CONSULTATION QUESTIONS

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

The comments made hear should be read in conjunction with those made at Qu 5 below.

In terms of the Marine (Scotland) Act 2010 the activities identified at 1 and 4 in the proposed ‘register list’ could fall under section 21(1)1(a) of the Act. However neither can be considered ‘development’ or ‘works’ and have not previously been subject to any legislative framework that has been subsumed or repealed by the 2010 Act.

There would appear to be nothing in the 2010 Act that would allow the activities identified at 2, 3 and 5 in the proposed ‘register list’ to be considered licensable so that they could be included on a list of ‘registerable activities’. The stranding of deceased marine mammals, including royal fish, is purely a natural phenomenon and there is no legal obligation for them to be removed. The occurrence of human remains on the foreshore is usually the result of an unfortunate accident and removal is under the jurisdiction of the appropriate police authority.

As such the options identified in the BRIA and their associated cost implications are considered ineffectual. None of the listed activities previously required some form of licensing or consent and as a consequence it is unclear why any bodies associated with these activities would feel the need to register. There is therefore a potential for a large volume of non-compliance as a result which in turn would necessitate an increased monitoring requirement for extremely minor issues and financial recompense. As re-iterated in the response to Qu 5 this approach will not streamline the process for either applicant or regulator. The BRIA also indicates that either option will have a cost or benefit to industry – none of the activities listed could be considered an industry in any shape or form.

There are no major issues with the costings in the BRIA for the introduction of pre-application consultation (PAC) for major developments – as stated in the consultation document the cost of any PAC will be minimal in terms of the overall cost of such large projects.

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

If introduced the process as described would be appropriate for registering an activity.

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

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?

The proposed list of 'registerable activities' seems somewhat incongruous as none of the activities would appear to have required a licence/consent under any previous legislative frameworks or have been brought into the terms of the Marine (Scotland) Act 2010. Additionally none of the activities could be construed to represent 'development' or 'works'.

This would appear to be at odds with a regulatory framework aimed at being efficient, streamlined and equitable. None of the activities are included in the National Performance Framework (NPF), none are businesses and the proposals could be considered as micro-management from central Government. It could also be argued that i terms of the NPF, the proposals work against some national indicators in attempting to meet others, eg enhancing Scotland's marine environment at the expense of increasing the use of Scotland's outdoors.

It is unclear from the consultation document whether the activities listed would require application each time they took place or whether a single application would cover a number of occurrences over an extended period of time. For example, would a yacht club/association be required to register each time it deployed buoys for a Sunday race or would one application cover a number of races per year even though the buoys may be placed in a variety of locations each time due to the vagaries of wind and tide?

The inclusion of removal of dead marine mammals, including royal fish, and human remains from the foreshore could be considered spurious. At present deceased royal fish are reported to Marine Scotland who act, post devolution, on behalf of the UK Receiver of Wrecks. The latter act on behalf of the Crown who claim rights to such animals through common law acceptance of a royal prerogative dating back to Edward II. Whilst acknowledging that Marine Scotland may provide some funding to aid removal of such animals it is the Local Authority that deals with all such events as well as dealing with smaller marine mammal strandings. This occurs despite the fact that Local Authorities are under no legal obligation to do so – they tend to take action purely for reasons of public and environmental health. To require Local Authorities to register to undertake this type of work seems to be somewhat excessive. Again there is no indication as to whether registration would be required for every stranding event or a one-off registration to cover all future occurrences.

If there is a desire from Government to include strandings on a 'register of activities' why not delegate the function of dealing with such events to the Local Authority under section 51 of the 2010 Act so that they can simply get on with the work as and when required to do so.

Removal of human remains from the foreshore will be by the appropriate authority under the direct jurisdiction and direction of the local police force. Such events would not involve Marine Scotland nor has it ever involved any of its previous reincarnations. To include it as a ‘registerable activity’ is specious.

Historic Scotland or the Receiver of Wrecks are best placed to comment on the usefulness or otherwise of designating item 4 as a registerable activity. Similarly aspects of item 5 will fall to the aforementioned two bodies if flotation bags are being used for salvage purposes. If such bags are being used to lift collected benthic shellfish local and/or national fishing associations are best placed to comment.

In summary it is considered that the proposed list of registerable activities be given further consideration before proceeding further.

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

Q7. Do 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 would appear that the reasoning behind the proposals for pre-application consultation (PAC) is to emulate the situation that exists in the terrestrial planning system by identifying the equivalent of ‘major’ developments. It is the case that all the proposed classes of activity will require permission from the local Planning Authority for those parts of the development above MLWS – this will include any shore side developments (cables, sub-station convertors, etc.) associated with offshore renewable developments. Whilst there may be no need to identify a list of statutory consultees it should be made clear that the local Planning Authority should be involved in PAC as they would be able to advise who should be consulted through a screening process.

Within most Orkney harbour areas and around the whole coast of Shetland (out to the limits of territorial waters) there will be a continuing need for developers to obtain a works licence for any development below MHWS. Inclusion of the Planning Authority will ensure that developers are aware of this requirement from an early stage so that it can be included in any PAC discussions.

Given the overlap between the land based planning and marine licensing processes there may be some merit in considering increasing the size limits

for which PAC is required – the *de minimus* area for terrestrial projects is 2 ha. Any project under this level will still require screening and scoping under the relevant EIA regulations.

Under the Requirements of consent for offshore generating stations (Scotland) Order 2002 all offshore renewable projects capable of producing greater than 1 MW require s36 consent under the Electricity Act 1989. It is unclear as to why the *de minimus* figure for PAC for this activity has been set at 30 MW. A marine renewable development of 5 – 10 MW capacity for example will cover a large area of sea and may impact significantly on local community interests. It is considered that further thought should be given to the *de minimus* values for renewable in terms of PAC.

The inclusion of cables crossing the foreshore in requiring pAC could be considered excessive. As mentioned above any cables associated with offshore renewable will be granted deemed permission under s36 of the Electricity Act and would be part of the PAC covering the whole development. Developers also have the option of going direct to the Planning Authority for the necessary permission. By virtue of their size cables on their own (whether for telecommunications, electricity transmission or other uses) will only impact on a very narrow corridor across the foreshore and the need for PAC in these instances may be somewhat excessive.

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?

See response to Q8 above.

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?