

## Marine (Scotland) Bill

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### Marshalled List of Amendments selected for Stage 3

#### Comments by Scottish Environment LINK (in red font)

The Bill will be considered in the following order—

Sections 1 to 148  
Long Title

Schedules 1 to 5

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

#### Section 2A

##### Peter Peacock

**101** Leave out section 2A and insert—

<**Sustainable development and protection and enhancement of the health of the Scottish marine area**

In exercising any function that affects the Scottish marine area under this Act—

- (a) the Scottish Ministers, and
- (b) public authorities

must act in the way best calculated to further the achievement of sustainable development, including the protection and, where appropriate, enhancement of the health of that area, so far as is consistent with the proper exercise of that function.>

As recognised by the RAE committee in the Stage 1 Report, the state of Scotland's seas is a serious concern. The Marine (Scotland) Bill provides an opportunity to strengthen the legal position by placing a duty on Scottish Ministers and all relevant public authorities to act in the best way calculated to protect and enhance the health of the Scottish marine area. At Stage 2 the Cabinet Secretary argued that the duty might require enhancement of marine health even in 'pristine' areas. The addition of 'where appropriate' addresses this. The duty also reflects Scotland's obligations under the Marine Strategy Framework Directive in Scottish Primary legislation. At Stage 2 members of the public wrote almost 5000 messages to their MSPs supporting measures for marine recovery. As of 1<sup>st</sup> Feb 2010, 1029 people had sent a further 6,461 letters and e-mails to MSPs during the run up to Stage 3. The proposed amendment provides an opportunity to translate into law the unanimous support of the RAE committee, which was reflected by members of all political parties in the Stage 1 debate, for the principle of protection and enhancement of the Scottish marine area. **LINK supports this amendment.**

## After section 2A

**Peter Peacock**

2\* After section 2A, insert—

### <Mitigation of and adaptation to climate change

In exercising any function that affects the Scottish marine area under this Act, the Climate Change (Scotland) Act 2009 (asp 12), or any other enactment—

- (a) the Scottish Ministers, and
- (b) public authorities,

must act in the way best calculated to mitigate, and adapt to, climate change so far as is consistent with the purpose of the function concerned.>

The proposed amendment places a general duty on Scottish Ministers to act in the best way calculated to mitigate and adapt to climate change. 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.' LINK believes that a general duty of this sort is the best way to incorporate the need to mitigate and adapt to climate change in the Bill. Therefore, should this amendment be accepted we do not believe that it is necessary to further amend the bill to include climate change mitigation, particularly in Part 3. **LINK supports this amendment.**

## Section 3

**Elaine Murray**

102\* In section 3, page 2, line 15, at end insert—

<( ) states the Scottish Ministers' policies on the contribution of Nature Conservation MPAs (namely areas designated as such by order under

- (i) section 58(1)(a)), and
- (ii) sites falling within section 68A(4),

to the protection and enhancement of the area to which the plan applies,>

We believe that a major potential strength of the Marine (Scotland) Bill is the 3-pillar approach to nature conservation. These three pillars are:

- The contribution of wider seas measures
- Species protection
- Site protection

As part of the first pillar (wider seas measures), marine planning would be expected to play a major role (Policy Memorandum, para 45). A 3-pillar approach to marine nature conservation was the clear view of both AGMACS and the Sustainable Seas Task Force. In addition, during the Marine Bill consultation 86% of respondents that expressed an opinion agreed that the system of marine nature conservation should be based on the three-pillar approach<sup>1</sup>. However, as the Bill currently stands there is no clear link between the planning provisions (Part 2) and the provisions for marine protection and enhancement (Part 4).

We welcome the RAE Committee seeking clarification on the extent to which there is sufficient linkage between the marine planning process and the process of designating MPAs. We believe that the bill should explicitly state that a national marine plan or (as the case may be) a regional marine plan should also include Scottish Ministers' policies for and in connection with the protection and enhancement of marine protected areas in the area to which the plan applies. **LINK supports this amendment.**

### **Liam McArthur**

**6** In section 3, page 2, line 18, leave out subsection (3) and insert—

- <(3) For the purposes of preparing a national marine plan or (as the case may be) a regional marine plan, the Scottish Ministers must—
  - (a) set—
    - (i) economic, social and marine ecosystem objectives,
    - (ii) objectives relating to the mitigation of, and adaptation to, climate change,
  - (b) prepare an assessment of the condition of the Scottish marine area or, as the case may be, Scottish marine region at the time of the plan's preparation,
  - (c) prepare a summary of significant pressures and the impact of human activity on the area or region,
  - (d) prepare policies and a programme of measures to be applied to achieve the objectives set under paragraph (a),
  - (e) prepare a list of those public authorities or persons responsible for implementing those policies.>

The marine planning provisions are a vital component of the Bill, and it is therefore key that the Bill provides a clear direction and purpose for the marine planning system. As such it is important that the Bill provides greater clarity on the content of marine plans. We note that during the RAE Committee's first evidence session on the Marine (Scotland) Bill, there was a recognition that the Bill was unclear on what marine plans will look like and what they will contain. Whilst we appreciate the desire for flexibility within the planning system, we also believe that stakeholders, particularly from economic sectors, need the planning system to provide them with clarity and as much certainty as possible. We therefore believe that it is important that more detail on the content of marine plans is included on the face of the bill.

At Stage 2 the Cabinet Secretary stated that 'a marine plan is not a vehicle for delivering freestanding programmes or a series of actions'. However, section 9 of the Water Environment and Water Services (Scotland) Act 2003 requires SEPA to prepare a programme of measures to be applied to achieve objectives, for the purposes of the river basin management plan for a river basin district. In addition, section 27 of the Flood Risk Management (Scotland) Act 2009 requires SEPA to identify measures to achieve objectives for the purposes of preparing a flood risk management plan. Measures are simply

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<sup>1</sup> Page 8: Analysis of Responses to the Public Consultation on the Scottish Marine Bill. Scottish Government

tools for achieving plan objectives. We believe that a plan should set out what is going to be done and who is responsible for doing it; otherwise it is simply a list of aspirations as opposed to a plan. We believe that the approach taken in this amendment is consistent with the Acts mentioned above and provides a clear, simple and flexible an outline as possible as to what marine plans should contain as a minimum. **LINK supports this amendment** in preference to amendment 103.

### **Liam McArthur**

**103** In section 3, page 2, line 18, leave out subsection (3) and insert—

- <(3) For the purposes of preparing a national marine plan or (as the case may be) a regional marine plan, the Scottish Ministers must—
- (a) set—
    - (i) economic, social and marine ecosystem objectives,
    - (ii) objectives relating to the mitigation of, and adaptation to, climate change,
  - (b) prepare an assessment of the condition of the Scottish marine area or, as the case may be, Scottish marine region at the time of the plan’s preparation,
  - (c) prepare a summary of significant pressures and the impact of human activity on the area or region.>

Our preferred option is amendment 6, but as a secondary option, **LINK supports this amendment.**

## **Section 7**

### **Richard Lochhead**

**23** In section 7, page 4, line 26, at end insert <and of the living resources which the region supports>  
**LINK supports this amendment.**

## **Section 8**

### **Elaine Murray**

**24** In section 8, page 5, line 16, leave out from <may> to end of line 22 and insert <must comprise of—

- (a) a person nominated by the Scottish Ministers, and
- (b) one or more of the following—
  - (i) a public authority,
  - (ii) a person nominated by a public authority with an interest in the Scottish marine region to which the regional marine plan applies as the Scottish Ministers consider appropriate.>

### **Robin Harper**

**104\*** In section 8, page 5, line 22, at end insert—

- <( ) Where the Scottish Ministers designate delegable functions under subsection (1) to a group of persons, they must ensure that the group comprises—
- (a) so far as reasonably practicable, representatives of persons with an interest in—

- (i) the protection and enhancement of the Scottish marine region to which the regional marine plan applies,
  - (ii) the use of that region for recreational purposes,
  - (iii) the use of that region for commercial purposes, and
- (b) any other persons that the Scottish Ministers consider appropriate.>

**LINK supports this amendment.**

**Elaine Murray**

**25** In section 8, page 5, leave out lines 24 to 28 and insert <only with the consent of any public authority referred to in subsection (2)>

**Robin Harper**

**105\*** In section 8, page 5, line 28, at end insert—

- <( ) Where the Scottish Ministers designate delegable functions under subsection (1) to a public authority, the direction must include—
- (a) a statement of reasons setting out the grounds for designating the authority in preference to a group of persons,
  - (b) a requirement for that authority to consult on the exercise of its functions in relation to the relevant Scottish marine region with—
    - (i) representatives of persons with an interest in—
      - (A) the protection and enhancement of the Scottish marine region to which the regional marine plan applies,
      - (B) the use of that region for recreational purposes,
      - (C) the use of that region for commercial purposes, and
    - (ii) any other persons that the Scottish Ministers consider appropriate,
  - (c) a requirement for that authority to have regard to any representations made under paragraph (b).>

**LINK supports this amendment.**

#### **After section 8**

**Robin Harper**

**106\*** After section 8, insert—

##### **<Directions under section 8: laying a draft before the Parliament**

- (1) The Scottish Ministers must not give a direction under section 8 unless they have complied with the requirements of this section.
- (2) The Scottish Ministers must—
  - (a) lay before the Parliament a copy of the draft direction, and
  - (b) specify the period (“the representation period”) during which representations on the draft direction may be made to them.

- (3) The representation period must be at least 40 days, leaving out of account any period during which the Parliament is dissolved or is in recess for more than 4 days.
- (4) The Scottish Ministers must, before giving the direction under section 8, have regard to—
  - (a) any representations on the proposed direction made to them,
  - (b) any resolution relating to the direction passed by the Parliament, and
  - (c) any report relating to the direction published by any committee of the Parliament for the time being appointed by virtue of standing orders,before the expiry of the representation period.>

**LINK supports this amendment.**

## **Section 16**

### **Richard Lochhead**

- 26** In section 16, page 10, line 16, leave out <28> and insert <28A>

## **Section 17**

### **Karen Gillon**

- 107** In section 17, page 11, line 20, at end insert—  
<( ) nothing therein is to be taken to apply to fishing by any method.>

**LINK do not support this amendment.** Whilst we understand that the policy intention here is to avoid confusion regarding the reference to dredging in this section we cannot support this amendment. We note that the Cabinet Secretary made clear at Stage 2 that it is not the Government's intention to make sea fishing a licensable activity under the Bill. Section 17(1) may by order be amended to add or remove any activity from the list of licensable marine activities. It is therefore possible that certain methods of fishing activity may be added to this list in the future, perhaps in the light of new scientific information becoming available. The proposed amendment would not be consistent with that approach.

### **Richard Lochhead**

- 27** In section 17, page 11, line 22, at end insert—  
<( ) make such amendment consequential on such amendment of subsection (1) as they consider appropriate to any other provision of this Act>

### **Kenneth Gibson**

- 108** In section 17, page 11, leave out line 27

## **Section 17A**

### **Karen Gillon**

- 109** In section 17A, page 11, line 34, at end insert—

- <( ) The Scottish Ministers, if satisfied that a prospective applicant is applying for a marine licence in respect of a licensable marine activity—
- (a) which—
    - (i) is an activity which has previously been carried on at the site to which the application relates (or at a similar site), or
    - (ii) is similar to such an activity, and
  - (b) for which a licence has previously been granted,
- may determine that section 17B does not apply to the application.>

**Richard Lochhead**

- 28 In section 17A, page 12, line 8, leave out from <, including> to end of line 11

**Section 17B**

**Richard Lochhead**

- 29 In section 17B, page 12, line 31, leave out <for different cases or classes of case or>

**Richard Lochhead**

- 30 In section 17B, page 12, line 32, at end insert <(see also section 145(1))>

**Richard Lochhead**

- 31 In section 17B, page 12, line 39, leave out <development> and insert <activity>

**Section 18**

**Liam McArthur**

- 8 In section 18, page 13, leave out line 21

**Liam McArthur**

- 9 In section 18, page 13, line 22, leave out <or expedient>

**Liam McArthur**

- 10 In section 18, page 13, line 23, at end insert—

<(3A) Where the Scottish Ministers consider that, despite any information supplied or articles produced by the applicant under subsection (3), they are unable to determine the application, the Scottish Ministers may require the applicant to permit such investigations, examinations and tests as they may reasonably require to enable them to determine the application.>

**Liam McArthur**

- 11 In section 18, page 13, line 25, leave out <(3)(c)> and insert <(3A)>

**Liam McArthur**

- 12 In section 18, page 13, line 25, leave out <or expedient>

**Section 19**

**Liam McArthur**

- 32 In section 19, page 14, line 3, at end insert <(and the manner may be publication on one or more websites, without further means of publication, if the Scottish Ministers consider that appropriate to achieve the result specified in this subsection)>

This proposed amendment would allow notices of licensing applications to be published online. This would help to accomplish 19(2) and allow interested parties to monitor all applications. **LINK supports this amendment.**

**Section 20**

**Karen Gillon**

- 110 In section 20, page 14, line 34, at end insert—  
<( ) must determine each licence application in consultation with their statutory consultees,>

**Richard Lochhead**

- 33 In section 20, page 14, line 36, leave out from <has> to end of line 37 and insert <appropriate>

**Section 23**

**Liam McArthur**

- 13 In section 23, page 16, line 32, leave out <any person> and insert <the applicant>

**Liam McArthur**

- 14 In section 23, page 16, line 34, after <information> insert <that the applicant might reasonably have been expected to supply>

**Liam McArthur**

- 15 In section 23, page 17, leave out line 4

**LINK do not support this amendment.**

**Karen Gillon**

- 111 In section 23, page 17, line 9, at end insert—  
<( ) On an application made by a licensee, the Scottish Ministers may vary a licence if satisfied that the variation being applied for is not material.>



## After section 23

### Liam McArthur

34\* After section 23, insert—

#### <Pre-variation, suspension or revocation procedure

- (1) This section applies where the Scottish Ministers propose to vary, suspend or revoke a licence under section 23.
- (2) The Scottish Ministers must notify—
  - (a) the licensee,
  - (b) any other person whom they consider would be adversely affected by the variation, suspension or revocation.
- (3) Such notification must—
  - (a) state that the Scottish Ministers propose to vary, suspend or, as the case may be, revoke the licence,
  - (b) state the ground on which they propose to do so,
  - (c) specify a period of not less than 28 days within which the person notified may request the opportunity to make representations about the proposal before a person appointed by the Scottish Ministers.
- (4) The Scottish Ministers must appoint a person (the “appointed person”) for the purpose of—
  - (a) hearing any such representations, and
  - (b) reporting to them on the merits of such representations.
- (5) Where a request referred to in subsection (3)(c) is made timeously, the Scottish Ministers must—
  - (a) provide a reasonable opportunity for the person notified to make representations to the appointed person,
  - (b) (where that opportunity has been taken) have regard to the appointed person’s report on the representations.
- (6) Where the Scottish Ministers consider that there is an urgent need to vary or suspend a licence, they may do so—
  - (a) for a period not exceeding 3 months,
  - (b) until there is no longer such a need,whichever is the shortest, without doing the things mentioned in subsections (2) and (5).
- (7) The Scottish Ministers may, by regulations, make provision as to—
  - (a) the categories of person who may be an appointed person or the qualifications of such persons,
  - (b) the procedure to be followed at a hearing under subsection (4)(a),
  - (c) the manner in which reports under subsection (4)(b) are to be communicated to them,
  - (d) the publication of such reports.>

**Liam McArthur**

35 After section 23, insert—

**<Compensation where licence varied, suspended or revoked**

- (1) This section applies where the Scottish Ministers vary, suspend or revoke a licence under section 23(3).
- (2) If, on a claim made to the Scottish Ministers within the prescribed time and in the prescribed manner, it is shown that the licensee—
  - (a) has incurred expenditure in carrying out work rendered abortive by the variation, suspension or revocation, or
  - (b) has otherwise sustained loss or damage directly attributable to the variation, suspension or revocation,the Scottish Ministers must pay the licensee compensation in respect of that expenditure, loss or damage.
- (3) For the purposes of this section, any expenditure incurred in the preparation of plans for the purpose of any work, or in undertaking other similar matters preparatory to it, is to be taken to be included in expenditure for that work.
- (4) Subject to subsection (3), no compensation is to be paid under this section in respect of—
  - (a) any expenditure incurred in relation to work carried out before the grant of the licence which was varied, suspended or revoked, or
  - (b) any other loss or damage arising out of anything done or omitted to be done before the grant of that licence.
- (5) In this section, “prescribed” means prescribed by regulations made by the Scottish Ministers.>

We support the policy intention behind the proposed amendment but we are unable to support it as currently drafted. We are concerned by the lack of a process of determination of the level of compensation, which is independent, fair and balanced. A parallel for this would be the Town and Country Planning (Scotland) Act 1997 (as amended), where the level of compensation is determined by independent valuers working under the Lands Tribunal. As a possible solution, we would suggest that the Scottish Government could use Section 144(1) to make an order that sets up an independent, fair and balanced process for determining the level of compensation.

**Section 24**

**Kenneth Gibson**

112 In section 24, page 17, leave out line 29

**Section 25**

**Elaine Murray**

16 In section 25, page 18, line 1, at beginning insert <Any>

**Elaine Murray**

- 17 In section 25, page 18, line 1, leave out <may> and insert <must>

As the bill currently stands there is discretion as to whether regulations under subsection 1 should define or elaborate the meaning of ‘fall below’, ‘registered’ or ‘specific threshold of environmental impact’. If this discretion is exercised, section 25 becomes a generic exemption and is therefore essentially no different to section 24. At Stage 2, the Cabinet Secretary stated, ‘I am content that we can establish those thresholds. Hand on heart, however, I cannot guarantee that the science will deliver absolutely, so I am reluctant to accept a duty on the issue’. We would question whether it would be appropriate to register, rather than license, an activity where such doubt exists about the science. For these reasons, where Scottish Ministers provide by regulations that licensable marine activities which fall below a specified threshold of environmental impact are to be registered rather than licensed, there should be a duty to define or elaborate the matters referred to above in regulations. **LINK supports this amendment.**

**Elaine Murray**

- 18 In section 25, page 18, line 8, leave out <also>

**Elaine Murray**

- 19 In section 25, page 18, line 15, leave out from <consult> to end of line 16 and insert <, before making any regulations under subsection (1), consult—

- (a) representatives of those persons with an interest in the protection and enhancement of the Scottish marine area,
  - (b) representatives of those persons with an interest in the use of the area for commercial purposes,
  - (c) Scottish Natural Heritage, and
  - (d) such other persons as they consider appropriate.
- ( ) The Scottish Ministers must have regard to any responses to the consultation conducted under subsection (4).>

We believe that the Section 25(4) does not go far enough with regard to the need to consult appropriate persons. We therefore suggest that subsection 4 should include a requirement to consult SNH and appropriate persons, including those representing conservation interests and industry, and a further duty should be placed on Scottish Ministers to have regard to any representations made to them. **LINK supports this amendment.**

**Section 27**

**Elaine Murray**

- 113 In section 27, page 19, line 19, at end insert—

<(1D) Where the Scottish Ministers make provision as is mentioned in subsection (1C)(b), they must (without prejudice to subsection (1C)(c)), by order, make provision of the kind mentioned in subsection (1E).

(1E) That provision is provision determining that the relevant planning authority, for the purposes of paragraph 2 of schedule 8 to the Electricity Act is to be—

- (a) each local authority whose area is adjacent to any part of the Scottish marine area where the generating station (or any part of it) is, or is proposed to be, situated, and
- (b) each National Park authority which is, by virtue of a designation order under section 6 of the National Parks (Scotland) Act 2000 (asp 10), the planning authority for any such area.>

**LINK supports this amendment.**

## **Section 29**

**Richard Lochhead**

- 36** In section 29, page 20, line 32, after <appeal> insert <to the sheriff>

**Richard Lochhead**

- 37** In section 29, page 20, line 39, leave out from <any> to <or> in line 40 and insert <the sheriff to>

**Richard Lochhead**

- 38** In section 29, page 21, leave out lines 1 and 2

## **Section 38**

**Richard Lochhead**

- 39** In section 38, page 25, line 35, after <appeal> insert <to the sheriff>

## **Section 40**

**Richard Lochhead**

- 40** In section 40, page 27, line 14, after <appeal> insert <to the sheriff>

## **Section 42**

**Elaine Murray**

- 41** In section 42, page 28, line 18, at end insert—
- <( ) The Scottish Ministers’ power, under subsection (1), to delegate the function of determining whether to grant or refuse a licence for a licensable marine activity includes the power to delegate the function of determining whether to grant or refuse a licence for a particular type of licensable marine activity (for example fish farming).>

**Elaine Murray**

- 42** In section 42, page 28, line 19, leave out from <may> to end of line 24 and insert <must comprise of—
- (a) a person nominated by the Scottish Ministers, and

- (b) one or more of the following—
  - (i) a public authority,
  - (ii) a person nominated by a public authority with an interest in the Scottish marine region to which the regional marine plan applies as the Scottish Ministers consider appropriate.>

**Elaine Murray**

- 43 In section 42, page 28, leave out lines 26 to 30 and insert <only with the consent of any public authority referred to in subsection (2)>

**Richard Lochhead**

- 44 In section 42, page 29, line 8, leave out <27(1)> and insert <27(1C)>

**Section 45**

**Liam McArthur**

- 45 In section 45, page 31, line 3, after <maintained> insert <on a website>

This proposed amendment is similar to amendment 32 and would ensure that the register of licensing information is published online. **LINK supports this amendment.**

**Liam McArthur**

- 46 In section 45, page 31, line 5, leave out subsection (4)

This amendment is consequential to amendment 45. **LINK supports this amendment.**

**Section 52**

**Richard Lochhead**

- 47 In section 52, page 34, line 29, after <appeal> insert <to the sheriff>

**Richard Lochhead**

- 48 In section 52, page 35, line 3, leave out from <any> to second <or> and insert <the sheriff to>

**Richard Lochhead**

- 49 In section 52, page 35, leave out lines 5 and 6

**Section 54**

**Elaine Murray**

- 22 In section 54, page 36, line 4, leave out subsections (2) to (4) and insert—

<( ) In section 26—

- (a) in subsection (1), the words “, or the operation of a marine fish farm in the circumstances specified in section 26AA” are repealed,

- (b) in subsection (6)—
  - (i) after “any”, where it occurs for the third time, there is inserted “inland”,
  - (ii) the words from “which”, where it first occurs, to “miles”, where it first occurs, are repealed,
  - (iii) for the definition of “inland waters”, there is substituted ““inland waters” means waters which do not form part of the sea, as defined in section 2 of the Marine (Scotland) Act 2009 (asp 00)”,
  - (iv) the definition of “nautical miles” is repealed,
- (c) subsections (6C) to (6J) are repealed.
- ( ) Section 26AA is repealed.
- ( ) Section 31A is repealed.
- ( ) In section 275—
  - (a) in subsection (4), for the words “(6A) and (6C), 31A” there is substituted “and (6A)”,
  - (b) in subsection (5A), the words “or (6C)” are repealed.>

## Section 58

### Liam McArthur

- 20** In section 58, page 37, line 23, leave out from <island> to <island> in line 24 and insert <reef, skerry, stack or sandbar in that area of sea, whether or not any part of it>

Whilst LINK supports the policy intention behind this amendment, we were persuaded during the discussion at Stage 2 that the wording of this amendment might compromise the protection of historic assets in particular, if they extended from below the high water mark onto an island.

## Section 59

### Richard Lochhead

- 50** In section 59, page 38, line 2, after <The> insert <designation>

### Richard Lochhead

- 51** In section 59, page 38, line 5, at end insert—

<( ) Before designating an area as a Nature Conservation MPA, the Scottish Ministers must have regard to the extent to which the designation of the area would contribute towards the development of a network of conservation sites (namely a network referred to in section 68A(2)).>

This is a technical amendment which, in conjunction with amendment 53, allows provisions lost during an amendment at Stage 2 to be reinserted in subsection (4). LINK supports this amendment.

## Liam McArthur

52 In section 59, page 38, line 5, at end insert—

<( ) Before designating an area as a Nature Conservation MPA, the Scottish Ministers must—

(a) in a case where the area is not a candidate site registered under section 69(A1) (or does not comprise of two or more such sites)—

(i) obtain sufficient advice from Scottish Natural Heritage as to the appropriateness of the proposed boundaries of the area, and

(ii) have regard to that advice,

(b) in any case, have regard to any information available by virtue of section 69(D1)(b).>

Following an amendment at Stage 2, Section 59(1A) requires Scottish Ministers to prepare and publish guidance setting out scientific criteria to inform consideration of whether an area should be designated as a Nature Conservation MPA and to have regard to that guidance in exercising their functions under section 58. In the light of this we do not believe this amendment is necessary.

## Richard Lochhead

53 In section 59, page 38, line 10, leave out from second <the> to end of line 12 and insert <conserving marine flora or fauna, or (as the case may be) marine habitat or types of such habitat includes conserving the diversity of such flora or fauna or (as the case may be) such habitats or types of such habitats, whether or not any or all of them are rare or threatened>

This is a technical amendment which, in conjunction with amendment 51, allows provisions lost during an amendment at Stage 2 to be reinserted in subsection (4). **LINK supports this amendment.**

## Peter Peacock

3 In section 59, page 38, line 12, 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 were strongly opposed to the amendment of section 59(5) at Stage 2 which allowed socio-economic factors to be taken into account in site designation. We are still firmly of the opinion, which was the consensus position of stakeholder interests in the Sustainable Seas Task Force, that **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 purely conservation perspective and labelling an area as such as a first step to achieving an ecologically-coherent network of sites. Such designation need not preclude marine renewable development. Mitigation of climate change is a factor that could, and would, be taken into account in the future management of sites. LINK do not believe this amendment is necessary.

## Robin Harper

54 In section 59, page 38, line 13, leave out subsection (5) and insert—

<( ) Where the Scottish Ministers consider the desirability of designating 2 or more areas may be equal, in reaching their decision as to which area (or areas) it is desirable to designate they may have regard to any social or economic consequences of designation.>

We believe that the designation of Nature Conservation MPAs must be based on the best available scientific advice and on biodiversity needs alone. We were reassured that the Bill, as introduced, allowed Scottish Ministers to have regard to social or economic consequences of designation only where the desirability of designating 2 or more areas is equal. However, this was amended at Stage 2 to allow socio-economic consequences of designation to be taken into account for all sites. 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 will lead to the risk of the very factors that caused the original damage preventing its repair. We believe that the amendment to allow socio-economic considerations to be taken into account for all MPA designations has the potential to considerably weaken the nature conservation provisions in the Bill. Weakened in this way, attempts to deliver much needed conservation and restoration of marine ecosystems will be severely compromised. **LINK supports this amendment.**

### After section 60

**Elaine Murray**

55 After section 60, insert—

**<Nature Conservation MPAs: assessment of achievement of stated objectives**

The Scottish Ministers must assess from time to time the extent to which in their opinion the stated conservation objectives of any Nature Conservation MPA have been achieved (see also section 91, in particular subsections (1) and (3)(d)).>

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 63

**Richard Lochhead**

56 In section 63, page 40, line 11, leave out <believed to> and insert <which the Scottish Ministers are satisfied may>

**Karen Gillon**

114 In section 63, page 40, line 14, at end insert—

<( ) In considering whether to designate an area as a Historic MPA, the Scottish Ministers may 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.



## Section 65

### Richard Lochhead

- 57 In section 65, page 41, line 4, leave out <proposed MPA> and insert <area proposed to be designated>

### Peter Peacock

- 4 In section 65, page 41, line 10, at end insert—  
<( ) indicate where a plan or chart identifying the area's boundaries can be obtained or inspected.>

**LINK supports this amendment.**

## Section 67

### Elaine Murray

- 21 In section 67, page 41, line 32, leave out <2 years> and insert <12 months>

LINK supports the policy intention behind this amendment - that there is merit in section 67 and section 77 being standardised to 12 months. However, given that the Marine and Coastal Access Act 2009 also allows urgent designation of Marine Conservation Zones to last for 2 years it may be sensible to maintain consistency within and outwith 12nm. We note that at Stage 2 the Cabinet Secretary emphasised that the time period was *up to 2 years* rather than 2 years across the board.

### Robin Harper

- 115 In section 67, page 41, line 33, at end insert <(but any order that specifies a period in excess of 6 months must be reviewed by the Scottish Ministers after 6 months has elapsed to assess whether it is still required).>

**LINK do not support this amendment.** We understand the policy intention behind this amendment but we do not support extra constraints on the urgent designation process. We believe that 6 months will often be too short a time period to allow such a review to occur with any confidence. There is a concern within industry that an urgent conservation order could limit the activities possible on the development site, and in extreme circumstances could possibly halt development altogether. However, we believe that this concern is overstated. Prior to development of a site, a robust Environmental Impact Assessment would identify precisely the fragile ecosystems, habitats or species that might be protected by an urgent conservation order. We therefore believe that this amendment is unnecessary.

### Robin Harper

- 59 In section 67, page 41, line 33, at end insert—  
<( ) 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)  
(b) consulting under section 65(1)(b).>

## Section 69

**Liam McArthur**

**60** In section 69, page 43, line 14, at end insert—

- <(A1) Scottish Natural Heritage must maintain a register of candidate sites suitable for designation as Nature Conservation MPAs.
- (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, having regard to any guidance produced under section 59(1A),
  - (b) the boundaries of the site, or such information as to the locality of the site, as Scottish Natural Heritage considers would inform consideration of whether an area should be designated a Nature Conservation MPA under section 58(1)(a), (for instance an indication on a map as to the boundaries of the site),
  - (c) such other information as Scottish Natural Heritage considers appropriate.>

Following the addition, at Stage 2, of section 59(1A) we do not believe this amendment is necessary. We were persuaded during the discussion at Stage 2 that this amendment risks creating confusion and additional bureaucracy. A requirement to develop, maintain and publish a register of candidate sites would also impose a financial burden on SNH and we would prefer that such resources were used to designate and develop the MPA network.

## Section 71

**Richard Lochhead**

**61** In section 71, page 44, leave out lines 35 to 37

This is a technical amendment which, in conjunction with amendment 63 moves text which was inserted at Stage 2 to a more appropriate position in the Bill. **LINK supports this amendment.**

**Richard Lochhead**

**62** In section 71, page 45, line 26, leave out <National> and insert <Natural>

**Richard Lochhead**

**63** In section 71, page 45, line 31, at end insert—

- <( ) Where a public authority has any function, the exercise of which is capable of affecting (other than insignificantly) any protected feature of a Nature Conservation MPA, it must (so far as is consistent with the proper exercise of its functions) exercise its functions in the way best calculated by it to further the contribution of the Nature Conservation MPA in question to a network of conservation sites (namely a network referred to in section 68A(2))>

This is a technical amendment which, in conjunction with amendment 61 moves text which was inserted at Stage 2 to a more appropriate position in the Bill. **LINK supports this amendment.**

**Richard Lochhead**

- 64 In section 71, page 46, line 5, leave out <National> and insert <Natural>

**Section 72**

**Richard Lochhead**

- 65 In section 72, page 47, line 39, leave out <National> and insert <Natural>

**Section 76**

**Richard Lochhead**

- 66 In section 76, page 51, line 2, leave out <relevant planning authority> and insert <planning authority in whose district the land is situated>

**Richard Lochhead**

- 67 In section 76, page 51, line 11, at end insert—  
<( ) In subsection (4A), “planning authority” and “the district” of a planning authority have the same meaning as in section 1(1) of the Town and Country Planning (Scotland) Act 1997 (c.8).>

**Section 79**

**Karen Gillon**

- 116 In section 79, page 52, line 16, at end insert—  
<(A1) The Scottish Ministers must, before deciding to—  
(a) make a marine conservation order,  
(b) amend a marine conservation order,  
give any person mentioned in subsection (B1) the opportunity of making further representations to the Scottish Ministers or, at a hearing, to any person appointed by them for that purpose.  
(B1) That person is a person—  
(a) who made representations under section 76, and  
(b) whose representations demonstrate that their economic position could be materially disadvantaged as a result of any decision mentioned in subsection (A1)  
(C1) Subsection (A1) does not apply where the order mentioned in (A1)(a) is an urgent marine conservation order made in accordance with section 77.>

**LINK do not support this amendment.** We do not support extra constraints on the urgent designation process. 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. The proposed 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 18<sup>th</sup> November as it would not make equal provision for social or environmental representations.

**Karen Gillon**

**117** In section 79, page 52, line 25, after <subsection> insert <(A1) or>

This amendment is consequential to amendment 117 and therefore LINK do not support this amendment.

**After section 79**

**Liam McArthur**

**68** After section 79, insert—

**<Duty to assess impact of prohibition or restriction of activities**

- (1) Where an activity is restricted or prohibited under a marine conservation order made for a purpose mentioned in section 74(1)(a),(b) or (d), the Scottish Ministers must assess—
  - (a) the impact or potential impact of the restriction or prohibition within the area protected by the order (“the protected area”), and
  - (b) where the restriction or prohibition will cause displacement of the activity to another part of the Scottish marine area, the impact or potential impact of that displacement.
- (2) The assessment must include an assessment of the extent to which the restriction or prohibition of the activity has had and may have an impact on—
  - (a) economic interests,
  - (b) social interests,
  - (c) the environment within the protected area,
  - (d) 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 the impact as far as is practicable.
- (4) This section does not apply where the order mentioned in subsection (1) is an urgent marine conservation order made in accordance with section 77.>

When a similar amendment was lodged at Stage 2 we were concerned that the focus was entirely on the perceived concern that MPAs and their subsequent management may be detrimental to social and economic activities. We would maintain however, 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. It is time that management decisions were based on the long-term future of Scotland and its seas rather than short term interests taking priority. The proposed amendment is now drafted in such a way that it allows the wider benefits of management practices to be assessed as well as potential negative impacts. Crucially, the proposed amendment now does not apply to urgent conservation orders. 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 this amendment.**

## Section 85

### Kenneth Gibson

- 118 In section 85, page 55, line 25, leave out subsections (2) and (2A)

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 unsustainable situation that needs rectifying by this Bill. We further note that the RAE Committee was unconvinced at Stage 1 that fishing activity in MPAs required additional protection under the Bill. **LINK supports this amendment.**

## Section 90

### Richard Lochhead

- 69 In section 90, page 57, line 34, leave out <or (> and insert <(or>

## Section 91

### Liam McArthur

- 70 In section 91, page 59, line 2, after <made> insert <, or any amendment of any such order,>

### Liam McArthur

- 71 In section 91, page 59, line 3, after <made> insert <, or any amendment of any such scheme,>

Amendment 70 & 71. 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 amendments would ensure that International best practice is followed in monitoring and assessing MPAs. **LINK supports this amendment.**

## Section 98

**Elaine Murray**

72 In section 98, page 62, line 25, at end insert—

- <(2) Before granting a seal licence under subsection (1)(f), the Scottish Ministers must have regard to any information they have about—
  - (a) damage which seals have already done to the fishery or fish farm concerned or to any other fishery or fish farm which is in the vicinity of, or which is of a similar type to, the fishery or fish farm concerned, and
  - (b) the effectiveness of non-lethal alternative methods of preventing seal damage to the fishery or fish farm concerned or to any other fishery or fish farm which is in the vicinity of, or which is of a similar type to, the fishery or fish farm concerned.
- (3) The Scottish Ministers may require an applicant for a seal licence under subsection (1)(f) to provide them with such information about the matters mentioned in paragraphs (a) or (b) of subsection (2) as they reasonably require for the purposes of assisting them to decide whether to grant the seal licence.>

**LINK supports this amendment.**

**Robin Harper**

120\* In section 98, page 62, line 25, at end insert—

- <(4) No person may kill or take any seal under a seal licence during the period when females of the species are likely to be in an advanced stage of pregnancy or to have dependent pups.
- (5) For the purposes of subsection (4), the period is—
  - (a) for grey seals (that is to say seals of the species *Halichoerus grypus*) from 1 September to 31 December inclusive,
  - (b) for common seals (that is to say seals of the species *Phoca vitulina*) from 1 June to 31 August inclusive.
- (6) Despite subsection (4), the Scottish Ministers may, on an application of the licensee, authorise the killing or taking of seals in the period mentioned in subsection (5)(a) or, as the case may be, (b) if only satisfied that there is no satisfactory alternative way of achieving the purpose for which the licence is granted.>

This is consistent with the approach taken in the Nature Conservation (Scotland) Act. [LINK supports this amendment.](#)

### **Robin Harper**

**121** In section 98, page 62, line 25, at end insert—

<(7) The Scottish Ministers may not grant a licence authorising the killing or taking of seals to the owner or operator of any fish farm or other fishery installation unless they are satisfied that no part of the farm or installation is adjacent to a site important to seals.

(8) In coming to a view as to whether—

(a) a site is important to seals,

(b) a farm or fishery is adjacent to such a site,

the Scottish Ministers must (without prejudice to section 103(1)) consult the Natural Environment Research Council.

(9) Subsection (2)—

(a) may only come into force—

(i) following the making of an order under section (*Offence: harassment at haul-out sites*),

(ii) after 31 December 2011,

(whichever is the latest), and

(b) does not apply in relation to any farm or installation in place prior to the commencement of that subsection.>

[LINK supports this amendment.](#)

## **Section 99**

### **Richard Lochhead**

**73** In section 99, page 62, line 27, at end insert—

<( ) The Scottish Ministers must not grant a seal licence authorising a person to kill seals by shooting unless they are satisfied that the person has adequate skills and experience in using firearms.>

[LINK supports this amendment.](#)

## **Section 100**

### **Richard Lochhead**

**74** In section 100, page 62, line 34, at end insert—

<( ) specifying steps which must be taken in relation to any seal injured when attempting to kill or take it in accordance with the seal licence in order to reduce the risk of it suffering unnecessarily.>

### **Richard Lochhead**

**75** In section 100, page 62, line 35, leave out from beginning to end of line 9 on page 63

**Richard Lochhead**

76 In section 100, page 63, line 9, at end insert—

<( ) A seal licence which authorises the killing of seals by shooting must impose conditions—

- (a) specifying the type of firearm which must be used,
- (b) specifying the weather conditions in which a person may attempt to shoot a seal,
- (c) specifying how close a person must be to a seal before attempting to shoot it,
- (d) prohibiting a person from attempting to shoot a seal from an unstable platform, and
- (e) about the recovery of carcasses.>

**Amendment 75 & 76. LINK supports these amendments.**

**Elaine Murray**

77 In section 100, page 63, line 14, at end insert—

<( ) any period during which seals may not be killed or taken, for example, when females of the species of seal for which the licence has been issued are likely to be in an advanced stage of pregnancy or have dependent pups.>

**LINK supports this amendment.**

**After section 100**

**Richard Lochhead**

78 After section 100 insert—

**<Seal licence reports**

- (1) A person to whom a seal licence is granted must send a seal licence report to the Scottish Ministers within 10 days of the end of each reporting period.
- (2) A seal licence report is a report which—
  - (a) states how many seals have, during the reporting period concerned, been—
    - (i) killed in accordance with the seal licence,
    - (ii) taken in accordance with the seal licence,
    - (iii) killed when attempting to take them in accordance with the seal licence,
    - (iv) injured when attempting to kill or take them in accordance with the seal licence, or
  - (b) where no seals have been so killed, taken or injured during the reporting period concerned, states that fact.
- (3) A reporting period is—
  - (a) in the case of a seal licence which has effect for 3 months or longer—
    - (i) each period of 3 months following the granting of the seal licence, and
    - (ii) any shorter period beginning at the end of such a 3 month period and ending when the seal licence is revoked or otherwise ceases to have effect,



- (b) in the case of a seal licence which has effect for fewer than 3 months, the period for which the seal licence has effect.
- (4) Failure, without reasonable excuse, to send a seal licence report in accordance with subsection (1) is an offence.>

**LINK supports this amendment.**

**Elaine Murray**

122 After section 100, insert—

**<Exemption from licence condition: period during which seals may be killed or taken**

Where a seal licence includes a condition specifying a period during which seals may not be killed or taken, the Scottish Ministers may, on an application of the licensee, authorise the killing or taking of seals in that period but only if they are satisfied that there is no satisfactory alternative way of achieving the purpose for which the licence is granted.>

**LINK do not support this amendment.**

#### **After section 103**

**Elaine Murray**

79 After section 103, insert—

*<Protection at haul-out sites*

**Offence: harassment at haul-out sites**

Harassing a seal (intentionally or recklessly) at a haul-out site is an offence.

“haul-out site” means any place which the Scottish Ministers, after consulting the Natural Environment Research Council, by order designate as such for the purposes of this section.>

**LINK supports this amendment.**

#### **Section 114**

**Elaine Murray**

80 In section 114, page 66, line 31, after <95> insert <or (*Offence: harassment at haul-out sites*)>

**LINK supports this amendment.**

**Richard Lochhead**

81 In section 114, page 67, line 1, after <100(4)> insert <or (*Seal licence reports*)(3)>

**LINK supports this amendment.**

## After section 114

**Richard Lochhead**

**82** After section 114, insert—

### <Duty to review seal licensing regime

- (1) The Scottish Ministers must review and publish a report on the operation of the seal licensing regime—
  - (a) within 5 years of section 98 coming into force, and
  - (b) within each subsequent period of 5 years beginning with the publication of a report.
- (2) When carrying out a review, the Scottish Ministers must—
  - (a) have regard to such scientific evidence on seal biology, welfare and behaviour, and on such other matters, as they consider relevant, and
  - (b) consult the Natural Environment Research Council and such other persons as they consider appropriate.
- (3) The Scottish Ministers must have regard to their most recent report when performing functions under the seal licensing regime.
- (4) In this section, “seal licensing regime” means the provisions of this Part relating to seal licences.>

We believe that it is important to review these matters on a regular basis, taking into account new information as it becomes available. **LINK supports this amendment.**

## Section 117

**Elaine Murray**

**83** In section 117, page 67, line 28, leave out <and 100(4)> and insert <, 100(4) and (*Offence: harassment at haul-out sites*)>

**LINK supports this amendment.**

## Section 125

**Richard Lochhead**

**84** In section 125, page 72, line 5, leave out <124(3)> and insert <124(2)>

## Section 132

**Liam McArthur**

**7** In section 132, page 75, line 6, at end insert—

- <( ) Before doing any of the things in subsection (2), the officer must take all reasonable steps to—
- (a) notify the port authority for the port to which the officer proposes that the vessel be taken, and

- (b) seek the views of the port authority as to the appropriateness of so doing.>

### **Section 136**

#### **Richard Lochhead**

- 85** Leave out section 136 and insert—

#### **<Duty to provide evidence of authority where a person is present**

- (1) Where one or more persons are present at the time a marine enforcement officer intends to exercise a power conferred by this Part, the officer may exercise the power only after complying with subsection (2) or, as the case may be, (3).
- (2) Where one person is present at that time, the officer must produce to the person evidence that the officer is authorised to exercise the power.
- (3) Where more than one person is present at that time, the officer must produce such evidence to the person who appears to the officer to have the greatest interest of those present in the exercise of the power, and is not required to produce it to any other person present.>

### **After section 137**

#### **Richard Lochhead**

- 86** After section 137, insert—

#### **<Disapplication of sections 136 and 137 in relation to dwellings**

Sections 136 and 137 do not apply as regards the exercise by a marine enforcement officer of any power conferred by this Part in relation to entry to a dwelling. (Schedule 3 makes specific provision in relation to the exercise of warrants under section 122 authorising a marine enforcement officer to enter a dwelling, in particular in paragraphs 6 to 9).>

### **Section 141B**

#### **Richard Lochhead**

- 87** In section 141B, page 79, line 37, leave out <subsections (8) and (9)> and insert <subsection (8)>

### **After section 141B**

#### **Richard Lochhead**

- 88** After section 141B, insert—

#### **<Modifications relating to Sea Fisheries (Shellfish) Act 1967: orders as to fisheries for shellfish**

- (1) In section 1 of the Sea Fisheries (Shellfish) Act 1967 (c.83) (“the 1967 Act”) (power to make orders as to fisheries for shellfish), omit subsection (4).
- (2) The modifications made to that section by section 203 of the 2009 Act (variation etc. of orders as a result of development) extend to Scotland.

- (3) In paragraph 6 of schedule 1 to the 1967 Act—
- (a) the existing provision is renumbered as sub-paragraph (1), and
  - (b) after that sub-paragraph insert—
- “(2) Where the proposed order relates to any portion of the sea shore belonging to Her Majesty in right of the Crown, the appropriate Minister must also have regard to the powers and duties of the Crown Estate Commissioners under the Crown Estate Act 1961 (c.55).”>

**Richard Lochhead**

**89** After section 141B, insert—

**<Further modifications relating to Sea Fisheries (Shellfish) Act 1967**

- (1) The modifications to the Sea Fisheries (Shellfish) Act 1967 (c.83) (“the 1967 Act”) made by the following provisions of the 2009 Act extend to Scotland—
- 5 (a) section 204 (purposes for which tolls from regulated fisheries may be applied),
  - (b) section 206 (liability of master, etc where vessel used in commission of offence),
  - (c) section 207 (restrictions imposed by grantees in relation to regulated fisheries),
  - (d) section 209 (register of licences in relation to regulated fisheries),
  - (e) section 210 (protection of private shellfish beds),
  - 10 (f) section 211(1) and (3) (use of implements of fishing),
  - (g) section 214 (power to appoint inspector before making orders as to fisheries for shellfish),
  - (h) Part 5(A) of Schedule 22 (repeals).
- (2) In section 1 of the 1967 Act (power to make orders as to fisheries for shellfish), after
- 15 subsection (14) insert—
- “(14A) Subsection (14) above has effect in relation to Scotland as if the reference to the Town and Country Planning Act 1990 were a reference to section 26 of the Town and Country Planning (Scotland) Act 1997 (c.8).”.
- (3) In section 7 of the 1967 Act (protection of fisheries), in subsection (4), for “level 3 on
- 20 the standard scale” substitute “£50,000”.>

**Karen Gillon**

**89A** As an amendment to amendment 89, leave out line 7

**Karen Gillon**

**89B** As an amendment to amendment 89, leave out lines 11 and 12

**Liam McArthur**

**89C** As an amendment to amendment 89, line 18, at end insert—

- <(5A) In section 3 of the 1967 Act (effect of grant of right of regulating a fishery), after subsection (5) insert—

- “(6) It is a defence for a person charged with an offence under subsection (5) to show that the person—
- (a) did not know, and
  - (b) had no reason to suspect,
- that the boat would be used in the commission of an offence under subsection (3).”>

**Liam McArthur**

**89D** As an amendment to amendment 89, line 20, at end insert—

- <( ) The modifications to the 1967 Act made by section 214 (power to appoint inspector before making orders as to fisheries for shellfish) of the 2009 Act, other than those made by subsection (2)(b), extend to Scotland.
- ( ) In paragraph 4(2) of Schedule 1 to the 1967 Act (provisions with respect to making orders as to fisheries for shellfish), for “The appropriate Minister shall” substitute “The Scottish Ministers may, and in the case of receiving an objection raising a material concern under paragraph 3 above, must”>

**Section 145**

**Liam McArthur**

**90** In section 145, page 81, line 18, leave out subsection (3)

**Schedule 1**

**Richard Lochhead**

**91** In schedule 1, page 83, line 23, leave out <317> and insert <322>

**Richard Lochhead**

**92** In schedule 1, page 86, line 24, after <region> insert <to>

**Schedule 2**

**Richard Lochhead**

**93** In schedule 2, page 91, line 5, leave out from <any> to second <or> and insert <the sheriff to>

**Richard Lochhead**

**94** In schedule 2, page 91, leave out lines 7 and 8

**Richard Lochhead**

**95** In schedule 2, page 91, line 10, leave out from <court> to <person> and insert <sheriff>

**Richard Lochhead**

96 In schedule 2, page 91, leave out line 17

**Richard Lochhead**

97 In schedule 2, page 92, line 22, after <39> insert <in relation to an offence>

**Richard Lochhead**

98 In schedule 2, page 93, line 7, leave out <40(5)> and insert <40(4A)>

**Long Title**

**Peter Peacock**

5 In the long title, page 1, line 1, leave out <functions and activities in> and insert <the sustainable development of>

The long title to an act gives an insight into Parliament’s view of the essential function of the Act. As currently drafted, the long title of the Bill makes no mention of sustainable development. We believe that the long title should make reference to the concept of sustainable development, to reflect the Bill’s underlying purpose to maintain and protect marine ecosystems and improve the management of our marine resources. We note that at Stage 2 the Government accepted a general duty to act in the way best calculated to further the achievement of sustainable development. In addition section 3(2) states that a national marine plan or (as the case may be) a regional marine plan is a document which – states the Scottish Ministers’ policies (however expressed) for and in connection with the **sustainable development** of the area to which the plan applies. Given that any authorisation or enforcement decisions must be taken in accordance with the appropriate marine plans (section 11), an amendment to the long title of the Bill would simply be a more accurate reflection of the contents of the Bill. **LINK supports this amendment.**

**Richard Lochhead**

99 In the long title, page 1, line 2, leave out <and>

**Richard Lochhead**

100 In the long title, page 1, line 3, after <seals> insert <and regulation of sea fisheries>