

## The future of Scotland's Seas

**Summary:** Scotland's Seas are increasingly busy and as a result face tremendous challenges, irrespective of the outcome of the EU referendum. In order to overcome these and ensure much needed ecosystem enhancement, effective conservation and sustainable management of Scotland's marine environment is essential.

### Enhancing the health of Scotland's seas requires:

- **Ecosystem-based management** framework for all of Scotland's seas
- Mechanisms to ensure **legal accountability**
- **Effective legislation** that builds upon existing environmental protections
- **Effective monitoring** of marine activities and compliance
- **Management based on sound science**, including the precautionary principle where evidence is lacking and maintenance of burden of proof upon proposed plans/projects within Natura designations
- **Co-ordination and compatible management** approaches across boundaries
- **Adequate investment** in the health of Scotland's seas to 2020 and beyond

### Background

Scotland remains obligated to maintain and enhance its marine environment under international commitments such as the Bern Convention, the Convention on Biological Diversity, the United Nations Convention on the Law of the Sea (UNCLOS), OSPAR North East Atlantic strategy and delivering on the UN Sustainable Development Goals.

The Scottish Environment LINK Marine Group vision is of healthy, well-managed seas, where wildlife and coastal communities flourish and ecosystems are protected, connected and thriving. However, Scotland's Marine Atlas<sup>1</sup> highlights concern and uncertainty in the health of many species and habitats and that fishing and climate change are the "two significant pressures on the Scottish marine area, which are widespread", in addition to localised pressures. LINK therefore welcomes Scottish Government commitments to restoring marine and coastal ecosystems to a measureable level of Good Environmental Status (GES) by 2020, as required under the Marine Strategy Framework Directive (MSFD) and to continue working towards the vision of "*clean, healthy, safe, productive and diverse seas; managed to meet the long term needs of nature and people*"<sup>2</sup>.

### To protect and enhance marine ecosystems, the following outcomes are required:

#### Ecosystem- based management framework for all of Scotland's seas

National and Regional Marine Planning must support the integrated sustainable management of marine activities both individually and cumulatively. This requires effective and adaptive ecosystem-based management (EBM) plans that strive to sustain healthy marine ecosystems and the coastal communities they support. The long-term social and economic well-being of coastal communities is largely dependent upon healthy marine ecosystems, which through appropriate environmental protection and effective management, can ensure enhanced social and economic benefits.

#### Mechanisms to ensure legal accountability

On leaving the EU, it is unclear how Scotland will retain the same level of accountability to comply with legislation in the absence of the legislative oversight and arbitration role currently provided by the European Court of Justice. For newly transposed laws to have the same effect, a new governance arrangement is required to ensure monitoring, reporting, enforcement and accountability mechanisms are in place to meet the same standards set by EU legislation. Judicial review will not be sufficient to cover these aspects and this legal void must be addressed urgently.

<sup>1</sup> Scotland's Marine Atlas (2013) Marine Scotland. <http://scotgov.publishingthefuture.info/publication/marine-atlas>

<sup>2</sup> Scotland's National Marine Plan

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## Effective legislation that builds upon existing environmental protections and principles

Echoing the words of Cabinet Secretary Roseanna Cunningham<sup>3</sup>, the result of the EU referendum cannot be used to turn back the clock on environmental protection. Rather it is crucial that the standards and general principles of environmental protection provided to Scotland by the EU are upheld and enhanced to reverse declines and ensure the long-term health of Scotland's marine ecosystems. Crucially, the principles of Sustainable Development, the Precautionary Principle, the Polluter Pays principle, and Aarhus-compliant decision making and access to Justice, among others, should continue to be used to guide environmental conservation and management.

**Legal Planning and licencing frameworks:** Key to environmental protection are the Marine Strategy Framework Directive (MSFD) and Water Framework Directive (WFD), two integrative instruments that promote holistic outcomes for the marine environment. Marine activities, such as fisheries and renewable energy developments, should remain compliant with the standards and obligations of EU Directives, particularly with regard to Environmental Assessments (Strategic Environmental Assessment (SEA), Environmental Impact Assessment (EIA) and Appropriate Assessments), in keeping with economic uses of the sea, and with equivalent successor regulations should these be necessary. In transcribing these Directives there will be an opportunity to require full accountability to adequately offset impacts of development, and enhance the marine environment.

**Marine Conservation:** To meet international commitments, progress should continue developing Scotland's contribution to an ecologically coherent network of well-managed Marine Protected Areas (MPAs) in the UK. This will require:

- The transposition of legislation from the EU Birds and Habitats Directives that supports protection and enhancement of listed species and habitats through the designation of Special Protection Areas (SPAs) and Special Areas of Conservation (SACs). After extensive deliberations during the EU REFIT process, the European Commission concluded that "the European Birds and Habitats Directives remain relevant and fit for purpose"<sup>4</sup>. Removing EU legislation such as the Nature Directives from domestic legislation would be to the severe detriment of Scotland's nature. A critical impact would be the loss of an effective site management framework. Notably, the burden of proof currently placed on the developer to prove that activities in a Natura 2000 site would not cause damage, could be reversed.
- An appropriate level of management within MPAs, including closely managing damaging activities to ensure sites are able to achieve their conservation objectives, contribute to wider network objectives and to contribute to enhancing marine ecosystem health.
- Progressing the next stage of network development, including designating nationally important MPAs for mobile species, such as seabirds, minke whales, dolphins and basking sharks.

**Fisheries:** Effective legislation that builds upon recent reforms to the Common Fisheries Policy (CFP) to achieve coherent, ecosystem based-management of Scotland's fisheries, is urgently required. Key reforms achieved to date include the important principle in Article 17 of setting "transparent and objective criteria including those of an environmental, social and economic nature" and keeping recent deep-sea regulations<sup>5</sup> to protect fragile deep-sea ecosystems from damaging fishing gear. We welcome Scottish Government's commitment to update the existing fragmented and outdated inshore fishing legislation through a proposed Inshore Fisheries Bill. The opportunity must be taken to reform fisheries management throughout Scotland's seas to ensure consistency of approach, without losing momentum on urgently needed modernisation of inshore fisheries management. Any future fisheries policy should also be in line with the MSFD, the EU Nature Directives and other relevant EU Directives, Scotland's National Marine Plan, the Marine Nature Conservation Strategy and Scotland's 2020 Biodiversity Challenge. The opportunity should be taken to make further improvements to ensure sustainability, such as on the issues of discards, bycatch, and the management of low trophic level fisheries (i.e. sandeel). For effective environmental management, new fisheries legislation should be applied to all fisheries activities within Scottish

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<sup>3</sup> <https://news.gov.scot/speeches-and-briefings/sea-scotland-conference>

<sup>4</sup> [https://ec.europa.eu/commission/2014-2019/vella/announcements/my-statement-orientation-debate-next-steps-fitness-check-birds-and-habitats-directives\\_en](https://ec.europa.eu/commission/2014-2019/vella/announcements/my-statement-orientation-debate-next-steps-fitness-check-birds-and-habitats-directives_en)

<sup>5</sup> [http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv:OJ.L\\_.2016.354.01.0001.01.ENG](http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv:OJ.L_.2016.354.01.0001.01.ENG)

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waters, with provisions to ensure adequate fleet and impact monitoring and enforcement. Collaborative working with other maritime nations, to manage straddling fish stocks and migratory species will be essential.

**Additional measures to protect and enhance habitats and species throughout Scotland's seas** are also required. Measures to manage fisheries, aquaculture and other marine activity outside of MPAs must ensure the protection of Priority Marine Features (PMFs), such as salmon and sea trout, and areas important for various life history stages of commercial and mobile species. Spatial management of mobile gear fisheries is required to address widespread impacts on benthic habitats. The extent and intensity of creel activity throughout Scottish waters may require careful consideration to ensure it is being undertaken at sustainable levels. Stock management should also be considered at the Functional Unit level – where there is a relationship between habitat type and target stock - for suitable species (such as *Nephrops* and scallops) rather than at the large, Ecoregion (large areas defined by their environmental conditions) scale currently used by ICES.

**Management measures to minimise and where possible eliminate non-target species bycatch**, including marine mammals, basking sharks, seabirds and other mobile species are needed. There are large data gaps regarding the status of cetacean populations and bycatch rates in Scottish waters. Accordingly, monitoring schemes must be applied in all fisheries and where required, development of effective and targeted prevention mechanisms. Appropriate management should be applied in all set-net fisheries with a risk of marine mammal or seabird by-catch and to address the issue of entanglement in creel and other mooring ropes. Particular attention should be given to static nets with mesh sizes that might cause marine mammal or seabird by-catch, including within MPAs, and to trawl fisheries with a known high risk of by-catch, particularly pelagic trawl fisheries targeting tuna, bass and hake, and fisheries using very high vertical opening (VHVO) trawls. Research and trials on alternative mitigation technologies are recommended to identify other potential options. Measures should apply to Scottish vessels wherever they operate and all nations' vessels should apply the same standards in Scottish waters.

#### **Effective monitoring of marine activities and compliance**

Marine activities in Scottish waters can have direct (e.g. seabed alteration, noise disturbance, targeted removal and by-catch) and indirect (e.g. knock on effects of seabed alteration on mobile species) on the environment. Impact monitoring of acoustic noise from naval and other shipping activities on mobile species, and the environmental impact of aquaculture activities are also required to inform management decisions. Full documentation of all fishing vessels operating in Scottish waters, with accountability for what is being caught, how and when is needed. Remote Electronic Monitoring (REM) systems using cameras are a cost-effective and robust means to monitor fishing activity at sea, and are a realistic economic prospect for the over 10m vessels. Such technology is constantly improving and is currently being used in fisheries around the world including New Zealand, Chile, the US and Canada. For those under 10m an appropriate electronic monitoring equivalent should be adopted. This would provide a far more accurate picture of ecosystem health and the status of all caught fish and shellfish species, provide improved data for fisheries management and deliver effective compliance. It would also give confidence to retailers, consumers and regulators regarding the accountability and sustainability of our fisheries.

#### **Management based on sound science**

Robust scientific research that uses the best available data on commercial stock status and distribution and the health, function and distribution of important species and habitats, should underpin management decisions in Scotland's marine area. Where data is lacking a precautionary approach should be applied and efforts made to address data gaps. Major gaps can be filled by the adoption of effective REM with cameras and alternatives in the smaller vessels and supported by effectively involving marine industries in data collection, and analysis will create a transparent process and help build trust between stakeholders. Additionally, identifying and operating within sustainable limits, with removals aligned with best available scientific advice so that all harvested stocks are fished below  $F_{msy}$  (maximum rate of fishing mortality) in order to restore stock biomass and maintain them above levels capable of producing  $MSY$ . These catch limits should be based on scientific advice provided by the International Council for Exploration of the Seas (ICES), and the North East Atlantic Fisheries Commission (NEAFC), and in keeping with principles enshrined in the United Nations Convention on the Law of the Sea (UNCLOS). The designation of further Demonstration and Research MPAs provides an opportunity to explore and advance progressive fisheries management approaches, support research of impacts and encourage community engagement.

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### **Co-ordination and compatible management approaches across boundaries**

Fish, marine mammals, and seabirds are highly mobile species often moving across regional boundaries and national jurisdictions. Therefore, marine conservation measures require a high level of coordination across boundaries within Scotland (e.g. Regional Inshore Fisheries Groups in Scotland), within the UK - adopting processes to ensure consistency of approach - and with neighbouring coastal nations. Through the UK, Scotland is party to both the UN Convention on the Law of the Sea 1982 (UNCLOS) and the Fish Stocks Agreement 1995. These treaties mean that whatever the constitutional arrangements, all four UK nations must negotiate and share management responsibilities with neighbouring states of the waters around the UK and on the high seas. For this reason, any new legislation should maintain an ongoing review process in order to keep pace with neighbouring legislative changes. The imperative to integrate fisheries management with conservation and compliance with international and domestic policy is further driven by the Scottish Government's international responsibilities under WSSD<sup>6</sup>, OSPAR<sup>7</sup>, ICES, NEAFC and national commitments under the relevant Marine Acts<sup>8</sup>.

### **Adequate investment in the health of Scotland's seas to 2020 and beyond**

Safeguarded, and where necessary increased funding is required to support the monitoring, enforcement and completion of Scotland's MPA network, and development of Regional Marine Plans to meet national and international commitments to sustainably develop and enhance Scotland's marine environment. To ensure the long term benefits Scotland's seas provide, and the health and stability of Scotland's maritime industries, sustainable practices need to be underpinned and encouraged with sufficient resources. Governments should take advantage of European Maritime Fisheries Fund (EMFF) while it remains available and when this is no longer the case, should seek innovative ways of funding fisheries management, science and enforcement. Given budgetary constraints, any future funding must be directed strategically to support and incentivise a 'race to the top'. This could include:

- the development and application of fishing gear with low environmental impact,
- mitigation of damage to benthic habitats,
- technical and spatial measures to address overfishing, habitat damage and gear conflict,
- scientific research to support management measures,
- robust fisheries and impact monitoring,
- by-catch reduction and data collection, and
- industry-led initiatives, such as the real-time closures for cod in the North Sea

### **Concluding remarks**

The measures recommended here are vital to establish a healthy future for Scotland's rich marine and coastal environment and all its dependent industries and communities. We must ensure the current standards of environmental protection provided to Scotland through EU legislation are not only maintained but improved upon, placing Scotland at the forefront of global marine conservation and management. This is an opportunity to demonstrate clearly that safeguarding and enhancing Scotland's incredible marine biodiversity, as part of an ecosystem-based management approach, will ensure the long-term provision of ecosystem service benefits that in turn underpin secure livelihoods and support thriving coastal communities.

We look forward to engaging with Scottish Government, Members of the Scottish Parliament and all stakeholders on the next steps of ensuring Scotland's seas are in Good Environmental Status by 2020 and beyond.

Scottish Environment LINK is the forum for Scotland's voluntary environment community, with over 35 member bodies representing a broad spectrum of environmental interests with the common goal of contributing to a more environmentally sustainable society. This briefing is supported by the following members of the LINK Marine Group: Hebridean Whale and Dolphin Trust, Marine Conservation Society, the National Trust for Scotland, RSPB Scotland, Royal Zoological Society of Scotland, Salmon and Trout Conservation Scotland, Scottish Wildlife Trust, Whale and Dolphin Conservation and WWF Scotland.

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<sup>6</sup> World Summit on Sustainable Development, Johannesburg, 2002.

<sup>7</sup> Oslo-Paris Convention for the Protection of the Marine Environment of the North East Atlantic, 1992.

<sup>8</sup> Marine and Coastal Access Act, 2009 and Marine Scotland Act, 2010.

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