

## SECTION 15 OF THE SCOTTISH CROWN ESTATE ACT 2019

# Restriction on Removal of Wild Kelp from Seabed

## QUESTION & ANSWERS

### 1. What effect will Section 15 have when it commences on 1 October 2020?

The effect of Section 15 is that a manager of a Scottish Crown Estate asset must not grant a right to remove wild kelp from the seabed (that is, the bed and subsoil of the sea within the Scottish marine area) if either subsection (2) or (3) applies.

Subsection (2) applies if:

- (a) Removal of the kelp would inhibit the regrowth of the individual plant, and
- (b) The kelp removed is intended for commercial use.

Subsection (3) applies if:

- (a) Removal of the wild kelp is a licensable marine activity, and
- (b) The Scottish Ministers have not granted a marine licence for that removal.

### 2. What activity does Section 15 apply to?

Section 15 applies to the removal of any of the 5 kelp species listed below from the seabed (the bed and subsoil of the sea within the Scottish marine area). For example, Section 15 excludes farmed kelp grown on ropes suspended in the sea.

Section 15 only applies to certain species of wild kelp, those are:

- *Laminaria hyperborea*;
- *Laminaria digitata*;
- *Saccharina latissima*;
- *Saccorhiza polyschides*; and
- *Alaria esculenta*.

### 3. Does Section 15 apply to all owners of seabed and subsoil?

Section 15 only applies to the Scottish Crown Estate.

### 4. Does Section 15 impact on a marine licence?

Section 15 does not alter or amend the process for a marine licence under the Marine (Scotland) Act 2010.

## **5. What's the difference between a marine licence and a licence issued by Crown Estate Scotland?**

Licensing decisions are taken by Marine Scotland Licensing Operations Team (“MS-LOT”) on behalf of the Scottish Ministers, and issue marine licences in accordance with the Marine (Scotland) Act 2010<sup>1</sup>.

Crown Estate Scotland manages property rights in the seabed on behalf of the Crown and, in that capacity, grants rights (licences, leases) to persons and organisations to use seabed forming part of the Scottish Crown Estate.

## **6. I have an existing Crown Estate Scotland licence (granted right). Do I need to apply for a new Crown Estate Scotland licence under Section 15?**

A licence granted by Crown Estate Scotland before 1 October 2020 continues to apply until the review date (as stated on your licence) or earlier if a renegotiation takes place. Until then you can continue with your activity as per your licence conditions. Section 15 will come into effect at the time of any review or renegotiation (see Q7).

## **7. What happens at the review stage, if my activity falls under the criteria?**

If your activity falls within certain criteria in the restrictions of Section 15 the licence will be revoked.

## **8. Does Section 15 apply to hand removal for personal use?**

Crown Estate Scotland's policy for the collection of kelp for personal use is that this activity does not require a licence from Crown Estate Scotland and they are content for such collection to proceed for small quantities appropriate to personal use. It is recommended that anyone doing so takes account of environmental sensitivity of collecting anything from the wild.

Hand removal of seaweed for any form of **monetary or other reward** from the Crown foreshore or seabed in Scotland requires a licence from Crown Estate Scotland.

Removals from the seabed by hand, i.e. where no vehicle, vessel, etc. are used, do not require a marine licence.

## **9. Is removal of wild kelp from seabed banned?**

Section 15 introduces a control on the removal of certain species of wild kelp, and when a licence from Crown Estate Scotland may not be granted.

## **10. Do I require a licence from Crown Estate Scotland for the removal of kelp for maintenance works or scientific research?**

Removal of the kelp species listed in Section 15 for the purposes of scientific research or for maintenance purposes at ports or power stations or for other public interest reasons (such as cable maintenance) will not be prevented if the kelp removed is not used for commercial use. A proposal to remove kelp for these purposes should be discussed with Marine Scotland (MS-LOT) to determine if the activity will also require a marine licence.

1. MS-LOT will assess the impact that any licensable marine activity will have on the environment, human health and legitimate uses of the sea, such as any potential obstruction or danger to navigation which may result from the activity and other matters considered relevant to the determination of a licence application by MS-LOT

## **11. When will a granted right not be issued under Section 15?**

A decision on whether a right under Section 15 will be granted is a two stage process. A licence will **not** be issued if:

- You plan to remove one of the 5 species, listed within the Act, from the seabed and the removal of the kelp would
  - (a) Inhibit the re-growth of the individual plant and
  - (b) The kelp removed is intended for commercial use;
- **Or the removal of kelp is:**
  - A licensable marine activity and Scottish Ministers' have granted a licence under Section 21 of the Marine (Scotland) Act 2010, but your proposals would also inhibit the re-growth of the individual plant and the kelp removed is intended for commercial use, or
  - The removal of kelp is a licensable marine activity and the Scottish Ministers have not granted a marine licence.

**For example: both criteria (a) and (b) must apply for that restriction to be met.**

**For (a) the granting of the licence by Crown Estate Scotland is dependent upon relevant natural heritage authority (Nature Scot) confirmation that the harvesting proposal does not present any evident unacceptable environmental risks or impacts**

### **For more information**

#### **Scottish Crown Estate Act 2019 – Section 15**

-  <https://www.legislation.gov.uk/asp/2019/1/section/15/enacted>

#### **Information on Crown Estate Scotland seaweed harvesting licensing**

-  <https://www.crownestatescotland.com/what-we-do/marine/asset/aquaculture/section/seaweed-harvesting>

-  [enquiries@crownestatescotland.com](mailto:enquiries@crownestatescotland.com)

#### **Information on a marine licensing**

-  <https://www2.gov.scot/Topics/marine/Licensing/marine>

-  [ms.marinelicensing@gov.scot](mailto:ms.marinelicensing@gov.scot)

