

SEPA standing advice for the Department for Business, Energy and Industrial Strategy and Marine Scotland on marine consultations

September 2022

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<p>SEPA standing advice for the Department for Business, Energy and Industrial Strategy and Marine Scotland on marine consultations</p> <p>Land Use Planning System SEPA Guidance Note 13</p>	

Update Summary

Version	Description
Version 8	Standing advice provided to apply to all development proposals except a development proposal of potentially significant impact on aspects of the environment directly regulated by SEPA which is not dealt with adequately by our standing advice or is novel or unusual in which case please consult us specifying exactly the aspect of the environment regulated by SEPA on which advice is sought.

1. Purpose and scope

- 1.1 This note provides advice to the Department for Business, Energy and Industrial Strategy and to Marine Scotland on how SEPA wishes to engage with marine consenting processes, including developments requiring Environmental Impact Assessment (EIA). It will also be helpful for developers to refer to this guidance as it outlines our position on different marine activities.
- 1.2 Impacts on the marine environment are important but we have concluded that a) the Department for Business, Energy and Industrial Strategy and Marine Scotland are generally well placed to provide the expertise required to determine if the proposals are environmentally acceptable and b) the activities can, in relation to our interests, be adequately managed with low risk to the marine environment if they adhere to relatively simple standing advice. We will continue to provide advice on request on developments where there are novel environmental issues within our regulatory remit not covered by our standing advice.

2. How and when to consult SEPA

The Department for Business, Energy and Industrial Strategy

- 2.1 Please do not consult SEPA directly on any applications which are within the marine environment. Our standing advice is that best practice should be followed to minimise environmental impact. Where we are consulted directly by developers on proposals regulated by the Department for Business, Energy & Industrial Strategy, we will inform them of this position. Such best practice includes:
- a) documentation identified on the Department for Business, Energy & Industrial Strategy website itself and
 - b) Department for Business Enterprise and Regulatory Reform [Review of Cabling Techniques and Environmental Effects Applicable to the Offshore Wind Farm Industry \(pnnl.gov\)](#)

Marine Scotland

- 2.2 Please do not routinely consult SEPA directly on any applications which are purely within the marine environment, including at any stage of EIA or repeat consultations. Please consider our standing advice in Section 3 and Table 1 as SEPA's views and consultation response, where relevant.
- 2.3 Notwithstanding the advice above, should there be a development proposal of potentially significant impact on aspects of the environment directly regulated by SEPA which is not dealt with adequately by our standing advice or is novel or unusual, then please do consult us specifying exactly the aspect of the environment regulated by SEPA on which advice is sought.

<p><u>Potentially significant impacts on aspects of the environment directly regulated by SEPA not dealt with in standing advice</u></p>
<p>Proposals that impact on or involve radioactive substance</p>

- 2.4 If we are consulted without specifying the aspect of the environment comments are required on, we will respond by email indicating we have no comments to make and referring you to our standing advice.
- 2.5 Electronic consultations should be emailed as shown on SEPA contact sheet.

Town & Country Planning legislation and S36 deemed planning consent (cabling/onshore substation)

- 2.6 We advise that if any part of a proposal might impact on the terrestrial environment, or flood risk, then please refer to our planning guidance [sepa-triage-framework-and-standing-advice.pdf](#) for further guidance on the circumstances in which SEPA wishes to be consulted and our standing advice in that regard. Marine licensing extends up to mean high water springs (MHWS), whilst Town & Country Planning legislation extends down to the level of mean low water springs (MLWS).

River Basin Management Planning; Water Framework Directive; The Nature Conservation (Scotland) Act 2004 and Scottish Planning Policy

- 2.7 Marine Scotland is a designated authority under the Water Environment and Water Services (Scotland) Act 2003 and should ensure that marine licensing assists in the delivery of River Basin Management Planning objectives. River basins comprise all transitional waters (estuaries) and coastal waters extending to 3nm seaward from the territorial baseline. Any proposed development within 3nm must have regard to the requirements of the Water Framework Directive to ensure that all transitional and coastal water bodies achieve 'Good Ecological Status' and that there is no deterioration in status.

Contribution to sustainable development

- 2.8 We also recommend that marine licence and Electricity Consent applicants be encouraged to submit information detailing how proposed developments will contribute to sustainable development. Opportunities to enhance marine habitats in line with Water Framework Directive and The Nature Conservation (Scotland) Act 2004 objectives and Scottish Planning Policy guidance should be explored. Examples may include the coastal realignment, removal of structures, consideration of soft engineering techniques, the incorporation of naturalistic features in the design of shoreline works, or planting with salt tolerant species.

Marine Non-Native Species (MNNS)

- 2.9 The accidental introduction of Marine Non-Native Species (MNNS) has been highlighted as a risk for water body degradation and the River Basin Management Plan states that "We will take a zero tolerance approach to actions that could result in the introduction of [these] invasive species". Given that there has been no successful eradication of any marine non-native species, we recommend that controls should be included in marine licensing for Marine Non-Native Species in line with Water Framework Directive and Marine Strategy Framework Directive objectives, as well as EU Biodiversity Strategy targets. The Scottish Government has produced a Code of Practice on Non-Native Species that clarifies the Wildlife and Natural Environment (Scotland) Act's amendments to the Wildlife and Countryside Act (Scotland). This code clarifies organisational responsibilities and obligations, the use of Control Orders as well as the "polluter pays"

principle. Under the Water Framework Directive, the presence of MNNS within a water body can constitute a significant pressure on the biological elements. Good status is usually the maximum a water body can achieve if MNNS are detected, and this can fall to moderate status if MNNS are present above certain thresholds or impact on ecological receptors. We support the GB Non-Native Species Secretariat (GBNNSS) recommendation to put in to place effective biosecurity measures to prevent introduction and to stop their spread.

- 2.10 Accidental introduction of MNNS can occur via attachment to construction plants, barges, specialised equipment and moorings, as these are moved from one area to another. We therefore recommend that method statements produced as part of the marine licence or Electricity Consents application process include a risk statement of possible introductions of marine non-natives and any mitigation measures that will be adopted to minimise these risks before the construction, operation or decommissioning phases of a project commence.

Illegal activity

- 2.11 When you become aware of illegal activity please report immediately at [Report Environmental Events to SEPA](#). Legislation enforced by one or both organisations may have been breached. The aim of early liaison is to ensure that a lead organisation is agreed at the earliest stage (such that evidence can be gathered to inform any subsequent enforcement action) and it is determined whether SEPA, Marine Scotland or both organisations should initiate enforcement action. Support will be provided, as appropriate, by each organisation to the other and duplication of effort avoided wherever possible. An example of illegal activity would be where material from a licensed dredging activity is deposited in the wrong location and/or which contains materials such as bricks, road signs, tyres and litter. There are particular sensitivities about the Bathing Season and beaches that are designated under Bathing Waters legislation but activity that is unauthorised is illegal anywhere in Scotland. Please refer to [SEPA Enforcement Policy & Guidance](#).

3. Advice for Marine Scotland

The following standing advice applies to all development proposals where appropriate. In addition, Table 1 below sets out specific advice for aquaculture.

Standing advice

For all matters covered by the below advice, SEPA has not assessed the application, has no site-specific comments to make and, where relevant, does not consider EIA is required from our perspective.

Bathing Waters

Any operation should be cross checked to see if the proposed site is in or adjacent to a designated bathing water (within 2 km). If so, all physical operations should be done outwith the Bathing Water Season (1 June to 15 September).

If works to be done within Bathing Water Season, a strong case should be made as to why a particular operation would not present a risk to Bathing Waters.

Please refer to the Bathing waters section of our website www2.sepa.org.uk/bathingwaters/ for further guidance on the Bathing Waters Directive (2006/7/EC).

Pollution prevention

Many operations could potentially give rise to risk of pollution through silt mobilisation, silt suspension or chemical or oil spillages. To prevent pollution and safeguard marine ecology interests it is vital that good working practice is adopted, and appropriate steps taken to prevent water pollution and minimise disturbance to sensitive receptors. Measures need to be in place to minimise the release of sediment plumes and to contain and prevent construction and waste materials e.g., paint from falling from a structure into the water body beneath. Where appropriate, mitigation measures should be sought within method statements and onsite compliance should be confirmed through site visits.

Please refer to [gpp-5-works-and-maintenance-in-or-near-water.pdf \(netregs.org.uk\)](https://www.netregs.org.uk/gpp-5-works-and-maintenance-in-or-near-water.pdf). This includes working with concrete, cement and grout.

SEPA has no objection to the release of sediment tracing material into the water environment for the undertaking of a dispersion study (e.g. for aquaculture or septic tank flows). However, we strongly recommend the use of biodegradable material. We do not consider the use of non-biodegradable products (e.g. microplastic beads) to be the best environmental option.

On-shore works and restoration

With regard to works on the shoreline, the applicant should refer to the appropriate sections in the Guidance for Pollution Prevention (GPPs) and CIRIA Guidance, in particular [C744 Coastal and marine environmental site guide. 2nd edition, 2015 CIRIA](#). Disturbance to the shoreline should be minimised and the shore restored to as near its former condition following the works as reasonably possible on completion of the works. SEPA recommends that new infrastructure, including sea outfalls (including septic tank outfalls), be buried where possible and redundant structures and materials be removed.

Please refer to [CAR a practical guide.pdf \(sepa.org.uk\)](https://www.sepa.org.uk/car-a-practical-guide.pdf) for a guide to The Water Environment (Controlled Activities) (Scotland) Regulations 2011 (as amended) including an overview; definitions of the regimes; levels of authorisation and the General Binding Rules.

The developer should consider if waste deposition could constitute landfill and should therefore be subject to authorisation under PPC and should comply with all relevant environmental legislation and to check our website at www.sepa.org.uk/regulations/ and contact SEPA via the online form with any site-specific issues. Where appropriate, any waste materials should be removed and disposed of at a licensed onshore site.

Dredge spoil

Dredged material should be disposed of at an offshore sea disposal site and that work must be carried out in line with best dredging practices. Material should be deposited on the beach below MHWS and allowed to disperse naturally. If any dredged material accumulates above MHWS, disposal operations must cease until the material has dispersed.

Waste material (includes dredge spoil) above the low water mark

Waste material, which includes dredge spoil, deposited above the low water mark is subject to Waste Management Licensing controls regulated by SEPA unless it is subject to a licence issued under Part 4 of the Marine (Scotland) Act 2010 (which can extend to Mean High Water Spring Tide including within estuaries, rivers and channels), in which case it is excluded from such controls. However, if the waste deposition could constitute a landfill, then PPC not Waste Management Licensing would apply, and in this situation no Marine Licence exclusion is provided for.

Where dredge spoil is used for land reclamation works or harbour works then the method of construction will determine how the activity is regulated. If the works are carried out by way of deposit of material directly onto the intertidal zone or within a permeable bunded area (for example a bund made of placed stones) then the works will be considered to be occurring in the marine environment and will be regulated by Marine Scotland. If the works are constructed by way of initially creating an impermeable bund (such as a sheet piled metal wall) then the use of waste such as dredge spoil for infill works will be considered to be occurring above mean high water springs and therefore will be controlled by SEPA. Such works would require either a waste management licence or a waste management exemption.

The applicant should consult the local SEPA Regulatory Services team (see contact sheet for details) for advice on whether or not the proposed waste deposition would constitute a landfill and hence fall within PPC regulation, including for the controlled placement of dredged sands from harbours onto adjacent beaches and/or seabed.

Decommissioning

While MS-LOT consult on Marine Licence applications for decommissioning, the applicant will consult themselves on the Decommissioning Programme (as per Energy Act 2004) required to be submitted as part of the s.36/Marine Licences issued for renewables construction. SEPA does not require to be consulted and will provide no comments on the Decommissioning Programme.

Please ensure that conditions cover decommissioning where appropriate and the removal of all devices and as much of the support infrastructure/cabling is removed and all waste materials are removed and reused, recycled or disposed of at a licensed onshore site.

Table 1 Additional standing advice for aquaculture

<p>Installation of marine fish farms and associated infrastructure</p>	<p>SEPA has no objection to this application insofar as its physical footprint is concerned.</p> <p>Other aspects of the development are dealt with under other regulatory regimes.</p>
<p>Wellboat discharges</p>	<p>SEPA has no objection to this application provided the type and amount of chemical used and discharged will not exceed that specified in the respective CAR licence. The agreed condition should be imposed on the application preventing the simultaneous discharge from bath treatments.</p>
<p>Installation of structures and lines for the purposes of seaweed cultivation</p>	<p>SEPA has no objection to this application provided conditions are imposed to ensure:</p> <ol style="list-style-type: none"> 1. The applicant adopts measures to prevent the introduction and spread of invasive non-native species at the proposed site. 2. The applicant is not permitted to artificially enrich the marine environment to aid production or for any other reason in pursuance of this licence. 3. The applicant utilises locally sourced stocks for seeding of the cultivation systems and that mitigation measure to reduce impacts on the collection site are included in any procedures for this operation. 4. Any future expansion is subject to further assessment. <p>If the proposal is within or adjacent to the area of Clyde Forum's Biosecurity Plan SEPA advises that the applicant considers this plan and ensures that the details of the prevention measures complement those identified for the Clyde area. Further practical advice can also be obtained from the GB Non-Native Species Secretariat or from the forum itself.</p>

	<p>For seaweeds produced for human consumption and/or medical use, we do recommend that these are located within Shellfish Water Protected Areas (SWPAs) (as identified within The Water Environment (Shellfish Water Protected Areas: Designation) (Scotland) Order 2013), as SEPA is required to ensure that the water quality within SWPAs is maintained. Water quality standards set for SWPAs are designed to facilitate the production of wholesome, quality shellfish. While it is likely that such standards will ensure that seaweed produced in SWPAs is also suitable for human consumption, we have no evidence to show that this will be the case, or what the water quality standards may be required to ensure the wholesomeness of seaweed. However, the Food Standards Agency Scotland has the statutory responsibility for protecting the public's health and consumer interests and therefore we advise that they are consulted if the seaweed produced is ultimately proposed for human consumption.</p>
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4. Legislative background

- 4.1 Climate change is placing increasing pressures on coastal marine environments. SEPA's guidance within this document helps to demonstrate our commitment to its public body duties under Section 44 of the Climate Change (Scotland) Act 2009, by assisting in ensuring that a consistent and proportionate approach is taken to maintaining the resilience of our coastal to changes in our climate.
- 4.2 Under The Petroleum Act 1998, Energy Act 2004 and The Offshore Petroleum Production and Pipe-Lines (Assessment of Environmental Effects) Regulations 1999 (As Amended) we are consulted by the Department for Business, Energy & Industrial Strategy on proposals for oil field developments, decommissioning proposals for renewable energy installations, and offshore hydrocarbon pipeline proposals. Sometimes we are consulted directly by developers of such proposals.

- 4.3 Under the Marine (Scotland) Act 2010 the Scottish Ministers are responsible for the marine licensing system for activities carried out in the Scottish inshore region of UK Waters from 0–12 nautical miles (nm)¹. The Marine Scotland Licensing Operations Team (MS-LOT) acts on behalf of the Scottish Ministers and provides a ‘one-stop shop’ to process and assess licence applications under Section 20(1) of the Marine (Scotland) Act 2010. Licensable marine activities are listed in section 21, Part IV Marine Licensing of the Marine (Scotland) Act 2010 and a marine licence is required if any person intends to do any of the following from a vehicle, vessel and other structure in the Scottish marine area² (i.e. below the level of mean high water springs (MHWS) out to 12 nm):
- deposit any substance or object in the sea or on or under the seabed
 - construct, alter or improve works on or over the sea or on or under the seabed
 - remove substances or objects from the seabed
 - dredging (including plough, agitation, side-casting and water injection dredging)
 - deposit and/or use explosives
 - incinerate substances or objects
- 4.4 Under the Electricity Act 1989 the Scottish Ministers are responsible for the licensing of electricity generating stations in excess of 50 MW (under Section 36) and large gas and oil pipelines (under Section 37). MS-LOT acts on behalf of the Scottish Ministers in this regard as well.

For information on accessing this document in an alternative format or language please either contact SEPA by emailing to equalities@sepa.org.uk

If you are a user of British Sign Language (BSL) the Contact Scotland BSL service gives you access to an online interpreter enabling you to communicate with us using sign language.

<http://contactscotland-bsl.org/>

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