

T: 0300 244 4000
E: scottish.ministers@gov.scot

Edward Mountain MSP
Convener
Net Zero, Energy and Transport
Committee

By email:
netzero.committee@parliament.scot

Copied to:
DPLR.Committee@parliament.scot
rural.committee@parliament.scot
ministerpbv@gov.scot

28 January 2026

Dear Edward,

I wish to bring to the attention of the Net Zero, Energy and Transport Committee an on-going situation which is causing delays to laying a Scottish Statutory Instrument (SSI) to make changes to our marine licensing system. You may be aware, I wrote to the Conveners of the Rural Affairs and Islands Committee and Devolved Powers and Legislative Reform Committee regarding this matter on 23 January 2026. The Convener of the DPLR Committee has advised that NZET Committee should consider this SSI.

The SSI relates to the implementation of requirements of the Biodiversity Beyond National Jurisdiction (BBNJ) Agreement, and will ensure that Scotland possesses certain jurisdictional controls. It was originally scheduled for laying on 23 January and is being delayed due to timings of the UK Government's BBNJ Bill.

The international BBNJ Agreement came into force on 17 January 2026 and aims to ensure the conservation and sustainable use of marine biological diversity of areas beyond national jurisdiction (ABNJ), for the present and in the long term, and to further international cooperation and coordination. It sets, among other things, Environmental Impact Assessment (EIA) requirements on activities within a party's jurisdiction. The UK seeks to ratify the BBNJ Agreement and has communicated that both primary legislation (the UK's BBNJ Bill) and secondary legislation, including our SSI, must be in place in time for the UK to participate in the first Conference of the Parties, expected later in 2026.

As the Committee will be aware, the BBNJ Bill, to which the Scottish Parliament recently gave consent, makes direct amendments to the Marine Works (Environmental Impact Assessment) (Scotland) Regulations 2017 and amends the Marine (Scotland) Act 2010 to provide powers for the Scottish Ministers to make regulations relating to Scottish licensable marine activities for the purpose of implementing Part IV of the BBNJ Agreement. The Bill is currently in its final stages and expected to achieve royal assent between 2 and 11 February.

To implement the EIA requirements in a way that protects the devolved position, the Scottish Ministers must introduce marine licensing for activities taking place in ABNJ which are 'in and as regards Scotland'. The timeframe to consult on proposals for, and subsequently introduce, the necessary SSI has been very compressed due to the challenging timetable set by the UK Government for passage of the BBNJ Bill and related secondary legislation, in order to ratify the BBNJ Agreement. I appreciate and share your frustrations of the impact the UK Government's timetable has had for the Scottish Parliament's scrutiny of the BBNJ Bill and now for this SSI and appreciate your ongoing consideration.

Whilst assurances have been given that the UK Government will 'carve out' those matters that are expected to come under Scottish control via our SSI, failure to make this SSI will result in the UK Government introducing their SI in a manner which controls certain matters 'in and as regards Scotland' until such time as these can be addressed in future.

The delay to our SSI relates to timings of the UK's BBNJ Bill, to which the content of our SSI is closely tied, and the need to ensure regulatory parity with the UK Government on marine licensing matters, a position on which UK Government remains unsettled. Officials have been working closely with DEFRA following the consultation to ensure that DEFRA's policy positions are shared as early as possible.

For these exceptional, but unavoidable, reasons beyond our control and the imperative to have this in place before the election period to protect devolution, I am writing to notify you that we anticipate a need to breach the 40-day laying requirement in Standing Orders. Of course, given the vital role of appropriate parliamentary scrutiny of the SSI, my officials and I seek to support committee's oversight and offer to support this in any way we can and will keep committee updated of any significant developments.

I am copying this to the Conveners of the Devolved Powers and Legislative Reform Committee and the Rural Affairs and Islands Committee and to the Minister for Parliamentary Business and Veterans.

A handwritten signature in black ink, appearing to read 'Mairi Gougeon', with a stylized flourish at the end.

MAIRI GOUGEON