

Response to the 4th Edition of the Shetland Marine Spatial Plan by the Scottish Environment LINK Marine Taskforce

Date: 10th April 2014



Introduction

Scottish Environment LINK is the forum for Scotland's voluntary environment community, with over 30 member bodies representing a broad spectrum of environmental interests with the common goal of contributing to a more environmentally sustainable society.

LINK member bodies represent a wide community of environmental interest, sharing the common goal of contributing to a more sustainable society. LINK provides a forum for these organisations, enabling informed debate, assisting co-operation within the voluntary sector, and acting as a strong voice for the environment community in communication with decision-makers in Government and its agencies, Parliaments, the civic sector, the media and the public.

Acting at local, national and international level, LINK aims to ensure that the environmental community participates in the development of policy and legislation affecting Scotland.

LINK works mainly through Taskforces – groups of members working together on topics of mutual interest, exploring the issues and developing advocacy to promote sustainable development, respecting environmental limits.

The LINK Marine Taskforce (MTF) comprises eight LINK member bodies working on marine conservation and sustainable development. The LINK Marine Taskforce vision is of healthy, well-managed seas, where wildlife is flourishing, ecosystems are protected, connected and thriving, and coastal communities are sustained.

LINK MTF members welcome the opportunity to comment on the Shetland Marine Spatial Plan.

The Shetland Marine Spatial Plan (SMSP)

General comments

LINK MTF members agree that the 4th edition Shetland Marine Spatial Plan is very good and has been well adapted from the previous edition to incorporate planning consideration of the Marine Protected Area (MPA) network, currently developing as a requirement of the Marine (Scotland) Act 2010, and Priority Marine Features to be protected. The SMSP has clear prioritisation of its objectives and overall its policies are succinct and strong, with good application of the ecosystem approach; LINK MTF members concur that the SMSP provides a well-considered ideal for future marine spatial planning.

Notwithstanding LINK MTF members' support for the SMSP, there are some suggested amendments detailed in this response which it is hoped will provide additional clarity and focus to the plan.

LINK MTF members suggest that in general the SMSP could go further by setting out measures that address some of the declines recorded for some species, such as otters, seabirds and seals, and that the Habitats Regulation Appraisal (HRA) could focus more on these and other mobile species. LINK MTF members suggest that the ambition for protection of key species and habitats could be better reflected in the policies presented in the SMSP and the assessments presented in the HRA (see also later comments).

Specific comments by section

Section 3 – Planning Mechanism

LINK MTF members commend the Planning Mechanism approach set out in section 3 and agree that the framework is an excellent structure by which planners must prove that their plans adhere to the legislative policies for 'Clean & Safe' and 'Healthy & Diverse' before development can take place. However, the policies themselves must be well set out to comprehensively consider the marine environment in order for the framework to be effective. On the planning mechanism flow chart (p24), LINK MTF members suggest that a further section should be added after 'Productive' for 'Operation', which should account for adaptive monitoring, enforcement and licencing after application submissions; this can then influence future iterations of the Plan.

Section 5 - Policy Framework

a) Clean and Safe

Safe Levels of Underwater Noise (p47)

- LINK MTF members agree that the section title 'Safe Levels of Underwater Noise' is too subjective, as the term 'safe' is not defined in this context; perhaps the title should be amended to 'Underwater Noise'.
- LINK MTF members also note that this section only considers European Protected Species (EPS), which accounts for cetaceans and otters but not seals. As seals are also impacted by noise, this section should be updated to include relevant species listed as Priority Marine Features (PMFs), which would take both Harbour and Grey seals into account.
- The policies in this section do not account for cumulative impacts of underwater noise on vulnerable species; the SMSP will need to link up with wider policies, namely the National Marine Plan (NMP), to propose mitigation measures and to take into account activities occurring outside potential developments. The UK Marine Policy Statement is too high level for this and therefore linkage to the NMP should be an integral part of the policies throughout this spatial plan.
- Some of the noise reduction measures listed on p48 are for monitoring underwater noise, rather than mitigating the effects of it, such as use of marine mammal observers and passive acoustic monitoring. How these will be used for mitigation of impacts, or whether they are purely for monitoring purposes, should be made clearer in the text.

b) Healthy and Diverse

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LINK MTF members suggest that the structure of this part might benefit from some re-ordering to describe spatial measures first followed by wider seas measures. Policy sections for the different types of protected sites and features would be better if it were set out as a hierarchy:

- Sites
 - International sites
 - National designations
 - Regional/local designations
- Features
 - International protected features
 - National protected features
 - Local protected features

Designated Nature Conservation Sites (p63)

- LINK MTF members note that the text discussing the NC MPAs is much further along in the document than its corresponding map, perhaps losing some of its context, and would suggest reordering the text or the map accordingly.

European Protected Species (EPS) Licence (p70)

- LINK MTF members suggest that this section should be updated to remove the word ‘Licence’ from the title, and that licencing should be discussed as a component of this section more broadly entitled ‘European Protected Species’. Where a development is seen to have an effect on EPS, the developers must meet the test of the Habitats’ and/or Birds’ Directives in order to obtain a licence and should not come across as being a ‘tick-box exercise’.

Protected Species (p73)

- Policy HER3 should perhaps be re-worded – rather than ‘Development near to EPS’, it should be ‘Development and EPS’, as many EPS are highly mobile.

Marine Protected Areas (p80)

- This section should refer to, and be compatible with, section 83 of the Marine (Scotland) Act 2010 and the draft Nature Conservation MPA Management Handbook.
- The wording of Policy HER5 appears to repeat itself; LINK MTF members suggest the following would be more succinct: *Development capable of affecting any Nature Conservation MPA will only be permitted where it has been adequately demonstrated, to the satisfaction of the consenting authority, Marine Scotland and SNH, that the proposal has had due regard to the conservation objectives of the designated site.*
- LINK MTF members are concerned that Policy HER5 may be open to interpretation and suggests that the phrase ‘capable of affecting’ is better defined (cf. other policies which specify whether they pertain to developments ‘in’ or ‘near’ protected sites).

Priority Marine Features (p81)

- Policy HER6 is a welcome addition since the 3rd edition of the SMSP.
- LINK MTF members suggest that part d) of HER6 is not compatible with the overarching framework of the planning mechanism outlined in section3 and does not appear to support the principle of sustainable development; it should be removed.

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MPA Search Areas and Proposals (p83)

- LINK MTF members are pleased to see details of the proposed nature conservation MPAs and Fair Isle Demonstration and Research MPA included in the 4th edition of the SMSP, and are fully supportive of the designation of these areas.
- LINK MTF members would like to see that the SMSP supports the designation of the Fair Isle Demonstration and Research MPA, as with the proposed network of NC MPAs, in that it is incorporated in its policies.
- It would be more helpful if the PMFs displayed on maps 5b (viii) – (xiv) were put into context with the pMPA spatial data overlaid, to give a better visual indication of the spatial distribution of the PMFs in relation to the proposed protected areas.

Local Nature Conservation Sites (p93)

- Parts a) and b) of policy HER7 appear to contradict each other; LINK members suggest that part a) only is included in this policy to better fit with the planning mechanism framework detailed in section 3.

Geodiversity (p93)

- LINK MTF members request clarification as to the basis for allowing developments that have an ‘unavoidable effect’ [on marine geodiversity] in policy HER8.

c) Productive

- LINK MTF members do not support the premise or use of the term ‘sustainable economic growth’ as it undermines the term ‘sustainable development’. However, if the term sustainable economic growth is to remain in the SMSP, LINK MTF members recommend clarity is provided on the definitions of both. Furthermore, the key point that requires emphasis is the fact that sustainable economic growth is not incompatible with sustainable development and that environmental and social issues are critical to ensuring sustainable economic growth also delivers sustainable development. The recently refreshed Scottish Planning Policy document, currently awaiting finalisation, includes these definitions and is a suitable reference for the SMSP to use in clarifying and making the distinction between both terms. For further information on LINK MTF member’s views, please refer to the consultation response submitted for the National Marine Plan (<http://www.scotlink.org/files/pgolicy/ConsultationResponses/LINKrespNatMarPlanNov2013.pdf>).
- It would be useful to have some clarity on how the Scottish Government’s term ‘presumption of use’ [for the marine area] fits in with the planning mechanism framework described in section 3.
- LINK MTF members suggest that the Water Framework Directive requirements for Good Ecological Status should be referenced alongside the MSFD objectives, as the two directives have some overlap.
- LINK MTF members agree that the last sentence of the introductory paragraph should read as follows: *To achieve this goal, it is the intention of the SMSP to promote the adoption of an integrated approach to the protection and enhancement of ecosystems.*
- Part e) of Policy DEV1 is superfluous, as this is captured in the ‘Clean and Safe’ section.

Commercial Fishing (p121)

- This section should include more general comments about how commercial fishing will be approached as a development in the planning process.

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- Part d) of Policy FISH1 is not compatible with the overarching framework of the planning mechanism outlined in section 3 and does not appear to support the principle of sustainable development.

Aquaculture Planning Framework (p129)

- Policy AQ2 is covered by section 4A of the Aquaculture & Fisheries (Scotland) Act 2007 (as amended), which sets out the requirement on fish farm operators to be party to an FMA or prepare an FMS, and prescribes the content of the agreement or statement. AQ2 should be consistent with and reference this legal requirement.

Renewable Energy (p141)

- Policy MSP DEV1 Marine Developments: this policy is a catch-all and seeks to ensure the principles of sustainable development are adhered to. To achieve this, LINK MTF members recommend the inclusion of an additional subsection that reads as the following or words to this effect: ‘that...the proposal provides for the protection and, where appropriate, enhancement of the natural marine environment.’
- Additionally, subsection c) does not refer to environment as an existing marine use. Environment should be considered within this context.
- LINK MTF members suggest that three separate policies may not be necessary under this section, and recommend that there be one for commercial scale renewables developments and one for test and demonstration projects.
- For each of the NRG policies an additional requirement is suggested to that of simply monitoring. Monitoring should be an informative and progressive means to achieve better marine spatial planning and decision-making. There is a need to ensure monitoring is reported on and made publically available so that it may inform wider regional and national monitoring strategies and thus support the adaptive management approach and iterative review processes of regional and national marine sectoral plans. LINK MTF members recommend including this requirement as an additional subsection to the policy.

The SMSP Strategic Environmental Assessment (SEA)

LINK MTF members welcome the opportunity to comment on the SEA and agree that it gives an overall indication of the environmental benefits and impacts that will occur as a result of implementing the SMSP. We welcome, and are fully supportive of, the inclusion of the proposed Marine Protected Areas and Priority Marine Features in the SEA.

While LINK MTF members acknowledge that the SEA is lacking in its evidence base, it would be helpful to include more detail regarding the scale of the impacts, such as including some definition as to the timescale of 'short-term' and 'long-term' impacts.

LINK MTF members also assert that the scale of monitoring being proposed in the SEA is insufficient, particularly in the context of the Planning Mechanism set out in section 3 of the SMSP. The SEA proposed monitoring will be put in place where development occurs in the marine environment, which is important to account for impacts on marine features and define mitigation measures, however it does not provide a baseline to which the impacts can be compared. This seems to be where the SMSP policies fall short; without an adequate baseline it will be difficult to account for the potential impacts that a development may have on the marine environment with any level of certainty. Additionally, where policies specify a requirement to alleviate certain impacts on biodiversity, monitoring or mitigation measures should be clearly stated (e.g. underwater noise policy).

LINK MTF members contend that the ecosystem approach to planning should be emphasised, rather than proceeding on a developer by developer basis with little join up. This is particularly important in terms of assessing cumulative impacts, and LINK MTF members would welcome further detail as to how the SMSP will account for cumulative impacts across Shetland as a whole (not just at the development level).

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The Habitats Regulation Appraisal – Draft Record

LINK MTF members suggest that further context is required in the condition assessments in Tables 4 and 5; it is unclear as to the baseline for the ‘site condition’ categories and the SMSP would therefore benefit from a guide as to the definition of ‘favourable’/‘unfavourable’ and the level from which their condition is ‘maintained’/‘declining’. This is particularly important where a feature is unfavourable and/or declining to highlight where the need for enhancement is greatest.

As previously mentioned, LINK MTF members question whether the SMSP goes far enough to protect and recover key species (and habitats?), such as otters, seabirds and seals (particularly the harbour seal), which should be highlighted by the HRA. LINK MTF members note that in Table 6 the policy ‘Objective ENV’ has been screened out from the General Policy Statements and seek clarification as to whether this is appropriate, given its aspiration to protect and enhance Shetland’s marine environment and prevent inappropriate developments being undertaken in protected sites.

Similarly, the rationale for excluding certain activities from Table 9, such as underwater noise and marine development, is unclear as, even with mitigation measures, it is likely there will still be some negative impact on vulnerable species. When considered in relation to activities such as marine recreation, which has been scoped in as it is thought to have potential likely significant effects; LINK MTF members question the rationale behind the outcome of this screening process.

This response was compiled on behalf of LINK Marine Taskforce and is supported by:

Hebridean Whale and Dolphin Trust	Scottish Ornithologists Club
Marine Conservation Society	Scottish Wildlife Trust
National Trust for Scotland	Whale and Dolphin Conservation
RSPB Scotland	WWF Scotland

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