

MARINE BILL

SUSTAINABLE SEAS FOR ALL: a consultation on Scotland's first marine bill.

Response by the Scottish Council for National Parks

CHAPTER 1 - SETTING THE SCENE

Q1 Do you agree that change is needed to the management and legislative framework for managing Scotland's seas?

Agreed. The marine environment has been subject to neglect or abuse for too long and there is an urgent need to address the situation both strategically and locally.

Q2 For each of the following areas, do you agree that Scottish Ministers/Scottish Parliament should put in place a new legislative and management framework to deliver:

SCNP agrees that a new statutory and management framework is required for the five areas: marine planning for the sustainable use of Scotland's seas; improvements to marine nature conservation to safeguard and protect Scotland's marine assets; a streamlined and modernised marine licensing and consents system; better stewardship backed up by robust science and data; and a new structure, including a new national body with overall responsibility to deliver sustainable seas for all. Objective (c) may be achieved through existing structures by building on the strengths of existing organisations rather than the inevitable hiatus created by the setting up a totally new body and system. This should be examined further. Objective (e) also needs clarification in terms of its relationship to local government.

We also consider that Figure 1.2 on page 20 is simplistic and potentially misleading. The marine environment is complex. All the skills and disciplines currently consulted, and maybe more, will still have to be consulted under the new approach. If they are all brought together under Marine Scotland, there is the danger that it will be less transparent because where there is a conflict between different views, how it is resolved could remain hidden including the reasoning as to why a particular view prevailed.

Q3 What difference would these changes make to your area of interest?

SCNP considers that the marine environment has been systematically damaged over many years through a range of activities including over-fishing, damaging fishing techniques, mineral extraction, dumping etc. For these reasons, we have been pressing for the introduction of a strategy for national parks, including coastal and marine national parks across Scotland. A more integrated approach between policy and practice would clearly be beneficial provided it is based on sound science. The proper management of the seas around Scotland should form part of the national planning framework and be adequately resourced.

SCNP is supportive of the points made by the RTPI which has stressed:

- the importance of planning, not merely as a form of regulation, but as framework which guides other decisions;
- that as elsewhere, time, resources and skills are required to prepare and deliver plans in the marine environment;
- that while the atlas that accompanies the Shetland pilot is an excellent example, it sets out only what is already there, thus illustrating the difficulties in moving from data collection to making decisions about spatial strategies; and

- that utilising those with appropriate skills and making sure that appropriate training is available when there are skills gaps will be of immense importance.

Q4 Scottish Ministers believe there are strong practical reasons for further discussion with the UK Government on the allocation of responsibilities around the seas of Scotland. Do you agree with this approach?

Agreed. SCNP strongly supports a continuing dialogue with the UK Government because we consider that there should be integration between the planning and regulation of UK seas and the systems developed for the devolved nations and adjoining seas of other sovereign nations. SCNP considers that a sound science approach should transcend political boundaries.

CHAPTER 2 - CREATING STABILITY: MARINE PLANNING AND INTEGRATED COASTAL ZONE MANAGEMENT

Q5 Do you agree with the overall 3-tier approach to marine planning in Scotland?

The highest level tier should be that for the UK with its European/international relationships. The other tiers should more appropriately be the Scottish, Regional and Local levels.

Q6 Do you have any comments on the proposals for a National Marine Plan and the role of Marine Scotland in relation to planning at the Scotland level?

A National Marine Plan should have a spatial dimension and be integrated into the National Planning Framework with detail provided at regional and local levels. A National Marine Plan should also set out issues and projects of strategic importance and the approach to resolving conflicts. In particular, it should reinforce the Sandford principle where it is made clear that in the event of irreconcilable conflicts between development and conservation, conservation must have priority if we are to achieve long term environmental sustainability.

Q7 Do you have any comments on the approach to setting out national objectives for marine planning?

We agree that national objectives for managing the marine environment are necessary to set the direction for planning outcomes. These objectives will need to be consistent with and integrated into the wider UK seas policy.

Q8 Do you agree with the overall approach to planning at the international level beyond Scotland?

SCNP considers that the international dimension would more appropriately be handled at a UK level unless the UK government can find a way of devolving the implementation of UK wide policy to the Scottish government without generating duplication.

Do you have any further suggestions or comments to add to the proposed approach, in particular on the UK high level objectives?

See Q7 above.

Q9 Should Scottish Ministers use the Marine Planning system to deliver Scotland's obligations under the Marine Strategy Framework Directive?

See Q7 above.

Q10 Do you agree with the overall approach and functions for Scottish Marine Regions?

We are not clear from the consultation document on the areas of the Regions being considered and the roles and responsibilities vis-à-vis Marine Scotland. We have stated earlier that there should be integration of this work into the national planning framework. In Box 2.8 last sentence it refers to 'all public bodies would have to have regard to the plan.' This has not worked satisfactorily with land-use management under the planning acts where over many years some public bodies have not regarded themselves as being affected by approved development plans. If in the marine situation, plans are to be effective the meaning of 'have regard to' must be crystal clear.

Q11 Do you agree that Scottish Marine Regions should be responsible for integrated coastal zone management?

ICZM has a key role to play in the delivery of marine planning and we should build on the good work undertaken so far. Any arrangements will need to address both the planning and management aspects of ICZM and further consideration of the options available and of the flexibility required, would be useful. Local authorities and well-resourced local coastal partnerships could take the lead in delivering integrated coastal zone management.

Q12 Do you agree that Scottish Ministers should place a duty on Scottish Marine Regions to adopt the eight principles defining integrated coastal zone management?

The eight principles of ICZM are helpful, but should perhaps be reflected in policy guidance rather than becoming a statutory duty. Scottish Ministers might be given responsibility for producing guidance as in the case of the Biodiversity Duty or the Sustainable Development Duty. Good practice continues to evolve and is best addressed through continuing guidance rather than primary legislation.

Q13 Do you have any other comments on the delivery of integrated coastal zone management alongside marine planning?

Much will depend on the scale of the chosen regions and lessons from the pilot studies should help in examining further options.

CHAPTER 3 - REDUCING THE BURDEN: LICENSING AND ENFORCEMENT

Q14 Does licensing remain an effective method of delivering both certainty for investment purposes, and protection for the marine environment?

Whilst SCNP supports the idea of streamlining of licensing and the proposed relationship with the planning system, it is important that the views of the disciplines currently consulted are not swept aside and made less transparent under the new approach – see response to Q2. It will be critical to have up-to-date plans in place as a context for future licensing decisions. The relationship to development consents should also be clear.

Q15 The existing licensing system covers most of the impacts on the seas from existing activities. One area of activity that has potentially large impacts and is not licensed is dredging. Scottish Ministers propose to license all new forms of dredging (i.e. those forms that agitate the sea bed). Do you agree?

Yes. The proposed capital dredging consent should be regarded as a 'development consent'. It is quite feasible that there would be other types of development, especially if the 200 Nm limit came within the Scottish marine planning system, for which development consent would be required.

Q16 Scottish Ministers intend to create powers to set out a list of licensable activities in regulations. Do you have any views on this approach?

Cumulative impacts will also need to be addressed.

Q17 The proposed Marine Scotland should have general responsibility for the delivery of the marine licensing system. Do you agree?

A central approach to delivery would appear sensible in offshore areas. However, any centralised approach should not operate to the detriment of ICZM nor take away existing controls and planning responsibilities from the local planning authority. All matters which require marine licensing will require to be fully coordinated within integrated marine plans.

Q18 Scottish Ministers intend to reduce the numbers of marine licences that developers require to get before an activity can take place. There are two ways to reduce the number of licences either by creating a single licence for all marine impacts or by creating a single licence for each activity. Which system do you prefer?

The impacts system seems preferable.

Q19 Marine Scotland could undertake the licence work itself or operate as a front door coordinating the work of others. Do you have any views on these options?

Given the wide range of licensable activities, it would appear sensible for Marine Scotland to draw on the expertise of existing bodies. That would not preclude its having regional or even local presences as well as a national co-ordinating function.

Q20 Do you agree with the proposed approach to consultation involving local stakeholders?

Local consultation is essential in all planning activity.

Q21 Do you agree that the revised licensing system should incorporate the simplified CAR model throughout, to focus scrutiny on higher risk activities/ impacts and reduce the regulatory burden?

The licensing system should be based upon properly coordinated plans. Activities/impacts which are in accordance with the plans should require licensing with a light touch. A proactive approach to enforcement to secure compliance would be essential.

Q22 Scottish Ministers intend to provide Marine Scotland with powers to insert conditions into licences. Do you agree with this approach?

Agreed – and conditions and the reasons for them should be clear and they should be enforceable.

In particular Scottish Ministers intend to create a standard condition on removal of redundant kit and installations, do you agree?

Removal of redundant kit should be conditioned where it could be harmful and should be covered by the provision of an adequate financial bond.

Q23 Scottish Ministers believe an appeals procedure for those directly involved in the licence application would be a beneficial development. Do you agree?

Agreed.

Q24 To provide an easy and transparent system, do you agree that a scale of charges related to cost recovery is the most appropriate way to recover the costs of assessing, issuing, monitoring and enforcing licences?

The service is being created for the public good and any charge should be that which is sufficient to discourage 'vexatious' applications.

Q25 The Scottish Government proposes a review of existing licence monitoring and enforcement provisions relating to the marine environment and wishes to consolidate them into a single set of coherent powers and remedies. Marine Scotland should be tasked with ensuring compliance monitoring and enforcement activity is carried out consistently and efficiently. Do you agree?

This is desirable but to be effective there must be a framework of up-to-date, relevant plans.

CHAPTER 4 – SECURING THE FUTURE: NATURE CONSERVATION

Whilst there is widespread agreement that our seas, unlike the land, still present a truly wild and natural environment, we would argue that some of the positives outlined in Box 1.2 are overstated and indeed some of the negatives don't get to the heart of what has gone wrong with our management of the seas. Potentially, we do have some of the richest, biologically productive seas in the world, comparable with the likes of the Humboldt Current or Benguela Current influenced areas. That is as it should be, given that we are at the distal end of the Gulf Stream and we are blessed with the funnelling effect caused by the disposition of the land masses and the prevailing Westerlies. The true situation is that for reasons of geography, we still have primary production of phytoplankton comparable with the best on the Planet, but our fishery activity over the long term has removed too much of the upper trophic levels of the marine ecosystem.

To make the management of our seas truly sustainable, we need to secure a situation whereby all trophic levels are represented and will continue to be so, despite cropping by our fisheries interests. Because we are dealing with a largely uncontrolled wild environment, it is for that very reason that we should not approach this issue by trying to balance conservation objectives with socio-economic objectives. In this case it is not just a matter of applying the Sandford Principle to deal with conflicts between conservation and socio-economic objectives, it is a matter of ensuring that we regain a fully functioning marine ecosystem which then can be cropped at a sustainable level. There will continue to be a requirement for downward pressure on fishing effort and more effective management of what is caught, by better gear design. The government should ensure that this happens by positive management means and not by default.

In response to the questions posed, we set out our following views:

Q27 Do you agree that our system of marine nature conservation should be based on the three pillar approach?

We do agree this approach, but we stress the need for a realistic set aside of areas which are protected to varying degrees against human exploitation.

Q28 Please provide your views or comments on the application of Marine Ecosystem Objectives for marine nature conservation.

We regard ecosystem management of a natural resource as the only truly sustainable way of dealing with the marine environment. For that to be achieved there should be three overriding considerations as follows:

1. better scientific knowledge of the dynamics of marine ecosystems needs to be gained.
2. the precautionary approach to exploitation should be agreed.
3. substantial areas of seabed should remain unexploited, both for experimental control purposes and to record dynamic changes in habitat and species.

Q29 Do you agree it would be worthwhile to have a biodiversity duty in the offshore area around Scotland?

Yes. This duty should apply to all stakeholders including the oil and gas sectors and the Ministry of Defence.

Q30 Do you have any other suggestions for making improvements to Pillar I – wider seas measures?

Oil and gas exploration and MOD activities need to be brought within the scope of such measures, even if it is simply to recognise that there may be deleterious effects from sonic activities and efforts should be advanced for more environmentally friendly actions from these sectors. At the very least, should such activities have to continue, assuming their damaging nature, and no improvements made to avoid conflicts with conservation objectives, then no-go areas for such activities should be designated.

Q31 Do you agree with the proposals for a science-based review of whether new marine species need to be added to the existing list of protected species?

Yes

Q32 Do you have any further comments or suggestions for making improvements to Pillar II species conservation?

We have poor understanding of the consequential nature of certain actions or events taking place in the marine environment. Consideration will need to be given in certain circumstances as to how desired objectives can be achieved during recovery periods arising out of removal of previous deleterious regimes e. g. recovery of seabed from dredging.

Q33 Do you agree with the overall principle of the introduction of a power to select new types of site?

Yes. This will be necessary in a situation where we need flexibility to adapt new information to new circumstances.

Q34 Do you agree with the assessment of the three main types of requirements for site protection? Do you have any further comments on this?

Whilst we agree with this, the thinking behind it rather misses the main thrust of the objective to have a network of MPAs. It is the network which will achieve the conservation objectives rather than individual sites.

Q35 Do you have any views on whether or not a 'single approach' should be taken for marine historic and natural environment site protection?

There are obviously overlaps in this area, given that wreck sites usually develop a profusion of biodiversity. We see few problems in having a single approach since Marine Scotland will coordinate environmental and cultural heritage aspects through the relevant agencies in any case.

Q36 Do you agree with the proposals on how a new flexible site protection power will be used? Do you have any other comments?

Our only comment would be that the strategic nature of the document's approach to marine conservation necessitates that the basis for choice of site must rest with the science as indicated. As a consequence this should not be a piece meal exercise, based on local reaction to a putative Marine Protected Area but a clear, criteria-led approach which states the requirement for setting aside a proportion of our seabed for conservation purposes.

Q37 Do you have any views or comments on whether a single integrated power should be used to deliver these proposals?

It seems appropriate to have the flexibility of overarching powers to cover all circumstances.

Q38 Do you agree with the proposals for how sites will be managed, including the site by site based approach and the overall context of sustainable development? Do you have additional comments?

It is not appropriate to couch the language in this section in terms of sustainable development. This is about recovering our seas from a long period of despoliation and over-exploitation. The Government's first duty under the European Directive is to protect the natural heritage interest. Outside the designated areas more emphasis can be given to sustainable development.

Q39 Please provide us with your views on the role that a wider planning system should have in the identification of Marine Protected Areas.

We agree with the conclusion here of having the separate power outside the Marine Planning System. Again our observation would be that in a wild environment the emphasis should be the reverse of the approach here, viz. that the Marine Planning System should follow from a strategic assessment of a network of MPAs.

Q40 Do you have any other comments or suggestions for making improvements to Pillar III – site protection?

The management of such areas should be formalised. There should be MPA plans with objectives and targets against which success can be measured. Budgets will have to be developed so that resources can be applied.

Q41 Would you agree with the principle that the offence against damage to Natura sites should apply to marine sites? What are your views on whether a similar offence should be introduced for damage to other Marine Protected Areas?

It is appropriate to extend this sanction to the marine environment and to further extend it to MPAs.

Q42 How can we enhance the contribution which the wild marine environment makes to Scotland's economy?

The wildness of the marine environment presupposes any sustainable economic benefit arising. Therefore the country's first duty is to restore the marine environment to something like its previous unexploited condition.

Q43 Do you have any views on the options for improving conservation measures for seals? Do you have any specific comment on:

- a) Equal treatment across all sectors (licensing and seal conservation orders);*
- b) Welfare issues;*
- c) The 'Netsmen's defence';*
- d) Reporting and monitoring;*
- e) Relationship with the EU Habitats Directive, and*
- f) Any other comments?*

Our view is that there should be no need for population control as such if top predators were encouraged to return to our waters. Therefore there should be a presumption against such control and a presumption in favour of preventative measures if required.

CHAPTER 5 – UNDERSTANDING OUR SEAS: SCIENCE AND DATA

Q44 Do you agree that Scottish ministers should develop a marine science strategy to focus marine scientific effort, integrate socio-economic considerations, and to create a framework for wider stakeholder input?

Yes, there is good reason to agree a marine science strategy to inform management decisions and generally to bring greater focus and understanding of the dynamics of the marine environment. Socio-economic considerations and stakeholder involvement in determining the strategy are crucial for the long term success of the strategy but its main thrust initially should be on improving ecosystem management.

Q45 Do you have views on how to integrate scientific evidence with stakeholder and local knowledge?

The scientific outputs should be widely disseminated and discussed. Obviously they should be made available to Inshore Fishery Groups and Regional Advisory Committees. The cross-fertilization and integrated approach adopted by national parks presents a ready model for capacity building in the area of applying scientific information.

Q46 What do you think are the potential priorities for further work?

We agree with the priorities identified. The most important aspect of developing the strategy is the identification of a network of MPAs and protocols for their future management.

Q47 Scottish Ministers propose that the strategic role for the monitoring and assessment of Scotland's seas lies with Marine Scotland, do you agree?

Yes. MS needs to work closely with the MMO in England and Wales to compare and contrast their respective areas of responsibility.

Q48 Scottish Ministers propose to instruct Marine Scotland to take forward the development of GIS as a matter of priority. Do you agree?

Yes. They should ensure that what results can be integrated with any existing GIS systems held by the Crown Estate Commissioners, SEPA, SNH and FRS.

CHAPTER 6 – MANAGING OUR SEAS

Q49 Scottish Ministers propose to develop Marine Scotland to champion the seas and their use and provide better integrated and streamlined delivery in the marine area. Do you agree?

We agree the approach of creating a new organization to take forward a new agenda for our seas. We have concerns that given the repeated references to sustainable development the organisation will give lower priority to conservation when it needs to underpin all its policies and actions with good conservation practice.

Q50 Scottish Ministers propose that Marine Scotland deliver marine planning proposals as set out in Chapter 2. What are your views on this proposal?

We agree.

Q51 Do you agree with the approach set out for fisheries and aquaculture management? Do you have any further comments in connection with this approach?

We agree with the proposal that Marine Scotland takes a coordinating role in these areas. This is particularly important if offshore aquaculture is developed.

Q52 What are your views on the arguments relating to where control for aquaculture should lie?

On balance the argument lies with local authorities retaining control of planning functions with Marine Scotland as a key consultee. Given the importance of the conservation aspect of development decisions in aquaculture, advice from Marine Scotland should carry considerable weight.

Q53 Do you have any views on the role that FRS should take?

FRS should act as the scientific conscience of Marine Scotland. There should be protocols in place to ensure the continuing objectivity of this science function. It should be divorced from the political process, but should have good communication with fisheries and aquaculture sectors.

Q54 What are your views on the creation of Marine Scotland and the proposed range of functions over time?

As already stated, Marine Scotland will be a new body for a new situation. It will bring greater awareness of the condition of our seas, thereby pulling them up the agenda. Focus on our seas will bring better decision making. For it to be effective it must be a strong body with robust, science-based policies which can withstand pressure from different sectors.

Q55 Do you have any views on the development of Marine Scotland's role and functions over time?

As already implied, Marine Scotland becomes the champion for the marine environment. It should be held to account for its supervision of Scotland's stewardship of our seas. That means that it will need to have the appropriate resources to launch a major exercise in fact finding about the natural heritage interest of our marine environment and achieve a greater understanding of the dynamics of the marine ecosystem. In parallel with that it will need to launch its marine planning function and coordinate its strategic planning functions with those of local authorities. New developments in offshore marine energy will also feature largely in its case load. There will also be a continuing need to monitor the activities of the oil and gas sector and MOD operations.

Q56 Ministers believe that Marine Scotland should form part of the Scottish Government with appropriate safeguards for science and the appeals process. Do you have any views?

We believe it is crucial for Marine Scotland to be 'stand alone' with a requirement to report annually to the Parliament. In our view this position would be best served through its creation as a Non- Departmental Public Body. Since the UK Marine Bill proposes that the MMO should be an NDPB it would seem sensible to reflect that in Scotland.

Q57 Are there any other aspects of the proposals in this consultation document on which you wish to add your views?

The marine historic environment is not particularly well served by these proposals. The situation concerning the cultural heritage between 12 and 200 nautical miles needs re-examined.