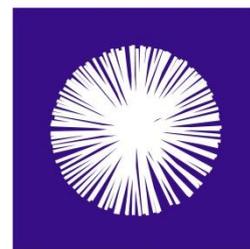


Response to the Scottish Government Consultation on four proposed Marine Conservation Orders

by the Scottish Environment LINK Marine Taskforce

August 2015



Scottish
Environment

LINK

Summary

Scottish Environment LINK Marine Taskforce members (hereafter LINK members) broadly welcome the proposals for management of fishing activities within the 11 nature conservation marine protected areas (ncMPAs) and 9 inshore Special Areas of Conservation (SACs) which have been developed following the recent public consultation. We recognise that the proposals are a broadly proportionate response to the ecological need for the sites, supported by sound scientific evidence and appropriate application of the precautionary principle where there is low confidence in the evidence.

We are encouraged by the level of public support from a wide geographic area and from diverse interests for well-managed MPAs. We also note that there is considerable support for the proposals from both communities of place and interest. These proposals signify an important step towards the emerging MPA network being well-managed, the first of many that we hope will culminate in an ecologically-coherent network MPAs, all managed well in order to help halt and reverse the environmental decline in Scotland's seas, in turn helping support and safeguard the benefits to society that they provide.

LINK members collectively recognise that these management measures will affect some existing commercial fishers. In the short-term, some fishers will need to move or reduce activity whilst others may consequently be able to fish those areas, due to the spatial segregation. In the long-term, our members firmly contend that the seas will benefit, as will fishers and Scotland as a whole. We recognise that this is not a straightforward process, but would emphasise our conviction that it presents a major opportunity for improving the health of Scotland's inshore marine environment and ultimately the coastal communities that rely upon it.

In this response, we provide feedback on the four proposed Marine Conservation Orders subject to consultation. We also take the opportunity to provide comments on the consultation process, on fisheries management proposals for the remaining MPAs and SACs that were simultaneously consulted on over winter 2014/15 and offer feedback on the way forward (see Appendices).

Introduction

Scottish Environment LINK is the forum for Scotland's voluntary environment community, with over 35 member bodies representing a broad spectrum of environmental interests with the common goal of contributing to a more environmentally sustainable society.

Its member bodies represent a wide community of environmental interest, sharing the common goal of contributing to a more sustainable society. LINK provides a forum for these organizations, enabling informed debate, assisting co-operation within the voluntary sector, and acting as a strong

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voice for this community in communications with decision-makers in Government and its agencies, Parliaments, the civic sector, the media and with the public.

Acting at local, national and international levels, LINK aims to ensure that the environmental community participates in the development of policy and legislation affecting Scotland.

LINK works mainly through Taskforces – groups of members working together on topics of mutual interest, exploring the issues and developing advocacy to promote sustainable development, respecting environmental limits.

LINK members welcome the opportunity to respond to this consultation.

Comments on the Draft Marine Conservation Orders (MCOs)

Loch Sunart to the Sound of Jura MPA

We note that Loch Sunart is specifically excluded from the draft MCO, therefore our support is contingent on the adoption of the separate proposal for Loch Sunart MPA/SAC under the Inshore Fishing (Scotland) Act.

We welcome the management proposal for Loch Sunart to the Sound of Jura MPA which we agree is a proportionate response to the ecological need for the critically endangered common skate (*Dipturus intermedius/D. flossada*), as set out in our consultation response. We also welcome the logical extension of measures for the Firth of Lorn SAC to prohibit mobile demersal trawl gear and recognise the wider ecosystem benefit that a larger area of seabed protection should provide. The seabed habitats documented for the Firth of Lorn include circalittoral sand, gravel and mud biotopes and circalittoral and infralittoral rock biotopes (Brown *et al*, 2005). These habitat types support a wide variety of benthic invertebrates, such as bivalves and burrowing crustaceans (Tyler-Walters *et al*, 2012), which are typical prey items of the common skate (Wearmouth and Sims, 2009) and a number of other predators, and key biological contributors to the maintenance of the habitat condition (e.g. through bioturbation). We also acknowledge recently published evidence that the prohibition on use of tickler chains may help to reduce the amount of bycatch for skates and other elasmobranchs (Kynoch *et al*, 2015) and welcome this measure for areas where trawling is still permitted in this site. However, we suggest that these overlapping sites should be a priority for research and monitoring, given the importance of this area for the conservation of common skate, as well as a range of other features. This should include monitoring of trawl bycatch to ensure that there are no population level impacts and to validate the prohibition on tickler chains for this site.

Furthermore, we acknowledge the proposed 'Southern Hebrides' SAC for harbour porpoise, which we believe will also overlap with this area and for which management will need to be aligned across the sites. Further management of future designated SACs and MPAs should be appropriate, proportionate and not diluted on account of existing measures.

Small Isles MPA

We welcome and support the management proposals for the Small Isles MPA, which are a significant improvement to those that were originally consulted on. We welcome the prohibition of scallop dredging and trawling over an increased area of benthic features within the site, such as northern seafan and sponge communities and burrowed mud. We also welcome the wider Sound of Canna management area, which will be important to allow recovery of sensitive benthic species and habitats, such as fan mussel and horse mussel aggregations, which have been constrained in this

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area by *de facto* protection from mobile demersal fishing gear due to the topography of the channel.

We are glad to see the proposed management areas that we suggested in our original consultation response have been considered as part of the developing proposals. However, we would like it noted that those suggestions were made based on an understanding that only high risk features (i.e. for this site, those other than burrowed mud features) were being considered in this first tranche of management measures and that we would have further opportunity to comment on management for lower risk features. While we support endeavours to improve the efficiency of this process where possible, it is likely that the management suggestions we proposed would have been different had we realised this site would be addressed in just one tranche, rather than two. For example, we are concerned that not enough of the sea pen and burrowing megafauna biotope (SS.SMU.CFiMu.SpMmeg) has been represented in the proposed management option.

Furthermore, we acknowledge the proposed Sea of the Hebrides MPA for basking shark, minke whale, fronts and geodiversity features, which will also overlap with this area and for which management will need to be aligned across the sites. Further management of future designated SACs and MPAs should be appropriate, proportionate and not diluted on account of existing measures.

South Arran MPA

This site, if well-managed, has the potential to contribute significantly to the wider ecological improvement of the Clyde sea area and help to support progress towards Good Environmental Status under the Marine Strategy Framework Directive by 2020, the EU target to which Scotland is committed. The South Arran MPA is known to host to a complex variety of features, some of which are sensitive, declining or now absent (e.g. herring spawning grounds). The proposed management should allow the chance of halting this decline and allowing recovery which, for maerl habitats (with a conservation objective for recovery) is critical. Scientific research within Lamlash Bay No Take Zone is already contributing to our understanding of these habitats and species and their potential for ecological recovery in the absence of pressures, but in such a small area it is difficult to demonstrate the full potential for wider ecosystem improvements.

Whilst we welcome the greater simplicity behind the proposals for management within the South Arran MPA, we maintain that a prohibition on mobile demersal gear throughout the site would be the most appropriate form of management. As stated in our consultation response, we contend that all the habitats in this site which support burrowing infauna, such as burrowed mud and shallow tide-swept coarse sands with burrowing bivalves, should also follow advice to remove/avoid pressure. However, we support the prohibition of scallop dredging in South Arran MPA and recognise that this will offer opportunities for other fisheries at sustainable levels, such as the brown crab, which occupies similar habitats to scallops and is a known bycatch species of dredging (Veale *et al*, 2000; Jenkins *et al*, 2001).

We support the no-static gear zones on the maerl beds for the recovery of this feature. We acknowledge creeling has a lower impact on the seabed, and support the continuation of this activity where appropriate. However, there is a shortage of scientific research on the impacts of creeling and the best management approaches for ensuring that creeling remains sustainable. We are wary about the reduced area of no static gear on the maerl and coarse shell gravel areas towards the west of the site, given the conservation objective of 'recover' for maerl in this site. We seek assurance that this will be closely monitored and further research on the impacts of static gear activities is planned.

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In principle, we support the development of a management plan for anchorages to allow the continuation of sustainable levels of recreational sea-going activities. We would welcome the opportunity to participate in the development of that plan and support its review during its implementation. We are mindful of recently published evidence of the damaging effects of anchoring (and other activities) in seagrass beds (La Manna *et al.* 2015; McCloskey and Unsworth, 2015) and, given that the South Arran MPA is currently the only MPA designated for seagrass, we suggest the latest evidence informs that management plan.

Wester Ross MPA

We welcome the prohibition of scallop dredging throughout the Wester Ross MPA and that the recent survey of maerl beds around the Summer Isles (SNH/SWT/FFI November 2014) has been incorporated into the management proposals. We also support the proposed level of prohibition of trawling on burrowed mud and circalittoral muddy sand communities.

We acknowledge the commitment expressed to establish dialogue with the static (creel) fishing sector that operate within the Wester Ross MPA, in order to determine an appropriate management plan for the activity of that sector within this site. This dialogue should be opened as a high priority, given the conservation objective of 'recover' for maerl beds and flame shell beds in Wester Ross MPA. Furthermore, this process should be conducted as openly and transparently as possible.

We also suggest that this area should be prioritised in terms of ecological monitoring in order to:

- confirm the extent of the burrowed mud and circalittoral muddy sand community biotopes, and their component features, to ensure that the baseline is adequate to assess any change that occurs as a result of the reduced mobile demersal fishing gear activity.
- Determine the impact of creels on different types of habitats and the saturation level of creels within a given area (see Appendix 1, section 3.1 and 3.3)

Furthermore, we acknowledge the proposed 'Northern Minch' SAC for harbour porpoise, which we believe will also overlap with this area and for which management will need to be aligned across the sites. Further management of future designated SACs and MPAs should be appropriate, proportionate and not diluted on account of existing measures.

Conclusion

We broadly welcome the management measures proposed for these sites. It is an important step towards a representative and ecologically-coherent network of well-managed MPAs. However, there is still a lot of work to be done, and LINK will continue to engage and work constructively with the Scottish Government and other stakeholders to contribute to the progression of the MPA network.

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This response was compiled on behalf of LINK Marine Taskforce and is supported by: Marine Conservation Society; National Trust for Scotland; Royal Zoological Society of Scotland; RSPB Scotland; Scottish Ornithologists Clubs; Scottish Wildlife Trust; Whale and Dolphin Conservation; WWF Scotland.

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Appendix 1

1. General Points

The ecological condition and function of Scotland's seas has been declining notably for decades (Baxter et al, 2011). These proposals are a critical first step in offering protection and possibly recovery to some of our inshore habitats and species. This is not only a legislative duty; alongside management in the other MPAs it will ultimately improve wider ecosystem functionality and resilience (Lester et al, 2009; Hughes et al, 2005; Ling et al, 2009).

We welcome the ecological benefits these management proposals will provide, as well as the socio-economic benefits that are likely to follow. These measures will protect several areas of key fish and shellfish nursery habitats, including maerl beds, coldwater coral reefs and kelp beds, which will support and enhance recruitment potential for commercial stocks. Evidence of these benefits is well documented in scientific literature, including early evidence of this effect in the Lamlash Bay No Take Zone off the Isle of Arran (Howarth et al, 2015 a,b).

The protection can also be expected to provide opportunities for sustainable marine tourism and recreational activities, such as sea angling, SCUBA diving and wildlife-watching. Such opportunities have already been demonstrated to create employment and support local coastal communities (Charles and Wilson, 2009).

We recognise that a proportion of inshore mobile demersal fishing businesses may be affected in the short-term if these management proposals are adopted. However, LINK members contend that the long-term impacts will deliver benefits for all fishers as a result of ecological recovery which could help increase commercial stocks, through secondary overspill effects, and allow for positive displacement via the movement of sustainable levels of fishing into areas which previously could not support economically-viable fisheries (Russ et al, 2004; Sumaila et al, 2000). We support the Cabinet Secretary Richard Lochhead's assertions that "There will be potential options to support diversification of activity and the implementation of more sustainable fishing methods under the new European Marine and Fisheries Fund. In the long-term, it is anticipated that the benefits to society, and the fishing industry, will outweigh any short term cost."¹

2. The Consultation Process

2.1 Stakeholder engagement

LINK members acknowledge the large amount of effort put into this consultation process by the Scottish Government and Scottish Natural Heritage and we welcome the significant opportunities for engagement provided throughout this undertaking. We note that Marine Scotland have consulted with other stakeholders in the development of these management processes outside of the formal workshops – an action we support in principle, but request that these additional meetings are transparently communicated to other stakeholders and the wider public.

While we support the intention to increase efficiency in this process and the pressing timeframes for implementation, we contend that stakeholders should be made more aware of other consultative opportunities to consider their views before incorporating them into the management proposals.

2.2 Consultation analysis

The consultation analysis is a very impressive distillation of many of the issues. However, we note that the 'Don't Take The P' campaign response signed by 4,000+ members of the public has not been factored into the site-level analysis of feedback on the different Options presented via the

¹http://www.scottish.parliament.uk/S4_RuralAffairsClimateChangeandEnvironmentCommittee/General%20Documents/20150611_Cabinet_Secretary_letter_on_National_Marine_Protected_Areas.pdf

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consultation. This is especially noticeable with regards to Luce Bay. The 'Don't Take The P' campaign stipulated support for Option 1 in the Luce Bay SAC section of the consultation, as part of a wider response to the entire list of MPAs. The map on p120 of the consultation analysis makes clear that some of these responses were submitted from people living in Dumfriesshire and close to Luce Bay too. This detail should have been included as a relevant consideration of weighing up the views of respondents to the consultation for this site, and others.

3. Key Concerns

3.1 Ecological monitoring strategy essential for MPAs

With statutory ncMPA and SAC management measures anticipated for adoption in the autumn, LINK members share a primary concern: that changes in condition of the protected features, and wider ecosystem, as a result of the management must be measured and understood in order to evaluate success. To achieve this, a strategy for ecological monitoring is essential and must be in effect from the adoption of management measures in order to ensure that the baseline for monitoring is adequate. This is particularly important given current resource constraints in science and research, which is likely to mean monitoring will have to be prioritised in certain sites within the MPA network instead of the ideal more comprehensive full network programme.

In our consultation response, we called for the Scottish Government to outline their plans for a monitoring programme for the MPA network and, as yet, this has not been made publicly available. We ask the Scottish Government for transparency in their plans for MPA monitoring and we would welcome the opportunity to further discuss this; many LINK members have scientific expertise and resources which can support monitoring and enforcement of MPAs.

We encourage the Scottish Government to be more proactive and innovative to implement a robust monitoring strategy, seeking large-scale funding opportunities, involving other sea users, environmental organisations and coastal communities to contribute to its delivery and drawing on local knowledge to help inform surveys.

3.2 Intermediate status of proposed management measures

While we acknowledge and welcome the more proportionate proposed measures, we recognise that these draft Marine Conservation Orders must still follow a process, which will include being laid before Parliament for necessary scrutiny. With anticipated adoption in October (Fishing Orders) and November (Marine Conservation Orders) 2015, we seek clarity from the Scottish Government as to how these measures should be considered and whether any level of legal protection will apply in the interim. We seek assurance that the sensitive features for which these management measures have been proposed will not be subject to further anthropogenic pressure, in the time between proposal, scrutiny and adoption in approximately 5 months' time, thereby reducing their condition further and risking the future achievement of the conservation objectives. We suggest that as a lesson learned from the process the consultative window between proposal, scrutiny and adoption should be narrower, and reflect on point 2.1 that expectations for the management proposals could have been better met.

3.3 Regulation of creel fishing within MPAs

We recognise that the use of creels is largely accepted as a lower impact fishing method than mobile demersal fishing gears, both in terms of the impact on the target stock (Leocádio *et al*, 2012) and the physical impact on the benthic environment (Eno *et al*, 2001). We fully support the continuation of creeling in appropriate areas and at sustainable levels within MPAs.

However, acknowledging the general acceptance of creeling as a more sustainable fishing method, there is relatively little published research in the area of creel impacts on sensitive features and we are concerned that there are not sufficiently timely measures in place to secure the protection of a

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sustainable creel fishery within some of the MPAs. We are aware of a raft of Scottish Government initiatives and consultations that are designed to develop management of static fishing in Scotland's inshore, and we urge the Scottish Government to expedite these policy measures in consultation with industry and in parallel to the implementation of fisheries management in MPAs. There are past cases where excessive creel activity has resulted in localised stock depletion (e.g. Loch Torridon) and wider environmental impacts. The potential for such a 'honeypot' effect is apparent in MPAs where measures propose a significant reduction in trawling and dredging. Conversion or diversification by affected trawl operators may result in a significant increase in the use of creels and the cumulative impact of this possible unintended consequence should be assessed as part of the on-going development of management of MPAs and SACs.

3.4 Appropriate Assessment of SACs

For SACs in which management proposals permit any potential damaging anthropogenic activities, the process by which it has been determined that these activities will have no likely significant effect on the protected features or overall site integrity must be documented transparently. If evidence arises that any of the permitted fishing activities may have a likely significant effect on the features, an Appropriate Assessment would be required (EC Habitats Directive, Article 6(3)).

Art 6(3) is clear that measures directly connected or necessary to the management of the site are excluded from the need for Test of Likely Significant Effect (TSLE) and appropriate assessment (AA). So a measure closing the site to fishing would not require an AA. However, should the Scottish Parliament seek to enact fishing orders that permit fishing within a SAC, the extant fishing activity should be subject to a TSLE and, as required, an AA. We note that Marine Scotland acknowledges fishing is a 'plan or project' (see para 4.2.4) and that any subsequent 'fisheries related decision' would be subject to an Appropriate Assessment, as the 'Consultation Analysis concedes at 6.1.2.4. What constitutes a 'fisheries related decision' is therefore of real importance. In establishing a Fishing Order, the authority is at the same time determining the scope of allowable fishing activity in the site. We therefore seek assurance that any activity allowed to continue in the SAC by virtue of not being proscribed by a Fishing Order, should first be subject to an Appropriate Assessment prior to its continuation at the date on which the Fishing Order is implemented, otherwise the authority risks contravention of the Directive. Ideally the full HRA process should be conducted prior to the Parliamentary scrutiny of the measures, so that the relevant Committees (RACCE and DPLR) are in a position to assess the sufficiency of the measure to achieve the conservation objectives of the site.

3.5 Recognition of "ecological processes" upon which the feature depends

The 'Consultation Analysis' incorrectly states (6.2.2.1 and 6.2.2.2) that the reason for our highlighting the importance of implementing Section 83 was due to a concern about "feature-led" protection. LINK members recognise the practical value in a feature-led approach to identifying sites and enabling measurable impacts of MPAs; our concerns instead hinge on the degree to which this necessarily leads to an overly-feature-specific approach to management. The distinction is important. The reason for highlighting section 83 was, now that the conservation objectives for features have been set, to ensure that the objectives are met according to the requirements of the law. For repeat clarity, s 83 states that a public authority must make management decisions based on: 'any ecological...process on which the conservation of any protected feature in a Nature Conservation MPA...is (wholly or in part) dependent'. The point we make is that there are likely to be ecological processes that are not fully understood and which are potentially crucial to the protection, conservation and recovery of that feature. A proper application of the precautionary approach would potentially require a broader management that respects ecological processes beyond the current extent of the feature (e.g. management of mobile fishing activities across a wider area in Loch Sunart to the Sound of Jura MPA for different life history stages of common skate populations). We reiterate here, that s 83 provides the legal authority - and indeed obligation - for adopting our recommended additional management measures.

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3.6 Vessel capacity restriction

LINK members suggest that further clarity should be provided to illustrate the positive impact the Scottish Government anticipates in its proposals for vessel capacity restrictions within the MPAs and SACs. Robust ecological monitoring will be required to determine whether a GRT restriction will reduce the physical pressure on the features sufficiently to achieve the conservation objectives of the site. We seek clarification on how the Scottish Government believe this management measure will progress the conservation objectives of the sites in which it is proposed and how it will be monitored.

4. Moving forward in the process

While MPAs and SACs are tools for environmental protection and enhancement, and not fisheries management tools, we note that some of the proposed measures do offer a certain degree of spatial management of fisheries, due to the type and extent of the protected features in some of the MPAs. It should be emphasized that these measures do not equate to adequate overall spatial management of fisheries for sustainable development, and we acknowledge that this larger-scale process may be further complicated by displacement of some mobile fishing activity as a result of the MPA management. We seek clarity as to how the management measures for SACs and MPAs will align with other processes, such as the outcomes of the recent consultations on the scallop dredge fishery and gear conflict.

LINK members are also keen to see the development of improved opportunities and mechanisms for community involvement in the management of MPAs and SACs, and affirm that this is a logical and inclusive next step of establishing management within the MPA network. Complex communities across Scotland that represent many and varied interests (from sustainable fishing, to recreation and tourism) are becoming increasingly aware of their connection with the marine environment. This is particularly the case in coastal communities where, for many, livelihoods depend on a constant and sustainable flow of ecosystem goods and services. A 'bottom-up' approach to MPA management, as sought by communities such as Barra and Vatersay, has been demonstrated to be a successful initiative both locally (e.g. Lamlash Bay) and internationally (e.g. Apo Reef, Philippines) and we fully support the catalysis of such initiatives.

Appendix 2

Comments on the remaining MPA and SAC management proposals

While we acknowledge that this window of consultation is designed to obtain feedback on the four Marine Conservation Orders, in the interest of wider context and oversight of the ecosystem implications of the overall network, we would like to offer comments on the proposals for some of the other sites.

Subject to appropriate monitoring and, where necessary, Habitat Regulation Assessment and Appropriate Assessment in the SACs, we support the proposed management measures for: East Mingulay SAC, Loch Creran MPA/SAC, Loch Laxford SAC, Loch Sunart SAC (see comments on the draft Marine Conservation Orders), Lochs Duich Long and Aish MPA/SAC, Noss Head MPA, Sanday SAC, St. Kilda SAC, Treshnish Isles SAC and Wyre and Rousay Sounds MPA. We are pleased that the Scottish Government has taken into account the clear scientific evidence which demonstrates the ecological importance of the features in these sites, such as the East Mingulay Lophelia reef and its unique situation on the continental shelf. We are largely supportive of the continuation of creeling in designated areas subject to careful monitoring to ensure that this practice is carried out at regulated, sustainable levels. We also agree with the prohibition of set nets within the sites.

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Loch Sween MPA

We welcome the extension to the originally proposed area prohibited for mobile demersal gear, as this will incorporate a larger area of benthic habitats including records of a former maerl bed. However, we do not agree that the former maerl bed should have been the priority in this case because, as we pointed out in our consultation response: 'Following verbal information from SNH at the stakeholder workshops in October 2014 that recent surveys of the loch found that maerl beds have been reduced to mere fragments...' Rather we would have preferred a prohibition on mobile demersal fishing gear which extended across the remainder of the site for the reason we also stated in our consultation response: 'The burrowed mud communities in Loch Sween represent a particular community that isn't the same as in other areas around Scotland - noting that the management advice for the burrowed mud and sublittoral mud and mixed sediment communities in this site is specifically remove/avoid pressure - which strongly supports the rationale for a site-wide prohibition on trawling on these habitats.' We maintain there is a valid ecological case for a site-wide prohibition, whilst acknowledging that the proposals do capture a further proportion of the mud habitat types.

Upper Loch Fyne and Loch Goil MPA

We welcome the larger area prohibiting demersal fishing gear from the flame shell bed for the recovery of this feature and we support the prohibition on scallop dredging throughout the site. However we consider the area in which trawling is permitted in Loch Fyne too large and maintain that this site should prohibit the use of mobile demersal gear throughout. We contend that the mud and mixed sediment communities in this site should have a higher level of protection from trawling. As reasoned in our consultation response: "All of [the] component species [which inhabit muddy sediments] make a vital contribution to the integrity and resilience of these habitats through helping to stabilise sediments and through long-term bioturbation as a result of burrowing activity. A more precautionary approach should be taken in this site to place higher priority on the muddy habitats and their conservation as a whole (with their component species) in order to ensure the conservation objectives are met. Given that the advice is remove/avoid targeted fishing for ocean quahog, a species associated with mud and mixed sediment communities, and their risk of being bycaught in *Nephrops* fisheries, such a precautionary approach is merited for this species alone, even before considering the numerous other infaunal and epifaunal species associated with these sediments. We therefore contend that management advice should be remove/avoid pressure from the sublittoral mud and specific mixed sediment communities and burrowed mud habitats in this site."

Furthermore, we feel that the shape and topography of Upper Loch Fyne and Loch Goil do not support a zonal management approach and we maintain the position we laid out in our consultation response: "Given that Upper Loch Fyne and Loch Goil are narrow waterbodies, and that the boundaries of the proposed fishing permit zones have been delineated very close to many of the protected features within the site, we believe that there is a risk to the overall integrity of the site and therefore to the achievement of the conservation objectives."

Luce Bay and Sands SAC

We are concerned that proposals for the management of Luce Bay and Sands SAC remain unresolved and we will continue to engage with the Scottish Government and other stakeholders in the on-going consideration of this site. We will provide comments on the revised management proposals for Luce Bay and Sands SAC when these are published in due course.

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LINK Consultation Response

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