

Planning Scotland's Seas

2013

The relationship between the statutory land use planning system and marine planning and licensing

draft

■
Circular

Scottish Planning Series

DRAFT PLANNING CIRCULAR

Planning Scotland's Seas

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ISBN: 978-1-78256-768-4 (web only)

The Scottish Government
St Andrew's House
Edinburgh
EH1 3DG

Produced for the Scottish Government by APS Group Scotland
DPPAS14511 (07/13)

Published by the Scottish Government, July 2013



PLANNING SERIES:

Scottish Planning Policy (SPP) is the statement of Scottish Government policy on nationally important land use planning matters.

National Planning Framework (NPF) is the Scottish Government's strategy for Scotland's long term spatial development.

Circulars contain Scottish Government policy on the implementation of legislation or procedures.

Statements of Scottish Government policy in the SPP, NPF and Circulars may be material considerations to be taken into account in development plans and development management decisions.

Planning Advice Notes provide advice and information on technical planning matters.

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Draft Planning Circular: The relationship between the statutory land use planning system and marine planning and licensing

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Introduction

1. This Circular explains the relationship between the marine and terrestrial planning systems, including related regimes such as marine licensing and consenting for offshore energy generation, ports and harbours development, and aquaculture.
2. The Circular is in draft form, and accompanies the consultation on the draft National Marine Plan for Scotland. The Circular will be issued in final form concurrently with the final National Marine Plan.
3. The *UK vision* for the marine environment is for ‘clean, healthy, safe, productive and biologically diverse oceans and seas’. The UK high level marine objectives, published in April 2009 and reflected in the UK Marine Policy Statement, set out the broad outcomes for the marine area in achieving this vision.
4. Marine Scotland, a Directorate of the Scottish Government, undertakes marine management in Scotland. It delivers integrated marine management functions – science, policy development and delivery, compliance monitoring and enforcement – whether fully or executively devolved to Scottish Ministers, both inside and outside the territorial waters adjacent to Scotland. Marine Scotland, on behalf of Scottish Ministers, has the primary responsibility for marine planning, licensing and conservation from Mean High Water Springs out to 200 nautical miles.

Marine Legislation

5. The Marine (Scotland) Act 2010 (‘the Act’) along with the Marine and Coastal Access Act 2009 (‘the UK Act’) is the legislative and management framework for the marine environment. Implementation of the Acts, in particular marine planning, provides key delivery mechanisms of the Marine Strategy Framework Directive. The Directive requires EU member states to develop national strategies on how to achieve and maintain Good Environmental Status of the marine environment by 2020.
6. The Act provides a framework to help balance competing demands on Scotland’s seas. It introduces duties to protect and enhance the marine environment. The main measures include:
 - *Marine planning*: a new statutory marine planning system to sustainably manage the increasing, and often conflicting, demands on our seas.
 - *Marine licensing*: a simpler licensing system, minimising the number of licences required for development in the marine environment.
 - *Marine conservation*: improved conservation for marine natural and cultural heritage, with new powers to protect and manage areas of importance for marine wildlife, habitats and historic monuments.

- *Seal conservation*: much improved protection for seals and a new comprehensive licence system to ensure appropriate management where necessary
- *Enforcement*: a range of enhanced powers of marine conservation and licensing.

7. Under Section 4 of the Act, Scottish Ministers and public bodies must, in carrying out any statutory function which affects the Scottish marine area (inshore waters out to 12 nautical miles), act in a way best calculated to mitigate and adapt to climate change, so far as is consistent with the purpose of the function concerned. This applies to terrestrial planning functions which affect the marine area.

8. Under the Act and the devolution settlement the Scottish Ministers have responsibility for marine planning from Mean High Water Springs out to 12 nautical miles. In addition, the UK Act executively devolves responsibility to the Scottish Ministers for marine planning, nature conservation, licensing and enforcement in waters adjacent to Scotland out to 200 nautical miles. With the approval of the Secretary for State, this will include planning for reserved activities such as oil and gas, shipping and telecommunications, although licensing for these remains reserved to the UK Government.

Marine Planning

9. The *Joint Ministerial Marine Planning Statement* between the UK and Scottish administrations confirms that each will prepare marine plans in the way that is most appropriate for its marine planning regions, and that they will collaborate to enable joined-up marine planning across borders.

The Marine Policy Statement

10. The *UK Marine Policy Statement* was published jointly by all the UK Administrations in March 2011. It sets a vision for the whole UK marine area and provides a framework for preparing marine plans, including economic, social and environmental considerations which need to be taken into account and strategic policy objectives for key marine sectors.

11. The Marine Policy Statement makes a presumption in favour of sustainable development in the marine planning area.

12. The Scottish National Marine Plan and any subsequent Scottish Regional Marine Plans must accord with the Statement.

13. All public authorities taking authorisation or enforcement decisions that affect or might affect the UK marine area must do so in accordance with the UK Marine Policy Statement, the Scottish National Marine Plan and any subsequent Regional Marine Plan, unless relevant considerations indicate otherwise. This applies to decisions on terrestrial planning applications and enforcement action.

14. Public bodies when making decisions which are capable of affecting the UK marine area which are not enforcement or authorisation decisions must have regard to the Statement and Plans. This applies to the preparation and adoption of terrestrial development plans and to other terrestrial planning functions.

Marine Plans

15. Marine Plans must set out economic, social, marine ecosystem and climate change objectives for a marine plan area, consistent with the Marine Policy Statement. They will set out how marine resources can best be managed and will ensure that different and potentially competing activities are managed in such a way that they contribute to the achievement of sustainable development.

16. The Act requires the Scottish Ministers to prepare an assessment of the condition of the Scottish marine region at the time of the plan's preparation – *Scotland's Marine Atlas*. This provides an evidence base upon which the draft Scottish National Marine Plan has been developed.

17. Marine plans must be kept under review. A report for each marine plan must be prepared at least every five years, at which time Ministers must consider whether the plan needs to be amended or replaced.

The Scottish National Marine Plan

18. The Act requires Scottish Ministers to prepare and adopt a National Marine Plan.

19. The Draft Scottish National Marine Plan is published for consultation, accompanied by this Circular. Once adopted, in agreement with the UK administration, it will be a plan for the whole of the UK marine area which is adjacent to Scotland, out to 200 nautical miles. It will help deliver the UK and Scottish Government's international responsibilities and Directives relating to the marine environment including the Marine Strategy Framework Directive.

Scottish Marine Regions

20. The Act empowers the Scottish Ministers to create Scottish Marine Regions, and to delegate marine planning powers for these regions. It is Ministers' intention to establish a number of Scottish Marine Regions and to devolve marine planning powers to a Regional Marine Planning Partnership for each Region.

21. These Partnerships will comprise representatives from a wide range of stakeholder interests, including public authorities and representatives that reflect the commercial, recreational and conservation interests of that region. Each Marine Planning Partnership will be required to create a regional marine plan for their area, taking into account the National Marine Plan and any specific directions from Ministers.

22. Marine Region Plans will be more spatially detailed than the National Marine Plan - reflecting their smaller scale, the input of local stakeholders and local

knowledge, and the increased level and complexity of marine activity that often occurs in coastal zones. A regional marine plan must conform with the national marine plan unless relevant considerations indicate otherwise. A Regional Marine Planning Partnership must take all reasonable steps to ensure that the plan is compatible with any adjoining regional plan and with the terrestrial development plan for any adjoining land.

23. Marine Regions will not extend beyond 12 nautical miles from the coast.

24. The Scottish Government consulted in 2010 on options for the basis on which the number and boundaries of Scottish Marine Regions may be determined. Ministers have considered responses and will soon confirm the Scottish Marine Region boundaries.

25. Final approval of any regional marine plan is for Scottish Ministers.

The Marine Planning Process

26. The marine plan for an area will consist of the National Marine Plan and any regional marine plan which is in effect for that area.

27. The Marine Acts require notice to be given, including to neighbouring terrestrial planning authorities, of the intention to prepare a national or regional marine plan. A statement of public participation must be prepared, and a consultation draft of the plan published.

28. The Scottish National Marine Plan must be laid before the Scottish Parliament, and the Scottish Ministers must consider any resolution the Scottish Parliament may make before they adopt the plan. In so far as it relates to Scotland's offshore waters (12 to 200 nautical miles) the Scottish National Marine Plan has to be adopted with the agreement of the Secretary of State.

29. Marine plan boundaries extend up to Mean High Water Springs. Terrestrial planning boundaries extend down to Mean Low Water Springs, with the exception of marine aquaculture. There is therefore an overlap in the inter-tidal area. This overlap will assist the integration of and consistency between both planning regimes. This can best be achieved by:

Liaison between terrestrial and marine planning authorities.

30. This will involve formal consultation at each successive stage of marine and terrestrial plan making, but also close collaboration throughout both processes. For example, relevant Marine Planning Partnerships could be involved in the preparation of terrestrial plans to the same extent as the statutory 'Key Agencies'. It is likely that local authorities will have a key role in the great majority of marine and terrestrial plans, and having one or more officials who are closely involved in both processes will be desirable.

Timing of plans.

31. Whilst marine and terrestrial plans each have statutory requirements which are separate and different, it may in some cases be possible to programme them so that the key stages, including key consultation stages, are aligned. This may deliver efficiencies overall, and may also assist in stakeholder and community engagement.

Plans which take into account both terrestrial and marine impacts.

32. Terrestrial plans should be prepared with due account taken of their impact on the marine environment and its users, and on marine policy objectives. Marine plans should be prepared with due account taken of their impact on the terrestrial environment and on terrestrial policy objectives.

Consistency between policies and proposals in marine and terrestrial plans.

33. Future terrestrial plans should be consistent with the Marine Policy Statement and the marine plans for the area. Marine plans should be consistent with terrestrial plans and with national objectives for terrestrial planning in Scottish Planning Policy and the National Planning Framework.

34. In particular there should be consistency and mutual support in the specific development proposals in marine and terrestrial plans which affect each other, and each plan should make provision for any land or sea resource and infrastructure which may be necessary to support a development proposal in the other plan.

35. Such consistency is likely to be most important for certain policy objectives, including renewable energy; electricity networks; adaptation to climate change, including coastal and flood defence; aquaculture; ports and harbours; public access and recreation; protected areas; waste water infrastructure; and landscape and seascape.

36. It is evident that both terrestrial and marine planning systems and their respective policy objectives will evolve over time. Common sense judgements on the correct policy objectives to adopt at any particular time will be called for as each terrestrial and marine plan comes to be prepared and then revised.

Integrated Coastal Zone Management.

37. In most circumstances the marine and terrestrial planning and consenting regimes will, if operated in the joined-up manner we advocate, be sufficient to ensure an integrated approach to the planning and management of the coastal zone.

38. There may, however, be some areas where complex or competing interests require a more fine-grained approach. This is most likely to be where there are a high number of uses and users of coastal resources, for example in and around some of our firths, sea-lochs and sounds. It will be for marine and terrestrial planning authorities to consider and agree, in each case, whether there is a requirement for more detailed co-ordination in the form of integrated management of the coastal zone. Where it is agreed by the respective planning authorities that this

is desirable, this should remain consistent with the policies and proposals in the respective terrestrial and marine plans.

Sharing the evidence base.

39. Marine and terrestrial planning authorities should aim, where appropriate, to share a common evidence base on which to prepare monitoring statements, to found the policies and proposals in their plans and to support statutory and other assessments such as Strategic Environmental Assessment and Habitats Regulations Appraisal. This will aid efficiency in the plan-making process, improve the quality and comprehensiveness of these assessments, and aid consistency and clarity in all plans.

Marine licensing

40. Marine Scotland-Licensing Operations Team (MS-LOT) administers the licensing function under Part IV of the Marine (Scotland) Act 2010 (the Act) from 0-12 nautical miles and under Part IV of The Marine and Coastal Access Act 2009 from 12-200 nautical miles. The Acts largely replace Part 2 of the Food and Environment Protection Act 1985 (FEPA) and Part 2 of the Coast Protection Act 1949 (CPA) and have a landward limit of Mean High Water Spring (MHWS) level.

41. Together, the provisions of the Acts and executive devolution of some reserved functions mean that Marine Scotland is the appropriate authority for licensing most activities in Scotland's marine environment. Exceptions include most activities relating to oil and gas, defence and shipping, which remain reserved by the UK Government.

42. The Acts define a number of licensable marine activities, including -

- depositing any substance or object within the Scottish marine area, either in the sea or on or under the seabed, from a vehicle, vessel, aircraft or marine structure (applies to any sea if vessel loaded in Scottish marine area).
- constructing, altering or improving any works within the Scottish marine area either in or over the sea, or on or under the seabed.
- using a vehicle, vessel, aircraft, marine structure or floating container to remove any substance or object from the seabed within the Scottish marine area (including dredging).

43. Under separate legislation, licences and consents are required for marine based electricity generating stations of capacity greater than 1 MW, for activities affecting 'protected species' and for many oil and gas related activities between 0 and 12 nm.

44. Certain activities are specifically exempted from licensing by Order, for example maintenance of ports and harbours (if carried out for or on behalf of a Harbour Authority within the area of the existing works) and coastal defences (for or on behalf of a local authority), as are certain activities required for safety and in emergency situations. Fishing is exempt from marine licensing as it has its own regime.

45. While aquaculture developments are exempt from most of the marine licensing regime, a licence is required in relation to navigational aspects, and finfish developments also require one in relation to discharges from wellboats.

46. Some 'licensable marine activities' are regulated activities that form part of a plan or project that may require Environmental Impact Assessment under the Marine Works (EIA) Regulations 2007 (as amended) and/or the Electricity Works (EIA) (Scotland) Regulations 2000 (as amended). Marine Scotland expects significant and very early pre-application consultation with applicants and cross cutting discussions with any other regulatory or appropriate authority engaged in the EIA process, such as a relevant local authority, to streamline the EIA process. EIA can be a lengthy process, for example, ornithological (for offshore wind farms) or cetacean (for offshore wind farms, wave and tidal projects) reports may require at least two years' worth of data and so early dialogue is of paramount importance.

47. Before they determine a licence application, Scottish Ministers usually publish notice that they have received it and must consult certain statutory consultees, to include marine planning partnerships when they are formed. Terrestrial planning authorities are not statutory consultees, but will be consulted on a case by case basis by MS-LOT where it considers this is warranted. Within the inshore region (out to 12nm) pre-application consultation will be required for some categories of application (which are to be prescribed by subordinate legislation). Scottish Ministers may also hold an inquiry into a licence application before determining it. In deciding whether to issue a licence, Ministers will consider the environment, human health, legitimate uses of the sea and any other matters they consider relevant.

48. Applicants who are dissatisfied with the Scottish Ministers' decision on a licence application may appeal to a Sheriff. Carrying out a licensable activity without a licence is an offence. Ministers have the power to vary, revoke or suspend a licence, and to take enforcement action. Marine Scotland maintains a public register of marine licensing information.

49. Since marine licensing covers the marine area up to mean high water spring and terrestrial planning control extends down to mean low water spring, there is an overlap of consenting regimes in the inter-tidal zone. This means that for some activities there may be a need for both a marine licence and planning permission, and a works licence in Shetland and in certain parts of Orkney.

50. Where both a licence and planning permission are required, it will be important to establish - through early pre-application engagement - which of the competent authorities, if any, will require an environmental assessment (including any EIA or Habitats Regulations Appraisal where appropriate). Early and effective engagement with all the relevant consenting authorities and Consultation Bodies will be particularly important in such cases. This will provide the opportunity to discuss which environmental assessment obligations may apply; the applicant's proposed consenting strategy; and the scope for co-ordinating the different consenting processes and their environmental assessment obligations. In this way, all parties can seek to minimise duplication whilst ensuring the requirements of the individual environmental assessment regimes (including EIA and HRA) are met in full.

Renewable Energy

51. The Scottish Government has developed a system of sectoral marine planning. These non-statutory plans, which we are consulting on at the same time as this Circular and the draft National Marine Plan, seek to facilitate the development of commercial scale renewable energy developments in the most sustainable locations around Scotland.

52. Terrestrial development plans and decisions should be consistent with and facilitate marine renewable energy developments which have been consented or which are supported in marine plans and in sectoral plans like the National Renewables Infrastructure Plan, the National Planning Framework and Blue Seas Green Energy prepared by the Scottish Government. This includes related infrastructure like grid connections, sub-stations, testing facilities, carbon capture and storage, manufacturing and assembly facilities, and ports and harbours infrastructure.

53. For marine based electricity generating stations in excess of 1MW in the inshore area (out to 12 nautical miles) and in excess of 50MW in the offshore area, which will in most cases be for renewable forms of energy, special licensing procedures will allow Marine Scotland to consider applications for consents and licences under both the Marine and Electricity Acts together. Marine Scotland may also process other licence applications which may be needed for a project, for example a European Protected Species licence, at the same time.

54. Planning permission is likely to be required for the components of marine based electricity generating stations which are above Mean Low Water Springs, including any substations. Section 36 of the Electricity Act applies to generating stations above 1MW capacity inshore (from 0-12nm) and above 50MW offshore (12-200nm). In these cases a statutory provision in the Growth and Infrastructure Act 2013, amending s57 of the Town and Country Planning (Scotland) Act 1997, will allow Scottish Ministers to direct that planning permission is deemed to be granted for the ancillary onshore components and related onshore infrastructure for a marine based electricity generating station consented under Section 36. Developers may still choose to make a separate planning application for the onshore components if they wish.

55. The Scottish Government considers that, in most cases, a single licensing process will be more efficient and effective than a separate application to the planning authority for planning permission. In either event, developers should seek early pre-application consultation with the planning authority. Any separate planning applications for development classed as 'major' under the Town and Country Planning (Hierarchy of Development) (Scotland) Regulations 2009, or 'national' under the National Planning Framework, will require formal pre-application consultation.

56. In other cases (below 1MW capacity inshore and below 50MW offshore) separate planning permission for the onshore components will always be required.

57. To assist in tackling complex issues and/or to resolve areas of dispute anytime in the application process prior to determination, MS-LOT may decide to bring together an advisory/decision making group. This group is formally known as the Marine Renewables Facilitators Group (MRFG). The group normally comprises representatives of the key regulators and statutory consultees who are suitably experienced and empowered by their organisations to provide advice, guidance and where necessary are prepared to agree compromises to assist MS-LOT in finalising a view on an aspect of an application.

Ports and Harbours

58. Activities in statutory harbour authority areas are governed by the local harbour legislation for that port. Any new harbour-related development may require the authority to apply to Scottish Ministers for additional powers. This would be done by an application for a Harbour Revision order under the 1964 Harbours Act. Terrestrial planning authorities are statutory consultees in this process along with environmental and other bodies.

59. Statutory Harbour Authorities may also benefit from permitted development rights in classes 29 or 35 of the Town and Country (General Permitted Development) (Scotland) Order 1992, as amended. The extent of these varies from harbour authority to harbour authority. Notwithstanding the powers of Harbour Authorities and their permitted development rights, some development within their areas may still require Marine Licensing and/or terrestrial planning consent depending on the proposal.

60. Many harbour authorities, particularly in river estuaries, also have powers to licence others to carry out works within their area of jurisdiction. These licenses are in addition to any marine licence or planning consent which may be required.

Coastal defences

61. The marine environment, particularly in those areas close to shore, is a highly dynamic system, and there are many connections between physical work occurring in these areas and the management of flood risk. There are also close links between climate change adaptation and flood risk management in coastal areas, particularly in relation to sea level rise.

62. The Flood Risk Management (Scotland) Act 2009 (the FRM Act) requires coastal areas to be identified, and objectives and measures to address flood risk to be coordinated across these areas. Ensuring close coordination between physical works occurring in coastal areas and actions to manage flood risk is essential. For example, coast protection works to tackle erosion problems along the coast are often inextricably linked to flood management, i.e. erosion problems are often accompanied by flooding problems, and erosion may in fact cause flooding and vice versa.

63. Coastal erosion and flood risk will be included in the strategic appraisal of flood risk management measures that SEPA is carrying out under the FRM Act for areas that have been identified as having a significant risk of coastal flooding.

64. Under s60 of the FRM Act flood protection schemes do not require separate planning permission, instead the statutory process under s65 of the FRM Act allows for deemed planning permission to be granted by Scottish Ministers on confirmation of a scheme.

65. Under the provisions of the Coast Protection Act 1949, local authorities have discretionary powers to carry out such coast protection work as may appear to them to be necessary or expedient for the protection of any land in their area against erosion and encroachment by the sea. Such schemes may also require separate planning permission.

Aquaculture

66. A *Working Arrangements* document sets out the respective roles and responsibilities of each of the statutory consultees in relation to aquaculture planning applications. The Scottish Salmon Producers Organisation has produced a good practice guide for industry engagement in the planning process: *Industry Protocol for Preparing Planning Applications for Aquaculture Development*.

Consenting of marine aquaculture

67. Until 2007, marine aquaculture development was leased and consented either by the Crown Estate or, in their respective areas, by Orkney Islands Council and Shetland Islands Council. Since then, marine aquaculture has required planning permission, and all new fish farms out to 12nm (as well as modifications to existing ones) require a planning application to the relevant terrestrial planning authority. In parallel, the Scottish Government is currently reviewing the fish and shellfish farms consented by the Crown Estate and these two Councils prior to 2007 to determine whether they should be granted permanent planning permission.

68. There is currently no provision for obtaining planning permission in principle for fish farms.

69. The Act empowers the Scottish Ministers to order that marine fish farming is not development under the terrestrial planning system. The effect of such an order, which can only be made with the consent of the planning authority affected, is that new aquaculture development would, in the area covered by the order, no longer require planning permission but would be regulated by the marine licensing regime. Marine Scotland will set out the procedural arrangements in such circumstances. As yet, no such Order has been made.

70. As long as consenting of fish farm development remains the function of a terrestrial planning authority, that authority must continue to determine any such planning applications in accordance with the terrestrial development plan (and with any marine plan for the area) unless material considerations indicate otherwise. Material considerations may include any non-statutory spatial framework for fish farming which the planning authority has adopted and any guidance issued by statutory consultees, for example Marine Scotland's *Locational Guidance* and

Scottish Natural Heritage's *Marine Aquaculture and the Landscape*. Scottish Planning Policy and the National Planning Framework may also be material.

71. As well as planning permission, all farms need a number of additional consents to operate. These include:

- an Aquaculture Production Business Authorisation by Marine Scotland's Fish Health Inspectorate (FHI) under Aquatic Animal Health (Scotland) Regulations 2009; and
- a licence from Marine Scotland in relation to navigational aspects such as fish farm cages and barges.

72. Finfish farms need a number of additional consents, including:

- a Controlled Activity Licence (CAR) licence from SEPA under The Water Environment (Controlled Activities) (Scotland) Regulations 2005. This licence, which is based on the case specific computer simulation modelling of nutrients, veterinary medicines and other chemicals that may be used on the farm, stipulates the biomass of fish that may be cultivated and provides individual approvals for the types and quantities of veterinary medicines or other chemicals that may be used;
- a licence from Marine Scotland in relation to discharges from wellboats.

73. The Scottish Government introduced certain permitted development rights for fish farms in the summer of 2012. These enable fish farmers to make minor changes to their farms without the need to apply for planning permission. These rights, other than to change between certain fish species, are subject to a process of prior notification and approval by the planning authority.

Planning for marine aquaculture

74. The draft Scottish National Marine Plan sets out high level objectives for aquaculture and some of the factors which will be relevant to decisions on where new aquaculture development should go.

75. Marine Scotland is undertaking a 3-year project to identify areas of opportunity and restriction for both finfish and shellfish sectors. This will include consideration of the risk to wild salmonids from aquaculture.

76. Development plans identify the scope, where any exists, for future aquaculture development. They may be supplemented by fish farming framework plans or an indicative spatial strategy indicating where new fish farms are likely to be acceptable, and where they are not. Presently, these framework plans, where they exist, are associated with terrestrial development plans. For the time being, this should continue.

77. The Scottish Government expects that, in time, regional marine plans, and any supplementary plans or guidance associated with them, will provide the principal spatial framework for decisions about the location of new aquaculture development. In doing so, regional marine plans will need to take account of the pre-existing terrestrial development plan and any spatial framework, and of the impact of any new aquaculture development on terrestrial planning objectives. This shift of spatial

planning for aquaculture from terrestrial to marine planning should take place in a manner and time to be agreed between terrestrial and marine planning authorities.

Marine Conservation

78. The Act defines the Scottish Marine Protection Area as the Scottish marine area (out to 12 nautical miles), excluding waters upstream of the fresh-water limit of estuarial waters. The Scottish Ministers may make, by a 'designation order', any area of the Scottish Marine Protection area a Nature Conservation Marine Protected Area (MPA), a Demonstration and Research MPA or a Historic MPA. These may include islands and adjacent areas of seashore. The UK Marine & Coastal Access Act created similar powers for nature conservation MPAs in the Scottish offshore zone, beyond 12nm. Nature Conservation MPAs are one of Scotland's three pillars for marine nature conservation – site protection (including MPAs); species protection; and wider policies and measures.

79. The Scottish Government is consulting on its proposals for Marine Protected Areas at the same time as the consultation on this Circular and on the draft Scottish National Marine Plan.

80. Scottish Natural Heritage and Scottish Ministers may give advice and guidance on the protection of the features in Nature Conservation and Demonstration and Research MPAs and the furtherance of their purposes and conservation objectives.

81. In exercising any functions which may affect a MPA, a public body must, so far as is consistent with the proper exercise of its functions, do so in a way which it considers best furthers (or least hinders) the purpose or objectives of the MPA. For Nature Conservation MPAs, such an obligation also applies to furthering the contribution of that MPA to a network of conservation sites. In complying with these requirements, public bodies must have regard to any guidance issued for the purpose by SNH or Scottish Ministers.

82. Nature Conservation MPAs are to be identified for conserving marine flora or fauna, including rare or threatened species, marine habitats or features of geological or geomorphological interest. Taken together with marine conservation zones identified under the UK Act and with other protected areas in the marine environment such as those designated under the EU Birds and Habitats Directives, Nature Conservation MPAs are to form a network which contributes to the conservation or improvement of the marine environment in the UK marine area.

83. Demonstration and Research MPAs are to be identified for demonstration of sustainable methods of marine management or exploitation and/or for research into such matters.

84. Historic MPAs are to be identified for preserving a marine historic asset of national importance according to guidelines published by Historic Scotland. Historic MPAs are to replace use of section 1 of the Protection of Wreck Act 1973 in Scotland and will normally be preferred to scheduling of monuments of national importance offshore.

Conservation of Seals

85. The Scottish Government has responsibility for the conservation and management of seal populations in Scottish waters. The Act introduced enhanced seal protection measures whilst allowing for appropriate management under a new seal licensing system.

86. It is now an offence to intentionally or recklessly injure, kill or take a seal at any time (except under license or for animal welfare reasons) or to harass seals at designated haul-out sites. Scottish Ministers may also designate an area as a seal conservation area where they consider it is necessary to do so to ensure the proper conservation of seals.

87. The potential for development to impact on seal conservation objectives may be material to some planning decisions, notably for fish farm development but also potentially for other developments affecting the coastal zone, including those associated with renewable energy development. This may include impacts on areas important for seals, including seal conservation areas and designated seal haul outs.

How to respond

This Draft Planning Circular is out for public consultation until 13 November 2013. It is available electronically on the Scottish Government's website at: <http://www.scotland.gov.uk/Consultations/Current> and in hard copy from:

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EH6 6QQ

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Comments on the paper are invited from the public and all interested stakeholder organisations. Responses in writing should be sent to the above address or emailed to marineplanning@scotland.gsi.gov.uk by 13 November 2013.

Handling your response

We need to know how you wish your response to be handled and whether you are happy for your response to be made public. Please complete and return the Respondent Information Form included with this consultation paper as this will ensure that we treat your response appropriately. If you ask for your response not to be published we will regard it as confidential, and we will treat it accordingly.

All respondents should be aware that the Scottish Government is subject to the provisions of the Freedom of Information (Scotland) Act 2002 and would therefore have to consider any request made to it under the Act for information relating to responses made to this consultation exercise.

Publishing responses

Where respondents have given permission for their response to be made public, these will be made available to the public in the Scottish Government Library and on the SEConsult web pages within 6 weeks of the close of the consultation time period.

Where agreement has been given, we will check all responses for any potentially defamatory material before logging them in the library or placing on the website. You can make arrangements to view responses by contacting the Scottish Government Library on 0131 244 4556. Responses can be copied and sent to you, but a charge may be made for this service.

If you have any comments about how this consultation has been conducted, please send them to us at the address above.

Draft Planning Circular

The relationship between the statutory land use planning system and marine planning and licensing.



RESPONDENT INFORMATION FORM

Please Note this form **must** be returned with your response to ensure that we handle your response appropriately

1. Name/Organisation

Organisation Name

Title Mr Ms Mrs Miss Dr *Please tick as appropriate*

Surname

Forename

2. Postal Address

<input type="text"/>		
<input type="text"/>		
<input type="text"/>		
<input type="text"/>		
Postcode	Phone	Email

3. Permissions - I am responding as...

Individual / Group/Organisation

Please tick as appropriate

(a) Do you agree to your response being made available to the public (in Scottish Government library and/or on the Scottish Government web site)?

Please tick as appropriate Yes No

(b) Where confidentiality is not requested, we will make your responses available to the public on the following basis

Please tick ONE of the following boxes

Yes, make my response, name and address all available

or

Yes, make my response available, but not my name and address

or

Yes, make my response and name available, but not my address

(c) The name and address of your organisation **will be** made available to the public (in the Scottish Government library and/or on the Scottish Government web site).

Are you content for your **response** to be made available?

Please tick as appropriate Yes No

(d) We will share your response internally with other Scottish Government policy teams who may be addressing the issues you discuss. They may wish to contact you again in the future, but we require your permission to do so. Are you content for Scottish Government to contact you again in relation to this consultation exercise?

Please tick as appropriate Yes No

CONSULTATION QUESTIONS

Please identify the main area of interest you identify with :

Local Authority / Planning Authority

Nature Conservation

Fisheries

Industry/Transport

Energy

Aquaculture

Recreation/tourism

Academic/scientific

Community group

Public sector/Regulatory body

Local Coastal Partnership

Other (Please state)

Comments

1. Is the Draft Circular on the relationship between the land use and marine planning systems helpful?

Comments

Q2. Does the Draft National Marine Plan appropriately set out the requirement for integration between marine planning and land use planning systems?

Comments

Q3. Do you agree with the suggestions for good practice in paragraphs 30-39, and do you have any other suggestions?

Comments



**The Scottish
Government**
Riaghaltas na h-Alba

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ISBN: 978-1-78256-768-4 (web only)

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St Andrew's House
Edinburgh
EH1 3DG

Produced for the Scottish Government by APS Group Scotland
DPPAS14511 (07/13)

Published by the Scottish Government, July 2013

www.scotland.gov.uk