

Marine (Scotland) Bill

2nd Marshalled List of Amendments for Stage 2

Comments by Scottish Environment LINK (in red font)

The Bill will be considered in the following order—

Sections 1 to 5	Schedule 1
Sections 6 to 41	Schedule 2
Sections 42 to 122	Schedule 3
Sections 123 to 146	Schedule 5
Section 147	Schedule 4
Section 148	Long Title

Amendments marked * are new (including manuscript amendments) or have been altered.

Section 58

Robin Harper

194 In section 58, page 33, line 3, at end insert—

<() a surfing marine protected area (a “Surfing MPA”)>

Liam McArthur

178 In section 58, page 33, line 3, at end insert—

<() When making an order under subsection (1), the Scottish Ministers must lay before the Parliament a statement—

- (a) stating whether they propose to make any marine conservation order in respect of the designated area, and, if so,
- (b) describing the provisions they consider that the first such order is likely to contain.>

Marine management is often based on incomplete knowledge. The science available will almost always be perceived as incomplete, particularly in the most sensitive or contested areas. This amendment confers a duty on Scottish Ministers, at the point of making a designation order, to state whether they propose to make a marine conservation order. We would be concerned if this amendment precluded an MCO being made at some future date in the light of new information.

Liam McArthur

195 In section 58, page 33, line 5, leave out from <island> to <island> in line 6 and insert <reef, skerry, stack or sandbar in that area of sea, whether or not any part of it>

LINK supports this amendment.

Section 59

Liam McArthur

196 In section 59, page 33, line 10, at end insert—

<(A1) An area may only be designated by a designation order as a Nature Conservation MPA if the Scottish Ministers are satisfied (having regard to the information available by virtue of section 69(D1)(b)) that—

- (a) it comprises a candidate site registered under section 69(A1) (or two or more adjacent candidate sites), or
- (b) the following two conditions are met—
 - (i) the area includes part of a candidate site,
 - (ii) they have taken sufficient advice from Scottish Natural Heritage as to the appropriateness of the proposed boundaries of the area.>

Our preferred option here would be amendment 197.

John Scott

197 In section 59, page 33, line 16, at end insert—

<() The Scottish Ministers must—

- (a) prepare and publish guidance setting out scientific criteria to inform consideration of whether an area should be designated a Nature Conservation MPA, and
- (b) have regard to such guidance in exercising their functions under section 58.>

In order to ensure that MPAs are designated on the basis of best available science we believe that it is important that guidance is published by Scottish Ministers which details the scientific criteria to be used for the designation of MPAs. Scottish Ministers must have regard to this guidance when designating MPAs. **LINK supports this amendment.**

Elaine Murray

198 In section 59, page 33, line 19, after <objectives> insert <as specified by Scottish Natural Heritage>

We believe that the conservation objectives for a Nature Conservation MPA are a crucial element of the MPA provisions in the bill and as such, it is important that the body tasked with producing these objectives has the necessary expertise. We believe that the appropriate statutory nature conservation body is best placed to do this and the proposed amendment makes clear that SNH should specify the conservation objectives. **LINK supports this amendment.**

Elaine Murray

199 In section 59, page 33, line 25 leave out from <conserving> to the end of line 28 and insert <the Scottish Ministers must have regard to the extent to which a designation order would contribute towards the development of a network of conservation sites as specified in section (*Creation of network of conservation sites*).>

In line with our international commitments under OSPAR, WSSD and MSFD we believe that it is vital that there is a requirement to designate MPAs as part of a network of sites. Protection of marine fauna, flora, habitats and ecosystems cannot be achieved through the designation of stand-alone sites. Rather an ecologically coherent network of sites is required, designated on the basis of best available science. It is therefore important to consider the contribution that a site might make to the network as part of the designation process.

The proposed amendment is based on the approach adopted by the Nature Conservation (Scotland) Act 2004 for SSSI's, and will require the potential contribution of an individual site to an ecologically coherent network to be considered during the designation process for that site. **LINK supports this amendment.**

Peter Peacock

200 In section 59, page 33, line 28, at end insert—

<() In considering whether to designate an area, the Scottish Ministers may have regard to the extent to which doing so will contribute to the mitigation of climate change.>

LINK do not support this amendment. LINK recognises the vital role that not only marine renewables, but also a healthy, biodiverse and well-functioning marine environment can play in climate change mitigation. The sea is the world's second largest carbon sink after the atmosphere itself. It is estimated to have absorbed around a third of the total carbon (150 Gt) from human activities since 1850 and contains about fifty times as much inorganic carbon as is found in the atmosphere. A recent report by the United Nations Environment Programme concludes that, 'Minimisation of pressures, restoration and sustainable use are management options that can help [oceans and coastal] ecosystems maintain their important carbon management function.' However, as we state in our response to amendment 179, **designation** of a site should be based solely on science (except where there are two or more equal areas). Designation is simply a process of recognising what is important and has value from a conservation perspective and labelling an area as such. Such designation need not preclude a marine renewable development, and indeed mitigation of climate change is a factor that could, and would, be taken into account in the future management of a site.

Karen Gillon

179 In section 59, page 33, line 29, leave out from beginning to <they> in line 31 and insert <In considering whether it is desirable to designate an area as a Nature Conservation MPA, the Scottish Ministers>

LINK do not support this amendment. Marine Protected Areas (MPAs) are the safe havens that promote more general marine recovery. Currently within the Bill Nature Conservation MPAs are **the only areas of Scotland's seas** where the health of the marine environment can be promoted and damage reversed. The Sustainable Seas Task Force, in which all marine interests participated, reached clear consensus on the designation of Nature Conservation MPAs on the basis of best available scientific advice and we do not believe that that consensus should be lost. There is already provision within the Bill to take socio-economics into account in any choice between two or more equal areas and in the management of MPAs after designation.

There is a large body of evidence linking better marine health with economic productivity, social well-being and, crucially, climate change mitigation. A 2009 report (*No charge? Valuing the environment*, Natural England) estimates that the potential benefits of a UK network of Marine Conservation Zones could outweigh costs by a factor of between 7 to 40, with estimated benefits of between £7 billion and £19 billion. Socio-economic pressures are a major contributor to the current clear need to protect and restore the marine environment. Allowing such factors to be taken into account when designating MPAs would lead to the risk of the very factors that cause the damage preventing its repair and make it difficult or impossible to take much-needed steps to support the long-term health of the marine environment.

Within the Bill NC MPAs form an important part of the environmental element of Sustainable Development, and contribute to the fulfilment of the Bill's Sustainable Development duty. International commitments to create 'an ecologically-coherent network of well-managed MPAs' are also likely to be very difficult to meet if socio-economics are considered during the selection process. Past experience demonstrates that this approach has failed once already. Marine Nature Reserves under the Wildlife and Countryside Act 1981 failed because laws to protect MNRs were not allowed to affect the functions of any other relevant authority, and commercial interests effectively had power of veto over MNR proposals. As a result **no** Marine Nature Reserves were ever established in Scotland.

Some stakeholders have called for consistency with the UK Marine and Coastal Access Act which states that social and economic factors may be taken into account in site designation. However, in a statement to Parliament, and notably in a recent letter to Joan Edwards, chair of Wildlife and Countryside Link, (which has been placed on the public record in the Commons Library) Huw Irranca-Davies, Minister for the Natural Environment, Wildlife and Rural Affairs stated:

"As I clearly stated in Committee, science is absolutely fundamental, in determining where we will designate sites for MCZs. I stressed how this is captured in the Bill by explaining that '*Failure to make a designation decision on the basis of scientific evidence would mean, first, that the designating authority did not take account of reasonable considerations; secondly, that it would therefore have acted unreasonably; and thirdly, that the decision could then be considered for judicial review.*' I stand by this analysis, and it is reflected in the pre-eminent place science has in the various guidance documents we have produced. I recognise that as they are currently drafted, the guidance and MPA Strategy are not always consistent with what I have said in Parliament. As I explained during our meeting on 29 September, that is the result of the evolution of the Bill through the Parliamentary debating process. I can assure you that the final versions of the documents will be consistent with the Bill and with the commitments the Government has made in the House."

In summary, amending the Bill to take account of socio-economics in all MPA designations would fatally weaken the nature conservation provisions in the Bill. Weakened in this way, delivery of much-needed protection and improvement of marine ecosystems would be difficult and sustainable development of Scotland's marine area and marine economy would be impossible.

Stuart McMillan

- 201** In section 59, page 33, line 29, leave out from beginning to <may> in line 31 and insert <In considering whether it is desirable to designate an area as a Nature Conservation MPA, the Scottish Ministers must>

LINK do not support this amendment. See comments for amendment 179.

Elaine Murray

- 202 In section 59, page 33, line 32, after <area> insert <(having regard to the provisions in subsection (4) and, where applicable, subsection (5)),>

There is a clear policy intention that Nature Conservation MPAs should be designated according to science and we welcome the fact that the RAE Committee agreed with this approach (Paragraph 237 – Stage 1 report). However, section 59(6) is not consistent with such an approach, and indeed does not appear to be consistent with 59(5) which sets out the circumstances under which social or economic consequences of designation may be considered. As the bill stands section 59(6) would potentially allow regional delegates designated to exercise functions in relation to a regional marine plan to prevent the designation of an MPA for a nationally important marine feature for reasons unrelated to the scientific criteria for site designation. **LINK supports this amendment.**

Elaine Murray

- 203* In section 59, page 34, line 4, at end insert—

<() The Scottish Ministers may not, in exercising their powers under subsection (1), designate a greater number of sites than the total number suggested in any relevant advice from the appropriate statutory conservation authority.>

Our preferred option here would be amendment 197.

Section 61

Stuart McMillan

- 204 In section 61, page 35, line 4, leave out <may>

Stuart McMillan

- 205 In section 61, page 35, line 5, at beginning insert <may>

Stuart McMillan

- 206 In section 61, page 35, line 8, at beginning insert <must>

Amendments 204, 205 & 206. **LINK do not support these amendments.** Section 61 already allows the social and economic consequences of designation to be taken into account. This amendment would make it almost impossible to carry out any research or demonstration of sustainable methods of marine management or exploitation, and such methods could have huge potential benefits to Scotland.

Section 63

Richard Lochhead

- 66 In section 63, page 35, line 27, leave out <located, or believed to be located,> and insert <which is, or which they are satisfied may be, located>

Karen Gillon

- 66A As an amendment to amendment 66, line 2, leave out <, or which they are satisfied may be,>

LINK do not support this amendment. We are opposed to the weakening of the provisions relating to marine historic assets.

Stuart McMillan

207 In section 63, page 35, line 32, at end insert—

<() In considering whether it is desirable to designate an area as a Historic MPA, the Scottish Ministers must have regard to any social or economic consequences of designation.>

LINK do not support this amendment. We are opposed to the weakening of the provisions relating to marine historic assets.

After section 63

Robin Harper

208* After section 63, insert—

<Surfing MPAs

- (1) An area may be designated by a designation order as a Surfing MPA if the Scottish Ministers consider it desirable to do so for the purpose of preserving a surfing asset of national importance located in the area.
- (2) In this section a “surfing asset” means an area with the requisite topography, including seabed contour lines, to produce waves that can be surfed on.
- (3) The order must—
 - (a) state the preservation objectives for the asset and the area, and
 - (b) identify the area’s boundaries.
- (4) For the purpose of subsection (3)(b), an order may provide for the boundary to be determined by, or by reference to, mean high water spring tide.
- (5) A Surfing MPA may include (in addition to an area of sea referred to in section 58(1)) an area of seashore lying above mean high water spring tide if the area of seashore adjoins the area of sea.
- (6) For the purpose of subsection (3)(a), the preservation objectives for the asset and the area may include, but are not limited to—
 - (a) water quality objectives,
 - (b) objectives relating to access to the site.>

Section 65

Peter Peacock

180* In section 65, page 36, line 15, at end insert <a minimum of 12 weeks before the date on which it is intended that the order be made.>

Liam McArthur

- 209 In section 65, page 36, line 17, at end insert <including, in particular, any local authority whose area is adjacent to the likely boundaries of the proposed MPA.>

Stuart McMillan

- 210 In section 65, page 36, line 17, at end insert <including those specified by virtue of section 20(4)(a).>

Liam McArthur

- 211 In section 65, page 36, line 17, at end insert—
<() Where the Scottish Ministers propose to designate an area any part of which is land, they must have regard to the relevant local development plan (as prepared under section 16(1) of the Town and Country and Planning (Scotland) Act 1997 (c.8)) for each such part.>

Peter Peacock

- 181 In section 65, page 36, line 22, at end insert—
<() contain a plan or chart identifying the area’s boundaries.>

LINK supports this amendment.

Section 66

Richard Lochhead

- 67 In section 66, page 36, line 24, leave out subsection (1) and insert—
<(1A) This section applies where the Scottish Ministers have made a designation order (or an order amending or revoking any such order).
(1B) The Scottish Ministers must publish notice of the making of the order.
(1C) The notice under subsection (1B) must—
(a) be published in such a manner as the Scottish Ministers consider is most likely to bring the order to the attention of any persons likely to be affected by the making of it,
(b) give an address at which a copy of the order may be inspected.>

Liam McArthur

- 212* In section 66, page 36, line 26, at end insert—
<() A copy of any such order must also be sent to any such person on the day of its being laid.>

Richard Lochhead

- 68 In section 66, page 36, line 28, leave out <every designation> and insert <the>

Richard Lochhead

- 69 In section 66, page 36, line 28, leave out <one of their offices> and insert <the address specified under subsection (1C)(b)>

Richard Lochhead

- 70 In section 66, page 36, line 30, leave out <a designation> and insert <the>

Section 67

Robin Harper

- 213 In section 67, page 36, line 34, leave out <In any case> and insert <Subject to subsection (2),>

Robin Harper

- 214 In section 67, page 36, line 36, after <area> insert <and an imminent risk of harm otherwise being done to the area or asset>

Elaine Murray

- 182 In section 67, page 37, line 3, leave out <2 years> and insert <12 months>

We believe that there is merit in section 67 and section 77 being standardised to 12 months. LINK supports this amendment.

Robin Harper

- 215 In section 67, page 37, line 3, leave out <2 years> and insert <6 months>

Our preferred option is amendment 182.

Robin Harper

- 216 In section 67, page 37, line 4, at end insert—

- <(2) Upon expiration of the order, the Scottish Ministers may not re-designate the area (or any part of it) without—
 - (a) publishing notice of their proposals under section 65(1)(a), and
 - (b) consulting under section 65(1)(b).>

Section 68

Liam McArthur

- 217 In section 68, page 37, line 9, at end insert—

- <(1A) The Scottish Ministers must, before deciding whether to exercise the power in section 67(a), give any person likely to be directly affected by the order the opportunity of making oral or written representations to them or to any person appointed by them for that purpose at a hearing.>

LINK do not support this amendment. An urgent designation will only be used where there is an urgent need to protect an area or historic asset. As such, it is not appropriate to require Scottish Ministers to give persons the opportunity to make oral or written representations at a hearing in all cases. This raises the possibility that vexatious complaints will be made as a matter of course. We note that, where it is appropriate for a hearing to take place, the power for Scottish Ministers to take this action already exists in section 79.

Liam McArthur

218* In section 68, page 37, line 11, at end insert <and (1A)>

After section 68

Bill Wilson

Supported by: Peter Peacock, Elaine Murray

109 After section 68, insert—

<Duties relating to network

Creation of network of conservation sites

- (1) In order to contribute to the achievement of the objective in subsection (2), the Scottish Ministers must designate areas as Nature Conservation MPAs under section 58.
- (2) The objective is that the areas designated as Nature Conservation MPAs by the Scottish Ministers, taken together with any areas designated as marine conservation zones under section 116 of the 2009 Act and any relevant conservation sites in the UK marine area, form a network which satisfies the conditions in subsection (3).
- (3) The conditions are—
 - (a) that the network contributes to the conservation or improvement of the marine environment in the UK marine area,
 - (b) that the features which are protected by the sites comprised in the network represent the range of features present in the UK marine area,
 - (c) that the designation of sites comprised in the network reflects the fact that the conservation of a feature may require the designation of more than one site.
- (4) For the purposes of subsection (2), the following are “relevant conservation sites”—
 - (a) any European marine site,
 - (b) any European offshore marine site,
 - (b) the whole or part of any site of special scientific interest,
 - (c) the whole or part of any Ramsar site.
- (5) When complying with the duty imposed by subsection (1), the Scottish Ministers must have regard to any obligations under EU or international law that relate to the conservation or improvement of the marine environment.
- (6) Before the end of the period of 2 months beginning with the date on which this section comes into force, the Scottish Ministers must—
 - (a) prepare a statement setting out such principles relating to the achievement of the objective in subsection (2) as the Scottish Ministers intend to follow when complying with the duty imposed by subsection (1), and

- (b) lay of copy of the statement before the Parliament.
- (7) A statement prepared by the Scottish Ministers under this section may also set out other matters relating to the achievement of that objective which they intend to take into account when complying with the duty imposed by subsection (1).
- (8) The Scottish Ministers must—
 - (a) keep under review any statement they have prepared under this section, and,
 - (b) if they consider it appropriate in consequence of a review, prepare a revised statement of the principles referred to in subsection (6)(a) and lay a copy of it before the Parliament.
- (9) In this section—
 - “European offshore marine site” means any site within the meaning of the Offshore Marine Conservation (Natural Habitats, &c) Regulations 2007 (S.I. 2007/1842),
 - “feature” means—
 - (a) marine flora or fauna,
 - (b) marine habitats or types of such habitat,
 - (c) features of geological or geomorphological interest,
 - “Ramsar site” has the same meaning as in section 37A of the Wildlife and Countryside Act 1981 (c.69),
 - “site of special scientific interest” includes a site within the meaning of Part 2 of the Wildlife and Countryside Act 1981.>

We welcome the RAE Committee’s recommendation that the Bill should impose a duty on Scottish Ministers to create an ecologically coherent and representative network of MPAs, in line with our international commitments under OSPAR, WSSD and MSFD. We believe that it is necessary to place a duty on Scottish Ministers to designate MPAs (rather than discretion as at present) in order to contribute to an ecologically coherent network of well-managed MPAs. Currently, the only reference to a network comes under Section 91 (Reports to Parliament). Protection of marine fauna, flora, habitats and ecosystems cannot be achieved through the designation of stand-alone sites. Rather an ecologically coherent network of sites is required, on the basis of best available science. The proposed amendment creates a duty for a network of conservation sites, in line with the approach adopted in the UK Marine and Coastal Access Act. **LINK supports this amendment.**

Section 69

Liam McArthur

219 In section 69, page 37, line 14, at end insert—

- <(A1) Scottish Natural Heritage must maintain a register of candidate sites for designation as a Nature Conservation MPA.
- (B1) In maintaining the register, Scottish Natural Heritage must have regard to the purposes mentioned in section 59(1).
- (C1) Scottish Natural Heritage must make arrangements for the register to be available online and for public inspection.
- (D1) In respect of each entry on the register, Scottish Natural Heritage must state—

- (a) the reasons why Scottish Natural Heritage considers it appropriate to include the site on the register,
- (b) the boundaries of the site, or such information as to the locality of the site as Scottish Natural Heritage considers is sufficient to enable the Scottish Ministers to make a designation under section 58(1)(a), having regard to the requirement in section 59(A1) (for instance an indication on a map as to the boundaries of the site),
- (c) such other information as Scottish Natural Heritage considers appropriate.>

Our preferred option here would be amendment 197.

Elaine Murray

- 183** In section 69, page 37, line 15, leave out <may> and insert <must>

We believe that it is crucial that SNH are placed under a duty to give advice and guidance on all matters capable of damaging or affecting protected features or processes, rather than only when a public authority requests such advice. It would be impossible to make an informed decision on the management of a site without such information. This would allow SNH to support those making decisions relating to the planning and management of MPAs more effectively and ensure that expert opinion is always used to inform such decisions. **LINK supports this amendment.**

Section 71

Robin Harper

- 184** In section 71, page 38, line 21, leave out <(other than insignificantly)>

Section 71 and 72 make reference to ‘*other than insignificantly*’/ ‘*significantly*’ with regard to affecting the protected features or stated purpose of an MPA or hindering the achievement of the stated conservation objectives or stated purpose of an MPA. It is not clear where the ‘*significance threshold*’ would lie and it is not clear that the public body would have the appropriate expertise to make such a judgement call. In the interest of clarity for all users, reference to ‘*other than insignificantly*’/ ‘*significantly*’ should therefore be removed and the advice of SNH should be followed. At the very least there should be a clear statement on the record as to what would constitute an insignificant effect. **LINK supports this amendment.**

Robin Harper

- 220** In section 71, page 38, line 24, at end insert—

<() a Surfing MPA,>

Robin Harper

- 221** In section 71, page 38, line 34, at end insert—

<() the stated preservation objectives for the Surfing MPA,>

Elaine Murray

- 222** In section 71, page 38, line 34, at end insert—

<() exercise its functions in the way best calculated to further the contribution of a Nature Conservation MPA to a network of conservation sites as specified in section (*Creation of network of conservation sites*),>

Section 71 places a duty on public authorities to exercise its functions in the manner which it considers best furthers (or least hinders) the stated conservation objectives for a Nature Conservation MPA. However, given the importance of an ecologically coherent network of MPAs to the health of the Scottish marine environment, we believe that this section must also include a duty to ensure that no functions of a public authority can have a negative impact on the integrity of the network as a whole. This is consistent with the approach of the Nature Conservation (Scotland) Act 2004 which includes a duty on public bodies in relation to maintaining or enhancing the representative nature of any series of sites of special scientific interest to which a SSSI notification contributes. **LINK supports this amendment.**

Richard Lochhead

- 71 In section 71, page 39, line 1, leave out <the exercise of any of its functions> and insert <any of its functions is such that the exercise of the function>

Robin Harper

- 185 In section 71, page 39, line 2, leave out <significantly>

See comments for amendment 184. LINK supports this amendment.

Richard Lochhead

- 72 In section 71, page 39, line 4, at end insert—

<(3A) Subject to subsection (3C), subsection (3B) applies in any case where a public authority intends to do an act which is capable of affecting (other than insignificantly) any feature, purpose, asset or process mentioned in paragraphs (a) to (d) of subsection (1).

(3B) If the authority believes that there is or may be a significant risk of the act hindering the achievement of the objectives or purpose mentioned in subsection (2)(a), the authority must notify the Scottish Ministers and (if appropriate) Scottish Natural Heritage of that fact.

(3C) Subsection (3B) does not apply where—

(a) in relation to acts of a particular description—

(i) Scottish Natural Heritage has given advice or guidance to the authority under section 69,

(ii) the Scottish Ministers have given advice or guidance to the authority under section 70,

(b) the act which the authority intends to do is an act of that description, and

(c) the advice or guidance has not ceased to apply.

(3D) Where the authority has given notification under subsection (3B), it must wait until the expiry of 28 days beginning with the date that the Scottish Ministers and (if appropriate) Scottish National Heritage are notified (and if such notification is given on different dates, the later of those dates) before deciding whether to do the act.

(3E) Subsection (3D) does not apply where—

- (a) the Scottish Ministers notify the authority that it need not wait until the end of the period referred to in that subsection, or
- (b) the authority thinks that there is an urgent need to act.>

Richard Lochhead

73 In section 71, page 39, line 5, leave out <the> and insert <a public>

Robin Harper

223 In section 71, page 39, line 15, at end insert—
<() the stated preservation objectives for a Surfing MPA.>

Richard Lochhead

74 In section 71, page 39, line 19, after <(3)> insert <, (3B)>

Liam McArthur

224 In section 71, page 39, line 21, at end insert—
<() The functions referred to in subsection (1) include any measure taken by a planning authority in pursuance of any—
(a) vision statement, or
(b) policy or proposal,
set out in any current local development plan prepared under section 16(1) of the Town and Country Planning (Scotland) Act 1997 (c.8).>

LINK supports this amendment.

Section 72

Robin Harper

186 In section 72, page 39, line 26, leave out <(other than insignificantly)>
See comments for amendment 184. LINK supports this amendment.

Robin Harper

225 In section 72, page 39, line 29, at end insert—
<() a surfing asset in a Surfing MPA,>

Robin Harper

226 In section 72, page 39, line 39, at end insert—
<() the stated preservation objectives for the Surfing MPA>

Robin Harper

227 In section 72, page 40, line 13, at end insert—

<() the stated preservation objectives for the Surfing MPA,>

Peter Peacock

- 228* In section 72, page 40, line 22, leave out from <undertake> to first <to> in line 24 and insert <make all reasonable efforts to secure the implementation of measures of environmental benefit adequate to compensate for>

Section 74

Robin Harper

- 229 In section 74, page 42, line 8, at end insert—

<() that of furthering the stated preservation objectives for a Surfing MPA,>

Liam McArthur

- 187 In section 74, page 42, line 14, leave out <in Scotland> and insert <that is part of an area designated under section 58(1)>

LINK do not support this amendment. Whilst we believe that the use of ‘Scotland’ here is imprecise, the proposed amendment seeks to limit the scope of a marine conservation order to too great a degree. A marine conservation order must be available to control activities outside the boundaries of an MPA if those activities are likely to compromise the achievement of the stated conservation objectives for that site.

Robin Harper

- 230 In section 74, page 42, line 16, at end insert—

<() An order made under this section for the purpose of furthering the stated conservation objectives of a Nature Conservation MPA must include such reference to the provisions of the Inshore Fishing (Scotland) Act 1984 (c.26) as the Scottish Ministers consider would contribute to those objectives.>

The proposed amendment would ensure that the powers in the Inshore Fishing (Scotland) Act 1984 can, and where appropriate will, be used to exclude fishing activities that are likely to damage the protected features of an MPA. Various forms of fishing activity have the potential to compromise the achievement of conservation objectives for MPAs and, depending on the type of gear used and the protected feature of the MPA, it is expected that in some circumstances, for some sites or parts of some sites, fishing would need to be controlled. Following discussion in committee, at the very least we would hope to see a commitment by the Cabinet Secretary that the powers in the Inshore Fishing (Scotland) Act 1984 can, and where appropriate will, be used to exclude fishing activities that are likely to damage the protected features of an MPA.

A similar commitment was recently given by Huw Irranca-Davies, Minister for the Natural and Marine Environment, Wildlife and Rural Affairs, in a letter to Joan Edwards, Chair of Wildlife and Countryside Link. This letter has now been placed in the House of Commons Library. In this letter the Minister states:

“One of the principle mechanisms for the protection of MCZs will be by regulating damaging activities through byelaws. The Bill’s provisions enable the MMO to make byelaws (Clause 129) out to 12nm for the purpose of furthering the conservation objectives stated for an MCZ in England (and the general duty in Clause 125 requires the MMO to exercise its functions in a manner which it considers best furthers the conservation objectives stated for the MCZs). They also give Inshore Fisheries and Conservation Authorities (IFCAs) the power to make byelaws to regulate fishing in their districts (which will extend out to 6nm). IFCAs will have a duty to seek to ensure that the conservation objectives of MCZs in their district are furthered. One method of achieving this will be via the making of byelaws to regulate fishing where it is likely that fishing would otherwise have had an adverse impact on an MCZ achieving its conservation objectives. Where IFCAs fail to perform their duty they may be subject to judicial review.

“Both nature conservation and IFCA byelaws can be used to prevent or limit activities not currently occurring in an MCZ, this is detailed in the explanatory note to clause 153. The Marine Management Organisation and IFCAs will need to consider whether such byelaws of this forward-thinking type would be appropriate, and/or necessary in each case. They might consider for example, whether the displacement of an activity from a distant area might cause a new pressure on an MCZ and necessitate regulation. Any subsequent proposals to lift or modify a byelaw put in place to protect a MCZ would require careful assessment against the conservation objectives for that MCZ.”

LINK supports this amendment.

Elaine Murray

231 In section 74, page 42, line 29, at end insert—

<() No order may be made in furtherance of a stated purpose under subsection (1)(b) which would interfere with the legitimate uses of the seas.>

LINK do not support this amendment. Whilst we understand the policy intention of this amendment we believe that Section 61(3), which allows Scottish Ministers to have regard to any social or economic consequences of designation, should be sufficient to take account of the concerns of legitimate uses of the sea. This amendment would make it almost impossible to carry out any research or demonstration of sustainable methods of marine management or exploitation, and such methods could have huge potential benefits to Scotland.

Section 75

Robin Harper

188 In section 75, page 43, line 22, at end insert—

<() the use of fishing gear (including requiring it to be stowed) on any vessel within the protected area.>

Similar to our comments to amendment 230 above, we would hope to see a commitment by the Cabinet Secretary that the powers in the Inshore Fishing (Scotland) Act 1984 can, and where appropriate will, be used to exclude fishing activities that are likely to damage the protected features on an MPA.

Robin Harper

232 In section 75, page 43, line 30, at end insert—

<() where the protected area is a Surfing MPA, the stated preservation objectives for it,>

Robin Harper

233 In section 75, page 43, line 37, at end insert—

<() require that any vessel in the protected area has its registration identification clearly displayed.>

We believe that all vessels should have such information clearly displayed at all times. LINK supports the policy intention behind this amendment.

Section 76

Liam McArthur

234 In section 76, page 44, line 15, at end insert—

<() Where the proposed order would apply to an area any part of which is land, the Scottish Ministers must provide a copy of a draft to the relevant planning authority.>

Section 78

Stuart McMillan

235 In section 78, page 45, line 18, at end insert <including the United Kingdom Hydrographic Office, to allow the content of such orders to inform—

- (a) navigational charts, and
- (b) notices to mariners.>

Section 79

Karen Gillon

236 In section 79, page 45, line 31, at end insert—

<(A1) The Scottish Ministers must, before deciding to—

- (a) make a marine conservation order (whether in accordance with section 76 or an urgent marine conservation order in accordance with section 77),
- (b) amend a marine conservation order,

give any persons who considers that their economic position could be materially disadvantaged as a result of any such decision, the opportunity of making oral or written representations to Scottish Ministers or to any person appointed by them for that purpose at a hearing.>

Whilst we understand the policy intention here we are unable to support this amendment as it also includes urgent marine conservation orders. As we stated in our response to amendment 217 an urgent designation will only be used where there is an urgent need to protect an area or historic asset. As such, it is not appropriate to require Scottish Ministers to give persons the opportunity to make oral or written representations at a hearing in all cases. This raises the possibility that vexatious complaints will be made as a matter of course. We note that, where it is appropriate for a hearing to take place, the power for Scottish Ministers to take this action already exists in section 79. Section 79 as it currently stands already allows *any person* the opportunity of making oral or written representations at a hearing and does not preclude a person who considers that their economic position could be materially disadvantaged as a result of any such decision. In addition, this amendment would confer a duty on Scottish Ministers to hear written or oral representations before making or amending a MCO, but no such duty would exist before revoking a MCO. This amendment would therefore not be in line with the Sustainable Development duty accepted by the RAE Committee on 18th November as it would not make equal provision for social or environmental representations.

Karen Gillon

237 In section 79, page 45, line 40, after <subsection> insert <(A1) or>

After section 79

Liam McArthur

238 After section 79, insert—

<Duty to assess impact of restriction and prohibition of activities

- (1) The Scottish Ministers must assess the potential impact of—
 - (a) the restriction or prohibition of an activity within the area, or
 - (b) the displacement of an activity to another part of the Scottish marine area,where the activity has been restricted or (as the case may be) prohibited as a consequence of an order made under section 74(1)(a), (b) or (d).
- (2) The assessment must include the extent to which the restriction or prohibition of the activity would have an adverse impact on—
 - (a) commercial interests,
 - (b) the environment elsewhere in the Scottish marine area as a result of the activity being displaced.
- (3) Where, following an assessment, the Scottish Ministers identify an adverse impact under subsection (2), they must take such steps as they consider are reasonable to minimise it as far as is practicable.>

There would appear to be a concern that MPAs and their subsequent management may be detrimental to social and economic activities. However, we would maintain that there is a large body of evidence linking better marine health with economic productivity, social well-being and, crucially, climate change mitigation. A 2009 report (*No charge? Valuing the environment*, Natural England) estimates that the potential benefits of a UK network of Marine Conservation Zones could outweigh costs by a factor of between 7 to 40, with estimated benefits of between £7 billion and £19 billion. We would also point out that marine activities may also be displaced for a number of other reasons, for example, where two marine activities being incompatible in the same area. The displacement of marine activities is a factor that must be considered when managing our seas according to the ecosystem approach and therefore LINK supports the policy intention behind this amendment.

Section 82

Robin Harper

- 189 In section 82, page 46, line 37, at end insert <, imprisonment for a period not exceeding 2 years, or both.>

This amendment seeks to ensure consistency between the penalties for offences in Part 3 and Part 4 of the Bill. Offences for contravening license provisions are punishable by:

- (i) on summary conviction, by a fine not exceeding £50,000,
- (ii) on conviction on indictment, by a fine, imprisonment for a period not exceeding 2 years, or both.

However, with regard to offences for contravening a marine conservation order (s82) or offences relating to protected features of a Nature Conservation MPA (s83), imprisonment is not part of the suite of punishments. **LINK supports this amendment.**

Section 83

Stuart McMillan

- 239 In section 83, page 47, line 27, leave out <£50,000> and insert <£5,000>

LINK do not support this amendment. Section 83(3) lays out a number of circumstances where an act, which would otherwise be an offence under this section, is not considered an offence. Given these provisions we do not believe that a fine of £5000 is a sufficient deterrent.

Robin Harper

- 190 In section 83, page 47, line 28, at end insert <, imprisonment for a period not exceeding 2 years, or both.>

This amendment seeks to ensure consistency between the penalties for offences in Part 3 and Part 4 of the Bill. Offences for contravening license provisions are punishable by:

- (i) on summary conviction, by a fine not exceeding £50,000,
- (ii) on conviction on indictment, by a fine, imprisonment for a period not exceeding 2 years, or both.

However, with regard to offences for contravening a marine conservation order (s82) or offences relating to protected features of a Nature Conservation MPA (s83), imprisonment is not part of the suite of punishments. **LINK supports this amendment.**

Section 84

Stuart McMillan

240 In section 84, page 48, line 15, leave out <£50,000> and insert <£5,000>

LINK do not support this amendment. Section 83(3) lays out a number of circumstances where an act, which would otherwise be an offence under this section, is not considered an offence. Given these provisions we do not believe that a fine of £5000 is a sufficient deterrent.

After section 84

Robin Harper

241 After section 84, insert—

<Offences relating to Surfing MPAs

- (1) A person commits an offence under this section if the person—
 - (a) intentionally or recklessly does a prohibited act in a Surfing MPA (the “protected area”), and
 - (b) the act has significantly hindered, or may significantly hinder, the achievement of the stated objectives for the protected area.
- (2) For the purpose of subsection (1), a person does a prohibited act if the person carries out works or activities in the area which (or which are likely to)—
 - (a) damage or interfere with a Surfing MPA,
 - (b) have a significant impact on the protected area.>

Section 85

Robin Harper

242 In section 85, page 49, line 1, after <act,> insert—

<() the act occurred on the seaward side of the 0-6 nautical mile fisheries zone in a location where foreign vessels have fishing rights,>

Section 85 states that a person cannot be guilty of an offence under section 82 (Contravening a marine conservation order), 83 (Offences relating to protected features of a Nature Conservation MPA) or 84 (Offences relating to marine historic assets) if the act was done whilst fishing and the effect of that act on the protected feature could not reasonably have been avoided. We note that in many instances it is sea fishing that has created the parlous situation that needs rectifying by this Bill. We further note that the RAE Committee remains unconvinced that fishing activity in MPAs requires additional protection under the Bill.

We understand that this defence is designed to prevent discrimination between UK and non-UK fishing vessels under the Common Fisheries Policy in such areas between 6-12nm where there are historic fishing rights. In these areas non-UK vessels cannot be charged under UK law if they are in compliance with the CFP. However, there does not appear to be any justification for such a defence within 6nm or in areas between 6-12nm where there are no historic fishing rights. **LINK supports these amendments.**

Richard Lochhead

75 In section 85, page 49, line 3, at end insert—

<(2A) The Scottish Ministers may by order amend this section so as to remove, or restrict the application of, the defence provided by subsection (2).>

We understand that the sea fishing defence is designed to prevent discrimination between UK and non-UK fishing vessels under the Common Fisheries Policy in such areas between 6-12nm where there are historic fishing rights. In these areas non-UK vessels cannot be charged under UK law if they are in compliance with the CFP. However, there does not appear to be any justification for such a defence within 6nm or in areas between 6-12nm where there are no historic fishing rights. However, this amendment, which is consistent with the approach adopted in the UK Marine and Coastal Access Act allows the defence to be removed or restricted following reform of the Common Fisheries Policy. Our preferred option would be amendments 242 and 243 which would limit the defence to areas between 6-12nm where there are historic fishing rights, but we can see the merit in consistency with the UK Act here.

Robin Harper

243 In section 85, page 49, line 4, at end insert—

<“foreign vessel” means any vessel other than a British vessel, Scottish fishing boat or a Northern Ireland fishing boat.>

The proposed amendment is consequential to amendment 242. **LINK supports this amendment.**

Section 86

Richard Lochhead

76 In section 86, page 49, line 11, leave out <structure,> and insert <installation, and>

Richard Lochhead

77 In section 86, page 49, leave out line 12

Section 87

Bill Wilson

168 In section 87, page 49, line 27, leave out from beginning to <all> in line 28 and insert <A marine management scheme must be established for each>

Post-designation it is essential that conservation objectives are used to develop a management scheme for each MPA. A marine management scheme is necessary to translate the conservation objectives into clear management guidelines, making it easier for public bodies and other organisations and individuals to understand the management requirements and the implications with regard to their own functions and activities. We believe that the best way to provide clarity for all sea users is to require that a management scheme must be developed for every MPA. **LINK supports this amendment.**

Robin Harper

244 In section 87, page 49, line 30, at end insert—

<() any Surfing MPA,>

Robin Harper

245 In section 87, page 49, line 36, after the first <MPA> insert <, a Surfing MPA>

Bill Wilson

169 In section 87, page 50, line 1, leave out <relevant authority's (or authorities') functions> and insert <functions of a relevant authority (or of 2 or more relevant authorities acting together)>

The proposed amendment is consequential to amendment 168. LINK supports this amendment.

Robin Harper

246 In section 87, page 50, line 7, at end insert—

<() the stated preservation objectives for any Surfing MPA to which the scheme applies,>

Bill Wilson

170 In section 87, page 50, line 17, after <area> insert <directed in writing by the Scottish Ministers to establish a marine management scheme (whether on its own or together with another relevant authority or other relevant authorities)>

The proposed amendment is consequential to amendment 168. LINK supports this amendment.

Section 89

Elaine Murray

191 In section 89, page 50, line 28, at end insert—

<() The relevant authority (or authorities acting together) must have regard to any representations made to it by Scottish Natural Heritage under subsection (1).>

Section 89 places a duty on a relevant authority to consult SNH before amending a marine management scheme. However, there is currently no requirement for that authority to have regard to any advice given by SNH. LINK supports this amendment.

After section 90

Elaine Murray

247* After section 90, insert—

<Nature Conservation MPAs: duty to review achievement of stated objectives

Nature Conservation MPAs: duty to review achievement of stated objectives

- (1) At the end of a period mentioned in subsection (3), the appropriate statutory conservation body must carry out an assessment of the extent to which the stated conservation objectives of a designated Nature Conservation MPA have been achieved.
- (2) An assessment under subsection (1) may also include an assessment of the contribution of any relevant marine management scheme to the achievement of the objectives.

- (3) The periods are—
- (a) the period of 5 years beginning with the date on which the area was designated under section 58(1)(a),
 - (b) each subsequent period of 5 years.>

There is currently no requirement for sites to be monitored. In the absence of such monitoring, it would appear to be impossible for Scottish Ministers to report on the extent to which the stated conservation objectives have been achieved (91(3)). The proposed amendment includes a monitoring requirement for all MPAs in order that progress towards achieving conservation objectives can be assessed. We welcome the recommendation of the RAE Committee that the Cabinet Secretary consider the merits of the Bill requiring MPAs to be regularly monitored and reviewed following designation. **LINK supports this amendment.**

Section 91

Richard Lochhead

- 175 In section 91, page 51, line 20, leave out <120 of the Marine and Coastal Access Act 2009 (c.00)> and insert <124 of the 2009 Act>

Robin Harper

- 248 In section 91, page 51, line 25, at end insert—
- <() Surfing MPAs,>

Robin Harper

- 249 In section 91, page 51, line 32, at end insert—
- <() in relation to each Surfing MPA—
- () its size,
 - () the stated purpose,>

Robin Harper

- 250 In section 91, page 52, line 6, at end insert—
- <() in relation to each Surfing MPA (whether in a designation order made before or during the relevant period)—
- () the extent to which in the opinion of the Scottish Ministers the stated purpose has been achieved,
 - () any further steps which in their opinion are required to be taken in order to contribute to the achievement of that purpose,>

Liam McArthur

- 192 In section 91, page 52, line 17, at end insert—
- <() information about—
- (i) any amendment to a marine conservation order, or
 - (ii) any amendment to or update of a marine management scheme,

made during the relevant period as a result of monitoring the effectiveness of the order or scheme,>

Section 91(3) requires Scottish Ministers to report on the extent to which the stated conservation objectives have been achieved. The World Conservation Union (IUCN) recently produced guidelines for evaluating the effectiveness of MPAs which highlighted the central importance of evaluating management effectiveness of MPAs through a process of adaptive management. Management effectiveness is simply the degree to which management actions are achieving the goals and objectives of a protected area. Adaptive management is the process of testing assumptions, learning from the results of such testing, and subsequently revising and improving management practices – sometimes described as ‘learning by doing’. Adaptive management is a requirement of the Marine Strategy Framework Directive (MSFD) which states under Article 3(5) *Adaptive management on the basis of the ecosystem approach shall be applied with the aim of attaining good environmental status.* The proposed amendment would ensure that International best practice is followed in monitoring and assessing MPAs. **LINK supports this amendment.**

Richard Lochhead

- 171** In section 91, page 52, line 20, leave out from <an> to the end of line 26 and insert <the objective in section (*Creation of network of conservation sites*)(2).>

Richard Lochhead

- 172** In section 91, page 52, leave out lines 28 to 30

Richard Lochhead

- 173** In section 91, page 52, leave out lines 35 and 36

Amendment 171, 172 & 173. The proposed amendments are consequential to amendment 109. **LINK supports these amendments.**

Section 92

Richard Lochhead

- 79** In section 92, page 53, line 1, leave out <Marine and Coastal Access Act 2009 (c.00)> and insert <2009 Act>

Richard Lochhead

- 80** In section 92, page 53, line 18, leave out <Marine and Coastal Access Act 2009> and insert <2009 Act>

Section 94

Richard Lochhead

- 81** In section 94, page 53, line 33, at end insert—
<“animal” includes any egg, larva, pupa or other immature stage of an animal,>

Robin Harper

251* In section 94, page 54, line 10, at end insert—

<“stated preservation objectives” for a Surfing MPA means the preservation objectives stated (in the designation order designating the area) as the preservation objectives for the area,>