

# Marine Scotland

Guidance for Marine Licence Applicants

Version 2 - June 2015



marinescotland

### **Why has The Scottish Government produced this guide?**

The Scottish Government has produced this guide for applicants for marine licences under [Part 4 of the Marine \(Scotland\) Act 2010](#) (M(S)A 2010) and [Part 4 of the UK Marine and Coastal Access Act 2009](#) (MCAA) which deal with licensable marine activities between 0 and 200 nautical miles (nm).

### **Who is this guide for?**

This guide is designed to help anyone who plans to carry out a licensable marine activity within Scottish waters and can help to determine if a marine licence is required for an activity. It also describes other relevant permits and assessment requirements.

If, after reading this document, you are unsure about whether you require a marine licence you can check the [FAQs](#) or contact Marine Scotland's Licensing Operations Team (MS-LOT).

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## **PART 1: MARINE LICENSING**

### **1.1 Introduction – licensable activities and the requirement for a licence**

Under the M(S)A 2010 the Scottish Ministers are responsible for marine licensing system and enforcement in the Scottish inshore region from 0-12 NM and under the MCAA 2009 Scottish Ministers have responsibility for licensing and enforcement in Scottish offshore region from 12-200 NM. The licensing regime allows regulation of the deposit and removal of substances and objects in the seas around Scotland. Activities must take place in accordance with licence conditions.

### **1.2 What activities are licensable?**

A marine licence from MS-LOT, on behalf of the Scottish Ministers, is required if a person or organisation intends to carry out certain activities in Scottish waters. These activities can include:

- Marine construction works, including piers, slipways, land reclamation, bridge repair and construction and coast protection
- Dredging of minerals, all capital dredging, maintenance dredging by means of water injection, agitation, plough, side-casting and removal of sediment (e.g. sampling)
- Disposal of dredgings at sea and beach replenishment
- Placement/use of explosives at sea
- Installation of marine farm equipment, moorings, buoys, pontoons, marine renewable devices
- Discharge of sea lice treatments from wellboats
- Incineration of waste generated on board a vessel or other facility
- Removal of substances/objects from the seabed using a vessel or similar

Applications forms are activity specific and include:

- Dredging & Sea Disposal
- Marine Construction
- Marine Renewable Energy Projects
- Moorings
- Marine Finfish and Shellfish Farms
- Discharge of treatment agents (i.e. wellboat)
- Sampling & Instrument Deployments
- Offshore Deposits

Persons considering any of the above types of operation, or wishing further information about whether or not a proposed activity/project is licensable, are advised to contact MS-LOT to discuss their proposals.

As well as a marine licence, a project may require other approvals or consents from other consenting bodies such as the Crown Estate, Transport Scotland, SEPA, Harbour/Port Authority or the Local Planning Authority. A marine licence does not abrogate

responsibility to obtain any other approvals or consents.

### **1.3 Who is the licensing authority?**

The Scottish Ministers are the licensing authority for most matters in Scottish inshore and offshore waters and MS-LOT issue licences on their behalf. Scottish Ministers have responsibility for oil and gas-related activities within 3 miles of the coastline. However, under the devolution arrangements for Scotland, Northern Ireland and Wales, certain matters remain reserved to the UK Government.

The Secretary of State is the licensing authority in Scottish offshore waters for oil and gas-related activities, defence matters, and matters covered by [Part 6 \(shipping pollution\) of the Merchant Shipping Act 1995](#). The Secretary of State is the licensing authority for a similar range of matters in Scottish inshore waters. For oil and gas-related activities, applicants should contact the Department for Business, Energy and Industrial Strategy (BEIS). For marine pollution from shipping related activities, applicants should contact the Department for Transport. For seabed leases matters, applicants should contact the Crown Estate.

The Secretary of State is the licensing authority in English inshore and offshore waters, as well as in cases where a UK vessel or a vessel loaded in the UK (except Scotland) makes a deposit or loads a vessel with materials for incineration or scuttles a vessel outside UK waters. The scuttling of vessels and aircraft at sea and the incineration of materials at sea on purpose built vessels are all banned within the OSPAR (The Convention for the Protection of the Marine Environment of the North-East Atlantic) area by Ministerial agreement.

### **1.4 Marine Plans**

A key feature of the marine licensing system is that decisions will be taken in accordance with the [UK Marine Policy Statement](#), the [Scottish National Marine Plan](#) and, in due course, the [Scottish Regional Marine Plans](#).

The UK Marine Policy Statement, which has been created and adopted by the UK and devolved administrations, facilitates an integrated approach to marine planning across the UK. The Scottish National Marine Plan sets out Scottish Ministers' policies for the sustainable development of Scotland's seas and will guide regional planning through Scottish Marine Regions plans. Marine plans, including the current Marine Policy Statement, inform marine licensing and other decision making functions of all public authorities. When considering an application for a marine licence, applicants should consult available marine plans in development planning stages for clarity of Government objectives and policies for the marine environment.

More information on Marine Planning for Scotland's seas is available on the Scottish Government [website](#).

### **1.5 What is considered in reaching a licensing decision?**

MS-LOT will consider the extent to which an activity is in accordance with any marine plan for the area and the impact that an activity will have on the environment, human health, legitimate uses of the sea, such as any potential obstructions or dangers to navigation which may arise, either while the works are being carried out or once they

have been completed and other matters considered relevant to the application by the licensing authority. This may include assessment of impacts on designated sites such as Natura sites or Marine Protected Areas (MPA) (see [part 7](#) and [part 8](#) respectively).

## **1.6 Streamlining consents**

Where a marine project, such as an offshore wind farm, tidal array or other offshore generating station, requires consent under the [Electricity Act 1989](#), a marine licence will also be required and MS-LOT process both applications.

Where multiple licences and consents may be required, such as marine [Farming](#) requiring planning permission or larger infrastructure projects requiring Harbour Orders in addition to marine licences, MS-LOT may provide assistance by facilitating simultaneous processing of applications and by working with other regulators to return decisions on multiple applications together. Applicants are strongly advised to discuss this option with MS-LOT and other regulators at an early stage in project development. More information is also available in the [Planning Circular](#) - The relationship between the statutory land use planning system and marine planning and licensing.

MS-LOT can also process other consents or licences that are needed for a project (e.g. a licence to disturb European Protected Species (see [part 9](#)) at the same time.

## **PART 2: PRE-APPLICATION CONSULTATION (PAC)**

The [Marine Licensing \(Pre-application Consultation\) \(Scotland\) Regulations 2013](#) came into force on 6 April 2014. The Regulations require applicants for certain activities in the Scottish Inshore Region to carry out a public pre-application consultation. Applications affected will include those activities covered by the M(S)A 2010 with the potential to have significant impacts upon the environment, local communities and other legitimate uses of the sea. The purpose of these new requirements is to allow local communities, environmental groups and other interested parties to comment upon proposed marine developments at an early stage, before an application is submitted to MS-LOT.

The prescribed classes of activities affected are:

- submarine cables over 1853 metres (approx. 1 nautical mile) in length and where the inter-tidal boundary is crossed.
- reclaiming land, where the area exceeds 10,000 square metres.
- any bridge, causeway or walkway, including pontoons, over 50 metres in length.
- Construction works or alterations (other than for a renewable energy structure or fish farms) (does not apply) exceeding 1000 square metres
- renewable energy structure, or alteration or improvement, where the total area in which the structure is to be located exceeds 10,000 square metres.

More information on pre-application consultation can be found in a guidance document [here](#).

Where a marine licensable activity of a prescribed class has been carried on at the site to which an application relates or is similar to such an activity, MS-LOT can determine, subject to an applicant providing a previous licence or consent, that the pre-application consultation requirements do not apply.

In addition to requirements for (PAC), it is a general policy of [Scotland's National Marine Plan](#) (Gen 18) that appropriate, proportional and meaningful early engagement on any proposed licensable marine activity should be undertaken with the general public and all interested stakeholders to facilitate the licensing process.



## **PART 3: THE MARINE LICENCE PROCESS**

### **3.1 Timescale**

MS-LOT aims to process 85% of marine licence applications in fourteen weeks (from application submission to final licence issue). It should be noted however, that this determination time applies to straightforward cases without objections or other outstanding issues to be resolved. If objections are made, or if there are any other issues to be dealt with, then the determination period may take longer.

A marine licence application should be submitted at least fourteen weeks before a project start date. For more complex, larger, or potentially contentious projects an applicant should allow longer for an application to be processed. Applications for activities that require EIA will take longer than those that do not require EIA. Both screening and scoping have 28 day consultation periods and the consultation period on the Environmental Statement, which can occur simultaneously with consultation on the marine licence, is for 42 days.

### **3.2 Co-ordinates**

For all applications submitted, co-ordinates of the location of the works must be provided along with a chart clearly showing the area the work is to be carried out. Co-ordinates must be provided in either National Grid References (NGR) or latitude and longitude co-ordinates.

NGR should consist of two letters followed by 10 digits (e.g. TL6320031700) where the first 5 digits are the eastings (read from the south west corner of an Ordnance Survey map) and the last 5 digits are northings. Latitude & longitude should be to three decimal places and be provided in decimal degrees and minutes e.g. 55°55.55' N 02°22.22' W.

Applications that contain incorrect or erroneously formatted co-ordinates will not be processed. MS-LOT will contact an applicant in such cases to advise.

### **3.3 Noise register**

Under the [Marine Strategy Regulations \(2010\)](#) there is a requirement to monitor loud, low to mid frequency (10Hz to 10kHz) impulsive noise. This includes use of seismic airguns, other geophysical surveys (<10kHz), pile driving, explosives and certain acoustic deterrent devices.

More details and the relevant forms can be found [here](#).

### **3.4 Licence application fees**

Fees for marine licences can be found [here](#). Fees are based on full cost recovery and are determined by the scale and complexity of the project and therefore the time MS-LOT needs to deal with the application. This ensures that the costs incurred are met by the individuals or organisations benefiting from the licensing of an activity rather than falling

to the public sector or other licence applicant.

### 3.5 Payment

An application for a marine licence will not be processed until payment has been received.

Payments can currently be made in the following ways:

**Cheques:** should be made payable to 'The Scottish Government' and marked 'A/C Payee Only'. They should be posted to MS-LOT and a cover note should be included with the cheque if it is being submitted separately from an application. The cover note should detail either the file reference number if available, or give an identifiable description of the works it is connected with.

**Invoice:** these will be issued by the Marine Scotland finance department in Aberdeen and are necessary for all methods of payment other than cheque in order to ensure that payments are accounted for. Invoices will be accompanied by details of the possible payment options; these include BACS transfers and debit card payments. Purchase order numbers should be requested with an application if needed.

### 3.6 Reduced fees

When an application is received for a marine licence which had previously been applied for and the fee paid, under [The Marine Licensing \(Fees\) \(Scotland\) Regulations 2011](#) MS-LOT accepts a reduced fee of 50%. The application must be similar to an earlier application and the earlier application must have been withdrawn or refused.

Any reduced fee should be based on the current fees structure e.g. where an applicant might have originally paid £4000 under the 2011/2012 scale, their new fee would be based on the scale at the time of new application.

### 3.7 Publication of notice for marine licences

Once a marine licence application (including Environmental Statement (ES) where appropriate) has been accepted by MS-LOT applicants will be sent an advert template along with instructions. The advert template should be completed and returned to MS-LOT for approval. Once approved, the advert must be placed in a newspaper, or newspapers, circulated in the locality where the works are to be carried out.

The notice must:

- be placed in the relevant section of the newspaper to ensure maximum exposure;
- appear in a newspaper or newspapers with a reasonably large coverage area, and;
- be advertised for two successive weeks.

The notice must not be:

- placed in a free paper.

A copy of the marine licence application (and ES where appropriate) must be made available to the general public in hard copy at an easily accessible public building, or buildings, such as the local library or post office, for inspection for a period of 42 days for an EIA project and 28 days for non EIA projects from the date of publication.

For EIA projects, copies of the ES must also be provided on request in either hard copy or CD. A reasonable charge may be made for copies, and this is included in the notice. Short non-technical summaries should be provided on request free of charge.

Following publication, the complete pages from both newspapers (including the paper title and date of publication) in which the notices appeared must be sent to MS-LOT. Scanned copies are acceptable if they are clear and include the paper title and date of publication.

This process affords local interests the opportunity to comment on the proposals, and any representations received from the general public will be sent to an applicant to offer an opportunity to respond. Failure to comply with any of the above statutory advertising requirements will result in re-advertising, which will increase the time taken to process an application.

Where MS-LOT reasonably considers that further information is required to properly to consider the likely environmental effects of the project, this information must also be advertised in line with the above requirements.

Please note that advertising any EIA project under the [Electricity Act 1989](#), has slightly different requirements. Please see the [Renewables Guidance](#) for further information.

### **3.8 Consultation**

Following confirmation that the works have been advertised, MS-LOT will carry out a 28 day consultation with both statutory and on-statutory consultees. The statutory consultees are the NLB, the MCA, SNH and SEPA. Forthcoming Marine Planning Partnerships will also be statutory consultees once established. Non-statutory consultees include, but are not limited to, the Royal Yachting Association (RYA), the Crown Estate (CE), Scottish Fisherman's Federation (SFF), Marine Scotland Science (MSS), Historic Scotland, Transport Scotland and any relevant Harbour or Port Authority.

### **3.9 Marine licences**

Conditions attached to a marine licence can relate to matters of maintenance and operation, specific testing, record keeping, remediation works and anything MS-LOT consider appropriate to mitigate the impact of a project.

Marine licences may be issued for the lifetime of a project, for example the duration of a deposit or the life time of a construction, including its removal. The licence will therefore be valid during the operational and decommissioning stage of a project and the conditions contained will remain enforceable throughout its lifetime.

MS-LOT may vary, suspend or revoke a licence if it appears that there has been a breach of any of the licence provisions; or if it appears that the applicant supplied information that was false or misleading, or the applicant failed to supply information that might

reasonably have been expected to be supplied.

A licence may also be revoked for any of the following reasons:

- a change in circumstances relating to the environment or human health,
- increased scientific knowledge relating to either of the above matters,
- in the interests of safety of navigation,
- for any other reason that appears to Scottish Ministers to be relevant.

### **3.10 Site visits and enforcement**

As a condition of a marine licence, a licensee must allow access for officials and inspectors to the marine activity under licence for the purpose of site inspections. Inspections are carried out to ensure licence conditions have been and are being complied with. Officers arrange such inspections with a licensee prior to the date of inspection.

Enforcement powers laid down in the Acts allow for the inspections and seizure of items in addition to the issuing of notices to comply with conditions, remediate any significant effects, stop works and make works safe. It is an offence to carry on a licensable marine activity or cause or permit any other person to carry on such an activity without a marine licence.

## **PART 4: TYPES OF APPLICATIONS**

An overview of licensable marine activity is given in [section 1.2](#). Guidance on completing the application forms can be found within the application forms themselves or by contacting MS-LOT. Applications can be submitted by e-mail or post at the addresses on page 1. There are several types of application form and these can be found on the [Apply Now](#) section of our website.

### **4.1 Dredging and sea disposal**

There are several types of dredging and/or sea disposal licences including maintenance, capital, agitation and plough dredging. Marine licences granted for dredging and sea disposal are valid for a maximum of 3 years and an applicant is required to apply to MS-LOT at least two months prior to the expiry of an existing marine licence.

#### **4.1.1 Capital dredging**

Capital dredging, where an area/depth is being dredged either for the first time or which has not been dredged within the past 7 years, require sediment analysis (see below) prior to applying for a marine licence. The results of analysis should be included in a Best Practicable Environmental Option (BPEO) assessment (see below) and should illustrate that the material is suitable for disposal at sea.

#### **4.1.2 Maintenance dredging**

Maintenance dredging, where an area which is dredged annually, or on a regular basis, within the previous 7 year period, may require samples for analysis depending on the results of previous year's sediment analysis or lack of recent contaminant data.

#### **4.1.3 Chemical analysis**

As part of the application determination process, an assessment should be made of the chemical and physical characteristics of the material to be deposited at sea and its potential effects upon the marine environment.

In addition to pre-dredge sampling, an applicant may also be required to take representative samples of the dredged material during the dredging/sea disposal operations for analysis by MS-LOT. In such cases, MS-LOT will issue a sampling instruction letter and sampling equipment.

For further information please refer to our guidance on [pre-disposal sampling](#).

#### **4.1.4 Best Practicable Environmental Option (BPEO) Assessment**

Consideration must be given to the availability of practical alternatives when considering any applications involving disposal of material at sea. In order for MS-LOT to assess the available alternative options, all sea disposal licence applications must be supported by a detailed assessment of the alternative options. This should include a statement setting out the reasons, including financial, that have led to the conclusion that deposit of the materials at sea is the BPEO. Sea disposal applications will not be considered unless

they are accompanied by a BPEO assessment.

#### **4.1.5 Disposal site**

An applicant should provide details of the proposed disposal site for the dredged material and, if necessary, any alternative disposal site(s) considered. Locations of disposal sites are available [here](#). In determining whether to issue a licence, MS-LOT will take into account any site nominated by the applicant. However, should this site be unsuitable, the nearest suitable disposal site for the dredged material will be identified.

Should an applicant wish to establish a new site, details should be provided in a covering letter with an application and further discussions held with MS-LOT before an application is determined. The cost of any site investigations to identify any new disposal site will normally be the responsibility of the applicant. Further guidance can be found [here](#).

## **4.2 Construction**

Activities such as the construction of a pontoon, pier or jetty; construction of a slipway; coast protection works; land reclamation and beach replenishment; construction of sewer outfalls and discharge pipes; the laying of Submarine cables bridge repair work; and any repairs to existing structures require a marine licence. MS-LOT requires complete coordinates detailing the full extent of works below MHWS and a chart clearly illustrating the location and extent of the works.

### **4.2.1 Deposits**

Applications must indicate all materials to be deposited below MHWS, including temporary and permanent (e.g. clean rock, average particle size). If any materials to be placed below MHWS are to be brought to the site by sea, details the vessels to be used must be provided. A chart should also be provided showing the proposed vessel route to the project site and details of any transshipment areas (i.e. where material may be off-loaded to smaller vessels/barges for transport inshore).

[The Crown Estate](#) should be contacted if it is intend to use seabed material for beneficial purposes, for example for use in land reclamation

### **4.2.2 Assessment**

Applications for certain works may require assessments to be carried out, such as environmental or navigational assessments, where a project does not require a full EIA but certain information is required to process an application. MS-LOT will discuss this with an applicant on a case by case basis upon submission of suitable project information, and early engagement is recommended.

### **4.2.3 Chemical analysis**

For beach replenishment, land reclamation and infill operations MS-LOT may require results of chemical analysis to be submitted. Where the material has not been chemically analysed MS-LOT may request representative samples for analysis or require the applicant to arrange for analyses to be undertaken before the licence can be determined.

### 4.3 Submarine cables

Submarine cables in Scottish seas require a marine licence. Cables longer than 1853m and which cross the intertidal boundary are subject to pre-application consultation requirements and an opinion should be sought from MS-LOT.

Whilst stand alone submarine cable projects are not listed as EIA projects, applicants for marine licences for Submarine cables should consider the scale and nature of their project and give consideration to the need for a proportionate environmental assessment. For larger projects MS-LOT require an application for a marine licence to be accompanied by an Environmental Appraisal report detailing the assessments carried out, such as the cable route study and desktop study outputs. MS-LOT offer to 'scope' such an assessment in a similar manner to EIA projects to ensure the required information is available during the consultation, and so early engagement with MS-LOT is essential to avoid delays in processing a licence application. Applicants will usually have to consider natural and historical heritage issues, navigation and impacts on fishing activity from their proposals. The appointment of a Fisheries Liaison Officer can help to facilitate good communication networks with the fishing industry.

To avoid interference with legitimate users of the sea, and in accordance with the [National Marine Plan](#), there is a presumption in favour of submarine cable protection and burial, where feasible. As such marine licence applications should also be accompanied by a burial plan showing in detail where an applicant expects to achieve burial and where, due to underwater obstacles, this may be difficult to achieve. Where burial is not planned, an applicant must provide robust data and analysis to support a claim for not burying and provide details of how a cable will be protected. Where no protection is planned, suitable justification must be provided with an application.

Emergency inspection and repair of cables does not require a marine licence, however, an applicant must provide details to the MS-LOT for their approval. Outside 12 nautical miles the laying and maintaining of certain types of cable does not require a marine licence. It is advisable to contact MS-LOT to establish the applicability of the licensing regime to any cable project.

Applicants should be aware of the policies contained in the National Marine Plan – Chapter 14 – Submarine Cables.

### 4.4 Marine farms

Finfish, shellfish and algal farm sites usually require a marine licence. Applicants are required to provide co-ordinates for the site boundary, cage grids, associated moorings, any feed barge and associated equipment (i.e. storage rafts). Applicants must also provide a map clearly illustrating the location of the proposed site. Marine licences granted for a marine farm are valid for up to 6 years and licensees are required to apply to MS-LOT at least two months prior to the expiry of an existing marine licence. Applications for an algae farm may require a degree of environmental and navigational information to be included.

Applicants should be aware of the policies contained in the National Marine Plan –

#### **4.5 Wellboats**

The discharge of chemotherapeuticants from wellboats berthed alongside fish farm cages requires a marine licence. Discharge of chemotherapeuticants away from a fish farm site is not permitted. Applicants are required to provide co-ordinates for the site of discharge and a map clearly illustrating the location of the proposed site. Applications should also be accompanied by a [Best Practicable Environmental Option \(BPEO\)](#) assessment, Material Safety Data Sheets for each chemotherapeuticant, a Standard Operating Procedure for the operation, along with the Controlled Activities Regulations (CAR) licence issued from the Scottish Environment Protection Agency (SEPA). Marine licences granted for a wellboat discharge are valid for up to 3 years and Applicants are required to apply to MS-LOT at least two months prior to the expiry of the licence.

#### **4.6 Moorings**

All private moorings, commercial moorings and moorings areas require a marine licence. Applicants must provide a map clearly illustrating the location of the proposed mooring(s) and for a moorings area applicants must provide a chart clearly illustrating the area boundary. Marine licences granted for moorings are valid for up to 6 years and licensees are required to apply to MS-LOT at least two months prior to the expiry of the licence.

#### **Moorings and Special Areas of Conservation**

Lochs Creran, Alsh, Duich and Long have Special Area of Conservation (SAC) designation. Loch Creran has been selected for its bedrock and biogenic reefs of the tube worm *Serpula vermicularis* and the horse mussel, *Modiolus modiolus* and Lochs Alsh, Duich and Long for their sublittoral rock (marine) reefs. All are very sensitive to physical damage from anchors and the placement of moorings and in order to assist their protection reference should be made to the special moorings pack which can be downloaded [here](#).

#### **4.7 Scientific surveys/instrument deployments** - (application form)

Certain scientific surveys and instrument deployments may require a licence although exemptions can apply (see Part 5). Where an activity may be exempt from marine licencing, a [Notice of Exempted Activity](#) form must be submitted to MS-LOT.

#### **4.8 Marine renewables energy projects** - (application form)

All construction works in relation to an offshore wind farm, tidal array or other offshore generating station require a marine licence and some will require a S.36 consent. Applicants should refer to the [licensing manual](#) and the National Marine Plan – Chapter 11 – Offshore Wind and Marine Renewable Energy for further information.



## **PART 5: EXEMPTED ACTIVITIES**

Certain activities will be exempt from the requirement to obtain a marine licence and such activities are set out in the [Marine Licensing \(Exempted Activities\) \(Scottish Inshore Region\) Order 2011](#), the [Marine Licensing \(Exempted Activities\) \(Scottish Offshore Region\) Order 2011](#) and the [Marine Licensing \(Exempted Activities\) \(Scottish Inshore and Offshore Regions\) Amendment Order 2012](#).

Exempted activities include, but are not limited to:

- Maintenance of coast protection, drainage and flood defence works
- Emergency works
- Maintenance of harbour works
- Removal of obstruction to navigation
- Emergency inspection and repair of cables and pipelines
- Sediment sampling

The list of activities above are subject to a number of conditions therefore MS-LOT should be contacted for further information.

## **PART 6: ENVIRONMENTAL IMPACT ASSESSMENT**

The majority of applications for a marine licence will not require an EIA. The [EIA Directive \(85/337/EEC\)](#) came into force in 1985 and applies to a wide range of defined public and private projects, which are defined in Annexes I and II. All projects listed in Annex I require an EIA. Projects listed in Annex II will require an EIA depending on their size, nature and location. The decision on whether an EIA is required is made through the "screening procedure", where regulators and advisers determine the effects of projects on the basis of thresholds/criteria or a case by case examination.

The initial Directive of 1985 and its three amendments have been codified by [DIRECTIVE 2011/92/EU](#)

The Directive has been transposed into Scots law for marine development purposes by [The Marine Works \(Environmental Impact Assessment\) Regulations 2007 \(as amended in 2011\)](#) Other EIA regulations may also be relevant depending on which other consents are being applied for, e.g.:

- [The Electricity Works \(Environmental Impact Assessment\) \(Scotland\) Regulations 2000](#) – for Section 36 of the Electricity Act 1989 applications
- [The Harbours Act 1964](#) – for harbour revision orders
- [The Town and Country Planning \(Environmental Impact Assessment\) Regulations 2011](#) (as amended) – for onshore planning applications

Where more than one consent is required, there can be one lead competent authority that will coordinate a single EIA process.

For Annex II projects if the screening process finds that an EIA is required MS-LOT recommend that a scoping exercise is undertaken. Although not mandatory, this allows MS-LOT to advise on the scope of the EIA. The applicant will be required to submit a scoping report which MS-LOT will consult on and provide the applicant with a scoping opinion. This ensures that the EIA will focus on the significant issues and allows issues which are not significant to be 'scoped out' of further assessment. The process also encourages early engagement with stakeholders.

Following the scoping exercise an Environmental Statement (ES) must accompany the marine licence application. All issues raised in the scoping opinion must be fully considered in the ES. Public participation is an important element of the EIA process; the requirements are detailed in part [3.7](#).

SNH have produced detailed [guidance](#) on the EIA process which gives information about the different stages and the requirements at each stage.

## **PART 7: HABITAT REGULATIONS ASSESSMENT**

### **7.1 The regulatory framework**

[Council Directive 92/43/EEC](#) on the conservation of natural habitats under wild fauna and flora (“the Habitats Directive”) and [Council Directive 2009/147/EC](#) on the conservation of wild birds (“the Birds Directive”) have been transposed into Scots law through the [Conservation \(Natural Habitats, &c.\) Regulations 1994](#) (for projects within 12 nautical miles) and the [Offshore Marine Conservation \(Natural Habitats, &c.\) Regulations 2007](#) (for projects beyond 12 nautical miles). These regulations are commonly referred to as “The Habitats Regulations”.

### **7.2 The process**

There are 3 steps to the Habitat Regulations Assessment (HRA) process:

**Step One:** Is the proposal directly connected with or necessary for site management for nature conservation? If the answer is no then proceed to step 2

**Step Two:** Is the proposal likely to have a significant effect on the site?

If the answer is yes proceed to step 3

- This test is like a scoping stage to remove proposals that do not need further consideration under step 3. Projects must be considered both alone and in-combination with other plans or projects.

**Step Three:** Can it be ascertained that the proposal will not adversely affect the integrity of the site?

- This step is referred to as the Appropriate Assessment (AA)

Under the Habitats Regulations the relevant nature conservation agencies (SNH and/or JNCC) advise MS-LOT if they consider that an AA is required for a project that is likely to have a significant effect on a Natura site. Where a project is subject to an EIA, this is often done at the scoping stage, although more complex projects may be recommended to undertake a formal HRA screening where the Natura sites to be considered in the AA are identified (step 2 above).

### **7.3 Appropriate Assessments**

MS-LOT, as the competent authority under the Habitats Regulations, will carry out the AA focusing exclusively on the qualifying interests of the Natura sites where likely significant effect has been identified. The AA will use information provided by the applicant and any other relevant information that MS-LOT regards as appropriate. The AA will consider any impacts on the conservation objectives of the site. It must also be based on, and supported by evidence that is capable of standing up to scientific scrutiny.

MS-LOT will not authorise a project unless, by means of the AA, they can ascertain that it will not adversely affect the integrity of a Natura site either alone or in-combination with other projects. The only exceptions are if there are no alternative solutions and there are imperative reasons of overriding public interest for the project to go ahead. The [SNH website](#) provides further information on HRA.

## **PART 8: MARINE PROTECTED AREAS**

### **8.1 The regulatory framework**

Marine Protected Areas (MPA) have been designed to conserve a selection of marine biodiversity (species and habitats) and geodiversity (the variety of landforms and natural processes that underpin the marine landscapes). [30 MPAs](#) have been designated under the [Marine \(Scotland\) Act](#) and the UK [Marine and Coastal Access Act](#). These are reflected in the policy of the [National Marine Plan](#) and represented in [National Marine Plan interactive](#) (see [part 12](#)) alongside existing protected areas.

When considering a site for development or planning a licensable marine activity it is important that Marine Protected Areas are taken into consideration as delays to the licensing process may be avoided by identifying MPAs that may be affected by the proposed development or activity.

Please see the links below for advice and guidance or contact [MS.marinelicensing@scotland.gsi.gov.uk](mailto:MS.marinelicensing@scotland.gsi.gov.uk) for more information

### **8.2 The process**

There are 3 steps to the assessment of whether a proposal will affect an MPA:

Step One: Initial Screening: Is the activity capable of affecting the protected features of a Nature Conservation MPA?

If the answer is yes then proceed to Step Two.

Step Two: Initial Screening: Is the activity capable of affecting, other than insignificantly, the protected features of a Nature Conservation MPA?

If the answer is yes proceed to Step Three.

Step Three: Main Assessment: Is there a significant risk of hindering the achievement of the conservation objectives?

- This step is may require assessment by public authority, in the case of marine licence applications this is likely to be led by MS-LOT.

### **8.3 Assessments**

MS-LOT, as the licensing authority under the Marine Scotland Act, will carry out the assessment focusing on the stated conservation objectives of the NC MPA and considering advice from SNH. The assessment will use information provided by the applicant and any other relevant information that MS-LOT regards as appropriate. As with AA above, the assessment must also be based on, and supported by, evidence that is capable of standing up to scientific scrutiny.

MS-LOT can only permit a project that carries a significant risk of hindering the conservation objectives of an NC MPA in certain circumstances and applicants are advised to contact [MS.marinelicensing@gov.scot](mailto:MS.marinelicensing@gov.scot) for more information. The [SNH website](#)

provides further information on MPAs.

## **PART 9: EUROPEAN PROTECTED SPECIES**

As well as being the licensing authority under the Marine (Scotland) Act, MS-LOT are the licensing authority under the Habitats Regulations, issuing European Protected Species (EPS) licences.

The Conservation (Natural Habitats, &c.) Regulations 1994 (as amended) (Habitats Regulations) implement certain requirements of the European Habitats Directive (Council Directive 92/43/EEC on the conservation of natural habitats and of wild flora and fauna). Animals listed in Annex IV(a) of the Habitats Directive, whose natural range includes any area in Great Britain, are also listed in Schedule 2 of the Habitats Regulations as European protected species (EPS) of animals. They are species of European Community interest in need of strict protection and include all species of cetaceans (whales, dolphins and porpoises), marine turtles and the Atlantic sturgeon. These Regulations apply to Scottish inshore waters (out to 12 nautical miles).

The 1994 Regulations make it an offence to deliberately or recklessly

- capture, injure or kill a wild animal of a EPS, and, more specifically,
- deliberately or recklessly disturb any dolphin, porpoise or whale (cetacean).

Certain activities in the marine environment may cause disturbance that would constitute an offence under the Habitats Regulations. MS-LOT issue licences under the Habitats Regulations to allow disturbance of EPS during such activities, if certain strict criteria are met

- there is a licensable purpose as described in Regulation 44 (2) (see Regulations above);
- there are no satisfactory alternatives;
- the actions authorised will not be detrimental to the maintenance of the population of the species concerned at favourable conservation status in their natural range.

The applicant should contact SNH if their activity relates to science, research or conservation. Applicants should refer to the [guidance on the protection of marine European Protected Species](#) for more detailed information.

In Scottish offshore waters (12 – 200 nautical miles), marine EPS are protected under the Offshore Marine Conservation (Natural Habitats, &c.) Regulations 2007 (as amended). MS-LOT are also responsible for issuing licences for certain non-reserved matters in this region. Further information on this legislation can be found [here](#).

Application forms can be found [here](#). Applicants should contact MS-LOT for further advice on applying for an EPS licence.

## **PART 10: APPEALS**

The Scottish Government want to encourage all outstanding issues or differences of opinion on an application to be resolved during the application process or in discussion with the licensing authority after a decision has been made. The existence of marine planning documents, including marine plans, should also reduce the likelihood of appeals.

If an applicant is unhappy with a decision to refuse an application or with the conditions attached to a licence, they can ask the licensing authority to carry out an internal review of their decision. MS-LOT will provide advice to applicants on this. However, there is a deadline for lodging a formal appeal (21 days after intimation of the decision in question) and applicants will need to bear this in mind in deciding on the best way forward. Any formal appeal requires to be made in the sheriff court.

### **10.1 Who can appeal?**

Any applicant for a marine licence is able to appeal against a decision not to grant a licence or against any of the conditions attached to a licence.

### **10.2 Who decides the appeal?**

Regulations made under [Section 38 of MSA 2010](#) and [Section 73 of the MCAA 2009](#) provide that appeals against marine licensing decisions for both the Scottish inshore and offshore regions will be heard by a Sheriff. The Sheriff Court provides an independent and impartial forum for these appeals.

### **10.3 Inquiries**

In the case of large, complex or potentially controversial projects Scottish Ministers may request an inquiry to be held in connection with a marine licence application which will increase the time of the determination.

## **PART 11: THE PUBLIC REGISTER**

MS-LOT will keep a [public register](#) of marine licensing information. The register contains information on applications; licences granted, revoked and varied; information supplied in connection with licences, convictions, other enforcement action and remedial action and other information set out in the [Marine Licensing \(Register of Licensing Information\) \(Scotland\) Regulations 2011](#). MS-LOT will maintain this register in line with [Data Protection Act 1998](#) requirements.

Information relating to offshore waters will not appear on the Register if the Secretary of State decides that its release would be contrary to the interests of national security. Commercially or industrially sensitive information will be excluded from the register where such confidentiality is provided for by law to protect genuine commercial interests.

## **PART 12: MARINE SPATIAL DATA**

Marine Scotland operates two on-line systems to make data available to the wider stakeholder community that may be useful in the license application process.

### **12.1 National Marine Plan interactive (NMPi)**

[NMPi](#) is an on-line interactive GIS-based tool allowing users to view different types of information (as layers) at a scale of their choice. Users can create maps for printing, develop their own data layers and download certain data (subject to a licence agreement). NMPi is designed to assist in the development of national and regional marine planning. NMPi also has links to appropriate part of the National Marine Plan, related parts of Scotland's Marine Atlas and in some instances allows data to be downloaded. All data sources are cited.

Whilst every effort is made to keep data on NMPi up-to-date, and new data are regularly being added, applicants should contact the data owner/source if relying on the data to make applications for licences.

### **12.2 Marine Scotland interactive (MSi)**

[Marine Scotland Interactive](#) is a web based resource that complements NMPi. MSi is used for making complex layered spatial datasets of the marine environment available to download in formats compatible with freely available software (Google Earth and ArcGis Desktop Explorer) and social media sites (Picasa and YouTube) and for providing access to spatial data held by Marine Scotland. A variety of file formats (maps, video clips, photographs, geodatabases and text) can be viewed with differing levels of functionality and interactivity. The first phase of the MSi project concentrates on themed marine environmental data covering renewable energy, monitoring, conservation and marine spatial planning. In time new themes will be added to the site.