

*RSPB Scotland response:*

## **SCOTTISH GOVERNMENT CONSULTATION ON MARINE LICENCE APPLICATIONS REQUIRING PRE-APPLICATION CONSULTATION**



### **Background**

The RSPB in Scotland is supported by nearly 90,000 members from both urban and rural areas, campaigning on issues affecting wildlife and the natural environment. In combination with RSPB staff across the UK, and our international partners in Birdlife International, we have cross-cutting expertise and experience of spatial planning, marine and sustainability issues within Scotland, the UK and internationally. The RSPB is unusual amongst UK NGOs because we engage with individual applications for renewable and other energy infrastructure across the UK, advising developers how they can minimise the impact of their developments, as well as working with Government to develop legislation and policy. Our professional planning and conservation staff are regularly involved with individual project proposals and we comment on several hundred individual proposals in Scotland each year. This gives us an almost unique perspective into the implications of new policy for development on the ground.

RSPB Scotland worked closely with the Scottish Executive and the Scottish Parliament to help inform the development of the Planning etc. (Scotland) Act 2006, which includes provisions for pre-application consultation. The Planning etc. (Scotland) Act 2006 includes marine territorial waters (out to the 3 nautical mile limit) around Scotland and relates only to marine fish farming. RSPB Scotland welcomes the desire to extend the pre-application consultation process for other marine activities. However, we do have some concerns regarding the list of activities proposed to be subject to pre-application consultation, which are detailed below. We are keen to ensure that the planning system for marine activities affords effective consultation which is tailored to the complexity and potential impact of proposed developments.

### **Consultation Questions**

#### **Q1. What are your views on the overall costs and savings identified in the Business and Regulatory Impact Assessments?**

No comment.

#### **Q2. Do you agree with the registration process as described?**

RSPB agrees with the registration process in principle, subject to appropriate safeguards to ensure that inappropriate activities that could have unacceptable environmental impacts are not included in this process and continue to be licensed.

**Q3. If not, what changes would you propose to the process?**

We agree that the activities listed as examples are unlikely to have an unacceptable environmental impact. However, more information is required on the 'specified threshold of environmental impact' to ensure that the registration process does not result in unacceptable environmental impacts. RSPB would like to be consulted further on this. A publically available online list of activities registered would also be useful.

We also request that information relating to proximity to Marine Protected Areas (MPAs), under the Marine (Scotland) Act 2010 is provided as part of the registration form as reference is currently only made to information relating to Natura sites. The registration procedures should also define a buffer distance within which designated sites need to be included in the application form instead of referring to sites 'nearby'.

**Q4. Do you agree that the listed activities should be registerable, rather than licensable?**

Yes  No

**Q5. Do you have further comments regarding the activities listed above?**

It is unclear why it is necessary to register the removal of human remains from the foreshore. It may be more appropriate to exempt this activity. If included, there may need to be some flexibility to allow for the registration process to be undertaken following the removal of the carcass due to practical implications.

**Q6. Are there any other classes of activity that should be registerable?**

As stated above, more information is required on the specified threshold of environmental impact. RSPB would like to be consulted to ensure an appropriate threshold is defined.

**Q7. Do you agree that statutory consultees should not be specified in legislation for the pre-application consultation process?**

Yes  No

**Q8. If not, which persons or bodies do you believe should be specified as statutory consultees for the pre-application consultation process?**

It is important that all relevant stakeholders are consulted as part of the pre-application process. This will include statutory and non statutory consultees and will be dependent on the location and nature of development. As it would be difficult to specify a comprehensive and appropriate consultee list as part of the legislation we strongly advise that guidance should be provided on the type of organisations that should be consulted. The RSPB would like to be consulted at the pre-application stage and wish to be included in this list. The guidance should make it clear that early and effective engagement is critical and that evidence to demonstrate this will be considered as part of the licensing process.

**Q9. Do you agree with the classes of activity that will be subject to pre-application consultation?**

Yes  No

**Q10. If not, what activities would you add or remove from the list?**

The Government's initial view is that the following projects would be subject to a pre-application process:

1. Bridge, causeway or walkway construction over 50 metres in length.
2. Construction/refurbishment projects over 1000 sq. metres in extent below MHWS.
3. Cables crossing the inter-tidal boundary.
4. Renewable energy projects over 30 MW or developments that increase the output of an existing project to over 30 MW.
5. Marinas where the enclosed water surface area exceeds 1000 sq metres and extensions to existing marinas that take the enclosed water surface area over that threshold.
6. Reclamation projects over 1 hectare in extent.
7. Other developments which, in the Scottish Ministers assessment, may have impacts on the environment, human health or legitimate uses of the sea that would make pre-application consultation appropriate.

RSPB Scotland considers that there should be provision for a formal pre-application process for all activities where an EIA is required. Items 1-6 provide useful guidance on the type of projects however, the environmental impact will be dependant on the characteristics of the project including cumulative impact with other projects and the sensitivity of location. We suggest that point 7 is updated to make reference to all projects considered likely to have significant effects on the environment, as defined by the EIA Directive 85/337/EEC (as amended). This would make the requirements for marine projects more consistent with the provisions for pre-application consultation introduced by the Planning etc. (Scotland) Act 2006 and the Town and Country planning (Hierarchy of Developments) (Scotland) Regulations 2007.

The pre-application process relates only to activities licensed under the Marine (Scotland) Act 2010. Large scale renewable projects within the zone from 12-200nm and also works relating to the construction, improvement or maintenance of a harbour would therefore be excluded from this process. RSPB therefore encourage the Scottish Government to work with the UK Government to introduce a similar requirement to cover all offshore developments. This is essential for enabling communities and consultees to be fully engaged in the decision-making process for these projects.

**Q11. Do you believe that the above proposals discriminate disproportionately between persons defined by age, disability, sexual orientation, gender, race and religion and belief?**

Yes  No

**Q12. If you answered yes to Question 11, in what way do you believe the proposals to be discriminatory?**

N/A.

*For further information please contact:*

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Scotland no. SC037654 – JUNE 2012*  
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