
STATUTORY INSTRUMENTS

2009 No.7

WILDLIFE

The Offshore Marine Conservation (Natural Habitats, &c.) (Amendment) Regulations 2009

<i>Made</i>	- - - -	<i>5th January 2009</i>
<i>Laid before Parliament</i>		<i>8th January 2009</i>
<i>Coming into force</i>	- -	<i>30th January 2009</i>

The Secretary of State is designated⁽¹⁾ for the purposes of making Regulations under section 2(2) of the European Communities Act 1972⁽²⁾ in relation to the environment.

The Secretary of State makes these Regulations in exercise of the powers conferred by that section.

Title and commencement

1. These Regulations may be cited as the Offshore Marine Conservation (Natural Habitats, &c.) (Amendment) Regulations 2009 and come into force on 30th January 2009.

Amendments

2. The Offshore Marine Conservation (Natural Habitats &c.) Regulations 2007⁽³⁾ are amended as follows.

3. In regulation 32, in paragraphs (4)(b)(i) and (5)(b)(i), for “the ability of any significant group of animals of that species” substitute “their ability”.

4. In regulation 39—

(a) in paragraph (1)(b), omit the words from “in such a way” to the end;

(b) after paragraph (1) insert—

“(1A) For the purposes of paragraph (1)(b), disturbance of animals includes in particular any disturbance which is likely—

(1) [S.I. 2008/301](#).

(2) [1972 c. 68](#).

(3) [S.I. 2007/1842](#). The 2007 Regulations make provision for implementing, in relation to marine areas where the United Kingdom has jurisdiction beyond its territorial sea, Council Directive [79/409/EEC](#) on the conservation of wild birds (O.J. No. L103, 25.4.79, p.1.) and Council Directive [92/43/EEC](#) on the conservation of natural habitats and of wild fauna and flora (O.J. No. L206, 22.7.92, p.7) as last amended (in both cases) by Council Directive [2006/105/EC](#) of 20 November 2006 adapting Directives [79/409/EEC](#), [92/43/EEC](#), [97/68/EC](#), [2001/80/EC](#) and [2001/81/EC](#) in the field of environment, by reason of the accession of Bulgaria and Romania (O.J. No. L363, 20.12.06, p.368).

- (a) to impair their ability—
 - (i) to survive, to breed or reproduce, or to rear or nurture their young; or
 - (ii) in the case of animals of a hibernating or migratory species, to hibernate or migrate; or
 - (b) to affect significantly the local distribution or abundance of the species to which they belong.”; and
 - (c) for paragraphs (7) and (8) substitute—
 - “(7) The Secretary of State, or the Joint Nature Conservation Committee with the approval of the Secretary of State, may publish guidance as to the application of the offences in paragraph (1)(b) or (d) in relation to particular species of animals or particular activities.
 - (8) In proceedings for an offence under paragraph (1)(b) or (d), a court must take into account any relevant guidance published under paragraph (7).”.
5. In regulation 40, after paragraph (6) insert—
- “(6A) The defences in paragraphs (1) to (3) and (6) do not apply where it is shown by the prosecution that the defendant’s action did not satisfy the conditions in paragraph (6B).
 - (6B) Those conditions are that—
 - (a) there was no satisfactory alternative; and
 - (b) the action was not detrimental to the maintenance of the population of the species concerned at a favourable conservation status in their natural range.”.
6. In regulation 44—
- (a) in paragraph (1), after “arrangements”, insert “in accordance with paragraphs (3) to (5)”;
 - (b) after paragraph (2) insert—
 - “(3) The joint committee must—
 - (a) assess how and to what extent surveillance of the conservation status of each relevant habitat and species needs to be carried out, having regard to—
 - (i) whether a habitat or species is a priority natural habitat type or priority species; and
 - (ii) the conservation status of the habitat or species; and
 - (b) advise the Secretary of State as to the need for such surveillance.
 - (4) The Secretary of State must ensure that the necessary surveillance is carried out on an ongoing basis.
 - (5) Surveillance for the purposes of this regulation may be carried out by—
 - (a) the joint committee; or
 - (b) any other person acting pursuant to, and in accordance with, an agreement with the Secretary of State or the joint committee.
 - (6) In paragraphs (3) and (5)—
 - (a) “the joint committee” means the Joint Nature Conservation Committee; and
 - (b) a “relevant” habitat or species means a habitat or species in the offshore marine area of a type referred to in paragraph (1).”.
7. In regulation 45—
- (a) for paragraph (1) substitute—

“(1) The Secretary of State must, as required in the light of information derived from surveillance carried out under regulation 44 or otherwise arranged for the purposes of Article 11 of the Habitats Directive, ensure that measures are taken for the purpose in paragraph (2).”;

- (b) in paragraph (3), for “Where the Secretary of State considers that measures are necessary under paragraph (1), he must” substitute “Where measures are required under paragraph (1), the Secretary of State must”.

8. In regulation 46—

- (a) in paragraph (1), after “arrangements” insert “in accordance with paragraphs (3) to (5); and
(b) after paragraph (2) insert—

“(3) The joint committee must, in relation to the species of animals listed in Annex IV(a) to the Habitats Directive which are found in the offshore marine area—

- (a) identify the risks of incidental capture and killing to which those species are subject, and the activities which give rise to such risks;
(b) maintain a record of instances of incidental capture or killing of animals of those species of which the joint committee is aware as a result of the surveillance carried out under regulation 44, the monitoring carried out under this regulation, or otherwise;
(c) assess to what extent monitoring of incidental capture and killing is needed, having regard to—
(i) the risks identified under sub-paragraph (a);
(ii) the instances of incidental capture or killing recorded under sub-paragraph (b);
(iii) whether the species is a priority species; and
(iv) the conservation status of the species; and
(d) advise the Secretary of State as to the need for such monitoring.

(4) The Secretary of State must ensure that the necessary monitoring of incidental capture and killing is carried out.

(5) Monitoring for the purposes of this regulation may be carried out by—

- (a) the joint committee;
(b) any other competent authority;
(c) any other person acting pursuant to, and in accordance with—
(i) an agreement with the Secretary of State or the joint committee; or
(ii) a condition of a licence or other authorisation granted by a competent authority.

(6) In paragraphs (3) and (5), “the joint committee” means the Joint Nature Conservation Committee.”.

9. For regulation 47(1) substitute—

“(1) The Secretary of State must, as required in the light of information derived from monitoring carried out under regulation 46 or otherwise arranged for the purposes of Article 12(4) of the Habitats Directive, make arrangements for further research, or ensure that conservation measures are taken, for the purpose specified in paragraph (2).”.

5th January 2009

Hilary Benn
Secretary of State
Department for Environment, Food and Rural
Affairs

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend the Offshore Marine Conservation (Natural Habitats, &c.) Regulations 2007 (“the 2007 Regulations”), which make provision for implementing Council Directive [79/409/EEC](#) on the conservation of wild birds (O.J. No. L103, 25.4.79, p.1) (“the Wild Birds Directive”) and Council Directive [92/43/EEC](#) on the conservation of natural habitats and of wild flora and fauna (“the Habitats Directive”) (O.J. No. L206, 22.07.92, p.7) in relation to marine areas where the United Kingdom has jurisdiction beyond its territorial sea.

The amendments made to the 2007 Regulations by this instrument alter the transposition of the Habitats Directive, but do not affect the transposition of the Wild Birds Directive.

Regulations 3 and 4 amend the terms of offences of disturbing protected species in regulations 32(4) and (5) and 39(1)(b) of the 2007 Regulations. The offences in regulation 32(4) and (5) apply to the disturbance of animals of a species for which a site has been designated as a special area of conservation or listed by the European Commission as a site of Community importance, while the animals are within that site. The offence in regulation 39(1)(b) applies to the deliberate disturbance of animals of a European protected species whether or not they are in a protected site. Regulation 4 also makes provision for the publication of guidance as to the application of the offences in regulation 39(1)(b) and (d) in relation to particular species of animals or particular activities, and requires the court to take account of any such guidance in proceedings for an offence under those provisions.

Regulation 5 amends regulation 40 of the 2007 Regulations, which contains defences to the offences relating to European protected species in regulation 39, by providing that the defences in paragraphs (1), (2), (3) and (6) of regulation 39 do not apply if the prosecution shows that there was a satisfactory alternative to the defendant’s action, or that the action was detrimental to the maintenance of the population of the species concerned at a favourable conservation status in their natural range.

Regulations 6 and 7 amend regulations 44 and 45 of the 2007 Regulations to specify in greater detail the arrangements to be made for surveillance of the conservation status of natural habitat types of Community interest and species of Community interest, and to clarify the duty to take action in the light of that surveillance. Similarly, regulations 8 and 9 amend regulations 46 and 47 of the 2007 Regulations to specify in greater details the arrangements to be made for monitoring the incidental capture and killing of animals of the species listed in Annex IV(a) to the Habitats Directive, and to clarify the duty to take conservation measures in the light of that monitoring.

A transposition note setting out how the 2007 Regulations, as amended by this instrument, transpose the provisions of the Habitats Directive is available from the Wildlife, Habitats and Biodiversity Division, Defra, Temple Quay, Bristol BS1 6EB, and is annexed to the Explanatory Memorandum which is available alongside this instrument on the OPSI website. A full impact assessment has not been produced for this instrument as no impact on the private or voluntary sectors is foreseen.