

Scottish Marine Bill Consultation Response

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 and its campaign for a Scottish Marine Bill is supported by:

Hebridean Whale and Dolphin Trust
Marine Conservation Society
National Trust for Scotland
RSPB Scotland

Scottish Wildlife Trust
WWF Scotland
Whale and Dolphin Conservation Society

Overarching Comments

We welcome the opportunity to respond to the Scottish Marine Bill Consultation. Scottish Environment LINK's Marine Task Force would like a Scottish Marine Bill with the environment at its heart, by which we mean it must result in protection and recovery of our marine environment in order to achieve a healthy, functioning marine ecosystem. The marine ecosystem is the foundation which underpins all human activities and therefore ensuring that this is a healthy, well-functioning ecosystem is essential for a sustainable economy. The bill should therefore be founded on the 5 principles of sustainable development: living within environmental limits; ensuring a strong, healthy and just society; achieving a sustainable economy; promoting good governance; and using science responsibly. In addition the Bill must fully transpose our international obligations under the Marine Strategy Framework Directive and meet international commitments under OSPAR and the World Summit on Sustainable Development. We have answered the specific questions set out in the consultation document below, but in addition we would like to draw attention to the following duties that we believe the Bill should include:

- A duty on Scottish Ministers to identify and designate new sites and to establish an ecologically coherent network of marine protected areas.
- A duty on Scottish Ministers to deliver ecosystem-based management.
- A duty on Scottish Ministers to implement High Level Marine Objectives.
- A duty on Marine Scotland to have regard to advice from SNH.
- A duty for all public bodies in the course of decision-making to consult SNCOs
- A duty on all public bodies to deliver ICZM.

Recognising that a lot of detailed work is needed to define such aspirations and establish whether they are being met, a successful Scottish Marine Bill must deliver Good Environmental Status and seas that are clean, healthy, safe, productive and biologically diverse.

CHAPTER 1 – SETTING THE SCENE

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

Yes: Scottish Environment LINK's Marine Task Force (LINK MTF) has been campaigning for strong and effective marine conservation legislation for more than ten years. LINK MTF has contributed to the work of AGMACS and SSTF where there was consensus across sectors for the need for change.

In addition, it is clear that change is needed in order to deliver our international commitments under the EU Marine Strategy framework Directive (MSFD) in addition to our OSPAR and WSSD commitments.

Marine Strategy Framework Directive (MSFD)

As the Scottish Marine Bill will be the vehicle for transposition of this directive we would particularly wish to emphasise the following clauses of the MSFD (Bold and italics transposed from MSFD):

(2) It is evident that pressures on natural marine resources and the demand for marine ecological services are often too high and that the Community needs to reduce its impact on marine waters ***regardless of where their effects occur.***

(3) The marine environment is a precious heritage that must be protected, preserved and, where practicable, restored with the ultimate aim of maintaining biodiversity and providing diverse and dynamic oceans and seas which are clean, healthy and productive. In that respect, this Directive should, ***inter alia, promote the integration of environmental considerations into all relevant policy areas and*** deliver the environmental pillar of the future Maritime Policy for the European Union.

(4) In line with Decision No 1600/2002/EC of the European Parliament and of the Council of 22 July 2002 laying down the Sixth Community Environment Action Programme, a thematic strategy for the protection and conservation of the marine environment has been developed with the overall aim of promoting sustainable use of the seas and conserving marine ecosystems.

(5) The development and implementation of the thematic strategy should be aimed at the conservation of the marine ecosystems. This approach should include protected areas and should address all human activities that have an impact on the marine environment.

(6) ***The establishment of marine protected areas, including areas already designated or to be designated under*** Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora (hereinafter referred to as the "Habitats Directive"), Council Directive 79/409/EEC of 2 April 1979 on the conservation of wild birds (hereinafter referred to as the "Birds Directive"), and ***under international or regional agreements to which the European Community or Member States concerned are Parties, is an important contribution to the achievement of good environmental status under this Directive .***

(7) Establishing such protected areas under this Directive will be an important step to fulfil the commitments undertaken at the World Summit on Sustainable Development and in the Convention on Biological Diversity, approved by Council Decision 93/626/EEC, and to contribute to the creation of coherent and representative networks of such areas.

(8) By applying an ecosystem-based approach to the management of human activities while enabling a sustainable use of marine goods and services, priority should be given to achieving or maintaining good environmental status in the Community's marine environment, to continuing its protection and preservation, and to preventing subsequent deterioration.

(13) By reason of the transboundary nature of the marine environment, Member States should cooperate to ensure the coordinated development of Marine Strategies for each Marine Region or

Sub-Region. Since Marine Regions or Sub-Regions are shared both with other Member States and with third countries, Member States should make every effort to ensure close coordination with all Member States and third countries concerned. Where practical and appropriate, existing institutional structures established in Marine Regions or Sub-Regions, in particular Regional Sea Conventions, should be used to ensure such coordination.

(18) This Directive should also support the strong position taken by the Community, in the context of the Convention on Biological Diversity, on halting biodiversity loss, ensuring the conservation and sustainable use of marine biodiversity, and on the creation of a global network of marine protected areas by 2012. Additionally, it should contribute to the achievement of the objectives of the Seventh Conference of the Parties to the Convention on Biological Diversity, which adopted an elaborate programme of work on marine and coastal biodiversity with a number of goals, targets and activities aimed at halting the loss of biological diversity nationally, regionally and globally and at securing the capacity of the marine ecosystems to support the provision of goods and services, and a programme of work on protected areas with the objective of establishing and maintaining ecologically representative systems of marine protected areas by 2012. The obligation for Member States to designate Natura 2000 sites under the Birds Directive and the Habitats Directive will make an important contribution to this process.

(27) Member States should then establish and implement programmes of measures which are designed to achieve or maintain good environmental status in the waters concerned, while accommodating existing Community and international requirements and the needs of the Marine Region or Sub-Region concerned. **Those measures should be devised on the basis of the precautionary principle and the principles that preventive action should be taken, that environmental damage should, as a priority, be rectified at source and that the polluter should pay.**

*(39) Measures regulating fisheries management **can** be taken in the context of the Common Fisheries Policy, as set out in Council Regulation (EC) No 2371/2002 of 20 December 2002 on the conservation and sustainable exploitation of fisheries resources under the Common Fisheries Policy, based on scientific advice **with a view to supporting the achievement of the objectives addressed by this Directive, including the full closure to fisheries of certain areas, to enable the integrity, structure and functioning of ecosystems to be maintained or restored and, where appropriate, in order to safeguard, inter alia, spawning, nursery and feeding grounds.** Articles 30 and 31 of the EURATOM Treaty regulate discharges and emissions resulting from the use of radioactive material and this Directive should therefore not address them.*

(44) Programmes of measures and subsequent action by Member States should be based on an ecosystem-based approach to the management of human activities and on the principles referred to in Article 174 of the Treaty, in particular the precautionary principle.

We note in particular the emphasis on the ecosystem-based approach and the precautionary principle.

OSPAR

Under OSPAR, our commitments include the establishment of a network of marine protected areas (MPAs) by 2010 to 'ensure the sustainable use, protection and conservation of marine biological diversity and ecosystems'. The network should 'take into account the linkages between marine ecosystems and the dependence of some species and habitats on processes that occur outside the MPA concerned.' It should 'form an ecologically coherent network of well managed MPAs', including MPAs for 'mobile species, such as certain birds, mammals and fish, to safeguard the critical stages and areas of their life cycle'.

World Summit on Sustainable Development (WSSD)

The World Summit on Sustainable Development (WSSD) commits all contracting states to promote more sustainable fisheries, to significantly reducing biodiversity loss by 2010, and to '*establishing marine protected areas consistent with international law and based on scientific information, including representative networks*' by 2012.

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:

a) a new system of marine planning for the sustainable use of Scotland's seas;

Yes – in contrast to the well-developed terrestrial planning system, no overall framework exists for planning the use of the sea and protecting our marine environment. Instead, there is an *ad hoc* sectoral approach to consenting of marine activities, involving different pieces of legislation and all managed by different authorities. It is vital that Scotland work with the UK to produce a coherent regional seas approach that follows bio-geographical regions, including all administrations signing off a UK-wide Marine Policy Statement and High Level Marine Objectives and all relevant administrations signing off joint marine spatial plans for each regional sea (e.g. Irish Sea and Northern North Sea). The new marine planning system must be statutory, including a statutory local tier delivered by a body recognised as a legal entity.

b) improvements to marine nature conservation to safeguard and protect Scotland's marine assets;

Yes – protecting key habitats and species will play a vital role in improving the health of the marine environment. We also welcome the statement that 'ecosystems' will be at the heart of Scotland's marine management (paragraph 35) and would like to see this reiterated in the remainder of the document. In order to be effective, improvements should include, among others, a duty on Scottish Ministers to use the powers proposed to establish an ecologically coherent network of MPAs. Without the relevant duties, new powers, however welcome, would not have the statutory impetus to ensure that such a network is delivered.

c) a streamlined and modernised marine licensing and consents system;

Yes. However, we would like assurance that the current arrangements for cooperative working (i.e. delivering enforcement responsibilities on behalf of other Administrations - Paragraph 30) will be retained and updated in light of new systems in both Scotland and the rest of the UK

d) better stewardship backed up by robust science and data; and

Yes. It should be emphasised that enough scientific data exists, particularly inshore and in our fragile and unique sea lochs, to begin work identifying possible sites now to work toward a coherent network of marine protected areas. However, there of course remains an urgent need to gather more information about the distribution of marine species and habitats in Scottish waters, particularly offshore, in the Clyde Sea, off the north and northeast coast and exposed coasts in the west coast and islands. With many industries expanding at sea, we would therefore urge a precautionary approach when licensing new activities, until such time as surveys for SEA and EIA identify the suitability or otherwise of new sites for new activities. This should be seen as a stop-gap until the marine planning system is up and running.

e) a new structure, Marine Scotland, to deliver sustainable seas for all?

Yes. A marine management organisation is required with integrated responsibility for the stewardship of Scotland's seas including planning, licensing, compliance monitoring, enforcement, science and data and to act as the competent authority for the implementation of the MSFD. However, LINK MTF strongly believes that Marine Scotland should not form part of the Scottish Government as we believe that under such a scenario appropriate safeguards would not exist for an appeals process. If Scottish Ministers (via Marine Scotland) are responsible for taking decisions, they cannot subsequently hear appeals on their own decisions. There is also an issue

as to how, if Marine Scotland is to be part of the Scottish Government, this new organisation will operate, and whether its advice to ministers will be published. Having taken independent legal advice on this matter, and for the reasons given above, LINK MTF strongly favours the status of Marine Scotland as a Non Departmental Public Body, thereby increasing the independence of Marine Scotland from Government. Given that the UK MMO will be an NDPB, and the importance of effective coordination between the UK MMO and Marine Scotland, LINK MTF believes that the way that the UK body will operate will mean that practical (and legal) issues may arise which make it desirable that both bodies operate in the same way. The powers and duties that Marine Scotland should have depend greatly on whether Marine Scotland is set up as part of government or as an NDPB. It should therefore be assumed that where we recommend powers and duties for Marine Scotland it is in the assumption that this body will be an NDPB.

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

If properly resourced, implemented and enforced, we would expect these changes to improve nature conservation. A healthy marine ecosystem underpins the marine goods and services provided by and attainable from Scottish waters and therefore the conservation and recovery of marine ecosystem health must be at the very heart of the Scottish Marine Bill. Nature conservation is not simply another activity or sector to be traded off against economic and social activities, but the very foundation and building blocks for those activities. The changes proposed to improve marine nature conservation should therefore not be viewed in isolation as a sectoral benefit alone, and are also essential for Scotland/UK in meeting the national and international commitments highlighted above.

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?

LINK MTF believes that there is merit in the devolution of marine nature conservation duties/powers beyond 12 nm around Scotland, as this would ensure that conservation delivery is integrated with accountability for action e.g. designation and enforcement of marine protected areas should be linked, particularly as the Scottish Fisheries Protection Agency is responsible for fisheries enforcement in the Scottish Fisheries Zone. However, in order to implement an ecosystem-based approach (See Q1), we would advocate a joint approach to marine planning and management for UK seas. We believe that there should be greater integration of plans and the ability to establish joint planning arrangements at the regional seas scale (as defined on biogeographical grounds by JNCC) as well as a commitment from all UK Administrations to work together across political boundaries, even where different legislation is used to deliver planning. There is a clear requirement for all administrations to consult and take into full account cross border issues including devolved/reserved issues. We see this as delivering the stated outcome in paragraph 29 (a joined up system of marine planning in the UK) and urge all UK Administrations to agree these mechanisms as quickly as possible so that the UK Marine Bill as well as the Scottish Marine Bill can reflect them without needing future amendment.

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?

LINK MTF agrees with the 3-tier approach to marine planning in Scotland and we are happy to see that a statutory system is proposed. However, in order to implement an ecosystem-based approach, as required by the MSFD and signed up to by all four UK administrations¹, marine management for UK seas must be based on biogeographical rather than political boundaries. LINK MTF therefore believes that marine management on a regional seas scale is the most coherent

¹ Safeguarding Our Seas: A Strategy for the Conservation and Sustainable Development of our Marine Environment (2002); Review of Marine Nature Conservation (2004)

approach. Regional seas have been defined as areas of distinct physical, geological or biological characteristics such as the Northern North Sea or Irish Sea (as designated by JNCC). Such an approach would involve joint planning between administrations and agreement between administrations for an ecologically-based planning system. Furthermore, EU Member States will have to cooperate to develop marine strategies for the marine regions set out in the MSFD. There is a clear requirement for Marine Scotland and the UK MMO to work together to develop joint plans and this requirement should be stated in the Scottish Marine Bill. We recognise that such duties would have to be delivered both through the Scottish and UK Marine Bills and we would emphasise that we are also making the same comments to the UK Government with regard to this issue.

We are concerned that the new planning system is proposed to “ensure sustainable economic growth in the seas around Scotland” and to “maximise and balance the various uses made of marine resources”. Rather, the purpose of a marine planning system should be ecosystem health and any new planning system should be firmly underpinned by the 5 principles of sustainable development, rather than economic growth (i.e. sustainable economic development should be within environmental limits and lead to achieving a healthy and just society). LINK MTF believes that there is a fundamental difference between development planning and marine planning, where the latter must also have a primary focus on natural resource management. LINK MTF believes that the marine planning system should not just be a development plan but needs to ensure space for wildlife too. We also recognise that marine planning must also have a temporal element.

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?

LINK MTF believes that it is appropriate for Marine Scotland to be responsible for the creation of the National Marine Plan. We are also pleased that such plans will have statutory force and that all Scottish public bodies will have to act in accordance with them. We would like clarification as to whether UK bodies would also be required to act in accordance with these plans. It is also appropriate that such plans are reviewed and revised on a 5 yearly basis. However, as illustrated in Figure 1.3, oil and gas, telecoms shipping and defence are reserved to Westminster from 0-200nm. This mix of responsibilities illustrates the importance of a coherent system of joint planning between the Scottish Government, UK Government and the devolved administrations in Northern Ireland and Wales.

We assume that ecosystem management (Paragraph 55) refers to ecosystem-*based* management (as referred to in the EU MSFD – see answer to Q1). If so, we are pleased to see a duty on Marine Scotland to deliver ecosystem-based management, but we ask for clarification of the extent of its ‘fall back’ powers. Scottish Ministers, on the advice of Marine Scotland, should be provided with full emergency powers to stop damaging activities.

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

LINK MTF is encouraged that all marine objectives will be founded on the five guiding principles of sustainable development (Box 2.2). However, this is inconsistent with the statement that “Objectives ... will be developed within the context of sustainable economic growth” (Paragraph 53). The five guiding principles of sustainable development are not hierarchical but mutually supporting and do not include economic growth as a maxim. The economy must be developed within environmental limits and lead to achieving a healthy and just society ‘in which environmental and social costs fall on those who impose them (Polluter Pays)’. It is right that Marine Scotland should ensure that local/regional objectives are consistent with national marine objectives. Similarly, national objectives should be compatible with UK marine objectives. LINK’s MTF believes that the best way to ensure this compatibility would be for Scottish Ministers to participate fully in the joint UK-wide Marine Policy Statement and High Level Marine Objectives.

We would therefore agree with the findings of the Joint Committee on the draft UK Marine Bill²: “The [UK] Marine Policy Statement...must be subject to a high level of Parliamentary scrutiny, and should not be adopted before every effort has been made to reach agreement with the devolved administrations on it.”

LINK MTF is extremely concerned that marine ecosystem objectives appear to be “balanced” by social and economic objectives. This would allow the marine environment to be traded off where necessary to allow economic activities to take place. This Bill must deliver a healthy marine environment and therefore marine ecosystem objectives should be overarching and SMART (specific, measurable, achievable, realistic and timely) to ensure that we can measure progress towards the conservation *and recovery* of our marine environment, including biodiversity.

Q8 Do you agree with the overall approach to planning at the international level beyond Scotland? Do you have any further suggestions or comments to add to the proposed approach, in particular on the UK high level objectives?

Whilst it is encouraging that Scottish Ministers intend to consult with partners across national or international boundaries, we were very disappointed to learn that Scottish Ministers will not participate in the development and agreement of the UK Marine Policy Statement. As stated in Paragraph 53 “Ministers propose that Marine Scotland examine and where possible develop joint objectives for the regional seas around Scotland”. We believe that the most effective way to achieve this aim would be to participate and influence the UK Marine Policy Statement and contribute to and sign-up to the UK High Level Marine Objectives. In partnership with our sister Link organisations in England, Wales and Northern Ireland we have suggested amendment to these UK objectives. This document was forwarded to the Scottish Government prior to the UK deadline for responses and is included as an appendix to this consultation response. In addition, the Bill will need to include mechanisms for cooperative working (and joint planning) between Marine Scotland and the UK MMO.

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

In so far as it is able, yes. However, the requirement for the UK to produce Marine Strategies and programmes of measures that when combined with those from other Member States will result in the GES of the Marine (Sub-) Regions, supports UK Administrations working together on a coherent approach to marine management. In particular, it provides a rationale for promoting a UK-wide Marine Policy Statement and joint planning, involving all UK Administrations. It also supports a biogeographical regional seas approach (i.e. on the scale of the Irish Sea or the northern North Sea) to achieve an ecosystem-based approach to planning – Administrations would plan jointly in areas where there is shared responsibility to produce one plan at the regional sea scale. The MSFD also makes specific reference to the programme of measures including “*spatial protection measures, contributing to coherent and representative networks of marine protected areas, adequately covering the diversity of the constituent ecosystems*” to achieve good environmental status. The marine planning system would therefore not be sufficient alone to meet Scotland’s obligations under the MSFD. In addition, transposition of the MSFD by Member States is required by 15 July 2010 at the latest and to ensure a comprehensive system of marine planning LINK MTF believes that transposition should be delivered by the Scottish Marine Bill. It is clear that if Good Environmental Status is to be meaningful, it must lead to conservation *and recovery* of marine ecosystem health.

² House of Lords, House of Commons (2008) Joint Committee on the Draft Marine Bill, Volume 1, Report and formal minutes.

Q10 Do you agree with the overall approach and functions for Scottish Marine Regions? Do you have any further comments on the proposed approach to planning at a regional level?

Scottish Marine Regions

It is not clear from the consultation document whether the Scottish Government proposes that marine planning at the level of the Scottish Marine Regions would be statutory. LINK MTF maintains that marine planning at this level must have statutory force. We agree that a partnership approach is appropriate for plan making at this tier. With regard to plan implementation, we are pleased to see that Marine Scotland will designate a lead partner for each SMR, particularly as, in a statutory planning system, the 'delivery agent' must exist as an agent in law, and must be invested with clear roles, responsibilities, powers and duties. It is unlikely that a loose partnership between existing bodies (such as a Local Coastal Partnership or the Scottish Coastal Forum) could exist in law as required. The emphasis in the consultation paper appears to be on plan making, and it is not clear how inevitable conflicts over plan implementation will be dealt with. We would seek clarification as to whether the lead body will have decision making powers in this area. LINK MTF believes that Scottish Ministers should sign-off all marine plans.

Inshore Fisheries Groups

LINK MTF supports the formation of Inshore Fisheries Groups to manage local fisheries issues. Box 2.7 states that each SMR board will have representation from the relevant IFG and will take into account the fisheries management framework developed by IFGs when drawing up regional plans. However, this integration must be two-way, with the SMR board having a place on the relevant IFG's advisory group. It is clear that the SMR Board, with its statutory basis, and SMR plan, will take priority in cases where the two plans are inconsistent. LINK MTF would seek clarification of the timing of the development of management plans and encourage the Scottish Government to ensure that these plans are developed in parallel rather than independently. There is a need for SMR plans to take into account other plans and objectives – not just IFG plans. Also, there doesn't seem to be a requirement for other planners/plans (where they aren't a public body) to take the SMR/Scottish plan into account in their plan – this needs to be addressed in the full bill. In addition to the details in Paragraph 66 the bill needs to make clear that legal requirements and international obligations (e.g. Habitats and Birds Directives) will need to be met at the local level where appropriate.

Presumption of Use

Box 2.8 states that 'The basic principle is the presumption of use, i.e. it is presumed that an activity can take place in a specific location unless it is specifically excluded'. As we also highlight in our answer to Q 38 below we are extremely concerned that the term, 'presumption of use' is open to misinterpretation due to how it has traditionally been interpreted under the terrestrial planning system and we would like further clarity on what is intended by this term. We assume here that presumption of use would only apply to marine activities licensed and permitted under existing rights and **not** for new, unlicensed activities. Otherwise such an approach would bypass EIA and Habitats and Birds Directives requirements for assessment and we could not support it. However, a planning system is about integrating and balancing what activities should take place where and when and therefore various public interests must be balanced. In the light of this, LINK MTF believes that there should be no presumption of use within the planning system, including any new marine planning system, as all industries should have an equal say in the planning of marine activities (via the SMR board). Ultimately it is for the planning authority and Scottish Ministers to make these decisions with licensing decisions being made by the appropriate licensing authority in accordance with the plan. LINK MTF believes it is essential to work towards more sustainable activities and therefore there should be a sustainability test for new activities to allow a more even playing field between new and existing activities.

Appeals

LINK MTF strongly believes that there should be a mechanism to appeal on the competence of the plan itself, rather than just on decisions made on the basis of the plan. There is no mention of a Public Inquiry process for marine plans and LINK MTF believes that such a process should be mandatory, as for plans on land. There is also no mention of the SEA process.

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

All relevant Scottish public bodies (including SMRs) should have a duty to deliver ICZM. Other statutory bodies should also be required to participate effectively in the process, otherwise successful integration across sectors and neighbouring SMRs will not be achieved.

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?

Yes – whoever delivers ICZM should be bound by these eight principles.

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

It is clear that the voluntary principle in resolving resource conflicts and supporting sustainability is not adequate and therefore a statutory basis to local marine planning is essential.

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?

We would like to reiterate that although licensing has an important role in helping to protect the marine environment, it is also important in ensuring that common resources are available to others rather than just licensees. There are societal benefits (e.g. human health, well-being and amenity benefits), recreation benefits and economic benefits (e.g. reducing conflicts and preserving the rights of other legitimate users of the sea). Whilst we welcome the statements in paragraph 75 and 76 we also believe that there is room for improvement in the current system. In particular we would refer to our concerns with regard to presumption in favour of development (See answer to Question 10 above).

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? Are there other activities that should be licensed?

LINK MTF believes that the following activities should be considered for licensing:

- Novel dredging techniques, such as water injection, plough and other forms of agitation dredging
- Subsea disposal of nuclear waste
- Fishing with mobile gear that contacts the seabed
- Bioprospecting (in the search for new medicines, antibiotics and biodegradable plastics)
- Supra-marine structures such as offshore wind turbines (as opposed to the 'socket' in which they sit)
- Human-induced noise
- Aggregate extraction
- Cable installation
- Moorings
- Marine research (current mismatch between SNH and Home Office License under the Animals (Scientific Procedures) Act 1986.
- Wildlife watching

- Leisure craft (depending on engine size/power/purpose)
- Launching of vessels (depending on vessel size)
- Winkle picking and bait digging (perhaps only beyond a certain level of extraction)
- Seaweed harvesting (perhaps only beyond a certain level of extraction)

We note that there are issues with a number of reserved issues, such as navigation and energy (including oil and gas developments and ship-to-ship transfer), and these are not necessarily harmonized with devolved processes. We also note that some locations are currently exempted from CPA including Esk, Clyde, Dee, Tay, Forth, Water of Leith. LINK MTF believes that a consistent geographic approach to licensing is required.

In addition, LINK MTF would like to point out that licensing should not only “seek, where possible, to protect [marine features], and if it is not possible ... seek to minimise the adverse impact” (Paragraph 78). There is also a clear 3rd option, i.e. **not to licence activities** where the adverse impact is considered significant. We would like to see this third option in the final Scottish Marine Bill.

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?

This would appear to be a sensible approach. Such a system would need to be flexible enough to deal with all forms of new activity, and be subject to Environment Impact Assessment as mentioned in Box 3.1.

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

It would appear to make sense to bring planning and licensing under Marine Scotland along with being the competent authority for Environmental Impact Assessment. We would like to reserve further comments until it is clear what “general responsibility” for the delivery of marine licensing means. We need greater clarity regarding what roles Marine Scotland will have and which licensing regimes it would be responsible for.

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 numbers 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?

LINK MTF does not have a strong preference between an impacts approach and an activity approach. Our main concern is that any licensing decisions are made in accordance with the marine plan and contribute to good environmental status. This would clearly include assessing cumulative effects in the licensing process.

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?

LINK MTF does not believe that it is possible for Marine Scotland to be wholly responsible for regulation of marine consents as there are both reserved and devolved activities which require licenses. Whilst it would be possible for Marine Scotland to deal with all devolved licenses, thereby meaning that fewer agencies would deal with consents, this would not be the same as a one-stop shop for operators in the marine environment. However, it is possible that a front door coordinating route would allow both reserved and devolved licensing processes to be coordinated by Marine Scotland. LINK MTF is comfortable with either route, providing that decisions are taken in accordance with the plan and good environmental status is not compromised. Any new streamlined licensing system should not be seen as an excuse for deregulating or relaxing environmental standards.

Q20 Do you agree with the proposed approach to consultation involving local stakeholders? Do you have any further comments?

LINK MTF supports the principle of improved local involvement in licensing decisions and new mechanisms to increase local accountability. We would therefore support the principle of non-statutory bodies being consulted although this would have to be done according to agreed and consistent criteria.

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?

In principle the CAR approach would seem logical but LINK MTF would need to be assured that cumulative or in-combination impacts can be understood, considered, and taken into account, presumably within the marine planning system, before supporting this idea. LINK MTF believes that there is a strong requirement for a register of all activities to enable cumulative impacts to be assessed. We are very concerned that there is no mention of the precautionary approach here. 'Minor' engineering works for example could still have a major impact if they occurred in the wrong place at the wrong time.

Q22 Scottish Ministers intend to provide Marine Scotland with powers to insert conditions into licences. Do you agree with this approach? In particular Scottish Ministers intend to create a standard condition on removal of redundant kit and installations, do you agree?

Yes. Impact monitoring should be a requirement and Marine Scotland should also be able to set standards such as minimum standards and good-practice standards.

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

Yes. LINK MTF supports an appeals process but any such process should also allow appeals by interested/affected parties as well as the applicant. With regard to paragraph 103, LINK MTF agrees that timetables for licensing decisions are a good idea, we also need to ensure that the system can also cope when there are legitimate delays such as where there is a need for additional environmental information to improve an EIA and ensure that there is adequate information on which to base a decision. It is more important that the right decision is reached, perhaps over a longer period of time, than the wrong decision made quickly. Such timetables must not lead to a weakening of environmental criteria and safeguards.

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?

LINK MTF welcomes the polluter-pays criteria and note that the EU MSFD states that programmes of measures *should be devised on the basis of the precautionary principle and the principles that preventative action should be taken, that environmental damage should, as a priority, be rectified at source, and that the polluter should pay.*

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?

Yes - we need strong and visible monitoring and enforcement - it should be possible to check on a public register that all conditions are being complied with. We also note that there does not appear to be a process to review licences on a regular basis. LINK MTF believes that such a review process is vital. There is no mention of penalties for non-compliance and it is vital that such penalties are sufficient to act as a deterrent. We would also seek assurances that the enforcement system will link with the proposed UK system of enforcement and enforcement officers.

Q26 Please provide any further comments you have on the licensing provisions in the consultation paper.

The licensing provisions in the consultation paper are very high level and we look forward to further detail in the future. We would like clarification on how the Scottish and UK systems of reformed licensing will link together, especially in cross-border areas such as the Solway and Northern North Sea. We would also seek assurances that the two licensing systems will be consistent and compatible.

CHAPTER 4 – SECURING THE FUTURE: NATURE CONSERVATION

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

Yes. It was clear during both the AGMACS and SSTF processes that there was widespread support for such an approach. We are disappointed that there is no specific mention of the ecosystem-based approach, particularly within wider seas measures and LINK MTF believes that this is a major omission, particularly in the light of our International Commitments in transposing the MSFD (See Q1). In keeping with the Biodiversity Duty under the Nature Conservation (Scotland) Act 2004, protection for marine biodiversity must be enshrined in the management and planning of all marine activities, as is also required in an ecosystem conservation approach.

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

LINK MTF believes that Marine Ecosystem Objectives are central to the success of the Scottish Marine Bill. We believe that high level marine ecosystem objectives should underpin not only marine nature conservation but all the Scottish Government's policies and marine planning for the marine environment and there should be a duty on Scottish Ministers to implement such MEOs. In addition, SMART (specific, measurable, achievable, realistic and timely) MEOs should be used as a tool to monitor the health of Scotland's seas and ensure that high level objectives are delivered. There should be an aspiration in developing these MEOs to protect, conserve and recover, rather than merely maintain biodiversity.

Recommendation 6.4.2. of AGMACS was: *“that a Scottish set of Marine Ecosystem Objectives (MEOs) should be drawn together, with full stakeholder engagement, during 2007. These should have the ecosystem approach at their heart, and should be fully integrated with the broad policy approach of 'living within environmental limits'. They should be nested within a wider set of MEOs for UK waters and for the Regional Seas around Scotland.”* It is notable that this deadline has passed and there is no real information in the consultation about how this recommendation will be met in the future and how such MEOs will be developed. We would like to see a clear timescale and pathway for the development of Scottish MEOs.

LINK MTF is extremely concerned that marine ecosystem objectives appear to be “balanced” by social and economic objectives. This would allow the marine environment to be traded off where necessary to allow economic activities to take place. Ecosystem Health should be the overarching purpose of the Bill and therefore marine ecosystem objectives should be overarching and SMART to ensure that we can measure progress towards the conservation *and recovery* of our marine environment, including biodiversity.

The suggested list of areas where MEOs might be developed is rather basic and limited. MEOs should attempt to expand information to measure key ecosystem features and processes for function and health, rather than being limited to those datasets currently available. The list of MEOs needs to be greatly expanded to include, *inter alia*, species (to include all species in need of protection), habitats, marine landscapes (as per the Irish Sea Pilot and subsequent work), geological features and other components and measurable impacts on the marine ecosystem e.g. zooplankton community composition, fish stocks, water quality indices, marine litter levels and

others. Some thought also needs to be given as to how to measure the health of ecosystem **function** e.g. in terms of nutrient cycling, trophic indices etc. That is, would measurement of components of the ecosystem, such as those listed above, be enough to gauge the health of ecosystem process and function or do we need to develop new techniques to do so? In addition, it is important that MEOs should be met across the board, including all sectors, activities, plans, projects and programmes, not just in those areas important for marine biodiversity.

It is not clear whether it is the Scottish Government's intention that MEOs should apply only to marine nature conservation or to the entire Bill, including planning. As stated above, LINK MTF believes strongly that MEOs should underpin the entire bill and not be applied only to marine nature conservation.

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

Yes. LINK MTF strongly supports such a measure. The offshore area has historically been a low priority for species and habitat conservation, despite containing a variety of important offshore species and habitats. However, it is not clear whether such a biodiversity duty would also apply to UK bodies operating in the offshore area adjacent to Scotland.

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

LINK MTF believes that the marine planning system can have a significant contribution for marine nature conservation, but in order to achieve this aim there must be a clear sustainability purpose for the planning system. Any new planning system must be underpinned by the 5 principles of sustainable development, rather than economic growth. There should be a duty on all public bodies to ensure, in carrying out their functions, that the objectives of the MPA network are met. It is also important that existing requirements such as SEA, EIA, licensing decisions and future measures such as marine planning have regard to the biodiversity duty in a meaningful way. Public bodies should therefore be required, in the course of their policy development and/or decision making to consult SNH/JNCC as to the likely effect of their policy/decision on a site or the network as a whole, and to have regard to that advice.

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. Currently only a limited number of marine species are protected under the WCA and work needs to be done to determine whether other marine species merit protection under the WCA wherever they are found.

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

In addition to the science-based review mentioned above, LINK MTF believes that if powers for marine nature conservation were extended to 200nm, the Wildlife and Countryside Act 1981, the Conservation (Natural Habitats, &c.) Amendment (Scotland) Regulations 2004 and any associated legislation should also be extended and enforced to 200nm.

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

LINK MTF believes that, given our international commitments, there should be a duty to identify and designate new types of sites rather than a power. LINK MTF is very supportive of such new sites and have produced a recent report entitled 'Finding NIMAs – The case for nationally important marine areas' which details how we would envisage this approach being taken forward. We would note that EU sites cover a very narrow range of species and habitats and therefore we believe that such new sites will play a crucial role in meeting our international commitments under MSFD, OSPAR and WSSD as well as the expectations of Scots that their national as well as

international marine heritage is protected. It is clear therefore that the Scottish Bill must deliver networks of sites rather than individual sites. In order for the power to be used, we would like to see a duty in the bill for Scottish Ministers to deliver a comprehensive network of MPAs.

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?

LINK MTF is supportive of all three requirements for site protection (Box 4.4), and we believe that sites for ecosystem recovery should form part of the selection criteria for tiers one and two. This is consistent with the approach demanded under the Water Framework Directive (which applies within 3nm of the coast) whereby there is a responsibility to ensure the restoration of ecologically degraded waters.

As set out in our report, 'Finding NIMAs – the Case for Nationally Important Marine Areas' we believe to deliver international and Scottish priorities (tiers one and two), MPAs are needed to protect: examples of representative habitats and marine landscapes; exceptionally biologically diverse areas; those areas important for nationally important marine features³; and to protect feeding, spawning, mating and migration sites for mobile species. There must be a clear purpose and objectives for the MPA network - the underlying objective for designating a marine protected area, and establishing a network of MPAs, is conservation and helping ensure, as one pillar of the three-pillared approach, wider marine ecosystem functioning and recovery. The objective of an MPA network is not the encouragement of socio-economic use. We note that MPAs for representative habitats and marine landscapes are of particular importance to ensure protection and recovery of marine ecosystem function. We would also support the proposal for a new power to be able to establish sites for the purpose of demonstrating or carrying out research on particular management approaches (tiers two or three). Such demonstration sites might include closed areas in which recovery to a natural state can be monitored.

The third tier shown in Box 4.4 describes a different type of MPA, more akin to the terrestrial Local Nature Reserves, for which different criteria could be used. We support such a community-driven approach provided the underlying purpose for proposed local areas is marine conservation.

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

A 'single approach' is certainly appropriate for Marine Protected Areas that are established to protect area-based historic environment assets. The idea needs to be scrutinised to check for compatibility between the various needs of different natural and cultural assets, but we are positive in principle.

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

LINK MTF believes that, given our international commitments, there should be a duty to identify and designate new types of sites rather than a power, and a duty to create an ecologically coherent network of MPAs. We would also like some further clarification as to the use of the term 'flexible'. LINK MTF believes firmly that any flexibility in site selection should only reflect ecological needs and priorities and not changing economic imperatives (as implied in paragraph 141 – see below).

We are also concerned by the use of the term 'proportionately' (Paragraph 139) with regard to how new site protection powers will be used. This does not appear to be consistent with selecting sites according to a set of science-based ecological criteria (Paragraph 140). Sites in tiers one and two (Box 4.4) should be designated where science-based ecological criteria are met, and whilst

³ Nationally Important Marine Features are rare, threatened or declining species and habitats, those for which the UK has a high proportion of the global total, or otherwise exceptional features that need urgent protection.

engagement with stakeholders should take place in deciding the management of such sites, designation should be by scientific criteria. Sites in the third tier would require a different approach, involving greater community input at the selection phase, but such sites must still have a marine conservation purpose.

We are extremely concerned about the proposal to allow ministers to deselect a site or amend its boundary. Whilst we accept that such flexibility may be appropriate if, for example the geographical location of a species or habitat is altered due to climate change (i.e. reflecting ecological needs and priorities), the de-selection of a site due to changing economic priorities such as increases in shipping or the development of new industries is not appropriate and inconsistent with designation of sites by science-based ecological criteria. Such a socio-economically driven approach to de-selection would undermine the integrity and function of the MPA network, which should be established to help promote marine ecosystem health and recovery (along with the other two pillars of marine nature conservation).

There should be an emphasis on the precautionary principle. The EU Treaty incorporates the precautionary principle as a legal obligation, and the MSFD requires measures to be devised on the basis of that principle (See answer to Question 1 above). We note and support the recent report of the Joint Committee on the draft UK Marine Bill⁴: *“We recommend that where there is limited knowledge some locations may need to be designated on a precautionary basis, for example to avoid the potential for environmental damage or to support an effective MPA network under a scenario of climate change.”*

Finally, there is logic in prioritising the most biodiverse and least damaged sites initially but it must not be overlooked that some of the most damaged sites may be ecologically valuable if managed to enable them to return to a more ‘natural’ state, and these should not be overlooked in the course of developing the network. For example, much of the Firth of Clyde has been greatly degraded through human activity, such that other than two SPAs for seabirds and waders, no marine sites of international importance are recognised in the Clyde. It might be argued that protection of additional areas of the Clyde was a matter of some priority for wider marine ecosystem functioning, similar to the existing area in Lamlash Bay. Further details are discussed in the LINK report ‘Finding NIMAs - The case for nationally important marine areas’.

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

We do not understand what a ‘single integrated power’ is and do not understand the distinction between this question and Q33. As stated above the Scottish Bill must deliver networks of sites rather than individual sites and therefore we would like to see a duty in the bill for Scottish Ministers to deliver a comprehensive network of MPAs.

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

We believe that nationally important marine features should be protected from potentially damaging activities according to their ecological need. The level of protection should be driven by clear conservation objectives for each site. Some sites could continue to be multi-use, with only those activities that directly impact on the feature being restricted while making little difference to other human activities taking place in them. Other sites however will need a higher degree of protection from damage. Although we are clear that this does not mean that sites need be ‘no-go areas’, there is a big difference between social and economic uses being compatible with the protection of a site and encouraging social and economic use. The underlying objective for

⁴ House of Lords, House of Commons (2008) Joint Committee on the Draft Marine Bill, Volume 1, Report and formal minutes.

designating a marine protected area is conservation, not the encouragement of sustainable economic use. In addition, it is vital that cumulative effects are considered when determining restrictions of activities within sites. It will therefore not always be appropriate to assume multiple uses for sites, even when the social and economic uses, considered individually, would appear to be compatible with the protection of the features for which the site is selected. Such cumulative effects should be considered within the marine planning framework, following designation of the site. LINK MTF advocates that there should be a requirement to produce a management plan/scheme for all sites and management decisions should be taken on the basis of the precautionary principle.

As stated above we are comfortable with social and economic activities within sites, provided they are compatible with the feature for which the site is designated. However, as we highlight in our answer to Q10, we are concerned that the term, 'presumption of use' is open to misinterpretation. We assume that presumption of use would only apply to activities licensed and permitted under existing rights and **not** for new, unlicensed activities. If this is what is intended, LINK MTF believes that such consented activities should be able to continue until reviewed against the sites conservation objectives and the site management plan or other management mechanism determines that such activities are **likely to damage** the species or feature designated. Such management decisions (including review processes) must take into account the precautionary principle as required by the MSFD and signed up to by all four UK administrations⁵. This is consistent with the approach taken on land under the Nature Conservation (Scotland) Act 2004.

We ask for clarification of the extent of 'last resort' powers for Scottish Ministers (Paragraph 149). LINK MTF believes that Scottish Ministers, on the advice of Marine Scotland, should be provided with full emergency powers to stop damaging activities.

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 do not envisage a role for the marine planning process in identifying and designating sites in tiers one and two (Box 4.4), which should be an exclusively science-driven process. However, site management objectives will need to be met partly through the marine planning process. In short, marine planning has a key role in the management of sites but not their identification. We note that Scottish Ministers believe that there is a distinct need for a separate power to create MPAs (Paragraph 147) and we refer you to our earlier answers where we highlight that this should be a duty, rather than a power. Given our international commitments to deliver an ecologically coherent network of well-managed marine protected areas by 2010 and the establishment of representative networks for marine protected areas by 2012 under OSPAR and WSSD respectively, and the time-frame required to set up a system of marine spatial planning, it is clear that such a separate power would need to be used for the majority of sites. As stated previously there should be a clear statutory purpose for an ecologically coherent, representative network of MPAs and a clear duty to designate a network of MPAs in line with this purpose.

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

LINK MTF believes that one of the failings of Natura sites is the lack of a requirement to produce a management scheme. Management of Natura sites is primarily based on voluntary agreement, but where this fails control of damaging activities relies on the coordinated action of agencies and government departments, and such coordination is not always present. Where there is no management scheme, the sites effectively have no protection. We note that it is still unclear how to take account of fishing in a Natura site and this needs further clarification. LINK MTF advocates that there should be a requirement to produce a management plan/scheme for all sites (both

⁵ Safeguarding Our Seas: A Strategy for the Conservation and Sustainable Development of our Marine Environment. (2004).

existing Natura sites and new sites) and management decisions should be taken on the basis of the precautionary principle. We note that the MSFD states that: (Clause 27) *'Member states should establish and implement programmes of measures which are designed to achieve or maintain good environmental status...'* and *'Those measures should be devised on the basis of the precautionary principle and the principles that preventative action should be taken, that environmental damage should, as a priority, be rectified at source, and that the polluter should pay.'*

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?

Yes - operators should have to demonstrate that their activities will not have a significant impact, either singly or cumulatively, to be allowed to operate within Natura designated sites. This is in line with the precautionary principle and would be entirely appropriate for other MPAs. LINK MTF also believes that there should be a 'general offence' of damage or disturbance to a site/feature, including any new sites introduced through a Scottish Marine Bill.

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

LINK MTF believes that goods and services provided by the marine environment are entirely dependent on a healthy marine ecosystem. As the marine ecosystem is severely degraded in many places, the best way to enhance its economic contribution is to ensure that it is allowed to recover and that its biodiversity is adequately protected. These economic benefits apply equally to tourism, other industries such as fishing and aquaculture and the variety of ecosystem services.

APPENDIX TO CHAPTER 4 – SEALS FORUM REVIEW OF THE CONSERVATION OF SEALS ACT 1970

Q43 Do you have any views or comments on the options for improving conservation measures for seals?

Grey and common (or harbour) seals are present around the coast of Scotland in internationally important numbers. Scotland is home to 90% of the UK's common seals and the latest estimates for the Northern Isles and the east coast areas shows a considerable (~40%) decline in these areas. About 40% of the world's grey seals breed at well established sites around Britain. Of these, about 92% are associated with Scottish coasts. Whilst generally grey seal numbers have been on the increase, there has been a stabilisation in pup production over the last five years⁶.

The Conservation of Seals Act 1970 is almost 40 years old. It predates the legislative requirements of the EU Habitats Directive, under which both species of seal are Annex II listed, and the sentiment of the Scottish general public that Scotland's two species of resident seals deserve full protection.

LINK MTF believes that the best option for improving conservation measures for seals is as follows:

- The Conservation of Seals Act (1970) repealed
- Seals listed as protected species under Part 1 of the Wildlife and Countryside Act, thus extending the current closed season to provide year-round protection
- Only under exceptional circumstances of over-riding wider conservation concern, where all non-lethal means have been tried and failed, could any firearm licences then be issued by Scottish Ministers (following advice from SNH) under the WCA, consistent with the habitats directive.

⁶ Special Committee on Seals (SCOS) - Scientific advice on matters related to the management of seal populations: 2007.

Do you have any specific comments on:

a) equal treatment across all sectors (licensing and seal conservation orders);

Licensing option 1 is most consistent with the LINK MTF position as it extends the licensing power to the entire year and removes the netsmen's defence. Where a seal conservation order is in place, this would specifically exclude the use of the netsmen's defence (or any revised defence).

b) welfare issues;

Under exceptional circumstances where seals had to be shot licensed marksmen should be used to ensure, as far as possible that a clean fatal shot can be made. Any licensing system should ensure that only appropriate types of weapon are used.

c) the "Netsmen's defence";

Under licensing option 1 the netsmen's defence would be removed

d) reporting and monitoring;

The lack of a requirement to record numbers and species of seals shot or to record bullets used was a major omission of the Conservation of Seals Act and must be addressed.

e) relationship with the EU Habitats Directive; and

A major problem with the Conservation of Seals Act is that it predates the EU Habitats Directive and contravenes Article 15. Article 15 states:

"In respect of the capture or killing of species of wild fauna listed in Annex V (a) and in cases where, in accordance with Article 16, derogations are applied to the taking, capture or killing of species listed in Annex IV (a), Member States shall prohibit the use of all indiscriminate means capable of causing local disappearance of, or serious disturbance to, populations of such species, and in particular:

(a) use of the means of capture and killing listed in Annex VI (a);

(b) any form of capture and killing from the modes of transport referred to in Annex VI (b)."

Making the amendments outlined above would address this anomaly.

f) any other comments?

It is essential that any seal management legislation ensures that non-lethal control is the first line of defence. This should be combined with measures that can contribute to the effective containment of farmed fish, such as double netting or strengthened net material.

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?

LINK MTF supports the creation of a marine science strategy, but are again disappointed by the emphasis on socio-economics. There is no reference to the role of science in the delivery of the ecosystem-based approach or sustainable management of the marine environment. LINK MTF believes that science needs to be directed by broadly agreed sustainability objectives, not by political or economic priorities. There is a role for science to identify synergies between environmental and socio-economic objectives but this must be kept separate from developing purely ecological criteria for identifying and designating marine protected areas.

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

LINK MTF believes that stakeholder and local knowledge/data is potentially of value. It is vital that such data/evidence is quality assured and weighted appropriately prior to supplementing scientific

evidence. SMR boards must be provided with adequate scientific advice and support to ground-truth such stakeholder knowledge.

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

Some of our priorities for future work are determined by meeting the requirements of the MSFD. LINK MTF believes that the priorities for future work are:

- Establishing the criteria for MPAs.
- Establishing HLMOs
- Developing MEOs
- Assessing impacts of new technologies.
- Filling known data gaps.

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. In order to deliver an ecosystem-based approach to the management of UK seas, it is vital that Marine Scotland co-ordinate its functions, including monitoring and assessment, with the UK MMO.

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

Yes, but it should be noted that a number of organisations already use GIS for Scottish waters (e.g. Crown Estate, SEPA, SNH). It is vital to ensure that any new system is compatible and integrated with these existing systems to ensure that there is no duplication of effort.

CHAPTER 6 – MANAGING OUR SEAS: MARINE SCOTLAND

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?

LINK MTF supports the creation of Marine Scotland with integrated responsibility for the stewardship of Scotland's seas, including planning, licensing, compliance monitoring, enforcement, science and data and as the competent authority for implementation of the Marine Strategy Framework Directive. We however also strongly believe that SNH must remain independent in providing its statutory advisory and wider natural heritage 'promotional' roles. Marine Scotland should have a duty to have regard to this advice from SNH.

A key role for Marine Scotland is suggested to be the delivery of 'increased economic growth for the marine area' (Paragraph 197). However, given that Marine Scotland will also take responsibility for marine nature conservation, this would appear to be a clear conflict of interest. As mentioned earlier LINK MTF strongly believes that economic development should occur according to the five principles of sustainable development and therefore any activity must be within environmental limits, and ensure a strong, healthy and just society. Simple 'increased economic growth' is not consistent with these principles and therefore should not be a key duty of Marine Scotland.

With regard to the options for future delivery arrangements LINK MTF believes that Option B (partial or total integration) is the best option as we do not believe that 'virtual' coordination will be effective.

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

As stated earlier LINK MTF believes that it is appropriate that Marine Scotland be responsible for delivering marine planning proposals.

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?

Yes, it is vital that responsibilities for aquaculture and fisheries are integrated within Marine Scotland and that these industries are included in the marine planning system. However, we believe that there is a case to be made for moving only the regulatory and planning functions of FRS into Marine Scotland and retaining the remaining research function of FRS as an independent advice body.

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

As with other sectoral activities, control for aquaculture should lie with Marine Scotland as we believe that this is the most appropriate solution for consistency, integration and simplification of marine management. The other responsibilities need to be integrated with marine management through integrated coastal zone management.

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

As stated above, we believe that there is a case to be made for moving only the regulatory and planning functions of FRS into Marine Scotland and retaining the remaining research function of FRS as an independent advice body. This would allow Marine Scotland to take independent nature conservation advice from SNH and further scientific advice from FRS. Presumably, since FRS has both marine and freshwater functions, some form of reorganisation of FRS would have to occur in any event.

Q54 What are your views on the creation of Marine Scotland and the proposed range of functions it should deliver?

- We are happy to see that a Scottish MMO will be established
- The role of safeguarding the sea should be the central role of Marine Scotland as many of the key industries (such as fishing and aquaculture) rely on a healthy, productive marine environment. Marine Scotland should not have responsibility for securing marine based economic growth – rather the responsibility should be for ensuring sustainable development, founded on the five guiding principles of sustainable development (Box 2.2).
- We support Marine Scotland in having lead responsibility for marine planning, coordination, management and monitoring of underpinning science and data, and as competent authority for the implementation of the MSFD in Scotland. We note that the later responsibility will require close coordination with the UK MMO.
- We support the integration and management of fisheries and aquaculture with the other responsibilities of Marine Scotland but emphasise that sustainable development rather than simple economic growth should be the priority.
- We support SNH retaining its statutory advisory responsibilities, but there should also be a duty on Marine Scotland to have regard to such advice.

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

It is clearly vital that Marine Scotland is given sufficient resources and ministerial support to carry out its tasks successfully. Under the assumption that work towards implementing an ecologically coherent network of MPAs would be taken up by existing bodies prior to Marine Scotland being set up (due to the timeframe required in meeting our international commitments), we would suggest that marine planning and the coordination of the licensing system would be the first priority of Marine Scotland. However, if powers are to be accrued over time, a clear schedule would have to be laid out in the Marine Bill.

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

LINK MTF strongly believes that Marine Scotland should not form part of Scottish Government as we believe that under such a scenario appropriate safeguards would not exist for an appeals process. If Scottish Ministers (via Marine Scotland) are responsible for taking decisions, they cannot subsequently hear appeals on their own decisions. There is also an issue as to how, if Marine Scotland is to be part of the Scottish Government, this new organisation will operate, and whether its advice to ministers will be published. Having taken independent legal advice on this matter, and for the reasons given above, LINK MTF strongly favours the status of Marine Scotland as a Non Departmental Public Body, thereby increasing the independence of Marine Scotland from Government. Given that the UK MMO will be an NDPB, and the importance of effective coordination between the UK MMO and Marine Scotland, LINK MTF believes that the way that the UK body will operate will mean that practical (and legal) issues may arise which make it desirable that both bodies operate in the same way.

With regard to the options for managing marine consents LINK MTF favours either integration of responsibility for environmental regulation of inshore waters within SEPA, with other marine regulatory functions resting largely within Marine Scotland, or integrating responsibility for marine environmental regulation in Marine Scotland. If the former option is followed it is vital that there is effective coordination between SEPA and Marine Scotland within 3nm.

WHAT DO YOU THINK?

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

Appendix

Joint Links response to High Level Marine Objectives consultation

CONSULTATION ON 'OUR SEAS – A SHARED RESOURCE'

A joint response from Wildlife and Countryside Link, Scottish Environment Link, Wales Environment Link and the Northern Ireland Marine Task Force

SEPTEMBER 2008

The Wildlife and Countryside Link Marine Task Force⁷, the Scottish Environment Link Marine Task Force⁸, the Wales Environment Link Marine Working Group⁹ and the Northern Ireland Marine Task Force¹⁰ work together to achieve better protection for marine wildlife and effective management of all UK seas. Each is a coalition of environmental voluntary organisations, united by their common interest in the conservation and enjoyment of wildlife, the countryside and the marine environment.

We welcome the latest consultation on the high level Marine Objectives (HLMOs). We are pleased to have had the opportunity to provide comments to Defra on earlier versions and believe that the HLMOs set out in the current consultation document vastly improve upon those presented to stakeholders in previous drafts.

We are very pleased that the UK Government, Northern Ireland Executive and Welsh Assembly Government (WAG) have worked together in developing these HLMOs and that this consultation document has been issued jointly by the three Administrations. However, we are deeply concerned that the Scottish Government is not currently involved in this process, though through their consultation "*Sustainable Seas for All*"¹¹ on a Scottish Marine Bill they are seeking stakeholders' views on these HLMOs. We believe that shared HLMOs, which in turn will inform a UK-wide Marine Policy Statement (MPS), are essential to secure coherent marine management, and we urge all four Administrations to work together to take this forward. To this end, we urge the Scottish Government to participate in this joint process with the other UK Administrations. We understand WAG intends to add Welsh-specific objectives to the HLMOs and look forward to the opportunity to comment on these in the future.

We welcome the process of stakeholder engagement, the positive progress that has been made in developing the HLMOs and their aspirational nature and long-term view. However, we strongly believe that improvements must still be made in order to ensure that the final objectives provide a strong steer for the recovery, protection and sustainable development of all UK seas. In particular, we believe that there must be much greater recognition of the fact that a healthy marine environment provides many goods and services for the marine economy and society as a whole.

⁷ This response is supported by the following members of the Wildlife and Countryside Link Marine Task Force: Buglife – The Invertebrate Conservation Trust, International Fund for Animal Welfare, Marine Conservation Society, RSPB, The Ramblers' Association, The Wildlife Trusts, Whale and Dolphin Conservation Society and WWF-UK.

⁸ Scottish Environment Link Marine Task Force includes the following member organisations: Hebridean Whale and Dolphin Trust, Marine Conservation Society, RSPB Scotland, Scottish Wildlife Trust, The National Trust Scotland, Whale and Dolphin Conservation Society and WWF-Scotland.

⁹ Wales Environment Link Marine Working Group includes the following member organisations: Marine Conservation Society, RSPB–Cymru, The National Trust, Wildlife Trusts Wales and WWF–Cymru.

¹⁰ Northern Ireland Marine Task Force includes the following member organisations: Friends of the Earth Northern Ireland, Northern Ireland Environment Link, RSPB, The National Trust, Ulster Wildlife Trust and The Wildfowl and Wetlands Trust.

¹¹ Scottish Government 2008. *Sustainable Seas for All: A consultation on Scotland's first marine bill* – pg. 35 Box 2.4 and Annex B.

We believe that the key purpose of Marine Objectives must be to ensure that together the UK Marine Bill as implemented by the UK Government and WAG, and the Scottish Marine Bill and parallel Northern Irish legislation deliver sustainable management according to the five guiding principles of sustainable development as set out in the UK's Sustainable Development Strategy (UKSDS)¹², jointly agreed by the UK and Devolved Administrations. Critically, this must enable the recovery of marine ecosystems to full health, diversity, resilience and productivity, meeting the twenty year Vision and the joint UK target of '*clean, safe, healthy, productive and biodiverse oceans and seas*'. We believe that targets and measures of ecosystem health are vital if the marine planning and management delivered by new marine legislation are to achieve this ecosystem recovery.

We welcome the statement that the new objectives do not replace the existing jointly agreed, UK-wide strategic goals for the marine environment¹³ and the jointly agreed, UK-wide strategic goals for marine nature conservation¹⁴. We consider it important that this is reiterated in the MPS, and suggest that it would be helpful to cross-reference the existing strategic goals with the new HLMOs and possibly present them in some form of diagram. We also welcome and support the Scottish Government's commitment to develop a set of Marine Ecosystem Objectives (MEOs) as '*a mechanism for setting out what the management of Scotland's coasts and seas is aiming to achieve; outlining strategic goals for the marine environment and translating the principles of an ecosystem based approach into practice*'¹⁵. We would like to see all four UK Administrations developing measurable objectives against which to evaluate and direct the performance of new marine legislation and management measures in delivering the significant conservation and recovery of marine ecosystems specified in the twenty year UK Marine Vision.

We are pleased that many of our previous comments have been taken on board and included in the text of the current consultation document. However, there are still several points of concern that we believe need to be addressed and we therefore reiterate these here under the respective headings of the consultation document:

Overarching comment

- We believe that there is a risk of misinterpretation of the phrase 'delivering/achieving sustainable marine development' (pages 2, 3 & 6) and therefore believe that this should be worded 'delivering/achieving sustainable development of the marine environment/area'. Changing to the latter wording would ensure that this document is consistent with other Government policy documents, and clarifies that it refers to 'sustainable development' as defined in the UKSDS.

What success would look like...

- We strongly believe that there should be explicit reference to recovered biodiversity in this section as we do not consider the current state of marine biodiversity to represent a baseline for a healthy ecosystem, especially where human activity has resulted in adverse changes to marine life and continues to do so.

Marine Objectives – Living within environmental limits

- We welcome the reference to recovery of biodiversity in the first bullet point under this objective. However, we strongly believe that "*where appropriate*" should be removed from this statement. If this view is rejected and a caveat is considered absolutely necessary, it must be made clear that it refers only to recovery (as *per* the Marine Strategy Framework Directive (MSFD) [Art 1 (2)(a)]). We would also like clarification on why the term "*where appropriate*" has been used rather than "*where practicable*" as is used in the MSFD.

¹² HM Government 2005. The UK Government Sustainable Development Strategy

¹³ HM Government 2004. The Government's response to its Seas of Change consultation.

¹⁴ Defra 2005. Safeguarding Sea Life: The Joint UK Response to the Review of Marine Nature Conservation.

¹⁵ Scottish Government 2008. Sustainable Seas for All: A consultation on Scotland's first marine bill – pg. 35 Box 2.4 and Annex B.

- Whilst the ‘What success would look like’ section states that “*representative, rare, vulnerable and valued*” species and habitats will be protected, the third bullet of the ‘Living within environmental limits’ objective does not include ‘representative’ species. We strongly believe that ‘representative’ should also be included here so that it reads “*Our oceans support viable populations of representative, rare, vulnerable, and valued species*”.
- Marine Protected Areas (MPAs) will be the primary mechanism in the UK Marine Bill for ensuring that biodiversity is protected and conserved. We are therefore pleased that reference to these sites has been included in the ‘What success would look like’ section. However, as MPAs are such a crucial component of the marine management framework, we strongly believe that a further bullet point should be included under the ‘Living within environmental limits’ objective, stating “*A comprehensive, ecologically coherent network of well-managed (including representative) Marine Protected Areas has been designated providing the necessary level of protection to restore our marine environment*”.

Marine Objectives – Promoting good governance

- We believe that the last bullet point of this objective would benefit from the inclusion of ‘and natural’ at the end of the sentence so that it reads “*The use of the marine environment is spatially planned and based on an ecosystems approach which takes account of climate change and recognises the protection needs of individual historic and natural assets*”.

We would also like to raise the following additional comments on each of the sections below:

What success would look like...

- We are concerned by the inference that conflicts between activities and the impacts of developments on the environment will only be ‘taken into account’ and hence potentially ignored (paragraph 4). The conflicts between, and the environmental impacts of, activities in the marine environment must be “*properly assessed prior to consent being granted and managed effectively and consistently*” to ensure that only sustainable developments are consented.
- We feel that the reference to pollutants, contaminants and toxins should be strengthened by using similar wording to that used in the MSFD [Art1(2)(b)], in particular adding the reference to ‘phasing out pollution’ (our underlining below):
“*prevent and reduce inputs in the marine environment, with a view to phasing out pollution, so as to ensure that there are no significant impacts on or risks to marine biodiversity, marine ecosystems, human health or legitimate uses of the sea*”.
- We are concerned by the statement “*Underwater noise will be restricted to acceptable levels; and litter will be disposed of in ways which do not harm the marine environment*”. We are particularly concerned about how ‘acceptable’ will be judged. We suggest re-wording this statement to strengthen it, again using similar wording to that used in the MSFD, so that it reads: “*Underwater noise will be minimised to a level so as to ensure that there are no significant impacts or risks to marine biodiversity; and litter disposed of responsibly so that there is no harm to the marine environment*”.
- We are concerned by the suggestion in the last paragraph of this section that sustainable development is only about securing long-term benefits for society rather than all five of the sustainable development principles. We refer again to the wording in the UKSDS – “*for a policy to be sustainable, it must respect all five of these principles*”¹⁶ and recommend changing the last paragraph to reflect it, as follows (underlined text is taken directly from the UKSDS¹⁷):
“*In the long term, management of human activities in the marine environment will be such as to secure our goals of living within environmental limits and a just society, and we will do this by means of a sustainable economy, good governance and sound science, thereby delivering sustainable development.*”

¹⁶ UK Sustainable Development Strategy, Guiding Principles, pg.17, para1.

¹⁷ UK Sustainable Development Strategy, Guiding Principles, pg.17, para1.

Marine objectives

- We believe it would be worth re-iterating on page 4 (as per page 2) that while the five sustainable development principles are separated out for simplicity in this document, to achieve truly sustainable development they need to be integrated in decision-making.

Marine objectives - Promoting good governance

- In order for marine management to encompass an ecosystem-based approach and ensure sustainable development in the marine environment it must follow ecological rather than political boundaries as per the biogeographical Regional Seas defined by JNCC¹⁸. To this end, we support a joint marine planning approach at the regional seas scale, requiring the four UK Administrations to work together to produce joint marine plans. We welcome the reference to the ecosystems approach in bullet point 5 of this objective. However, we believe that bullet point 3 of the same objective should be amended so that it reads *“Marine management in the UK takes account of different management systems that are in place because of administrative or political boundaries, but is not restricted by such boundaries, and takes account of transboundary and international issues”.*

What we mean by:

We are concerned by the definition of the ecosystems approach. It is a considerable deviation from the Convention on Biological Diversity (CBD) definition. The definition in the consultation document appears to only include two of the three CBD ecosystem approach elements (i.e. ‘sustainable use’ and ‘equitable sharing of benefits’) while the ‘conservation’ element is not mentioned. We strongly suggest that the definition is re-worded so that it reads *“The ecosystems approach has been defined in various ways, but the core of the approach lies in integrating and managing the range of demands placed on the natural environment in such a way that the environment (including biodiversity) is conserved (and allowed to recover), so that it can indefinitely support essential ecosystem services and provide benefits for all”.*

- The ‘Ecosystem goods and services’ definition currently only refers to goods, but not any services, such as regulating climate/weather and absorbing CO₂ from the atmosphere, etc that the marine system delivers.
- We believe that a definition of ‘Biodiversity’ should be included in this section so that it is clear that this term includes all species, habitats and genetic diversity.

We believe that, if improved, the HLMOs could provide a strong steer for the achievement of true sustainable development of the marine environment, including the recovery of, and strong protection for, marine biodiversity. We now look forward to the next step in seeing how the Marine Objectives will be delivered. This is particularly important as it is in making these objectives operational that we will be able to judge whether the UK Government, WAG and Northern Ireland Executive are achieving the joint vision of ‘clean, healthy, safe, productive and biologically diverse oceans and seas’. Again, we urge the Scottish Government to participate in this joint process with the other UK Administrations.

¹⁸ Defra 2004. Review of Marine Nature Conservation Working Group Report to Government, July 2004.