

Email to: marinerestoration@gov.scot



15 May 2024

Marine Nature Restoration Policy Team  
Area 1B North  
Scottish Government  
Victoria Quay  
Edinburgh  
EH6 6QQ

To whom it may concern,

**Response to: Facilitating marine nature restoration through legislation: consultation**

Scottish Renewables (SR) is the voice of Scotland's renewable energy industry. Our vision is for Scotland to lead the world in renewable energy. We work to grow Scotland's renewable energy sector and sustain its position at the forefront of the global clean energy industry. We represent over 360 organisations that deliver investment, jobs, social benefit and reduce the carbon emissions which cause climate change.

Our members work across all renewable technologies, in Scotland, the UK, Europe and around the world, ranging from energy suppliers, operators and manufacturers to small developers, installers, and community groups, as well as companies throughout the supply chain. In representing them, we aim to lead and inform the debate on how the growth of renewable energy can provide solutions to help sustainability heat and power Scotland's homes and businesses.

SR welcomes the opportunity to provide the views of our members to the Scottish Government's consultation on policies to introduce a registration process for marine nature restoration projects. We have opted to provide our response within this letter. We broadly welcome and support the Scottish Government's proposals to introduce a registration process for marine nature projects and see them as a positive change.

In response to this consultation, our members have highlighted the following key points which are covered in further detail below:

- The proposed register for restoration projects will circumvent the need for marine licenses, which helps lower market barriers to entry for prospective restoration providers. Simple changes like those suggested will reduce complexity and may foster liquidity in offsite nature restoration provisions.
- The second proposal to extend Market Coupling Operators (MCOs) *may* interfere with cable routing, installation or operation and maintenance (O&M) activities. However, this is generally viewed as a low risk.
- The extension of MCO status is proportionate to standalone European marine sites. The power already exists in England and Wales, and we highlight the need for new legislation to address the disparity.

- The proposal to introduce registration for restoration proposals below a specified environmental impact threshold is supported. We recommend that the Scottish Government examine whether other activities that currently require a marine licence, especially pre-development surveys, which utilise standard mitigations and have little environmental impact, would be suitable and could benefit from a similar registration model.
- The enabling power under Section 33 of the Marine (Scotland) Act 2010 is relatively broad, so registration should not only be available for restoration proposals. We are concerned that this consultation only considers registration for restoration rather than more widely as part of the Marine Directorate - Licensing Operations Team's (MD-LOT) Streamlining Project. The need to reduce survey licensing burdens and remove inefficient processes has previously been highlighted by the renewables sector in the MD-LOT Streamlining & Proposed Licensing Manual Revisions consultation which concluded in April 2023, but no response has been forthcoming.
- For context, previous SR member responses to the earlier consultations referenced above:
  - *In respect of marine surveys, we observe that some surveys requiring licences (European Protected Species (EPS) or full marine) have little prospect of significant environmental impacts and are routinely granted only with 'standard' mitigation (e.g. watching briefs and soft start techniques) that developers routinely propose anyway for reasons (e.g. economic, regulatory, safety, etc) beyond marine licensing. Some survey licensing therefore increases resource pressures, administrative burdens and processing delays without enhancing environmental protection.*
  - *We suggest that updated guidance and procedures should adopt a more proportionate approach of seeking to optimise the use of licensing exceptions, applying de-minimis thresholds, defining 'standard' mitigation techniques, and developing fast-tracked or deemed approval approaches through registrations (whilst still satisfying statutory requirements) where such standard mitigation is sufficient for some licensable activities.*

It is trusted that the concerns of our members within our response will be fully considered. Scottish Renewables would be keen to engage further with this agenda and would be happy to discuss our response in more detail.

Yours sincerely,



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 Scottish Renewables

## RESPONSE TO CONSULTATION QUESTIONS

### Part 1 – Facilitating Marine Nature Restoration Through Legislation

- 1. Do you think the example definitions provided are a suitable basis to frame a definition of marine nature restoration for the purpose of this legislation?**

Yes, we agree.

- 2. Are there any other considerations or examples we should consider in formulating a definition for marine nature restoration?**

The concept of regeneration is closely linked to restoration, which may be worth considering since the term 'regeneration' considers economic approaches. The duration of the activity could also be considered in the definition.

- 3. Do you think registration should be based on the restoration 'project', rather than each individual 'activity'?**

Yes, we agree.

- 4. Please share any considerations you have in relation to tying the registration process to a 'restoration project' rather than each individual activity.**

Tying the registration to a project will simplify the process and facilitate a more holistic management of the cumulative benefits. We recommend including a detailed list of each activity and a cumulative risk assessment that includes all the individual activities to be conducted as part of the project as one of the registration requirements.

- 5. Please share any reflections you have on how we could set appropriate threshold(s) of environmental impact.**

Several thresholds for different types of restoration projects would be of greater benefit, however having such a targeted approach may be difficult to manage and regulate. It would be beneficial to include some type of equipment type to be used, materials to be deposited, and vessel types,

since there are always impacts associated with them, especially if something goes wrong and incidents occur.

- a. Please provide examples and any information which you think would be useful to support your views.**

No comment.

- b. In addition to the considerations above, we want to gather views on how we could consider and minimise navigational risks under a registration process. One way of achieving this could be that elements of a restoration project that could present a navigational risk, such as placing moorings, anchors or below surface mooring lines (for example through propeller entanglement) etc. should not be covered by the registration process. They would instead require a marine licence as under the current process. The detail of this would be set out in secondary legislation.**

With regards to the quantification of risk: the use of a small vessel anchored to the seabed or simple structures in place for the duration of the project does not equate to a larger vessel/barge/structure in an anchor pattern which would pose a much higher risk to navigation.

- 6. Do you agree with the principle that placement of moorings/anchors, lines or other objects that may present a navigational risk (for example through propeller entanglement) should not qualify for registration, and should remain subject to current marine licencing laws, even if they are part of a restoration project?**

No, we do not agree.

- 7. Please share any reflections you have on how we can minimise navigational risks under a registration process.**

Conditions could be attached to the registration to ensure the safety of navigation.

- a. **Please provide examples and any information which you think would be useful to support your views.**

Examples include notices to Mariners and adequate marking.

8. **Do you agree Scottish Ministers should have the option to devolve the administration of a registration process to another public body?**

Yes, we agree.

9. **Should a registration process be based on a self-declaration/self-assessment model or would you prefer an 'approval/application' based process?**

Other – Please see response to question 11.

10. **If you answered 'approval/applications process' for question 9, should the administrator of a registration process be able to apply conditions to the registration?**

Other – Please see response to question 11.

11. **Please share any considerations or concerns you have on the nature of the registration process and whether it should be based on self-assessment or approval/application.**

The Control Activities Regulations (CAR) model for the registration process could be applied, where small-scale restoration projects could go ahead under a set of general binding rules. Larger scale projects, based on the scale and environmental impacts of the project, could be authorised under a registration issued with a standard bank of conditions. Large-scale projects could be authorised under a more complex registration that has site/project-specific conditions attached.

- a. **Please provide examples and any information which you think would be useful to support your views.**

No comment.

**12. What are the key types of information you think projects should be required to provide as part of their registration? Please select all that apply.**

We agree with all below, as well as additional considerations listed under Other.

Location  
Activity being undertaken  
Methods  
Biosecurity  
Monitoring  
Navigational risk

Other – Area (hectarage), equipment used, vessel types, substances/materials to be deposited, adaptive management details.

**13. Do you think the register should be made publicly available? By publicly available we mean published online.**

Yes, we recommend all the information be made publicly available.

**14. Please share any concerns or considerations you may have with regards to providing information in the registration process and/or making information on the register publicly available.**

An Integrated Communications Operating License (ICOL) considers that there could be sensitivities regarding cost, national security issues (MOD area), commercial sensitivities.

**a. Please provide examples and any information which you think would be useful to support your views.**

No comment.

**15. Do you agree Scottish Ministers should have a broad post-registration power to intervene and amend/update/remove projects from the register?**

Yes, we agree.

**16. Please share any comments you may have on instances where Scottish Ministers should be able to intervene post-registration.**

We believe Scottish Ministers should be able to intervene if works are not conducted in line with the information provided on the registration, if new information comes to light post-registration that deems the project over the environmental threshold.

**a. Please provide examples and any information which you think would be useful to support your views.**

No comment.

**17. Do you agree Scottish Ministers should be able to create offences and penalties in relation to the registration process?**

Yes, we agree.

**18. Do you agree with the limits we propose as a model for the framework and upper limits on offences and penalties?**

Yes, we agree.

**Concluding questions for Part 1**

**19. Do you support bringing forward legislation to enable Scottish Ministers to develop a registration process for marine nature restoration projects?**

Yes, we agree.

**20. Do you think a registration process would help to reduce the administrative burden on restoration projects?**

Yes, we agree.

**21. Do you think a registration process would help encourage more restoration projects to come forward and/or scale up?**

Yes, we agree.

**22. Please share any further considerations you have about the proposals as a whole.**

**a. Please provide examples and any information which you think would be useful to support your views.**

No further comments.

## **Part 2 – Marine Conservation Orders**

**23. Do you support the extension of existing Marine Conservation Order provisions under the Marine (Scotland) Act 2010 to be applicable to habitats and species undergoing restoration or which have been restored?**

Yes, we support.

**24. Do you think there should be a requirement on Scottish Ministers to review any Marine Conservation Orders implemented for habitats or species undergoing restoration or which have been restored?**

Yes, we agree.

**25. Do you think that any of the existing Marine Conservation Order provisions outlined in this section should not be extended to be applicable to habitats or species undergoing restoration or which have been restored?**

No, we do not agree.



**26. Do you have any other views you would like to share in relation to the proposal to extend the existing Marine Conservation Order provisions to habitats and species undergoing restoration or which have been restored?**

No further comments.

**a. Please provide examples and any information which you think would be useful to support your views.**

No comment.

**27. Do you agree that MCO powers should be extended as outlined to be applicable to standalone European marine sites?**

Yes, we agree.

**28. Do you think that any of the existing MCO provisions within the Marine (Scotland) Act 2010 should not be extended to be applicable to standalone European marine sites?**

No, we do not agree.

**29. Do you agree with our proposal to change the requirement to consult on the 'draft order' to a requirement to consult on the 'draft proposal'?**

Yes, we agree.

#### **Impact Assessments**

**30. Do you think that any of the proposals will have an impact directly or indirectly on the costs and burdens placed on businesses, the public sector voluntary and community organisations?**

Yes, we agree.

### **Island Communities**

- 31. Do you think that any of the proposals will have an impact that is significantly different for island communities than for mainland communities?**

Yes, we agree.

### **Equalities**

- 32. Do you agree with our assessment that the proposals set out in this consultation will not impact on people with protected characteristics as set out under the Equality Act 2010?**

Yes, we agree.

### **Environment**

- 33. Do you agree that the Strategic Environmental Report is an accurate representation of the potential impacts, positive and negative, on the environment from the proposed MCO changes?**

No comment.

- 34. Do you agree with the findings of the Strategic Environmental Report that overall, the likely beneficial effects of the proposals outweigh the potential negative impacts?**

No comment.

### **Further Comments**

- 35. Do you have any further comments you wish to add?**

No further comments.

**a. Please provide any further comments.**

No further comments.

**END**