



BirdLife Malta's comments on the draft Environmental Permitting (Procedure for Applications and their Determination) Regulations 17th April 2024

BirdLife Malta welcomes the drafting of such an important legal framework. The Environmental Permitting Regulations shall play a crucial role in regulating activities that can have an adverse impact on the environment and/or preventing damaging activities and risks. Consequently, we would like to contribute to the consultation process with the following feedback.

Whilst acknowledging the scope of the draft Regulations, we would like to point out that the overarching objective of such regulations should be to protect the environment and human health. It should be clearly stipulated that any activity which may have an effect on the environment and not set out in the First Schedule or Second Schedule, is forbidden.

The reasoning behind assigning an activity or intervention to a particular type of application permit (level I, II and III) is not clearly stated in the Regulations. For full transparency on how an activity or intervention is assigned to a level, the relevant criteria for level I, II and III should be listed. Such criteria should elucidate the underlying reasoning and eliminate any misinterpretation or speculation.

Furthermore, the regulation lacks clarity on how spatial and temporal factors will be taken into account during the application processing. Applications with overlapping spatial and temporal scales will have a cumulative impact on the environment. Thus, we suggest that applications consider this as an integral part of the permitting procedure.

Attention should be given to the below Articles and sub-regulations which lack robustness and exhibit ambiguity:

Article	Sub-regulation	Suggestions
2	-	It is not clear what the term 'project' refers to. The First Schedule and Second Schedule of the regulation is only concerned with activities, operation or interventions.
7	2	Intolerance to infringements should be indicated – an applicant with multiple infringements and/or infringements with adverse impact on the environment should not be granted permits. The need to conduct environmental or ecological studies to inform the permitting process should also be considered.

8	-	Predicting environmental impacts and any mitigation measures should be another requirement of the Authority.
10	3	A notification system for the public on representations should be established. Splitting representations on the Authority's website according to the Category and Type of application/permit as per the First Schedule would make representations more accessible.
14	1	Urgent matters for shortening the consultation period should be detailed in the Regulation.
16	2	It is not indicated whether decisions available to the public refers only to the applications marked with # or all of them.
17	1	Criteria for the Authority's decision of the permit duration should be indicated in the Regulation. Stipulating permit duration according to the level of risk associated (Level I, II and III) could be one criterion. A restriction on permit durations should be implemented, especially considering that activities posing a high risk can result in significant environmental harm if allowed to continue for an extended period.
18	2	Drafting of the report for emergency permits by a duly qualified expert in the field should be a requirement not an option. A warranted engineer or architect will not necessarily have the knowledge to judge threats to the environment and environmental risks or impacts.
19	3	Renewals should require very clear demarcations of activities that are exactly the same as the previous application and any additional or changes made in the renewal application. For permit applications with no additions or changes and only if these are for education or research permission, we suggest a shortening of the processing period.
21	1	Requests for modifications might increase the risk to environmental damage. As per Article 62 of the Act, "such requests shall be considered and processed as a new application". Hence, we suggest that such requests are treated as a new application and undergo the standard processing time limit (Level I, II, III). They should also be available to the public on the website for representations. We also suggest that limitations on the acceptance of modifications are set, especially when the nature of the operation, intervention or activity is drastically modified.
22	-	We suggest to clearly state that a non-compliance with the conditions set in the environmental permit will lead to modifying or revoking the permit granted. A case in point is the permit conditions of PA/08089/19 (Doc 80c - ERA Assessment and Recommendations - Appendix II) regarding light fittings, which the permit holder currently fails to fulfil.

23	-	We suggest specifying that consideration of activity is done only after appropriate investigation, inspection, survey, or assessment and any applicable enforcement is carried out by the Authority pursuant to Part VII of the Act. This helps to clarify that the consideration process does not undermine the Authority's enforcement powers.
25	3	Restoration and rehabilitation obligations should be specified as part of the conditions to be compliant with before cessation of the activities.
26	1	We suggest that the permits sought for activities to prevent environmental damage or risk to public health should be exempted from a fee.

In addition, we have several comments on the First Schedule which includes operations, interventions and activities falling within the scope of the proposed regulations.

We express concern regarding the differentiation of categories for publication on the Authority's website for representations, particularly where some categories are selected for publication while others are not. The criterion for determining which category is published or withheld, as well as the underlying rationale, remain unclear. In the interest of transparency, we recommend that all categories be made publicly available on the website for representations. This approach ensures equal visibility and access to information for stakeholders and the general public.

The definition of the term 'protected area' used in the First Schedule should be clarified in the document, namely under article 3. A 'protected area' shall mean any designated area of international and national level, including not only N2K sites, but also Tree Protection Area, Area of Ecological Importance, etc.

Category	Operation, intervention or activity	Suggestions
1.13	Consignment and disposal at Sea (including operations in Association with Category 2.1)	<p>This category should be published on the Authority's website for representation and should be categorised as a Level III application given the high risk of environmental impact. The type and amount of material destined for consignment and disposal should also be specified.</p> <p>In addition, as per S.L. 549.63 a consignment permit is required, and it is not clear whether an application through a Level III environmental permit supersedes the</p>

		requirements of the aforementioned legislation.
1.19	Activity involving 50 persons or more, within a protected area	<p>Some activities within the protected areas can have a negative impact even if they involve less than 50 persons. A good example are boats activities within N2K sites which are important for colonies of breeding seabirds. Light and sound pollution emanating from such activities have an impact on seabirds especially during sensitive breeding periods.</p> <p>Furthermore, this category may inadvertently approve activities that are inappropriate for an N2K site in the first place. This risk is compounded by limited resources for on-site inspections to ensure compliance with ERA's conditions.</p> <p>This Category should be published on the Authority's website for representation.</p>
1.20	Operations, structural or Permanent interventions, in a protected area	<p>This category does not specify the scale of the intervention. Shall this be intervention of any scale, we would like to bring up the example with the creation of artificial ponds to attract water birds by hunters and trappers. Over the past months, BirdLife Malta has submitted a number of cases of illegal ponds within the protected areas across the Maltese Islands - such ponds exist without any permits from PA or ERA and should be controlled and regulated by ERA.</p> <p>Not all activities might be suited to a Level I category given that they might need a longer time for processing. In addition, this category should be published on the Authority's website for representation.</p>
1.21	Interventions on up to 10 protected trees	Interventions on protected trees should always be published on the Authority's website for representation, irrespective of the number of trees involved. Given the scarcity of mature trees around the Maltese islands, even a small number of trees serve important ecological functions. For example, on a survey done by BirdLife Malta on two mature <i>Ficus macrocarpa</i> , it was estimated that around 800 White Wagtails use the trees every night as a
1.22	Interventions on more than 10 protected trees	

		<p>roost¹. We would therefore suggest that intervention on any tree needs to be taken in the context of its ecological function. A single protected tree which is of a certain age and acts as a roosting site for avifauna or bats, for e.g. will not be treated with the requirement of such a permit. We also suggest that any permitting requesting an intervention on trees is seen to by an arborist and an ecologist who may suggest alternative means of interventions or even suggest the necessary mitigation measures to ensure that interventions have a minimal ecological impact. (E.g. considering interventions outside the breeding season for birds).</p>
1.24	<p>Importation of, and operations related to, invasive alien species of national or European concern, other than the control or removal of such species in accordance with the methodology approved by the Authority</p>	<p>Designating the importation and operations related to invasive alien species (IAS) as Level III would be of a better fit given their extensive negative impacts. Their introduction has several negative impacts on biodiversity, ecosystems, agriculture, and human well-being, resulting in significant economic burdens².</p>
1.38	<p>Marine aquaculture (including fishfarms)</p>	<p>It is not clear which operation, intervention or activity concerning aquaculture will fall under the Environmental Permitting Regulations. The expansion of existing aquaculture or establishment of new ones should be subject to an environmental impact assessment as per S.L. 549.56.</p>

In conclusion, we advise that alongside the regulation, guidance should be drafted to cover specific activities necessitating an environmental permit. This guidance may encompass activities within protected areas, interventions concerning protected trees, and boat operations within marine protected areas or near terrestrial N2K sites. Additionally, enhanced collaboration with other entities (such as AM, Transport Malta, AFM, MTA, etc.) and environmental NGOs is crucial for monitoring and enforcing permit conditions effectively.

¹ https://birdlifemalta.org/wp-content/uploads/2023/12/BLM-response-to-Bugibba-health-centre-PA4966_22.pdf

² Gentili, R., Schaffner, U., Martinoli, A., & Citterio, S. (2021). Invasive alien species and biodiversity: Impacts and management. *Biodiversity*, 22(1-2), 1-3.