

**Comments on 'Marine Protected Areas in the Seas around Scotland: Guidelines on the selection of MPAs and development of the MPA network'.
June 2010.**

Introduction

Scottish Environment LINK's Marine Task Force (LINK MTF) welcome the opportunity to comment on the draft guidance on the selection of MPAs and development of the MPA network. We are largely supportive of the draft guidance as presented and we believe that the draft guidance provides an excellent framework for meeting our international commitment of setting up a representative, ecologically coherent network of MPAs. However, we have some outstanding concerns and these are set out in the detailed comments below.

Comments arising from previous versions of the document.

LINK MTF were extremely grateful to have the opportunity to comment on a previous version of this document and this section focuses on comments that we have previously made.

1. Whilst Annex 1 provides detail of the design features associated with an ecologically coherent network, relating to the guidance that has been developed under the OSPAR Convention, it would be useful to have a comprehensive treatment of the key principles of ecological coherence in the main body of the document. Whilst we recognise that the Ministerial Statement on the creation of a network of MPAs (12 Mar 2010) is included in Annex 4, we believe that this key concept should be replicated (and potentially expanded) in the main body of the document.
2. Paragraph 4.2: LINK MTF welcome the inclusion of a vision for the MPA network.
3. Paragraph 4.5 (c) makes reference to the size of a Nature Conservation MPA but no longer makes reference to the size of the network as a whole. This paragraph should make clear that the size of the network should be sufficient to deliver Scotland's commitments, including national aspirations.
4. There is still no mention of the precautionary principle although we recognise that its principle features are set out in paragraph 4.5(g).
5. As we stated in earlier comments, we see no reason why MPAs should not be identified with the sole purpose of safeguarding ecological processes (Paragraph 4.9). It is surely possible that such processes may exist in areas that do not support priority marine features, and to discount the protection of such processes at such an early stage would appear counterproductive.
6. In a previous version of the document we supported the idea that supporting management measures can be put in place which vary with time. This concept is no longer included, but we trust that this will be included in the forthcoming management guidelines.

7. We were also encouraged to see a previous emphasis on the use of SEA and EIA but this is no longer included in the present draft:
'In addition to MEOs and marine planning, there is a lot that can be achieved in terms of management of the wider marine environment that will also support the MPA network. This includes the use of Strategic Environmental Assessment and Environmental Impact Assessment, the development of different techniques, guidance and best practice and the use of other sectoral measures or financial tools such as grants to support the conservation of biodiversity and/or geodiversity.'
8. We were also very encouraged to see the following statement in a previous draft of the document:
'There must be a clear understanding from the outset of the contribution that a particular MPA, and the MPA network as a whole, is making to the conservation and sustainable use of Scotland's seas. Similarly, the role that other marine management measures play in supporting MPAs to make this contribution must also be clear. Therefore it is not only those involved directly with MPA management who need to have a good understanding of what they have been set up to achieve, but also other regulators, advisors, industry, other users and local communities. Good science and data must underpin the decisions taken in relation to the planning and management of MPAs.'
We believe that it is crucial that there is a wide understanding of the objectives of an MPA network and of the role of individual sites, particularly in the absence of a duty in the Marine (Scotland) Act to create marine management schemes for all MPAs. We therefore believe that this paragraph should be reinstated.
9. Finally, we are concerned with the limited list of mobile species in Annex 3, Table 2c (see more specific comments below). With particular reference to cetaceans, *Lagenorhynchus acutus*, *Orcinus orca*, *Globicephala melas*, *Grampus griseus* and *Delphinus delphis* have all been removed from this list since previous drafts. We would seek clarification on the ongoing work on the justification for the inclusion of the cetacean species and would expect to have an opportunity to comment on this work. As a general principle the focus should be on starting from an inclusive list and then opting species out on the basis of their lack of suitability (with a clear justification for so-doing) rather than starting with such a limited species list. We are also serious concerned about the exclusion of seabirds in the draft list at Annex 3.

Comments specific to the current draft

Overarching Concerns

10. We are extremely concerned that the draft list of Priority Marine Features excludes habitats/species that are listed in the habitats/birds directives. We believe that Nature Conservation MPAs represent an important mechanism for the protection of such habitats or species which do not meet the threshold for designation as SACs/SPAs, but are considered to be nationally important. The exclusion of such species and habitats appears to be a policy decision, rather than a decision made on a rigorous scientific basis. We acknowledge, and support, the consensus within the Sustainable Seas Task Force that MPAs should not be used to underpin SACs/SPAs for the same qualifying

feature in the same location. However, we do not believe that this precludes (or should preclude) the designation of MPAs for nationally important populations of marine species or habitats listed in the habitats/birds directives. The technical process for identifying Nature Conservation MPAs as laid out in Figure 6 (Point C) requires a review of the *'potential contribution made by Natura and other spatial management measures to the conservation of priority marine features on the sub-list'*. We would argue that, rather than presuming that Natura sites already cover qualifying species/habitats, such species should be included as priority marine features and if, following an objective analysis, it is considered that Natura sites provide adequate coverage for nationally important populations in a given MPA region, there would be no need to designate further sites. If such species or habitats were excluded, we would point out that there would need to be far more Natura sites (and/or a revised definition of "internationally important" to cover both range/ numbers) to ensure a genuinely "coherent network" of marine protected areas.

11. We are concerned that the guidelines, in their current form, are unclear on how stakeholder involvement will work in practise. Without a clearly expressed context, stakeholder engagement has the potential to create confusion and generate unrealistic expectation. This context for the inclusion of socio-economic considerations into the site designation process has been set out by the recommendations of the Sustainable Seas Task Force, as outlined by the Cabinet Secretary for Rural Affairs and the Environment in his letter to the Rural Affairs and Environment Committee (1 Feb 2010). The MPA selection guidelines should be amended to reflect this. Specifically, it should be re-stated that *'science remains the primary consideration when identifying MPAs for inclusion in the network'* and *'only when it is clear that the ecological requirements of the network can be met, will socio-economic considerations figure in the decision making process'*.

Executive summary

12. Page 3, last sentence of last paragraph under 'Developing MPA networks': It should be made clear in a separate sentence that socio-economic benefits are secondary to the primary purpose of the MPA network (biodiversity protection, ecosystem recovery and meeting international commitments)

Section 1

13. Paragraph 1.10: We welcome the fact that additional guidance will be produced on the management of MPAs, as effective management according to ecological need is the key to the success of the MPA network. We would welcome the opportunity to comment on an early draft of these guidelines as soon as possible.
14. Paragraph 1.11: The reference to 'Sustainable Seas for all' seems dated - Sustainable Seas for All espouses three tiers of MPA (international, national and community), which is significantly different from the sites delivered by the Marine (Scotland) Act with both Nature Conservation and Demonstration and Research MPAs being able to be proposed by communities.

15. Paragraph 1.18 – 1.22 (MPA networks): There should be a reference to the duties relating to the creation of a network of conservation sites (Section 79 of the Marine (Scotland) Act and Clause 123 of the Marine and Coastal Access Act).
16. Paragraph 1.25: We welcome the clarification that science will be the primary consideration in the selection of Nature Conservation MPAs, but we do not feel that this paragraph is entirely consistent with the Cabinet Secretary's letter to the RAE Committee (1st Feb 2010). Specifically the wording in the letter was for the new power to be used only in 'exceptional' circumstances (rather than 'some' circumstances) and the letter also makes clear that 'when considering MPAs, only when it is clear that the ecological requirements of the network can be met, will socio-economic considerations figure in the decision making process'. This should be re-stated here for clarity.
17. Paragraph 1.28: Typo – 'form' should be replaced with 'formal'.
18. Figure 1: SNH and JNCC should undertake public consultation **on the scientific merit of proposals** on behalf of Scottish Ministers. It is also unclear whether Ministers will provide transparent information on their decisions regarding MPA proposals and the reasons behind these decisions. The advice given to ministers must be published for clarity. In addition, Ministers should also state their reasons for *not* designating a site following a recommendation from SNH or JNCC.

Section 3

19. Paragraph 3.5 states 'For these types of protected areas in particular, the IUCN definition has value in describing what we mean but it needs to be borne in mind that the IUCN definition is a more general one which can also be applied to Natura sites and other protected areas.' This comment is confusing. The term 'marine protected area' is a common generic term which is used worldwide to cover a range of protected areas including marine reserves (which offer a high degree of protection), marine parks, SACs, marine wildlife refuges or national marine sanctuaries. This confusion arises from using a general term to mean something more specific under the Marine (Scotland) Act. The IUCN has categories ranging from i (strict protection) to vi (multiple use). It would be useful to clarify that depending on the level of protection required, NC MPAs may lie across these categories.

Section 4

20. Paragraph 4.2: 'conserve' should be replaced with 'restore'. The Oxford Dictionary definition of 'conserve' is to *protect (something, especially something of environmental or cultural importance) from harm or destruction* and therefore this concept is already covered by the inclusion of the word 'protect'. Use of the term 'restore' is consistent with Article 1 of the Marine Strategy Framework Directive.
21. Paragraph 4.3 (iii): The MPA network should include the full range of representative features. Therefore the reference to '*and/or* representing the range of features within Scotland's Seas' should be amended to '*and* representing the range of features within Scotland's Seas'.
22. Paragraph 4.3 (iv) and 4.5 (b): It should be clarified that preference will be given to the selection of areas with multiple features only where this is an option. It will be important to take each potential site on its own merits within the network, considering representivity, connectivity, replication, resilience, naturalness and bearing in mind that high biodiversity is not a feature of all ecologically important areas. If too much of a priority is given to areas containing multiple features there is a risk that this

- approach would be detrimental to the protection of some species/habitats which do not fall within such areas.
23. Paragraph 4.3 (vi): As this is the first reference to such area based measures it would be useful to provide some examples here as in paragraph 4.10. LINK MTF would support other areas only if they are monitored and reported on in exactly the same way as designated MPAs.
 24. Paragraph 4.3 (vii): The reference to sustainable economic growth must be clarified here. For example, the Scottish Planning Policy defines the term in a manner that might better be summarised as 'sustainable development' and we believe that this would be appropriate here. If reference is to be made to Sustainable Economic Growth it should be as a separate sentence. The existing sentence should stop at 'environment', and the second sentence should make clear that the wider benefits, whilst important, are secondary to the primary role of the network.
 25. No paragraph 4.4
 26. Paragraph 4.5 (a): This paragraph should clarify that Nature Conservation MPAs will be developed through a scientific process and *subsequent* engagement with stakeholders, consistent with the recommendations of the Sustainable Seas Task Force, as outlined by the Cabinet Secretary for Rural Affairs and the Environment in his letter to the Rural Affairs and Environment Committee (1 Feb 2010).
 27. Paragraph 4.5 (d): Nature Conservation MPAs are a conservation tool rather than simply a management tool. This paragraph should therefore be edited to read, "Nature Conservation MPAs are only one of the measures available to help deliver the *conservation and sustainable* management of Scotland's seas. They will be used where they are the most appropriate mechanism to deliver effective *conservation and sustainable* management."
 28. Paragraph 4.5 (f): If such an approach is to be successful the existing sectoral measures must prove themselves to be effective.
 29. Paragraph 4.5 (i): We are concerned that the term 'assumption of multiple use' risks creating the potential for distrust and criticism if, following the objective process of identifying MPAs and acting on the advice of SNH/JNCC for the management of the sites, a large number of sites (or zones within sites) are found which cannot accommodate multiple use. This wording appears to place a different emphasis on the potential for multiple-use than the Ministerial Statement on the creation of a network of Marine Protected Areas (12 March 2010) and paragraph 61 of the draft Marine Nature Conservation strategy which both state '*Co-existence of activities will be encouraged where possible but we recognise that some activities in some areas may need to be controlled or excluded, meaning that the nature and intensity of human activities is likely to vary between sites*'. We would therefore suggest that the above wording is used, or alternatively that the final sentence of this paragraph is amended to: *We would expect co-existence of activities where possible in Nature Conservation MPAs, provided that this is compatible with meeting the conservation objectives for a Nature Conservation MPA.*
 30. Paragraph 4.5 (j): We would appreciate more information on the Impact Assessment process and who will carry out such an assessment.
 31. Paragraph 4.7 (Biodiversity bullet 5): This should include areas important for foraging.
 32. Paragraph 4.10 (ii & iii): Such areas should only form part of the network where monitoring is undertaken to a sufficient level to demonstrate positive impacts and where the sites therefore meet the required criteria in section 4.7. Such sites must have clear conservation objectives (as suggested by paragraph 6.34) and should be monitored against these objectives. We would be extremely concerned if these 'other' sites are not monitored and reported against in the same manner as officially designated MPAs. For example, how would s.80 of the Marine (Scotland) Act on advice

from SNH apply? Would the offences under s.94 and s.95 apply? Would such sites be reported against as per s.103? Would the relevant sections of Part 7 apply to these 'other' sites? If these conditions cannot be met we do not believe that it is appropriate to include 'other spatial measures' as part of the MPA network, and we would be unable to support this course of action.

Section 5

33. We believe that this section should be reworked to focus on the relationship between priority marine features and marine natural features. For example, it is not clear that Priority Marine Features would also be Marine Natural Features once a site is designated. We also have significant concerns about the terminology used here. It is easy to misinterpret these terms and come to the conclusion that Priority Marine Features are somehow of greater conservation value than Marine Natural Features, when in reality, Priority Marine Features are primarily a tool to focus the search for Marine Protected Areas (which may then include a wider range of features than the priority marine feature(s) alone). In order to avoid this misinterpretation we would suggest that the term '**MPA Search Feature**' is used as an alternative. We understand that the term 'Marine Natural Feature' is derived from the equivalent terrestrial terminology for SSSIs, but as 'Marine Natural Feature' simply refers to the protected features for which a site is designated we would recommend that the term '**Designated Feature**' or '**Protected Feature**' be used for simplicity.
34. Paragraph 5.4: This paragraph is a key concern. Nationally important concentrations of seabirds at sea will not be protected by the Natura 2000 network. This includes concentrations of non-breeding seabirds e.g. wintering populations, as well as important maintenance and foraging areas at sea for seabirds breeding at nationally important protected colonies on land. Nationally and internationally important seabird breeding colonies on land are protected under national (as SSSIs) and international (as SPAs) legislation. There is an obligation to protect the marine areas that support these land-based colonies e.g. maintenance and foraging areas. Those areas that are important for the continued survival of the internationally important seabird breeding colonies must eventually be protected as part of the marine SPA network – but the marine SPA network will not cover those marine areas that support the nationally important, SSSI breeding seabird colonies. Instead, the MPA mechanism should be used to protect these areas. In addition, black guillemot (*Cepphus grylle*), as the only species of UK breeding seabird that cannot benefit from SPA protection (being considered neither migratory in the UK nor listed on Annex I), will suffer because of an absence of specific spatial protection measures. MPA designation for this species would offer the vital opportunity to contribute to an ecologically coherent network, filling a gap in the present protection measures. With nearly all of the UK and half of the EU population of this species, surely this qualifies as "significant aggregations or communities of important marine species in Scottish waters". Seabirds (in general) are undoubtedly "features which are characteristic of Scotland's marine environment (Annex 1).
35. Paragraph 5.5: We would support this approach *provided* that less biodiverse marine features/sites, that are an important part of the proposed network because they are threatened/declining, keystone, representative and/or functionally important, are also adequately protected/considered as part of the network. Similar to our comments on paragraph 4.3 (iv) and 4.5 (b) this section should be amended as follows: 'Where coverage of less biodiverse marine features would not be compromised within the wider network, preference will be given to the selection of Nature Conservation MPAs with multiple features...'

36. Paragraph 5.5: Page: 7
In addition to providing the required protection for nationally important populations, including seabirds on the list of priority marine features will help to drive the search location process. The 'Finding Sanctuary' MCZ project in England has used seabirds to identify 'hotspots', and, to give a more specific example, black guillemot are closely associated with kelp beds (a priority marine feature).

Section 6

37. Paragraph 6.4: The reference should be 6.34 rather than 3.34.
38. Paragraph 6.7 & 6.12: There should be an additional bullet at the start of these lists stating, 'Assessment of existing data on relevant species and habitats in Annex 3'. This should also be reflected as a first step in Figure 6.
39. Paragraph 6.7 (Bullet 3): This should be limited to area-based protection measures that can be demonstrated to meet the MPA criteria.
40. Paragraph 6.12 (Bullet 2): We are concerned about the use of the term 'quality' here. Sites should be assessed on their *relative importance*, rather than their *quality*, making it clear up front that not just sites in good condition will be selected. Stage 2 should also consider ecological coherence.
41. Paragraph 6.18: We would suggest that this is re-worded to 'The guidelines for Nature Conservation MPAs will be applied to these least damaged/more natural areas first, before **being** applied more widely'. If there is an option not to apply the criteria to more damaged areas we would be concerned that areas most in need of recovery are overlooked.
42. Figure 6: At the end of the process there should be an additional box to check that the network is coherent, and if not a feedback loop to the start of the process should be included to ensure that an ecologically coherent network is delivered.
43. Figure 6 (Box D): This should include data gaps that prohibit a complete assessment.
44. Paragraph 6.34: We welcome the fact that all areas considered to contribute to the network will have conservation objectives. We would seek clarification that the same process of setting conservation objectives will be used as for formally designated MPAs.

Section 7

45. Paragraph 7.2 states that *information will be largely gathered from national/regional organisations as described in section 3*. However, this is not stated in section 3 and we cannot find reference to this elsewhere in the document. We expect that Environmental NGOs and key industry sectors could have a valuable role to play here.
46. Paragraph 7.2: There is no detail about what sort of socio-economic information is considered acceptable, and what level of rigour will be used to assess such information. More detail is required here.
47. Paragraph 7.3: How will Marine Scotland proceed for important mobile species where such long-term data sets do not exist? We would expect a degree of precaution here and this needs to be clearly stated in the document.
48. Paragraph 7.5: The first and second bullet points appear contradictory (recommending straight lines away from the coast and then complex shapes so that the boundary matches the feature. We believe that simple, straight boundaries, whilst politically probably unpopular, are easier to avoid and easier to police (both in the water and via GIS-tracking). Anecdotal feedback from the Scottish Fisheries Protection Agency (as was) confirmed this.
49. Paragraph 7.7: When will such guidance be available, especially since the document states that the final list used to underpin selection of new MPAs and development of the MPA network will be proposed to Scottish Ministers by June 2010 (Paragraph 5.2)?

50. Paragraph 7.10/7.11: These paragraphs allow for the de-selection of a specific MPA if the results of monitoring work show that the conservation objectives for a new MPA are unlikely to be met. However, we would suggest that prior to de-selection of a site there should be an assessment of the management measures employed to achieve the conservation objectives, and that these should be a much stronger commitment in the document to examine and potentially adjust/strengthen the management measures prior to de-selection of a site.

Annex 1

51. Page 43: Reference to 'figure 8' should read 'figure 6'.
52. Table 1; 1a; Note ii: The term 'characteristic' should encompass both distinctive and representative (not and/or). We understand 'distinctive' to mean 'only found in Scotland or a region of Scotland' and 'representative' to mean 'typical of Scotland or a region in Scotland'. The latter encompasses the former but not *vice versa* e.g. *Laminaria hyperborea* forests would be representative of much rocky infralittoral around UK, including Scotland (and therefore typical of both Scotland and the rest of UK), but not distinctively Scottish whereas circalittoral rock with northern sea fans and celtic featherstars would be both distinctively and representatively Scottish. We would be uncomfortable if common or representative features which are important for ecosystem functioning *within* Scotland were ruled out at an early stage, simply because they were also found throughout UK.
53. Table 1; 1b; Guideline: This should include those habitats and species which are data deficient or where there is a concern about an immediate threat.
54. Table 1; 1c; Guideline: The text here should read 'key and/or threatened/declining'.
55. Table 2; title and preamble: We are concerned about the use of the term 'quality' here. Sites should be assessed on their *relative importance*, rather than their *quality*, making it clear up front that not just sites in good condition will be selected.
56. Table 2; 2d; Guideline: We believe this is too pre-emptive and therefore we would suggest that 'rather than those heavily modified by human activity' is removed.
57. Table 2: Add new guideline 2f as follows - *The search location contains priority marine feature(s) already damaged by human activities but which merit restoration/recovery to help complete the network and which is/are realistically deemed to be reparable.*
58. Table 4; notes: Sites should not be considered unsuitable as MPAs simply because the required management will be awkward to implement. Site designation should be on scientific criteria alone and management of the site should be according to ecological need. 'and whether it is realistic that the required measures will be put in place' should be deleted. Where measures are required to be put in place they should be.
59. Table 5; Note vii: 'Foraging' should be included alongside 'courtship' and 'feeding' by a particular species.
60. Table 5; Note viii: See comment on Paragraph 7.2 (above)
61. Table 5: 'Note viiii' should be 'Note ix'.
62. Table 10: We are unaware of the source information here but it seems that a 100m boundary for inshore features in shallow waters from 100m distant is far too low compared with an offshore boundary that might be 2,000m. For example if the warp length is 100m, this would mean a boat could be at the 100m boundary and using gear legally right up to the edge of the feature. If, for example, the feature was sensitive to sedimentation this could have a devastating effect on that feature. We believe that a more precautionary approach to the limit for <25m depth should be taken to avoid this ambiguity. Quite apart from this specific concern we do not believe a 'one size fits all' approach is the correct one. In the face of climate change the geographical range of a feature might be expected to change over time. It would

appear sensible to allow some flexibility in the setting of MPA boundaries to allow this to happen without necessarily having to re-designate the site.

Annex 3

63. Table 2c; Cetaceans: We will comment on the species list for cetaceans once we have seen the further consultation on this list and have examined the detailed rationale as to why species included in previous drafts have been filtered out. In the meantime, we would refer you to our more general comments in paragraph 10 above.
64. Table 2c; Seabirds: See paragraph 34 above.

Other issues

65. There are a number of references to sections of the Marine (Scotland) Act as 'clauses'; in the ministerial statement (Annex 4) clauses of the Marine and Coastal Access Act are referred to as 'sections'.

Scottish Environment LINK is the umbrella body for Scotland's voluntary environmental organisations, representing around 500,000 members. Scottish Environment LINK's Marine Task Force is supported by:

Buglife – The Invertebrate Conservation Trust	RSPB Scotland
Hebridean Whale and Dolphin Trust	Scottish Wildlife Trust
Marine Conservation Society	WWF Scotland
National Trust for Scotland	Whale and Dolphin Conservation Society

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