

# **Proposals to extend marine planning zones out to 12 nautical miles**

## **Impact Assessments**

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## Introduction

Marine planning zones set out the spatial limits for particular local authorities responsibilities for planning controls of marine fish and shellfish farms in Scottish waters.

In 2007 the definition of “development” in the [Town and Country Planning \(Scotland\) Act 1997](#) (“the 1997 Act”) was extended to include fish and shellfish farming out to 12 nautical miles. This means that any proposed marine fish or shellfish farm located between 0-12 nautical miles requires planning permission from the relevant planning authority.

[The Town and Country Planning \(Marine Fish Farming\) \(Scotland\) Order 2007](#) (“the 2007 Order”) designated Scotland’s marine planning zones as extending out to 3 nautical miles. Full details on the policy intention and approach to designating the marine planning zones can be viewed in the [Consultation Paper on Defining Marine Boundaries for Fish Farming](#), published on 31 October 2005

In practice this means that there is no planning authority to which a developer may submit an application for a farm located between 3-12 nautical miles.

It is therefore proposed that the marine planning zones should be extended to 12 nautical miles (excluding those marine planning zones that are enclosed by other marine planning zones), to enable businesses to explore opportunities to develop fish and shellfish farms in this zone.

Extension of the marine planning zones would be carried out by the means of an affirmative Scottish Statutory Instrument (SSI) to amend [The Town and Country Planning \(Marine Fish Farming\) \(Scotland\) Order 2007](#).

The Scottish Government is required to consider the impacts of proposed policies, plans or strategic decisions in relation to equalities, various societal groups and sectors, data protection and the environment, under a range of legislation and commitments.

Given the amendment regulations will be of an administrative and technical nature, we have screened out a number of the impact assessments. Further detail is set out throughout this document.

## What are the impact assessments?

### What is an Equalities Impact Assessment (EQIA)?

An EQIA aims to consider how a policy (a policy can cover: activities, functions, strategies, programmes, and services or processes) may impact, either positively or negatively, on different sectors of the population in different ways.

The Equality Act 2010 harmonised existing equality legislation. It covers the characteristics of age, disability, gender reassignment, sex including pregnancy and maternity, race, religion and belief, and sexual orientation.

The Equality Act 2010 includes a public sector equality duty ('the general Duty') which requires public authorities to pay due regard to the need to:

- Eliminate discrimination, harassment, victimisation or any other prohibited conduct;
- Advance equality of opportunity; and
- Foster good relations between different groups – by tackling prejudice and promoting understanding.

In 2012 Scottish Ministers made regulations that placed specific duties on Scottish public bodies to help them meet the general Duty. These include a requirement to assess the impact of new policies or practices.

### What is the Child Rights and Wellbeing Impact Assessment (CRWIA)?

New legal requirements to extend and protect children's rights came into effect on 16 July 2024, under the United Nations Convention on the Rights of the Child (Incorporation) (Scotland) Act 2024 – also known as the UNCRC Act.

[Section 17 of the UNCRC Act](#) requires all Scottish Ministers to prepare and publish a Children's Rights and Wellbeing Impact Assessment (CRWIA) in respect of:

- all new Bills
- most Scottish Statutory Instruments
- coronavirus (COVID-19) related school closures
- all decisions of a strategic nature that relate to the rights and wellbeing of children

The Child Rights and Wellbeing Impact Assessment (CRWIA) is used to identify, research, analyse and record the impact of a proposed policy on children's human rights and wellbeing. CRWIA helps the Scottish Government consider whether it is:

advancing the rights of children in Scotland; and protecting and promoting the wellbeing of children and young people.

## **What is the Fairer Scotland Duty (FSD) assessment?**

The Fairer Scotland Duty is set out in legislation as Part 1 of the Equality Act 2010, and came into force in Scotland from April 2018. The aim of the duty is to help the public sector to make better policy decisions and deliver fairer outcomes. The duty focuses on socio-economic inequality issues such as low income, low wealth, and area deprivation.

The Fairer Scotland Duty applies to 'decisions of a strategic nature' – these are the key, high-level choices or plans that the public sector makes.

## **What is an Island Communities Impact Assessment (ICIA)?**

An Island Communities Impact Assessment (ICIA) tests any new policy, strategy or service which is likely to have an effect on an island community which is significantly different from the effect on other communities. This became a legal duty in December 2020 under the Islands (Scotland) Act 2018.

## **What is the Business and Regulatory Impact Assessment (BRIA)?**

A Business and Regulatory Impact Assessment (BRIA) looks at the likely costs, benefits and risks of any proposed primary or secondary legislation. It also covers voluntary regulation, codes of practice, guidance, or policy changes that may have an impact on the public, private or third sector.

The BRIA explains:

- the reason why the Scottish Government is proposing to intervene;
- options the Scottish Government is considering, and which one is preferred;
- how and to what extent new policies may impact on Scottish Government, business and on Scotland's competitiveness;
- the estimated costs and benefits of proposed measures.

## **What is Strategic Environmental Assessment (SEA)?**

In Scotland, public bodies and private companies operating in a public character, such as utility companies, are required to assess, consult on, and monitor the likely impacts their plans, programmes and strategies will have on the environment. This process is known as Strategic Environmental Assessment (SEA), and is required under the Environmental Assessment (Scotland) Act 2005.

SEA helps to better protect the environment, aims to ensure that any development is sustainable, and increases opportunities for public participation in decision-making. It ensures that expert views are sought at various points in the preparation process from the public and the consultation authorities, who are:

- NatureScot

- Scottish Environment Protection Agency
- Historic Environment Scotland.

### **What is a Data Protection Impact Assessment (DPIA)?**

A Data Protection Impact Assessment (DPIA) is required under the UK General Data Protection Regulation to consider the privacy implications associated with any arrangements involved in introducing new regulations. A DPIA helps to identify and minimise the data protection risks of such a project.

# Equalities Impact Assessment (EQIA)

## Equality impact assessment results

Title of policy - Proposal to extend marine planning zones out to 12 nautical miles

Summary of aims and desired outcomes of Policy - The intention is to extend marine planning zones out to 12 nautical miles by prescribing the extended marine boundaries by a Scottish Statutory Instrument (SSI).

This will close an existing gap in planning regulations. Currently, fish and shellfish farms located between 0-12 nautical miles require planning permission, however marine planning zones (which set out local planning authorities jurisdiction to consider such applications) only extend to 3 nautical miles.

In practice this means that there is no planning authority to which a developer may submit an application for a farm located between 3-12 nautical miles.

Directorate - Marine Directorate  
Division - Marine Economy and Communities  
Team - Aquaculture Regulatory Review Team

## Executive summary

EQIA Screening has been undertaken for Proposal to extend marine planning zones out to 12 nautical miles.

The intention of the proposal is to extend marine planning zones out to 12 nautical miles by prescribing the extended marine boundaries by a Scottish Statutory Instrument (SSI). This will close an existing gap in planning regulations.

Following the EQIA screening and framing processes it is considered the proposal will not have a direct impact on persons with protected characteristics.

This is because the proposal to extend the marine planning zones boundaries from 3 nautical miles out to 12 nautical miles is a technical change to resolve a gap in planning regulations, which will allow businesses to submit planning applications for proposed fish and shellfish farms in the 3-12 nautical mile zone, as they are currently able to do for proposed farms in the 0-3 nautical mile zone.

There will be no changes to the underlying planning regulations or processes. The same process for making and considering planning applications for fish and shellfish farms is to be consistent across the 0-12 nautical mile zone.

## Background

There is growing interest within the fish and shellfish farming sector to develop farms beyond 3 nautical miles from the coast. Developments in cage technology make fish farms in this region feasible. This type of innovative development has the potential to reduce environmental interactions and to support fish health and welfare in line with

the [Vision for Sustainable Aquaculture](#). There is also increasing interest in the potential for offshore shellfish farms, including through co-location opportunities with other structures.

In 2007 the definition of “development” in the Town and Country Planning (Scotland) Act 1997 (the 1997 Act) was extended to include fish and shellfish farming out to 12 nautical miles. This means all fish and shellfish farms to 12 nautical miles require planning permission from the relevant planning authorities.

The [Town and Country Planning \(Marine Fish Farming\) \(Scotland\) \(Order\) 2007](#) designated Scotland’s marine planning authority zones, however the marine planning zones were only designated out to 3 nautical miles. In practice this means that there is no planning authority to which a developer may submit an application for a farm located between 3-12 nautical miles.

When the marine planning zones were first designated in 2007, it was considered that it was highly unlikely that applications for planning permissions between 3-12 nautical miles would be lodged in the near future. It was therefore noted in [Planning Circular 1/2007](#) that the Scottish Executive would monitor the situation with further work envisaged during 2007-8 to extend the marine planning zones out to 12 nautical miles. This work was not undertaken and as such there remains a legislative gap.

## **Objective**

Recognising that fish and shellfish farms require planning permission to operate from 3–12 nautical miles, the proposed amendment will extend existing marine planning zones out to 12 nautical miles thereby allowing developers to submit applications for farm developments to the relevant planning authority. This will maintain consistency in the planning regulations for farms located out to 12 nautical miles.

## **The Scope of the EQIA**

An initial EQIA screening process was undertaken which identified the proposal to extend marine planning zones may indirectly result in people being employed, as the proposal will allow businesses to seek to develop new farms in the 3-12 nautical mile zone.

A subsequent EQIA framing process has been undertaken to assess whether the proposal to extend marine planning zones would impact on people with protected characteristics.

The Equality Act 2010 provides a framework to ensure we address inequality for people with protected characteristics listed in the act. These are:

- age
- disability (physical and mental)
- gender reassignment



- marriage and civil partnership (applies to employment - the Equality Act 2010 states that a person must not be discriminated against in employment because they are married or in a civil partnership)
- pregnancy and maternity
- race
- religion or belief
- sex
- sexual orientation

### Key Findings

It is considered the proposed extensions to marine planning zones will not have an impact on persons with protected characteristics. The proposal to extend the marine planning zones boundaries from 3 nautical miles out to 12 nautical miles is a technical change to resolve a gap in planning regulations, which will allow businesses to submit planning applications for proposed fish and shellfish farms in the 3-12 nautical mile zone, as they are currently able to do for proposed farms in the 0-3 nautical mile zone.

There will be no changes to the underlying planning regulations or processes and the same process for making and considering planning applications for fish and shellfish farms would be consistent across the 0-12 nautical mile zone

### Recommendations and Conclusion

It is considered that an EQIA is not required.

A public consultation is intended to be launched to seek views from stakeholders and the wider public on the proposals to extend marine planning zones. Should any responses raise issues in regard to impacts on protected characteristics, the requirement for an EQIA will be reassessed.

**I confirm that the decision to not carry out an EQIA has been authorised by:**

Name and job title of Deputy Director (or equivalent)	Date authorisation given
Malcolm Pentland, Deputy Director and Head of the Marine Economy and Communities Portfolio, Marine Directorate	29 August 2024

# **Child Rights and Wellbeing Impact Assessment (CRWIA)** for Proposals to Extend Marine Planning Zones out to 12 Nautical Miles

## **Disclaimer**

This document is an assessment of the likely effects of proposals to extend marine planning zones out to 12 nautical miles on the rights and wellbeing of children and Scottish Government will continue to review and update this document where required during the parliamentary process. Any future iterations will reflect an increased understanding of these impacts as the amount of evidence available continues to grow.

This impact assessment should be read in conjunction with:

Business and Regulation Impact Assessment

Strategic Environment Assessment Screening and Determination

Island Communities Impact Assessment

Equality Impact Assessment

Fairer Duty Scotland Assessment

Data Protection Impact Assessment

# Child Rights and Wellbeing Impact Assessment

A glossary of terms can be found at the bottom of this document

## Introduction

### 1. Brief Summary

The policy purpose of the proposals to extend marine planning zones out to 12 nautical miles is to resolve an existing gap in aquaculture planning regulations.

There is growing interest within the fish and shellfish farming sector to develop farms beyond 3 nautical miles from the coast. Developments in cage technology make fish farms in this region feasible. This type of innovative development has the potential to reduce environmental interactions and to support fish health and welfare in line with the [Vision for Sustainable Aquaculture](#). There is also increasing interest in the potential for offshore shellfish farms, including through co-location opportunities with other structures.

Under the Town and Country Planning (Scotland) Act 1997 (“the 1997 Act”), fish and shellfish farming is considered as a “development” between 0-12 nautical miles and any proposed farms in this zone require planning permission.

The Town and Country Planning (Marine Fish Farming) (Scotland) (Order) 2007 (“the 2007 Order”), designates Scotland’s marine planning zones, which set out the area for local planning authorities responsibilities for planning controls of marine fish and shellfish farms in Scottish waters. The existing marine planning zones only extend out to 3 nautical miles.

In practice this means that there is no planning authority to which a developer may submit an application for a farm located between 3 -12 nautical miles.

In accordance with section 17 of the United Nations Convention on the Rights of the Child (Incorporation) (Scotland) Act 2024, this will be:

- A Scottish Statutory Instrument made by Scottish Ministers other than a commencement instrument

Type of proposal (Please tick):

Bill  SSI

Name the proposal, and describe its overall aims and intended purpose.

The intention is to extend marine planning zones out to 12 nautical miles by prescribing the extended marine boundaries by a Scottish Statutory Instrument.

The intention is that, following public consultation on the proposal to extend marine planning zones, an Order to amend the relevant regulations would come into force in Spring 2025,

The proposed amendment to the original 2007 Order is an administrative exercise to extend the marine planning zones boundaries from 3 nautical miles out to 12 nautical miles, providing a mechanism for developers to bring forward proposals for farm developments in the 3-12 nautical mile zone, as they are currently able to do for farm developments located within the 0-3 nautical mile zone.

The extension to marine planning zones will not introduce any new regulations or processes. The existing planning regulations already apply across the 0-3 nautical mile zone and an extension to marine planning zones would be a technical change to designate the relevant local planning authority as the decision maker, granting them the ability to consider applications made for developments across the whole 0-12 nautical mile zone.

It is considered this proposal is outwith the scope of a CRWIA, as any potential impacts would only arise if and when an application for a farm is made

Start date of proposal's development: 02/04/24

Start date of CRWIA process: 03/07/24

2. With reference given to the requirements of the UNCRC (Incorporation) (Scotland) Act 2024, which aspects of the proposal are relevant to children's rights?

The proposal to extend marine planning zones out to 12 nautical miles includes no aspects or changes that are relevant to children's rights.

The proposed extension to marine planning zones is an administrative exercise which will allow developers to submit planning applications for fish and shellfish farms to the relevant local authorities between 3 and 12 nautical miles. There are no changes to underlying planning regulations or process by which applications would be considered. As such, it is considered this proposal would not impact on children's rights.

3. Please provide a summary of the evidence gathered which will be used to inform your decision-making and the content of the proposal.
  - Review of current regulations relevant to aquaculture planning
  - Review of previous consultation exercises carried out in relation to the development of current aquaculture planning regulations
  - Engagement with Scottish Government Legal Directorate (SGLD) on options to resolve the existing gap in aquaculture planning regulations
  - Engagement with Planning, Architecture and Regeneration Division (PARD) on the process for consulting on proposed changes to planning regulations

- Engagement with Marine Directorate Geographic Information Systems (GIS) team on mapping the extended marine planning zones
- A public consultation is intended to be launched to seek views from stakeholders and the wider public on the proposals to extend marine planning zones. The consultation paper will include all relevant impact assessment carried out, including the CRWIA. Should any relevant responses to the consultation be in relation to child rights and wellbeing, this impact assessment will be updated and republished if required

4. Further to the evidence described at '3' have you identified any 'gaps' in evidence which may prevent determination of impact? If yes, please provide an explanation of how they will be addressed

The proposed SSI to extend the marine planning zones out to 12 nautical miles itself will not directly result in any impacts on Childrens Rights and Wellbeing.

Potential impacts to children's rights and wellbeing would only arise when an application for a development is made. The planning regulations will apply to assess and manage any potential effects following an application. Any future iterations or developments of this policy will be assessed to determine whether there are any effects on children's rights and wellbeing and address any anticipated gaps in evidence when the developments in these policy areas arise.

### Analysis of Evidence

5. Please explain what the evidence told you about the impact of the proposal on the rights and wellbeing of children and young people.

Following development of the proposal and assessment of potential impacts on the rights and wellbeing of children through the CRWIA, it is considered this proposal will not impact on children's rights and wellbeing.

6. What changes (if any) have been made to the proposal as a result of this assessment?

N/A

### Conclusion

7. As a result of the evidence gathered and analysed against all UNCRC requirements, what is the potential overall impact of this proposal on children's rights?

Positive  Negative  Neutral  No impact

8. If you have identified a positive impact on children's rights, please describe below how the proposal will protect, respect, and fulfil children's rights in Scotland.

N/A

9. If a negative impact has been identified please describe below. Is there a risk this could potentially amount to an incompatibility?

N/A

#### Mitigation Record

What options have been considered to modify the proposal in order to mitigate negative impact or potential incompatibility issues?

No action taken as no impacts identified

10. As a result of the evidence gathered and analysed against all wellbeing indicators, will the proposal contribute to the wellbeing of children and young people in Scotland?

Yes  No

If yes, please provide an explanation below:

11. How will you communicate to children and young people the impact that the proposal will have on their rights?

A copy of this CRIWA will be published on the [legislation.gov.uk](http://legislation.gov.uk) website alongside the SSI and will also be included in the public consultation document and published separately on Publications - [gov.scot](http://gov.scot) ([www.gov.scot](http://www.gov.scot)) so will be in the public domain for those wishing to read it. The CRWIA has also been written with accessibility in mind and should be understandable to those wishing to read its content and the potential impacts/ no impacts of the SSI.

#### Post Assessment Review and sign-off

12. Planning for the review of impact on children's rights and wellbeing

As part of the decision-making process, plans for reviewing the impact on children's rights and wellbeing need to be developed.

- How will the impact of the proposal on children's rights and wellbeing be monitored?

Any future iterations or developments of this policy will be assessed to determine whether there are any effects on children's rights and wellbeing

- When will you review and update the CRWIA if required?

Any future iterations or developments of this policy will be assessed to determine whether there are any effects on children's rights and wellbeing and this CRWIA will be updated as required

### 13. Sign off

Policy Lead Signature & Date of Sign Off: Joe Triscott – 26/07/2024

Deputy Director Signature & Date of Sign Off: Malcolm Pentland, 29/08/2024

## Glossary of terms

Aquaculture - the farming of plants or animals in the water for food or other purposes. Aquaculture includes fish farming, shellfish farming and seaweed farming.

Environmental interactions – the impact a development may have on the surrounding environment, in the case of aquaculture this may include impact on the water environment from wastes, or on surrounding wildlife due to the presence of farmed animals and farm equipment.

Local planning authority – is part of a local authority council (such as Shetland Council, or Glasgow City Council) which is responsible for assessing planning applications and deciding whether that application is granted or rejected.

Marine planning zone – a defined area of the sea in which local planning authorities are responsible for assessing planning applications for fish and shellfish farms

Nautical miles – a unit of distance used in the sea. 1 nautical mile = 1.15 miles or 1852 metres

Planning - the planning system is used to make decisions about new buildings and infrastructure, or changes to existing buildings and infrastructure. It decides where development should happen, where it should not and how development affects its surroundings.

Regulations – rules made by an authority, this case by the Scottish Government

Scottish Ministers – are the people who oversee the operation of the Scottish Government. Scottish Ministers are all Members of the Scottish Parliament (MSPs), who have been elected into the Scottish Parliament

Scottish Statutory Instrument – are a type of power used by the Scottish Government to change existing regulations

# Fairer Scotland Duty (FSD) Assessment

## Assessment not required declaration

Policy title: Proposals to extend marine planning zones out to 12 nautical miles

Directorate: Marine Directorate

Portfolio: Marine Economy and Communities

Team: Aquaculture Development and Regulatory Review

Policy lead responsible for taking the decision: Joe Triscott

### Rationale for decision

The objective of the proposal is to close an existing gap in marine fish farming planning regulations, by extending marine planning zones to 12 nautical miles.

At present, any proposed marine fish or shellfish farm sited between 0-12 nautical miles from Scotland's coast requires planning permission, but current marine planning zones (which give local authority planners the power to consider such applications) only cover the area between 0-3 nautical miles.

When the marine planning zones were first designated in 2007, it was considered that it was highly unlikely that applications for planning permissions between 3-12 nautical miles would be lodged in the near future. It was therefore noted in Planning Circular 1/2007 that the Scottish Executive would monitor the situation with further work envisaged during 2007-8 to extend the marine planning zones out to 12 nautical miles. This work was not undertaken and as such there remains a legislative gap.

Extension of the marine planning zones would be carried out by the means of an affirmative Scottish Statutory Instrument (SSI) to amend The Town and Country Planning (Marine Fish Farming) (Scotland) Order 2007

It is considered the proposal does not represent a new strategic direction, but is an extension of existing planning powers out to 12 nautical miles, which has previously been indicated as an intention by Scottish Government. The provisions of the proposal should not have any direct implications for inequalities arising from socio-economic disadvantage. As such a Fairer Scotland Duty Assessment is not required.

I confirm that the decision to not carry out a Fairer Scotland assessment has been authorised by:

Malcolm Pentland - Deputy Director and Head of the Marine Economy and Communities Portfolio, Marine Directorate

29 August 2024



# Island Communities Impact Assessment (ICIA) - Partial

Note: Relevant sections of this partial island communities impact assessment may be updated following the public consultation on the proposed extensions to marine planning zones. The final impact assessment will then be published via the [Scottish Government Publications Website](#)

Name of Policy, Strategy or Service - Proposals to extend marine planning zones out to 12 nautical miles

## Step one – Develop a clear understanding of your objectives

What are the objectives of the policy, strategy or service? - The objective of the proposal is to close an existing gap in marine fish farming planning regulations, by extending marine planning zones to 12 nautical miles. This will be achieved by laying an SSI to amend the relevant regulations

What are the intended impacts/ outcomes and how do these potentially differ across the islands? - At present, any proposed marine fish or shellfish farm sited between 0-12 nautical miles from Scotland's coast require planning permission, but current marine planning zones (which give local authority planners the power to consider such applications) only cover the area between 0-3 nautical miles. The proposed Order will close this existing gap in planning regulations.

It is considered there will be no differing impacts across islands, as the intention is to extend marine planning zones to 12 nautical miles for all local authorities, including island local authorities.

## Step two – Gather your data and identify your stakeholders

What data is available about the current situation in the islands? - The number of fish and shellfish farms operating from each island is available through National Marine Plan Interactive. Data on finfish and shellfish production and direct employment is available on a regional level (including Orkney, Shetland and Comhairle nan Eilean Siar) but not at the individual island level (e.g. Skye and small Isles would fall under Highland Region).

Who are your key Stakeholders? - Aquaculture area communities, aquaculture businesses, regulators (including local authority planners), statutory consultees to the aquaculture planning process and NGOs

How does any existing data differ between islands? - Shetland has the highest numbers of aquaculture sites. Orkney, Lewis/Harris, the Uists, Skye and Mull have fewer farms but are still relatively well developed. A range of other islands have a small numbers of farms (1-3) such as Barra, Gigha, Rum, Muck, Colonsay, Arran, Eigg and Islay.

### **Step three - Consultation**

Is there information already gathered through previous engagements? - Prior to the designation of the current marine planning zones via The Town and Country Planning (Marine Fish Farming) (Scotland) Order 2007, engagement on how each marine planning zone boundary should be defined was carried out through a public consultation. Responses to the consultation informed the boundaries between each marine planning zone.

Consultees included groups associated with island communities including; local authorities, fisherman's federations, fishery boards, aquaculture groups, yachting associations and port authorities.

The proposed order does not change the delineation of existing marine planning zone boundaries between each local authority area. The intent is to extend the existing marine planning zones from the current 3 nautical mile limit, out to 12 nautical miles.

How will you carry out your consultation and in what timescales? Public meetings/Local Authorities/key Stakeholders - The proposed extensions to marine planning zones will be presented for input from relevant stakeholder groups via a public consultation, which will be open for 12 weeks. It is estimated the public consultation will launch during September 2024 and close during November 2024

What questions will you ask when considering how to address island realities? - The public consultation will set out the proposed extensions to marine planning zones and the reasons for doing so. Stakeholder groups and individuals with links to island communities will be able to feedback on the appropriateness of these extensions and raise any additional points should they disagree with the proposal.

Separate consultation events for Island communities/Local Authorities? - There are no intended separate consultation events for island communities and Local Authorities. It is considered the public consultation will provide the opportunity for island voices to be considered.

### **Step four - Assessment**

Does your assessment identify any unique impacts on island communities? - There are no anticipated unique impacts on island communities arising from the proposed Order

Does your assessment identify any potential barriers or wider impacts? - There are no anticipated potential barriers or wider impacts arising from the proposed Order

Are there mitigations already in place for these impacts raised? - N/A

## **Is a full Island Communities Impact Assessment required?**

You should now determine whether, in your opinion, your policy, strategy or service is likely to have an effect on an island community which is significantly different from its effect on other communities (including other island communities). To form your opinion, the following questions should be considered:

Are there mitigations in place for the impacts identified and noted above from stakeholders and community consultations? - There are no anticipated potential barriers or wider impacts arising from the proposed Order and as such no specific mitigations in place

Does the evidence show different circumstances or different expectations or needs, or different experiences or outcomes (such as levels of satisfaction, or different rates of participation)? - Evidence from island stakeholders in response to the public consultation will inform this section

Are these different effects likely? - To be updated following public consultation

Are these effects significantly different? - To be updated following public consultation

Could the effect amount to a disadvantage for an island community compared to the mainland or between island groups? - To be updated following public consultation

# **Business and Regulatory Impact Assessment (BRIA) – Partial**

Note: Relevant sections of this partial Business and Regulatory Impact Assessment will be updated following the public consultation on the proposed extensions to marine planning zones. The final impact assessment will then be published via the [Scottish Government Publications Website](#)

## **Title of Proposal**

Proposals to extend marine planning zones out to 12 nautical miles.

## **Purpose and Intended Effect**

### **Background**

There is growing interest within the fish and shellfish farming sector to develop farms beyond 3 nautical miles from the coast. Developments in cage technology make fish farms in this region feasible. This type of innovative development has the potential to reduce environmental interactions and to support fish health and welfare in line with the [Vision for Sustainable Aquaculture](#). There is also increasing interest in the potential for offshore shellfish farms, including through co-location opportunities with other structures.

In 2007 the definition of “development” in the Town and Country Planning (Scotland) Act 1997 (the 1997 Act) was extended to include fish and shellfish farming out to 12 nautical miles. This means all fish and shellfish farms to 12 nautical miles require planning permission from the relevant planning authorities.

The Town and Country Planning (Marine Fish Farming) (Scotland) (Order) 2007 designated Scotland’s marine planning authority zones, however the marine planning zones were only designated out to 3 nautical miles. In practice this means that there is no planning authority to which a developer may submit an application for a farm located between 3 -12 nautical miles.

When the marine planning zones were first designated in 2007, it was considered that it was highly unlikely that applications for planning permissions between 3-12 nautical miles would be lodged in the near future. It was therefore noted in [Planning Circular 1/2007](#) that the Scottish Executive would monitor the situation with further work envisaged during 2007-8 to extend the marine planning zones out to 12 nautical miles. This work was not undertaken and as such there remains a legislative gap.

### **Objective**

Recognising that fish and shellfish farms require planning permission to operate from 3–12 nautical miles, the proposed amendment will extend existing marine planning zones out to 12 nautical miles, allowing developers to bring forward proposals for

farm developments, while maintaining consistency in the planning regulations for farms located across the 0-12 nautical mile zone.

## **Rationale for Government intervention**

Scottish Government is making this proposal as it is only through amendment to the existing regulations that this existing gap in the planning process can be resolved. Without intervention, fish and shellfish farms will be unable to be developed beyond 3 nautical miles.

The proposal contributes to the following national planning Framework objectives:

- **Economy** - We have a globally competitive, entrepreneurial, inclusive and sustainable economy
- **Fair Work and Business** - We have thriving and innovative businesses, with quality jobs and fair work for everyone

## **Consultation**

### **Within Government**

#### Planning, Architecture and Regeneration Division (PARD)

PARD have been engaged with throughout the development of this proposal as the amendment will be to planning regulations. PARD have advised on potential solutions to address the outstanding issue, and on best practice for managing a public consultation in regards to amending planning regulations.

#### Scottish Government Legal Directorate (SGLD)

SGLD have advised on the options to amend regulations to resolve the outstanding issue.

#### Scottish Government Regulators

Scottish Government regulators responsible for fish and shellfish farming have also been consulted – Marine Directorate Licensing Operations Team and Fish Health Inspectorate.

## **Public Consultation**

Informal consultation has been carried out with planners from local authorities where fish and shellfish farm development currently takes place. consultation when launched.

In addition, informal consultation has taken place with Heads of Planning Scotland (HoPS) and The Convention of Scottish Local Authorities (COSLA)

Informal consultation has also taken place with the other relevant non-SG regulators; Scottish Environment Protection Agency (SEPA) and the Crown Estate Scotland in respect of their role as sea bed owner.

A public consultation will invite formal responses to the proposals from these public bodies and other relevant organisations and stakeholders

## **Business**

We will invite views on this partial BRIA as part of the public consultation. We also intend to promote this consultation to business organisations representing the relevant sectors.

## **Options**

- Option 1 – Do nothing

No regulatory amendments carried out. Fish and shellfish developers will be unable to obtain planning permission to develop beyond 3 nautical miles.

- Option 2 (Preferred Option) – Extend marine planning zones to 12 nautical miles

Consult on proposals to designate the relevant planning authorities and the marine planning zones between 3 – 12 nautical miles. Fish and shellfish developers can apply for planning permission to develop beyond 3 nautical miles.

- Option 3 – Remove requirement for planning permission for fish and shellfish farms located between 3-12 nautical miles

Determine that fish and shellfish farming is not development between 3-12 nautical miles, therefore not requiring planning permission.

## **Sectors and Groups Affected**

### **Businesses**

Fish and shellfish farming businesses are currently prevented from developing farms in the region between 3-12 nautical miles due to the existing gap in planning regulations. Resolving this issue will enable businesses to explore opportunities to site farms in these regions which have the potential to support increased production, reduce environmental interactions and to support fish health and welfare. Development beyond 3 nautical miles has the potential to see innovation delivered in Scotland, alongside realisation of the wider employment and supply chain benefits which will come as a result.

Businesses will be invited to respond to the public consultation. This section of the BRIA will be updated following input from relevant organisations

### **Local Authorities**

Existing regulations require fish and shellfish farms located between 3-12 nautical miles to obtain planning permission, however the current marine planning zones, only extend to 3 nautical miles. This means that prospective developers are unable to make an application for planning consent in the 3-12 nautical mile zone as there is no planning authority designated to whom they can apply to. Extending marine planning zones to 12 nautical miles would designate the planning authorities in the extended 3-12 nautical mile zones and allow local planning authorities to consider applications.

Extension of the marine planning zones would also ensure consistency in the planning application process for fish and shellfish farm development across the 0-12 nautical mile region, which is already well understood by businesses, regulators and other stakeholders.

Initial consultation with relevant local planning authorities, COSLA and Heads of Planning, has found that these organisations are open to the proposal and they will be invited to respond to the public consultation.

### **Other Regulators**

The existing gap in planning regulations does not directly impact on other fish and shellfish farming regulators. However resolving this issue would mean developers are more likely to apply for the other permits required to operate a farm, meaning regulators will need to consider applications for farms in new areas.

Initial consultation with relevant regulators has found that these organisations are open to the proposal and they will be invited to respond to the public consultation. This section of the BRIA will be updated following input from relevant organisations

### **Communities**

The existing legislative gap which prevents businesses from exploring opportunities to develop fish and shellfish farms between 3-12 nautical miles may be indirectly impacting on communities as a block on inward investment into coastal and island communities, resulting in direct and indirect employment opportunities, as well as potential investment in coastal and island infrastructure.

Extension of the marine planning zones would ensure communities remain able to comment on planning applications for fish and shellfish farm proposals, through the existing and well understood mechanisms to do so.

Community groups will be invited to respond to the public consultation. This section of the BRIA will be updated following input from relevant individuals and groups.

### **Benefits**

Option 1: Do nothing

There are no benefits arising from this approach. Fish and shellfish farms have no route to achieve planning permission for farms located between 3-12 nautical miles.

## Option 2 – Extend marine planning zones to 12 nautical miles

Will close the existing legislative gap, which Scottish Government has previously indicated would be resolved through extending the marine planning zones.

Provides a mechanism to achieve planning permission.

Will mean there would be consistency in planning requirements for fish farm developments across the 0-12 nautical mile zone, which are already well understood by businesses, regulators and other stakeholders.

Will enable the development of an innovative form of aquaculture that has the potential to reduce environmental interactions and to support fish health and welfare in line with the Vision for Sustainable Aquaculture.

## Option 3 – Remove requirement for planning permission for fish and shellfish farms located between 3-12 nautical miles

Will close the existing legislative gap

### **Costs**

#### Option 1: Do nothing

There would be no direct costs associated with Option 1, however the continuation of the gap in planning regulations may mean reduced inward investment into the Scottish aquaculture sector, as global aquaculture businesses consider opportunities to develop in the 3-12 nautical mile zone.

#### Option 2 – Extend marine planning zones to 12 nautical miles

There will be Scottish Government resourcing implications to progress with this option, however these will be limited to policy support to analyse the consultation and, where necessary, progress secondary legislation.

The extension of marine planning zones is not considered to have a significant impact on planning authority costs. Planning authorities implement a charging regime to support the planning system which aims to operate on a cost recovery basis. Fish and shellfish farms beyond 3 nautical miles will be subject to similar assessment procedures, including EIA and HRA, and therefore we expect costs of processing application to remain largely the same. If this is found not to be the case, a separate fee structure could be considered for fish and shellfish farms from 3 – 12 nautical miles in future.

#### Option 3 – Remove requirement for planning permission for fish and shellfish farms located between 3-12 nautical miles

This approach would result in a dual regime ( 0-3 nautical miles vs 3–12 nautical miles), whereas it may be preferential to maintain a consistent regulatory regime for fish and shellfish farms. Particularly in cases where proposed developments may cross over the 3 nautical mile line.



Marine Licensing would become the primary method of consenting fish farms in the 3-12 nautical mile zone, requiring investment in staffing within the Scottish Government's Marine Licence Operation Team.

It is likely establishing processes for Marine Licensing to assess applications for fish and shellfish farm proposals will take a longer time compared to planning authorities having established processes, allowing applications to be made as soon as the proposed Order enters into force.

## **Regulatory and EU Alignment Impacts**

### **Intra-UK Trade**

Is this measure likely to impact on intra-UK trade? No.

### **International Trade**

Is this measure likely to impact on international trade and investment? Yes – Closing the existing gap in planning regulations will enable businesses to explore opportunities to develop fish and shellfish farms between 3-12 nautical miles, which may result in inward investment

### **EU Alignment**

Is this measure likely to impact on the Scottish government's policy to maintain alignment with the EU? No

### **Scottish Firms Impact Test**

Views from business and industry interests are will be invited as part of the public consultation process. This section of the BRIA will be updated following input from relevant organisations

### **Competition Assessment**

There are no obvious impacts on competition from the proposed extension to marine planning zones.

The extension will allow fish and shellfish farm businesses to consider opportunities to develop in the 3-12 nautical mile zone. There will also be opportunities for a range of supply chain businesses to compete for contracts to help develop and service any new farms established in the 3-12 nautical mile zone

### **Consumer Assessment**

The Scottish Government definition of a consumer is "anyone who buys goods or digital content, or uses goods or services either in the private or public sector, now or in the future". It is not anticipated that the proposed extension to marine planning zones will have any impact on consumers

## **Test Run of Business Forms**

Implementing the proposed extension to marine planning zones will not introduce any new statutory business forms. The planning application procedures currently used for fish and shellfish farm developments in the 0-3 nautical mile zone, will also be used for applications in the 3-12 nautical mile zone.

## **Digital Impact Test**

It is not considered that the proposed extension to marine planning zones will have any impact on digital technologies or on traditional or offline businesses.

## **Legal Aid Impact Test**

The proposed extension to marine planning zones would not affect claims for legal aid.

## **Enforcement, Sanctions and Monitoring**

The proposal to extend marine planning zones will mean there is consistent approach to regulating fish and shellfish farms within the 0-12 nautical mile zone in terms of planning.

Local authority planners, following due process and consideration of input from statutory and non-statutory consultees, will determine whether or not an application for development of farms within 0-12 nautical miles, are accepted or rejected. The appeals process will also be consistent for applications made for proposed developments across this zone.

Local authority planners will also be able to apply conditions to planning consents for fish and shellfish farms, as is currently the case for farms located between 0-3 nautical miles. Local authorities have a range of enforcement options that can be taken forward should conditions not be met

## **Implementation and Delivery Plan**

Scottish Ministers may by Order, designate a planning authority for an area not currently covered by a marine planning zone. The mechanism for doing this is to amend the Town and Country Planning (Marine Fish Farming) (Scotland) Order 2007 which sets out the current marine planning zones, and replace them with new marine planning zones which extend out to 12 nautical miles.

Existing legislation requires consultation with local authorities and SEPA before designating or changing the marine planning zones. However, we intend to issue a public consultation on the proposal this autumn, seeking views from a wide range of stakeholders on designating the planning authorities 3 – 12 nautical miles and with the intention of laying an affirmative SSI in the Scottish Parliament in early 2025.

## **Post-implementation Review**

A review of whether the legislation is still fit for purpose will take place within 10 years of the amendment coming into force.

## Summary and Recommendation

It is recommended that **Option 2 – Extend marine planning zones to 12 nautical miles** is put forward in a public consultation as the preferred option to resolve the existing gap in planning regulations, which requires that fish and shellfish farms out to 12 nautical miles require planning permission, but where the relevant marine planning zones only extend to 3 nautical miles.

Resolving this through the preferred option will close an existing legislative gap, which Scottish Government has previously indicated would be resolved through this option.

Will mean there would be consistency in planning requirements for fish farm developments across the 0-12 nautical mile zone, which are already well understood by businesses, regulators and other stakeholders.

It will enable the development of an innovative form of aquaculture that has the potential to reduce environmental interactions and to support fish health and welfare in line with the Vision for Sustainable Aquaculture.

There will be Scottish Government resourcing implications to progress with this option, however this has been addressed by including this work within the annual delivery plans for the relevant directorates.

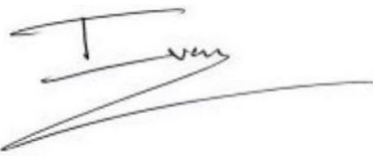
The extension of marine planning zones is not considered to have any additional costs for local authorities as the planning system operates on a cost recovery basis, with developers being charged for applications made.

## Declaration and Publication

### Sign-off for Partial BRIAs:

I have read the Business and Regulatory Impact Assessment and I am satisfied that, given the available evidence, it represents a reasonable view of the likely costs, benefits and impact of the leading options. I am satisfied that business impact has been assessed with the support of businesses in Scotland.

Signed:



Date: 04/09/24

Minister's name: Ivan McKee

Minister's title: Minister for Public Finance

**Scottish Government Contact point:** Joe Triscott, Marine Directorate

# **Strategic Environmental Assessment (SEA)**

## **Screening**

Responsible Authority - Scottish Government, although the plan will set the boundaries in which the consenting authority (the local planning authority) will determine an application for planning consent.

Title of the plan - Proposal to extend marine planning zones out to 12 nautical miles.

The intention is to extend marine planning zones out to 12 nautical miles by prescribing the extended marine boundaries by a Scottish Statutory Instrument (SSI).

What prompted the plan - There is growing interest within the fish and shellfish farming sector to develop farms between 3-12 nautical miles from the coast. Developments in cage technology make fish farms in this region feasible.

This type of innovative development has the potential to reduce environmental interactions and to support fish health and welfare in line with the Vision for Sustainable Aquaculture.

There is also increasing interest in the potential for offshore shellfish farms, including through co-location opportunities with other marine structures.

A review of the consenting framework for fish and shellfish farms between 3-12 nautical miles identified an existing gap in planning regulations.

Plan subject - Section 5(3) of the 2005 Act - Town and County Planning and Schedule, 1 Part 2, 23(6) of the 2005 Act – Fish Farming

Screening is required by the Environmental Assessment (Scotland) Act 2005 – It is our view is that an SEA is not required, as the environmental effects are unlikely to be significant: Please indicate below what Section of the 2005 Act this plan falls within

X Section 5(3)      0 Section 5(4)

Contact details: Jane Rougvie

Date: 23 July 2024

Context of the Plan - The plan is not a high level strategy or implementation plan, but relates to laying an SSI to resolve a specific administrative issue in existing aquaculture planning regulations. The SSI does not impact on any other sector as it relates only to marine fish and shellfish farm planning zones.

Under the Town and Country Planning (Scotland) Act 1997 (“the 1997 Act”), fish and shellfish farming is considered as a “development” between 0-12 nautical miles and any proposed farms in this zone require planning permission.

The Town and Country Planning (Marine Fish Farming) (Scotland) (Order) 2007 (“the 2007 Order”), designates Scotland’s marine planning zones; this sets out the spatial limits for coastal planning authorities in respect of their responsibilities for planning controls of marine fish and shellfish farms in Scottish waters. The existing marine planning zones only extend out to 3 nautical miles.

In practice this means that there is no planning authority to which a developer may submit an application for a farm located between 3-12 nautical miles.

Description of the Plan - This is simply an administrative exercise to set out the marine planning zone boundaries to align marine planning zones with the definition of marine fish farming development under the 1997 Act.

The intention is that, following public consultation on the proposal to extend marine planning zones, an SSI to amend the relevant regulations would be laid in the Scottish Parliament.

The proposed amendment to the original 2007 Order will extend the marine planning zones boundaries from 3 nautical miles out to 12 nautical miles providing a mechanism for developers to bring forward proposals for farm developments in the 3-12 nautical mile zone, as they are currently able to do for farm developments located within the 0-3 nautical mile zone

This is consistent with the policy intention of [Planning Circular 1/2007](#) and plugs the legislative gap by providing a designated marine planning zone for each coastal planning authority out to 12 nautical miles.

What are the key components of the plan? - The key component of the plan is to extend the boundary of the current marine planning zones from 3 nautical miles out to 12 nautical miles.

Have any of the components of the plan been considered in previous SEA work? - This is essentially an extension of the marine planning zones as described under the 2007 Order. The environmental principles and controls are already in place under the 1997 Act. Potential environmental impacts would only arise when an application for development is submitted for planning consent and existing planning legislation will apply to assess and manage any environmental effects.

In terms of your responses above, set out those components of the plan that are likely to require screening - It is considered that there are no components of this plan that are likely to require screening.

The proposed SSI to extend the marine planning zones out to 12 nautical miles itself will not directly result in any environmental impacts. Potential impacts would only arise when an application for a farm is made.

The extension to marine planning zones will mean existing environmental assessment processes will continue to apply along with any controls specified under any planning condition consented for all developments within the 0-12 nautical mile zone.

Any application that is made for a fish or shellfish farming development which also falls within the Environmental Impact Assessment (EIA) regulations, will be required to undergo an EIA.

Any proposed development which is likely to have an adverse effect on a protected 'European Site' will be required to undergo a Habitats Regulations Appraisal



Identifying interactions of the plan with the environment and considering the likely significance of any interactions on the following - Biodiversity, flora and fauna, population and human health, soil, water, air, climatic factors, material assets, cultural heritage, landscape, inter-relationship issues

Plan Components – This is a proposed amendment to the original 2007 Order to extend the marine planning zones from 3 nautical miles out to 12 nautical miles.

Explanation of Potential Environmental Effects - This is a proposed amendment to the original 2007 Order to extend the marine planning zones from 3 nautical miles out to 12 nautical miles.

There are no direct environmental effects associated with this order. Potential impacts would only arise when an application for a fish farm is made and these will be managed in accordance with the 1997 Act.

The extension to marine planning zones will mean existing environmental assessment and processes and controls under planning will apply to all proposed developments within the 12 nautical mile zone.

Explanation of Significance – N/A

Summary of how environmental principles have been considered: (including an outline of how the guiding principles, as set out in section 13 of the Continuity Act, are relevant to the plan) - The values of protecting the environment are already enshrined in the principle legislation that will enable developments to take place in the extended marine planning zones; (the 1997 Act refers).

Summary of interactions with the environment and statement of the findings of the Screening (Including an outline of the likely significance of any interactions, positive or negative, and explanation of conclusion of the screening exercise.) - A Strategic Environmental Assessment screening report was prepared for the proposal to extend marine planning zones out to 12 nautical miles and was submitted to the SEA Gateway on 23/07/2024.

Responses from the Consultation Authorities (Scottish Environment Protection Agency, NatureScot, Historic Environment Scotland) were received on 20/08/2024, whose overall opinion was that the plan is unlikely to have significant environmental effects.

The Scottish Government has therefore determined, using the criteria set out in Schedule 2 of the Environmental Assessment (Scotland) Act 2005, that the proposal to extend marine planning zones out to 12 nautical miles is unlikely to have significant environmental effects. A Strategic Environmental Assessment is therefore not required.

# **Data Protection Impact Assessment (DPIA)**

## **Proposals to extend marine planning zones out to 12 nautical miles – Consultation only**

### **1. Introduction**

The purpose of this assessment is to consider the privacy implications associated with the public consultation on proposals to extend marine planning zones undertaken by the Marine Directorate of the Scottish Government.

### **2. Document metadata**

Name of policy/project/initiative: Proposals to extend marine planning zones out to 12 nautical miles

Date of report: 08 July 2024

Version number: 1

Author of report: Joe Triscott

Name of information asset owner (IAO) of relevant business unit: Malcolm Pentland

Date for review of DPIA: At the end of the project or 30 June 2025, whichever is sooner

### **3. Description of the project and personal data**

Extension to marine planning zones are being proposed in order to close a gap in current aquaculture planning regulations.

The consultation paper will ask a series of questions to seek views on the proposals to extend marine planning zones as defined in The Town and Country Planning (Marine Fish Farming) (Scotland) Order 2007, out to 12 nautical miles.

The preferred method of response will be through the online CitizenSpace system. The questionnaire will also be downloadable and hard copies may be posted / e-mailed out to meet specific respondent's requirements if requested. Hard copies will be returned directly to Marine Directorate to ensure confidentiality. Personal data will also be requested to enable acknowledgement of receipt of response or to enable feedback to any queries received.

It is our usual practice to publish the responses as per the preferences that respondents have indicated via Citizen Space, or, where responses arrived by e-mail / post, via the Respondent Information Form (RIF), which asks about data release preferences.

Responses received via post or email will be uploaded on to Citizen Space by the Scottish Government, the original document or email will then be destroyed/deleted.

Following the closure of any consultation, we would look to publish responses where approval has been given for this by the respondent. All the responses will be moderated.

Marine Directorate will analyse the responses received and provide a clear and concise report for publication, which reflects a robust analysis of the consultation responses, in order to inform the next stages of policy / legislative development.

## **Consultation Process**

Consultations are hosted on Citizen Space, the Scottish Government's digital platform for consultations, and published on the [Scottish Government Consultations webpage](#), enabling people to submit their response online. Citizen Space is managed by the Scottish Government's Digital Engagement Team.

Consultations are also published on the Scottish Government website, enabling people to email or post a response.

The consultations will run for a minimum of 12 weeks starting September 2024 to November/ December 2024.

## **Governance**

The governance arrangements for consultations broadly involve the following:

- Consultation Manager (Scottish Government): Joe Triscott
- Digital Engagement Manager, Comms (Scottish Government): [DigitalEngagement@gov.scot](mailto:DigitalEngagement@gov.scot)

## **Reporting**

The Consultation Manager will be responsible for the analysis of the consultation responses, as well as the preparation of the final reports. The final consultation analysis report will be published on the Scottish Government's website. It is the responsibility of the Consultation Manager to ensure that their methods do not contravene the provisions of current Data Protection Laws.

Data Protection Laws means any law, statute, subordinate legislation, regulation, order, mandatory guidance or code of practice, judgement of a relevant court of law, or directives or requirements of any regulatory body which relates to the protection of individuals with regard to the processing of Personal Data to which a Party is subject including the Data Protection Act 2018 and any statutory modification of re-enactment thereof, and the General Data Protection Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data on the free movement of such data, and repealing Directive95/46/EC.

#### **4. Data controllers and data processors/sub processors**

##### **Data controllers**

Organisation: Scottish Ministers

Information Asset Owner: Malcolm Pentland

Activities: Devolved Government

Is the organisation a public authority or body as set out in Part 2, Chapter 2, Section 7 of the Data Protection Act 2018?: Yes

Lawful basis for processing under UK General Data Protection Regulation (UK GDPR) Article 6 for the collection and sharing of personal data – general processing: Public Task - Consultation is statutory requirement under Town and Country Planning (Scotland) Act 1997, Section 26, (6H):

Before making an order under subsection (6C), the Scottish Ministers—  
(a) must consult—  
(i) every planning authority, and  
(ii) the Scottish Environment Protection Agency, and  
(b) may consult such other persons as they think fit

## Data to be processed

Variable	Data Source
E-mail address	Citizen Space (online responses). Respondent Information Form (e mailed or postal responses).
Name	Citizen Space (online responses). Respondent Information Form (e mailed or postal responses).
Whether a person is responding on behalf of an organisation, or issuing a response as an individual. (If respondent is from an organisation, they are asked the type of organisation – developer, public sector, community council etc.).	Citizen Space (online responses). Respondent Information Form (e mailed or postal responses).
Postal address	Respondent Information Form (postal responses).
Contact telephone number	Respondent Information Form (e mailed or postal responses).

## Data Subjects

The data subjects are the self-selecting respondents to the consultation. Responses may be submitted by both individual members of the public and by organisations. During the data collection process, all respondents are asked to provide information about themselves, either via the Citizen Space online platform or by completing a Respondent Information Form. This form asks respondents to state their publication preference as follows.

The Scottish Government would like your permission to publish your consultation response. Please indicate your publishing preference:

- Publish response with name
- Publish response only (without name)
- Do not publish response

If **individual** respondents do not answer this question, the default position is not to publish their response.

If **organisation** respondents select 'do not publish' or do not answer this question, the organisation name may still be listed as having responded to the consultation.

Respondents are also asked to indicate whether they are content to be contacted again in the future by the Scottish Government in relation to this specific consultation exercise.

The Respondent Information Form will direct respondents to the [Scottish Government privacy note](#), which outlines respondents data protection rights and rights to complain.

### **Data Collection, Storage and Transfer**

Data will predominately be collected from data subjects electronically via the Citizen Space online platform. Some respondents may also submit their response via post or email and these are uploaded on to Citizen Space by the Scottish Government. Responses on Citizen Space can either be downloaded individually or automatically entered into a database (downloadable onto Excel).

Marine Directorate will be the owner of the data and will be responsible for ensuring the data is managed in line with the retention schedule as described under the **Data Purging and Archival** section of this document .

### **Data Access**

Citizen Space will securely hold the consultation responses submitted online or uploaded as attachments, and it will be possible to download the database of online responses onto Microsoft Excel.

The database will include all or some of the following information about each respondent who replied using the online data form or by email or post and either completed a Respondent Information Form or provided the information within their response:

- Name
- Email address
- Responding as an individual or an organisation (If responding on behalf of an organisation) Organisation's name and sector (from list of options -e.g. public, private, third).
- Permission to publish consultation response (publish response with name, publish response only, do not publish response).
- Content to be contacted by the Scottish Government in the future in relation to this consultation exercise
- All inputted responses to the consultation questions.

### **Data Cleaning**

Before beginning the analysis, the Consultation Manger will identify any blank or duplicate responses. Blank responses will be removed before analysis. Multiple different responses submitted by the same individual or organisation will be combined into a single composite response.

For audit and quality control purposes, a record will be kept of any exclusions or changes made to responses included in the final database (i.e. any responses that are excluded from the analysis and the reason for exclusion; any identified as campaign responses; and any reclassification of organisation type). This information

will be provided in a separate worksheet within the master database and referred to in the final report.

## **Data Publication**

Responses will be published in accordance with respondents' expressed publication preferences. Where respondents have given permission for their response to be published, with or without their name, and after the Scottish Government has redacted any personal data or defamatory content, consultation responses will be published at <http://consult.gov.scot>.

All staff involved in processing and publishing data will have undergone data protection training and be aware of procedures for data security and privacy, to comply with GDPR and ensure data is not published in error. All project staff will know how to recognise a personal data breach (PDB) and how to report suspected breaches in line with GDPR requirements

## **Data Purging and Archival**

The consultation datasets will be held on a secure, password protected server in the Scottish Government, in a sub-folder which is restricted to a limited number of staff working on this project. It is expected that the data will only be held for as long as the data is required. As soon as possible after the project is completed, a review will take place to determine whether the data needs to be retained or destroyed.

If it is decided that there is

- no rationale to justify continuing to hold the data, then it will be destroyed,
- justification to continue to hold the data then it can be held until a further review 12 months later. This would most likely arise if the consultation period has been extended beyond the review date

## **Explain the legal basis for the sharing with internal or external partners:**

The legal basis for processing personal data will be public task. Consultation is statutory requirement under Town and Country Planning (Scotland) Act 1997, Section 26, (6H):

Before making an order under subsection (6C), the Scottish Ministers—

(a) must consult—

(i) every planning authority, and

(ii) the Scottish Environment Protection Agency, and

(b) may consult such other persons as they think fit

The analysis of the data arising from the consultations provides information that will assist the Scottish Ministers in fulfilling their duties to engage under a range of legislation, including those requiring the preparation of impact assessments under environmental, equalities and islands legislation. The information may form the basis of future discussion with key stakeholders.

## 5. Stakeholder analysis and consultation

Group	Interest
Planning authorities	Statutory role as decision-makers in the planning system
Other public bodies	May have a role as a key agency / statutory consultee, or use planning to deliver development.  Key Agencies in Development Planning are specified in regulation 25 of <a href="#">The Town and Country Planning (Development Planning) (Scotland) Regulations 2023</a>
Respondents (members of public)	Opportunities proposed to consult the public as part of the process of extending marine planning zones out to 12 nautical miles
Community Councils	Statutory role in the planning system
Equality, Amenity and Environmental Interests / Groups	Provide representations reflecting their particular cultural, environmental, societal interest
Business and developer interests	Private sector organisations, individual businesses and enterprises use the planning system to deliver investment and development
Marine Directorate Team	Develop and produce the consultation paper for consultation, and analyse responses
Data Protection and Information Asset Team	Advise on completing the DPIA
Digital Engagement Unit	Create the consultation in Citizen Space

### Method used to consult with these groups when making the DPIA

Respondents will be invited, through the consultation, to comment on the DPIA.

### Data protection issues identified by these groups during consultation

To be updated following consultation

### Method used to communicate the outcomes of the DPIA

We will publish the finalised DPIA on the Scottish Government official platform.



## 6. Questions to identify data protection issues

All staff involved in processing data will be aware of procedures for data security and privacy, to comply with GDPR. All project staff will know how to recognise a personal data breach (PDB) and how to report suspected breaches in line with GDPR requirements.

### **Anonymity and pseudonymity**

Scottish Government will be responsible for ensuring that responses are published in accordance with respondents' expressed publication preferences.

Individual respondents' names will be published with their responses only if they have given explicit permission for this. Where an individual respondent selects 'publish response only', SG will redact their name and any other potentially identifiable information from their response. Any direct quotations from responses included in the report will not be attributed to identifiable individuals, regardless of their expressed publication preference. There will be no quotations from responses where permission to publish has not been given.

Organisation respondents which select the option 'publish response only (without name)' may still have the organisation name published, but the name of the specific person submitting the response will not be published. Organisations which have given permission for their response to be published could be mentioned by name in the final report, though it is also possible that, rather than being explicitly named, they might be referred to as 'an organisation from the private/public/third sector' etc.

We will keep under review whether anything else needs to be redacted from responses should it risk revealing a respondent's identity.

### **Technology**

Citizen Space is a secure online platform which will hold consultation responses. Where responses are not received via Citizen Space, such as by post / email, these are uploaded on to Citizen Space by the Scottish Government and original returns will be destroyed/deleted.

### **Identification methods**

Identifiable respondent information is accessible in the dataset created through Citizen Space.

Sensitive/Special Category personal data

It is not anticipated that many of the consultation responses would contain 'special category data,' as defined by GDPR. The legal basis for processing this data, under Article 9 of GDPR, will be 'substantial public interest.'

(g) processing is necessary for reasons of substantial public interest, on the basis of Union or Member State law which shall be proportionate to the aim pursued, respect

the essence of the right to data protection and provide for suitable and specific measures to safeguard the fundamental rights and the interests of the data subject’.

However, there is a risk that such data is submitted in free text boxes. Data on text boxes will be reviewed and irrelevant ‘special category’ data removed.

### Changes to data handling procedures

There will be no changes to general data handling procedures for consultations.

### Statutory exemptions/protection

We don’t believe that there any exemptions from the Data Protection Act will apply to this project.

### Justification

Marine Directorate will analyse the responses received and provide a clear and concise report for publication, which reflects a robust analysis of the consultation responses, in order to inform the next stages of policy / legislative development.

### Other risks

None identified

## 7. UK General Data Protection Regulation (UK GDPR) principles

Principle	Compliant – Yes/No	Description of how you have complied
7.1 Principle 1 – fair and lawful (see 4.1), and transparent	Yes	The legal basis for processing personal data will be ‘public task’. Scottish government has prepared a privacy statement which is available on the Scottish Government website. <a href="http://www.gov.scot">Privacy - gov.scot (www.gov.scot)</a> The Scottish Government would communicate this to consultees before they make their comments in any consultation.
7.2 Principle 2 – purpose limitation	Yes	The data will be collected for specific purposes and will not be processed in a manner incompatible with those purposes. The purpose will be clearly explained to respondents prior to responding.

7.3 Principle 3 – adequacy, relevance and data minimisation	Yes	<p>The consultation will only gather necessary information to achieve the project’s objectives.</p> <p>Participants are able to input as much information as they would like to open questions, and are able to skip open questions.</p>
7.4 Principle 4 – accurate, kept up to date, deletion	Yes	<p>The data from the consultation and analysis does not need to be kept up to date as it represents the participants’ views and circumstances at the point of collection. It will be deleted in accordance with SG retention and disposal strategy (See Principle 5 for deletion).</p>
7.5 Principle 5 – kept for no longer than necessary, anonymization	Yes	<p>The data processor will be processing data which is directly identifiable in the dataset. Anonymisation measures are set out in section 5.</p> <p>Review measures will be in place to ensure that the data will be kept for no longer than is necessary for its lawful purpose by the Scottish Government.</p>
7.6 UK GDPR Articles 12-22 – data subject rights	Yes	<p>Data subjects rights are set in the SG privacy policy which is to be found in the RIF linked to the consultation process.</p> <p>The data controller will process and manage any requests to exercise the rights of the data subject.</p>
7.7 Principle 6 - security	Yes	<p>Data will be protected from loss or unlawful processing using appropriate methods, including storing electronic data on password protected secure servers.</p>
7.8 UK GDPR Article 44 - Personal data shall not be transferred to a country or territory outside the European Economic Area.	Yes	<p>The project is not expected to involve the transfer of data outside the EEA.</p> <p>For customers in the EU, Rackspace is its Infrastructure as a Service hosting provider. Rackspace provides and manages the UK data centers in which the Citizen Space site is hosted.</p>

## 8. Data Protection Officer (DPO) advice

Advice from DPO	Action	Reason advice not actioned
Can you confirm that no special category data is being processed as part of this consultation	Yes, that is correct - no special category data is being processed. This is referenced under the Identification Methods section on page 8 of the DPIA	N/A
Please confirm the review date of the DPIA	Review date included	N/A
The DPIA needs to capture how all information is to be processed as part of this consultation so the further details need to be included on the processing of the manual forms etc and emails received both in terms of Storage/access and deletion as DPIA only covers Citizen Space for the full processing journey	Updated to note that responses received via post or email will be uploaded on to Citizen Space by the Scottish Government, the original document or email when then be destroyed/deleted.	N/A
You have identified you will be relying on public task as your lawful basis – can I ask if this is statutory or non-statutory consultation?	<p>Consultation is statutory requirement under Town and Country Planning (Scotland) Act 1997, Section 26, (6H):</p> <p>Before making an order under subsection (6C), the Scottish Ministers—</p> <p>(a) must consult—</p> <p>(i) every planning authority, and</p> <p>(ii) the Scottish Environment Protection Agency, and</p> <p>(b) may consult such other persons as they think fit</p> <p>The DPIA has been updated to reflect this</p>	N/A
You reference the public at large – I would consider using the term Respondents or Consultation Participants so their stakeholder role is clear	Updated to 'Respondents (members of public)' as we want to make clear that one of the respondent group is likely to be individuals rather than specified groups or organisations	N/A

<p>In terms of data retention, the personal data can only be retained for as long as it is necessary. My understanding from the current description is that although it will be reviewed at the 12 month stage you are potentially keeping the information indefinitely. You will need a strong justification for retaining the data indefinitely. I would recommend providing a clear retention point for transparency for the participants.</p>	<p>The Data Purging and Archival section (page 5) has been updated to provide information on instances where data retention may be required (extension of consultation period beyond DPIA review date)</p>	<p>N/A</p>
<p>Please note that Citizen Space is used as the tool to facilitate the consultation, however your business area is the owner of the data and will be responsible for ensuring the data within is managed in line with your retention schedule.</p>	<p>Data Collection, Storage and Transfer section has been updated to reflect this advice</p>	<p>N/A</p>
<p>Other Risk – you may want to consider including impacts such as publication in error, data subjects not being able to exercise rights, retaining information for longer than is necessary etc</p>	<p>The following sections of the DPIA have been updated to outline these risks and how they will be mitigated against, rather than including in the Other Risks section</p> <p>Data Subjects (Page 4) Data Publication (Page 5) Data Purging and Archival (Page 5)</p>	<p>N/A</p>

## 9. Authorisation and publication

The DPIA report should be signed by your information asset owner (IAO). The IAO will be the Deputy Director or Head of Division.

I confirm that the impact of undertaking the project has been sufficiently assessed against the rights of the data subjects (people):

Malcolm Pentland - Deputy Director and Head of the Marine Economy and Communities Portfolio, Marine Directorate

29 August 2024

## 10. Annex A – privacy information

[Privacy - gov.scot \(www.gov.scot\)](http://www.gov.scot)



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