

Consenting, EIA and HRA Guidance for Marine Renewable Energy Developments in Scotland

Scottish Environment LINK is the forum for Scotland's voluntary environment organisations, with over 30 member bodies representing a broad spectrum of environmental interests with the common goal of contributing to a more environmentally sustainable society.

We welcome the opportunity to respond to the Consenting, EIA and HRA Guidance for Marine Renewable Energy Developments in Scotland. Our vision is of a thriving marine renewable industry, which will help reduce the causes of climate change and bring secure long-term jobs while safeguarding a diverse, productive sea. Members of Scottish Environment LINK want to help and support the industry in realising this vision, therefore we make the following comments:

Part 1 – Marine Renewables Licensing Process

For context, we consider the guidance would benefit from an introductory section setting out the importance of sustainable development in the offshore environment. The principles of sustainable development, supported by the Scottish Government, are set out in the UK Sustainable Development Strategy and the Scottish Planning Policy. The UK SDS states that the '*goals*' of sustainable development are '*living within environmental limits and [achieving] a just society*'. This will be achieved '*by means of a sustainable economy, good governance and sound science*.' For a development to be sustainable it must respect all five principles.

The guidance should also highlight the duty under the Nature Conservation (Scotland) Act 2004 on all public bodies when exercising their functions, to further the conservation of biodiversity.

2.1 - We support early contact and discussions with local and relevant wider stakeholders.

2.8 – The guidance should make clear section 30 of the Marine (Scotland) Act 2010 enables Ministers to vary, suspend or revoke licences issued under the Act. The Act also contains provisions for various statutory notices. Further, it should be reinforced that it is an offence not to comply with licence conditions.

3.9 - We hope MS-LOT will encourage early engagement with relevant environmental NGOs where appropriate. We are keen to engage with developers at an early stage in projects in order to provide advice and expertise.

Part 2 – Legislation and Documentation

2.6 – Paragraph 5 states that Scottish Ministers may decide that applications for extensions or changes in usage of existing power stations are of a minor nature, and consequently applications do not need to be advertised. A consultation has recently closed on changes to the EIA Regulations regarding extensions or changes to projects. The results of this consultation may have implications in this regard and the guidance should be updated to reflect any relevant amendments.

2.7 - This section is titled – '*Habitats Directive 1994*'. The correct title should be either the '*Habitats Directive 1992*' or the '*Habitats Regulations 1994*'.

3.2 - We support the requirement to produce supporting environmental information where an EIA is not legally required. We hope the scope of this supporting information will be as wide as possible, and information on cumulative impacts will be required. We question the first line of

this paragraph which states "...if one [ES] is required, although it should be considered to be a rare occurrence". Given the scale of most proposed marine renewable developments, and the environmental issues they are likely to raise, we consider it more likely than not that they will require an Environmental Statement. This statement may therefore be misleading to developers.

Part 3 – EIA and HRA Guidance

Table 1.2 – The Habitats Regulations Appraisal is identified as 'stage 3'. This is slightly misleading. Ideally, it should be commenced out in conjunction with 'stage 1' – preparation of the Environmental Statement in terms of screening and scoping, even if the appropriate assessment itself is undertaken at 'stage 3', immediately prior to the decision being made.

2.1 – We support the guidance that developers avoid particularly environmentally sensitive sites. Environmentally sensitive sites may include Natura sites and Nature Conservation Marine Protected Areas designated under the Marine (Scotland) Act 2010 – including potential sites once these are identified, and until they are designated. Consideration should also be given to sensitive features protected by species protection mechanisms and wider seas measures.

We also support the requirement to consider any existing or developing marine spatial plans. However, it should be noted that regional marine spatial plans have not yet been developed, and the National Marine Plan is currently in draft form. The guidance could contain indicative timescales for the production of marine spatial plans.

We support the options/alternatives assessment process being well documented and recorded.

Key information page 9 – impacts on habitats should be included on this list. When considering the availability of access and necessary infrastructure, developers should consider this in both a terrestrial and marine context.

2.3 - While Annex (or schedule) II projects will require an EIA where any part of the development is likely to be carried out in a 'sensitive area', location is not the only criterion. The test for an EIA is whether it is 'likely to have significant effects on the environment by virtue of factors such as its nature, size or location'.

Footnote 1 should be moved into the main body of the text.

The third paragraph of 2.3 states that the regulator has a statutory requirement to provide a screening response within a specified timeframe. It would be useful if that timeframe was set out in the guidance.

The final paragraph states that if the developer disagrees with a screening opinion, the matter 'would generally' be referred to Scottish Ministers. It would be useful to lay out the other ways the matter may be addressed.

2.4 - We encourage a wider informal scoping exercise with non-statutory consultees at an early stage.

As stated, EPS licences will be required should the project present a risk to European Protected Species and/or their breeding site or resting place. It should be made clear that 'risk' includes disturbance, and the guidance should give examples of activities which have the potential for disturbance.

The ninth paragraph of 2.4 states that the regulator has a statutory requirement to provide a scoping opinion within a specified timeframe. It would be useful if that timeframe was set out in the guidance.

2.5.1 We support the requirement to assess the potential environmental impacts of the project in its entirety, including both onshore and offshore aspects.

It is highly likely that potential impacts will need further study. Baseline data and evidence of impacts are areas where knowledge is very rudimentary. Scotland has marine species and habitats found in few other parts of Europe (for example white-beaked and Risso's dolphins) which necessitates further Scottish specific research. Research on baseline data and impacts should be strongly promoted, and international research findings monitored and disseminated widely, with close attention to cumulative impacts at a larger scale, and adoption of best practice assessment, management and mitigation techniques.

2.5.4 While Marine Spatial Plans will be important sources of information, again it should be noted that these do not yet exist.

Other organisations out-with the Marine Renewables Facilitators Group which should be consulted include environmental NGOs such as the LINK Marine Taskforce's member bodies.

The requirements for formal consultation are currently being considered as part of the Marine Licensing consultation. This guidance should be updated to reflect the outcomes of this.

2.5.8 – The Environmental Statement should set out residual impacts, those which remain even after mitigation measures have been used/implemented.

2.7 – It is important that as part of the Environmental Monitoring Programme, the developer indicates how information to will be disseminated to relevant parties in an effective manner.

3.1 – Alternatives – the guidance should make clear that if no alternatives were considered this would seriously affect the validity of the EIA.

4.1 - This section should make clearer the difference between HRA and AA. "Applicant" should be substituted for "developer" in this section.

Figure 2 should be amended so that the "make changes" box at the lower right has an arrow back to the "will the project adversely affect" box, not the proceed box, as it must be tested whether the changes remove the doubt.

Section 4.3 could state more clearly that the "likely significant effect" question must be answered in the negative for AA to be avoided: there must be no likelihood (at all) of a significant effect on the site (otherwise AA is required).

Section 6 should give guidance to developers on the procedure should they require to make modifications to a development post-consent.

The guidance on AA for Development Plans referred to in section 7 has recently been updated. This guidance could usefully refer to other guidance, in particular from the European Commission, specifically Managing Natura 2000 and the 2007 guidance on Article 6(4).

Annex 4

A2 – Benthic ecology makes reference to Priority Marine Features. It is also appropriate for sections A3, A6, A7 and A8 to address PMFs and other nationally important habitats and species.

A2 Benthic Ecology

Seasearch (www.seasearch.org.uk) and the National Biodiversity Network Gateway (www.searchnbn.net), into which all Seasearch data is transferred, could be added to the list of sources of data.

A3 Birds

Introduction - We welcome the fact that the potential impact on passage species has been acknowledged. Whilst migrant waterfowl may rest on the sea with the potential for adverse

impacts, it is unlikely that migrant waders and songbirds (a better term may be passerines) would rest on the sea but structures above the surface may attract them if they were to be lit.

As well as disturbance as a result of noise and light, some species may also be attracted to devices due to lighting, leading to increased predation or collision risk (bullet 3). Disturbance **and** displacement of breeding birds, foraging and loafing/moulting birds (bullets 5, 6 and 7) should be noted. For completeness bullet 8 should include roosting/loafing areas.

Key Legislation - The text should read the Wildlife and Countryside Act 1981 (as amended). The Marine (Scotland) Act 2010 should also be added as a piece of key legislation.

Developers would be best advised to seek advice from MS-LOT, via relevant consultees, even where a proposed development is not in the vicinity of a sensitive area. This is both because the bird species, which may be affected, may be some considerable distance from a designated site and there is as yet no standard SNH guidance on appropriate methods and techniques to which developers can readily refer.

Scoping and Baseline Assessment - Whilst the baseline assessment will generally be commenced after EIA scoping, it can often be beneficial for the developer to have undertaken some desk-based work prior to producing the scoping report. It will be helpful if the initial assessment is as detailed as possible. Whilst a review of the nearest protected sites will give guidance as to the species present, the developer should ensure that species are not 'scoped out' before survey work has been undertaken e.g. consideration of passage species.

Topics for consideration – associated areas, such as feeding and loafing grounds, should also be identified for other priority bird species including non-breeding birds which may visit breeding colonies.

It should also be stated that ESAS data is now rather old, as well as being at a large spatial resolution.

Wintering waterfowl surveys should also include BTO as well as RSPB and SNH.

Mitigating actions – mitigation may also be required following EIA assessment (not just scoping and baseline work) and potentially post-construction, depending on the results of monitoring work. Developers may also wish to consider enhancement measures, over and above direct project mitigation.

There is no discussion of compensation measures which may be required as part of HRA.

In terms of avoidance of sensitive sites/species, whilst this is welcomed, it may be that some species are not found until during the assessment and application process. It may therefore not always be as straightforward for developers to avoid these, as suggested here. Consideration of impacts of lighting should be added. In terms of piling, we consider developers should be encouraged to avoid most sensitive periods altogether, and not as far as possible.

A4 Coastal and Sedimentary Geology Processes

We support early contact with key consultees at an early stage, including the British Geological Survey, SNH and SEPA.

Baseline assessments may also want to consider any nature conservation MPAs designated under the Marine (Scotland) Act 2010 for features of geological or geomorphological interest (s68(1)(b)(ii)). Such sites should also be considered in the Impact Assessment section.

A5 Commercial Fish

Inshore Fisheries Groups should be added to the list of useful data sources.

The impact assessment section highlights *Loss of traditional fishing grounds* as an impact. It should be made clear that this refers to displacement of effort and loss of potential activity in that area, rather than loss of fish stocks.

A6 Designated Sites and Conservation Interests

We do not believe environmentally damaging activities should be permitted. However, where development is permitted which would damage the nature conservation value of a site or feature we believe such damage **must** be kept to a minimum and compensatory measures should be used. The guidance must make very clear and that such activity will only be allowed in extraordinary circumstances.

Adequate monitoring and reporting of findings in a sufficient timeframe must be required in order to include results in an adaptive management approach.

As well as detailing the recent extensions of the breeding colony SPAs, the potential for future marine SPAs should also be outlined.

The requirements for the provision of compensatory habitat should be set out in the section on the HRA process.

A7 Fish and Shellfish

This section should highlight the importance of prey species, such as sandeels, as the basis of the food chain for many seabirds and mammals. These species require careful spatial management as sedentary adults. The mitigating actions section should specifically address sandeels ie it should suggest avoiding sandbanks known as important for sandeels.

All elasmobranchs should be fully considered, especially in relation to potential impacts from electromagnetic fields.

While local knowledge is helpful, and developers should be encouraged to consult with local fishermen's and fish farming organisations, developers and regulators should rely on sound science from fisheries science experts.

We agree with the importance of long term post construction monitoring in assessing both the negative and positive impacts of the development on fish and shellfish to help inform future developments. Increased research of this type will help us understand opportunities where it is both possible and appropriate to enhance biodiversity/productivity through design and siting of installations.

A8 Marine Mammals

Basking sharks should be considered, but it may be more appropriate in the fish section.

Where possible, the Impact Assessment should consider cumulative and in-combination impacts.

Suitable mitigation measures will need to be developed on a project and site-specific basis, but it should be stressed that mitigation must be effective. In this respect we highlight that the presence of MMOs constitutes a system of monitoring – not mitigation.

Reporting from monitoring requirements should happen in a timely fashion

This response was compiled on behalf of Scottish Environment LINK's Marine Task Force and is supported by:

Hebridean Whale and Dolphin Trust
Marine Conservation Society
National Trust for Scotland
RSPB Scotland

Scottish Wildlife Trust
WWF Scotland
Whale and Dolphin Conservation Society

For further information please contact:

Alan Wells
LINK Marine Policy and Advocacy Officer
Tel: 01350 728200
email: alan@scotlink.org

Lindsay Roberts
LINK Marine Policy and Advocacy Officer
Tel: 0131 3116544
email: lindsay@scotlink.org

Scottish Environment LINK is a Scottish Company limited by guarantee without a share capital under Company No. SC250899 and a Scottish Charity No. SC000296