activity has been assessed.

This form does not remove their duty of the developer to get other relevant consents.

1. Contact details

Name	
Organisation or company	
Full postal address including postcode	

Telephone number

Email address

2. Purpose of or background to survey

3. Survey dates

Earliest start date

Latest end date

Estimated no. of working days

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4. Survey location

A map (A4 size) should be provided, showing the survey and greater working area and, if appropriate, the survey sail (transect) lines.

Location

Minimum distance from nearest coastline

Approximate geographical co-ordinates and datum for corners of survey area

Survey area (square kilometres)

Greater work area (square kilometres)

Total sail (transect) line length (km) - if appropriate

5. Type of survey

Type

Details

Multi-beam and side scan sonar

Sub-bottom profiling (pingers, boomers, sparkers and chirp)

Reservoir

Regional

Site	
OBC and OBS	
Multi-component 4C (shear wave measurement)	
Marine vibroseis	
Refraction	
Verticle seismic profile (VSP) or borehole seismic	
Gravity surveys	
Magnetic surveys	
Shallow drilling operations	
Other geographical seabed	
Seismic surveys not covered above	

6. Details of survey equipment

Energy source type		
Energy source volume (cu in)		
Estimated sound level at 1 metre over frequency band 10 Hz to 10 kHz	Sound exposure level (SEL)	dB re1 μ Pa ² s
	Sound pressure level	dB re1 μ Pa peak
Specify dominant frequency band		
Brief description of equipment		

7. Details of survey vessels

Number of vessels involved	
Name(s)	

Tonnage(s)

Registration(s)

Call sign(s)

Vessel's role (source, guard)

8. Environmental information

Will surveys be carried out in or adjacent to marine or fisheries protected areas? If yes, identify site, provide a brief description and state distance to project.

Does the survey area and timing coincide with any fish or shellfish spawning or nursery sensitivities? If yes, please provide details.

9. Protected species risk assessment

A protected species risk assessment (equivalent to a European protected species risk assessment) is required to show that to proposal does not carry a risk of disturbance or injury to any species protected under the Wildlife Act 1990 (all whales, dolphins and porpoises, basking sharks, seals and sea turtles). If an assessment has been carried out in a separate report or is included in the environmental impact assessment, please provide this with this form. If not, please complete the information below.

Please tick this box if you have inserted any extra information.

a) Intensity and frequency of sound

Intensity and frequency

Extent of area where injury or disturbance thresholds could be exceeded (see JNCC's guidance)

Explain how potential injury or disturbance will be mitigated

b) In-combination effects

Interaction with known concurrent, preceding or subsequent noise producing activities

c) Likelihood of exposure

Known cetacean populations and likely densities

10. Mitigation or liaison (see JNCC's guidance)

Have discussions taken place with other licensees if survey overlaps, or extends into, an area licensed by any third party, including renewable licences? Please provide details and whether permission was granted by those licensees.

Have discussions taken place with DEFA and other statutory bodies? Please state which bodies were involved and when discussions took place.

Have you made arrangements for a marine mammal observer or observers? If yes, please state which organisation will provide them and how many will be provided.

Have you made arrangements for passive acoustic monitoring (PAM)? If yes, please state which organisation will provide this and how many operators will be provided.

Have discussions taken place with the Manx Fish Producers' Organisation and other relevant fisheries organisations?

If yes, please provide details including which organisations were involved and when discussions took place.

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Have you arranged a fisheries liaison? If yes, please state which organisation will provide this and how many staff will be provided.

11. Declaration

I have read and understand the guidance provided with this application form. I declare to the best of my knowledge and belief that the information given in this form and related papers is correct.

Signature		Date	
Full name (in capitals)			

EXPLANATORY NOTE

(This note is not part of the Byelaws.)

These Byelaws, made under the Wildlife Act 1990 s.33 (as modified by the Controlled Marine Area (Seismic Survey Works) Regulations 2016), regulate the carrying out of seismic survey works in the "controlled marine area" between high water mark and the seaward limit of the territorial sea.

Provision is made for the issue of permits for such works, and for their variation or cancellation in certain circumstances. Unauthorised surveys, and contraventions of the conditions of a permit, are made offences, punishable on summary conviction by a fine of up to £50,000 under the 1990 Act s.33(5).

The JNCC guidelines referred to in byelaw 7 may be downloaded at http://jncc.defra.gov.uk/marine/seismic_survey

Section 3: DEFA consultation response form

Consultation on the introduction of a consenting process for seismic surveys in Manx waters

Please respond to the consultation by answering the following questions. You are welcome to include additional pages as necessary to provide your comments. For collation purposes, it would be helpful if comments sent by email to: fisheries@gov.im , are sent in a Microsoft Word format. Anonymous responses will not be considered or included in the summary of comments.

It is also possible to respond to this consultation online using this Survey Monkey link:

<https://www.surveymonkey.com/r/9WX3XFW>

Deadline for responses: 5pm on Wednesday 23 November 2016

Contact details:

Please supply details of who has completed this response.

Response completed by:

Name of organisation or interest group
(if appropriate):

Position in organisation (if appropriate):

Address:

Contact telephone number
& email address:

Date:

Consultation questions

Please note these can be answered online at: <https://www.surveymonkey.com/r/9WX3XFW>

- 1. Do you support the concept of a statutory consenting process for seismic surveys and other geophysical surveys in Isle of Man waters? Please provide further information to support your response.**

Yes

No

Further information

- 2. Do you have any other comments on our intention to introduce this consenting process and the proposed approach?**

Yes

No

Further comments

Thank you for responding to this consultation

Section 4: Feedback to the consultation

Copies of this document may be downloaded from either the Department website at <http://www.gov.im/daff/consultations.gov?menuid=16916&type=current> or from the consultations webpage of the Isle of Man Government website at www.gov.im/consultations.gov .

Should you require a paper copy of the consultation document then please contact DEFA Fisheries at the postal or email address indicated below.

If you have any views or observations or there is some point of clarification you would like to receive in relation to the topics in this document, or any other issue related to the subject of the consultation, you are invited to respond in writing to:

Fisheries Directorate
Department of Environment, Food & Agriculture
The Slieau Whallian
Foxdale Road
St John's
IM4 3AS
Email: fisheries@gov.im
Tel: (01624) 685857 – Fisheries Enquiries

The closing date for the receipt of comments is **5pm on Wednesday 23 November 2016**.

Unless specifically requested otherwise (see below), responses received may be published either in part or in their entirety, together with the name of the person or body submitting the response. If you are responding on behalf of a group it would be helpful to make your position clear. To ensure that the process is open and honest, responses can only be accepted if you provide your full name with your response.

It may be useful when giving your feedback to make reference to the specific proposal(s) and questions set out in the document that you wish to comment on/discuss.

The purpose of consultation is not to be a referendum. It is an information, views and evidence gathering exercise from which to take an informed decision on the content of proposed legislation or policy. As with any consultation exercise, the responses received do not guarantee changes will be made to what has been proposed.

Confidentiality

In line with DEFA's policy of openness, at the end of the consultation period copies of the responses we receive may be published in a summary of the responses to this consultation. **If you do not consent to this, you must clearly request that your response be treated as confidential.** Any confidentiality disclaimer generated by your IT system in email responses will not be treated as such a request.

Respondents should also be aware that there may be circumstances in which DEFA will be required to communicate information to third parties on request, in order to comply with its obligations under the Freedom of Information Act 2015.

Appendix 1: Consultation Stakeholder List

Fishermen's organisations

Manx Fish Producers Organisation Ltd
ANIFPO
NIFPO

Marine industry

Manx Geological Survey
British Geological Survey
DONG Energy
Manx Tidal Energy
WesternGeco
HIS
MMbbIs
TGS Ltd
CGG Ltd

Environmental groups

Manx Wildlife Trust
Manx Basking Shark Watch
Manx Whale & Dolphin Watch
Manx Society for Marine Conservation
SeaSearch Isle of Man
Friends of the Earth (IoM)
Manx Conservation Forum
Manx National Heritage
Society for the Preservation of Manx Countryside & the Environment
Isle of Man Natural History and Antiquarian Society

Marine-related businesses and recreational organisations

Anglers Forum
Isle of Man Angling Federation
Ramsey, Peel, Mannin Angling Clubs
Isle of Man Charter Skippers Association
Gemini Charter Angling
Discover Diving
Isle of Man Sub Aqua Club
Isle of Man Aquaholics

Other

All Members of Tynwald
Attorney General's Office
Local Authorities
Isle of Man Government Departments, Chief Officers
Law Society
DEFRA, UK
Joint Nature Conservation Committee, UK
Oil and Gas Authority, UK
Department of Communications, Climate Action and Environment, Ireland
AFBI, Northern Ireland
Natural England
Marine Management Organisation, UK