

A Marine Bill

SCOTTISH ENVIRONMENT LINK MARINE TASK FORCE RESPONSE TO DEFRA'S CONSULTATION

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Scottish Environment LINK

Scottish Environment LINK (hereafter referred to as LINK) is the forum for Scotland's voluntary environment organizations. LINK comprises 36 member bodies with a combined membership of around 500,000 people representing a broad spectrum of environmental interests with the common goal of contributing to a more environmentally sustainable society.

This response is on behalf of Scottish Environment LINK's Marine Task Force, comprising the following member bodies:

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

RSPB Scotland
Scottish Wildlife Trust
WWF Scotland

For further information contact LINK Marine Task Force Convenor Calum Duncan on 0131 226 6360 or visit www.scotlink.org. The following LINK comments are for the attention of both DEFRA and the Scottish Executive.

1. General comments on consultation package

Scottish Environment LINK Marine Task Force members welcome the scope of the UK Bill consultation and believe it provides an excellent framework for Scotland to follow, and improve upon, in preparing its own tailor-made Marine Act for Scotland.

LINK has been working closely for several years with her sister UK organisation, Wildlife and Countryside Link (WCL), campaigning for comprehensive marine legislation throughout United Kingdom waters. LINK believes that comprehensive marine legislation requires a UK Marine Bill for reserved matters integrated with devolved marine legislation for matters controlled by the Scottish Executive, Welsh Assembly Government and Northern Ireland Administration. **In Scotland, such an approach urgently requires a Marine Act for Scotland.**

LINK supports the UK Marine Bill as providing a framework for marine management in UK waters, provided complimentary devolved legislation is forthcoming. LINK supports the UK commitment to a Marine Bill with sustainable development (in line with the Scottish Executive's own Sustainable Development Strategy¹), and Marine Spatial Planning at its heart, integrating conservation, energy and resource needs, which works within the natural limits of ecosystems (an ecosystem approach) and adopts the precautionary principle to protect the environment and its resources.

Marine Spatial Planning

LINK supports Marine Spatial Planning as outlined in the consultation, based on sustainable development, regional seas management and an ecosystem-approach, and favours a comprehensive system of legally-binding plans. It is important that to deliver the ecosystem-approach, the same underlying principles for Marine Spatial Planning must be used throughout UK waters and inshore waters (for which devolved administrations are largely responsible). A Marine Act for Scotland would be needed to establish a statutory system of Marine Spatial Planning in Scotland that integrates fully with other Marine Spatial Plans throughout the UK. Consents for development and use of the sea should be made in accordance with these plans.

¹ *Choosing the Future – Scotland's Sustainable Development Strategy*, Scottish Executive 2005

Improving Marine Nature Conservation

LINK strongly supports the approach outlined in the consultation, particularly the proposal for marine protected areas selected on biodiversity conservation grounds and managed according to their ecological needs. Such areas can range from multiple use areas to strict protection. A similar approach could be adopted in Scotland but, within 12 nautical miles, would need to be delivered through a Marine Act for Scotland.

Marine Ecosystem Objectives

LINK strongly supports the concept of Marine Ecosystem Objectives (MEOs), as outlined in the consultation, to deliver the ecosystem approach to marine management by measuring the success of policies and projects according to the health of the natural environment. For them to work, MEOs must be properly monitored and enforced. To deliver the ecosystem-approach throughout UK waters, MEOs must be developed by the UK government in close co-operation with devolved administrations and wider stakeholders. Delivered in Scotland, MEOs would help the Scottish Executive measure progress towards both delivery of Coastal and Marine Strategy Outcomes and an ecosystem-approach to marine management.

UK Marine Management Organisation

LINK support the establishment of a UK Marine Management Organisation (MMO) responsible for managing reserved matters throughout UK waters. **LINK believes there must also be some form of lead Scottish decision-making 'body' or affiliated counterpart of the UK MMO.** Whatever form it takes, the Scottish body must be answerable to Scottish Ministers, with its own budget and responsible for overseeing strategic and spatial planning of devolved activities in those regional seas which are wholly or partially coincident with Scottish waters, in close co-ordination with the UK MMO, who would have responsibility for reserved matters.

2. Fisheries

LINK is disappointed that the consultation does not provide the opportunity to answer questions in relation to how fisheries management would integrate with Marine Spatial Planning to help deliver an ecosystem approach to marine management. **LINK consider it vital that fisheries management is properly integrated with the other elements of the UK Marine Bill.**

LINK notes that Scottish inshore fisheries management is devolved, and LINK members are working through the appropriate fisheries forums in Scotland. However, we stress that the current Scottish inshore management system must be consistent with the principles of the UK Marine Bill. For example, the new Inshore Fisheries Groups being set up in Scotland must contribute to the Marine Spatial Planning process and decision making within these groups must be in accordance with these plans.

In light of recent fisheries reforms, LINK believe that any forthcoming consultation on a Marine Act for Scotland must include debate on how inshore and offshore fisheries should integrate with marine spatial planning, licensing, enforcement and nature conservation objectives.

We believe that inshore and offshore fisheries management must fall within the management framework provided by the UK and Scottish Marine Bills. Fisheries will be stakeholders in the preparation of spatial plans. We believe that there should be statutory provision to ensure that the new Inshore Fisheries Groups comply with the relevant Marine Spatial Plan and licensing regime, and that inshore and offshore fisheries management should come under the aegis of Scottish MMO in close co-ordination with a UK MMO.

3. Planning in the marine area

Summary and general remarks

Scottish Environment LINK believes the UK urgently needs Marine Spatial Planning to deliver an ecosystem-based approach for the management of all human activities in UK seas. Properly delivered, with the ecosystem approach at its core, Marine Spatial Planning can deliver economic, social and environmental benefits, ensuring sustainable use of the UK's precious marine resources.

It is important that to deliver the ecosystem-approach, the same underlying principles for Marine Spatial Planning must be used throughout UK waters and inshore waters, for which devolved administrations are largely responsible. A Marine Act for Scotland would be needed to establish a statutory system of Marine Spatial Planning in Scotland that integrates fully with other Marine Spatial Plans throughout the UK.

Q 1: Is it appropriate for the UK Government to consider creating a new system of marine spatial planning?

Yes. Marine Spatial Planning is an urgently needed tool for the development of an ecosystem-based approach to the management of all human activities in UK seas, and is essential to ensure sustainable use of valuable marine resources. The current sectoral approach to managing marine industries does not allow an overview of their cumulative impacts on marine ecosystems, which can undermine the economic and social benefits of nature conservation and sustainable development.

A coherent and integrated approach to the planning of activities at sea will have economic, social and environmental benefits – it will provide greater certainty about where and how developments should be allowed, help avoid and resolve costly planning disputes, reduce the regulatory burden and, in conjunction with new legislation to properly protect marine biodiversity, safeguard wildlife and habitats. The last point is crucial since Marine Spatial Planning is only as good as the 'tools in the box'. LINK believes that delivering an ecosystem-approach with Marine Spatial Planning requires new legislation to enable designation of sites for Nationally Important Marine Features (see response to questions in Section 5.2). Sites designated for Nationally Important Marine Features can then be 'locked-in' to the Marine Spatial Plan thus securing their protection.

While Marine Spatial Planning will not replace the need for project specific Environmental Impact Assessment (EIA), Strategic Environmental Assessment (SEA) carried out as part of the planning process will assist with the scoping of individual EIAs, and in the longer term should lead to a reduction in specific data-collection needs at project level. In addition, Marine Spatial Planning could facilitate the sustainable development of new technologies, for example wave and tidal energy, as well as traditional activities such as fishing, by identifying and safeguarding important resource areas for those sectors and reducing the delays in consent as conflicts are avoided.

Marine Spatial Planning is also essential to deliver numerous UK Government commitments, including the Labour manifesto commitment to introduce a new framework for the seas based on Marine Spatial Planning, the UNCED Commitment to encourage the ecosystem approach in marine management by 2010, and recommendations in the Review of Marine Nature Conservation and the Marine Stewardship report. The majority of stakeholders attending Marine Bill Fora in London (74%), Liverpool (88%) and Cardiff (84%) agreed that we should have a system of Marine Spatial Planning. Similarly, 92% of respondents to the Scottish Executive's "Developing a Strategic Framework for Scotland's Marine Environment"

consultation agreed that a system of Marine Spatial Planning should be established in Scottish waters.

Scottish Environment LINK will continue to campaign for a Marine Act for Scotland to establish a statutory system of Marine Spatial Planning for devolved issues, which would integrate fully with other Marine Spatial Plans throughout the UK.

Q 2: If so, should Government consider statutory provisions within the Marine Bill in order to implement a new system of marine spatial planning, or should alternative methods be considered?

Statutory provisions for Marine Spatial Planning are essential, as a non-statutory system will not have the 'teeth' to deliver truly integrated marine management. Marine Spatial Planning requires new legislation to provide a statutory framework, essential components of which would include:

- a new marine management organisation to oversee strategic spatial planning
- a requirement for decisions to be made in accordance with the plan
- an involvement of non-statutory stakeholders in development of the plan
- a definition of all duties and powers associated with marine spatial plans, and of plan boundaries
- a requirement for collecting and sharing all data needed to draw up plans
- an ability to 'future-proof' plans to deal with currently unknown activities, developments and threats, and to be flexible to emerging knowledge
- a requirement for plans to be regularly reviewed.

Q 3: Do you have any views on the broad objectives of marine spatial planning laid out above?

We largely support these broad objectives. However, there must also be a clear statement that Marine Spatial Planning aims to deliver environmental, as well as social and economic, benefits. For example, the list should include an objective to protect and enhance marine biodiversity and ecosystems. We suggest that high-level objectives for Marine Spatial Planning are developed, which focus on inspiring sustainable development, environmental protection, and assessment of cumulative impacts to achieve sustainable use of our seas. These must be consistent with Marine Ecosystem Objectives, and other high-level objectives for the marine environment, such as those committed to under OSPAR.

Q 4: What are your views on marine spatial planning as a context or framework for decision-making?

A statutory marine spatial planning framework is essential, to provide the context for decision-making in the short, medium and long-term, and to take a strategic approach to needs, aims and possible locations of all types of sectoral activity. We welcome the reference in 8.35 to the undertaking of a SEA for the whole area of the plan. SEA is an integral part of the holistic approach described and must be incorporated at the earliest stages of the plan to fully allow for alternatives to be considered to avoid, reduce and mitigate environmental impacts.

Q 5: To what extent, if at all, should plans be 'binding' on decision-makers and decision-making?

We fully support *Option 4: binding plan*. Plans should be binding on decision-makers and decision-making to ensure Marine Spatial Planning is implemented properly and its benefits realised. Decisions must be made in accordance with the marine spatial plan unless material

considerations such as new data indicate otherwise. There must be flexibility and scope for adaptive management that allows aspects of plans to change according to new information, changing circumstances and new technologies. Monitoring and assessment of plans against their objectives to identify whether changes are required to enable the objectives to be met, should be part of a regular review process.

Q 6: Do you have any views on the broad underlying principles for marine spatial planning, as laid out above?

LINK supports the four key principles of sustainable development, ecosystem approach, better regulation and compliance with international and EU obligations.

However, it is important that sustainable development remains compatible with long-term ecosystem health and environmental limits. The term 'sustainable development' should be clearly articulated so it is not misinterpreted as an endorsement to continue to develop in a way that compromises ecosystem health. The concept of 'living within environmental limits' is well defined as an 'end goal' of the Scottish Executive's Choosing Our Future: Scotland's Sustainable Development Strategy (SSDS December 2005). Sustainable development should be defined as it is in the SSDS, with the same underlying principles.

To strengthen this we recommend that a fifth principle of environmental protection should be added.

Para 4.8 of the consultation states 'there are also a number of European and internationally-recognised principles that should also be applicable through any new framework. These include the precautionary principle and the polluter-pays principle'. We take this to mean that these two principles will be incorporated into MSP, licensing etc and would like this to be made explicit in relation to MSP, licensing and other relevant regimes under the Marine Bill framework.

Q 7: Do you have any views on the potential increase or reduction of regulatory burden on Government or business, at either the planning stage or during subsequent licensing stages, as the result of a system of marine spatial planning?

We believe that Marine Spatial Planning will reduce the regulatory burden on Government and business, in addition to saving industry time and money. Marine Spatial Planning will enable potential conflicts between sectors, and between industry and wildlife, to be identified and resolved at the planning stage before considerable investment has been made for individual proposals. Marine Spatial Plans will guide developers on where applications are more likely to succeed or fail thus increasing certainty and reducing risks for investors. Data collation and maps produced for developing plans should be made available for EIAs and SEAs, and vice versa.

Q 8: Do you have any views on the geographical application of any new system of marine spatial planning?

Marine Spatial Planning should be implemented at a regional seas scale, out to 200nm (or the limit of UK jurisdiction) with cooperation between devolved administrations. We agree with the UK Government's view that Marine Spatial Planning should be applied landward to Mean High Water Springs, which conforms with the principal marine licensing controls, FEPA and CPA. A regional plan should be developed for each of the regional seas, and sub-regional plans will be needed, for example, for estuaries or intensively used inshore areas.

As the management of many activities in the territorial waters of Scotland, Northern Ireland and Wales is devolved, the four UK administrations must work closely together in the

development and implementation of Marine Spatial Planning according to a regional sea approach. This will necessitate a Marine Act for Scotland to deliver Marine Spatial Planning for its devolved activities, and which integrates fully with other plans throughout the UK.

Q 9: Do you have any views on ways in which regulatory efficiency could be improved in the intertidal zone, if a new system of marine spatial planning were created?

Marine Spatial Planning will ensure that the importance of coastal habitats in the context of marine ecosystems is taken into account in decision-making. Close co-ordination between Marine Spatial Plans and land-use plans (including Regional Spatial Strategies, Local Development Frameworks, River Basin Management Plans, Shoreline Management Plans) is essential. Integrated Coastal Zone Management (ICZM) is the formal mechanism to provide the land/sea 'zip' between terrestrial and marine planning. ICZM, including existing initiatives such as Local Coastal and Firths Partnerships, should be capitalised on to support joined up planning in the coastal zone (see Q8).

Q 10: Is this overall approach, involving a strategic marine planning policy statement, followed by spatial plans, appropriate?

We support proposals for a Strategic Marine Planning Policy Statement (PPS) to provide the context for a hierarchy of national, regional and sub-regional plans. The Strategic Marine PPS must lay out overarching international, EU and national marine objectives and policies, and contain clear policy guidance to assist in the integration of sectoral policies. A PPS, from the UK Government, for all reserved matters should be accompanied by a similar policy statement from the Scottish Executive in relation to devolved issues in Scotland's seas.

Q 11: Are there particular aspects of, or experience gained from the terrestrial or any other planning system, which should be considered when developing a marine planning system?

Experience from the terrestrial planning system proves the need for a forward-looking, integrated system of spatial planning with statutory underpinning, supported by strategic planning policy statements. However, a spatial planning system for the sea should improve upon the short-comings of the land based planning system, as identified by the Royal Commission on Environmental Pollution and which included:

- The need for a comprehensive, mutually consistent and unambiguous policies that place the protection and enhancement of the environment as the foundation for sustainable development;
- The planning framework must have the confidence of the public and include full participation of all stakeholders.
- Integrated spatial strategies must cover all forms of use, not just built development.

Q 12: Do you have any views on the elements of a strategic marine planning policy framework statement laid out in this section?

A framework of marine planning policy statements for every marine sector – including marine nature conservation - will be essential, particularly as some marine industries currently do not have established policy documents. These sectoral policy statements must guide sectors towards integrated management and decision-making based on Marine Spatial Plans. The framework must illustrate how plans from the UK and each of the four UK administrations will be integrated. Separate statements from the UK Government and the Scottish Executive will be required for some issues.

Q 13: Do you have any views on the way in which a strategic marine planning policy framework statement should be developed and the timeframe it should cover?

The strategic marine planning policy framework statement needs to be developed and owned by all UK and devolved Government departments with competencies relating to the marine environment, together with their agencies and statutory nature conservation advisors. Provisions should be made for participation by stakeholders from the four UK administrations. The statement should be produced to cover 10-20 years (or longer, where possible) and take a long-term view on issues such as climate change, but should be reviewed every 5 years and remain flexible to developments in international policy and technology, and emerging knowledge.

Q 14: What are your views on the nature and role of the planning body which would undertake the development of spatial plans?

We welcome the statement in the consultation that a new body will be needed to undertake the development of Marine Spatial Plans. The MMO must also be responsible for overseeing and implementing the plans, based on a policy framework laid out by the government. The MMO will need to be a UK body, with a planning remit relating to English territorial waters and the offshore area around the whole of the UK to the limit of jurisdiction, and have enough power to facilitate cross-departmental decisions in government in relation to Marine Spatial Planning, and to bring bodies together when such decisions are required. It will be crucial for the UK MMO to work with the devolved administrations to deliver an ecosystem-based approach to Marine Spatial Planning based on regional seas, for example coordinating with a lead decision making body for Scotland - a Scottish MMO - to ensure each regional, and cross border, Marine Spatial Plan is developed through integrated working.

Q 15: What are your views on the scale, location and possible boundaries of the areas used for spatial plans?

To deliver an ecosystem-based approach to managing all human activities, regional plans must be developed based on the bio-geographical marine regions, or regional seas, proposed by the RMNC. Effective management of regional plans will necessitate new marine legislation in devolved countries, which is why we are campaigning for a Marine Act for Scotland developed in parallel with the UK Marine Bill.

Q 16: Do you think that Marine Spatial Planning should apply in the same way in all parts of UK waters?

There may be a greater need for planning in some regional seas than others, due to the level and diversity of activity. Marine Spatial Plans should be developed for all regional seas but less detailed plans will be needed for regional seas, or areas of regional seas, where there is relatively little activity and/or a low diversity of activities. However, it is important that these plans are 'future-proofed' against unforeseen activities or conflicts and the need for detailed plans in less congested offshore areas regularly reviewed

Q 17: What are your views on the need for planning at sub-regional or local level?

Sub-regional plans will be needed in intensively used marine areas, for example firths, and will be more involved in the management of current uses than the forward-planning focus of regional or national plans. Sub-regional plans will need to comply with the national marine planning policy framework statement, and a two-way exchange of information and policies between Regional and Sub-regional plans will be essential, as are linkages to ICZM initiatives, River Basin Management Plans, Regional Spatial Strategies and Local Structure Plans.

Q 18: What are your views on the activities, developments and resources within the marine area, which might be considered within spatial plans?

All marine activities, developments and resources, including marine species, habitats and landscapes of national and international importance and ecosystem functions and services, should be considered in a marine spatial plan.

Q 19: Are there any anticipated future types of marine use, or technological advances, which you think the UK Government should consider when developing the strategic marine planning policy statement or in the marine spatial plans?

All emerging marine activities should be managed within the context of Marine Spatial Planning. Carbon capture and storage, sub-sea storage of natural gas and bio-prospecting are potentially new sea uses which must be considered, clearly illustrating why plans must be developed to cover the whole UK sea area, regardless if some regions currently have relatively little human activity.

Q 20: What are your views on data and information availability in relation to marine spatial planning?

We believe that a UK MMO should have responsibility for data management and have powers to obtain data from reliable sources including stakeholders. Data held in Scotland at the proposed Scottish Marine Observatory must be freely available to a UK MMO and vice versa in order to aid and inform cross boundary issues.

We strongly agree with the statement that “central to the success of many of the UK’s policies will be the collection, management and availability of marine data and information.” There is a lack of data on the marine environment and the effects of development relative to terrestrial data, and as such a more precautionary approach is often required. Systems are needed to ensure data is collected in a way that is consistent with standardised and compatible methodologies, and to ensure data is released and shared (for example data collected for consents or EIAs). Transferable data and information must be accessible by all the devolved authorities, and adequate training and resources must be available to personnel involved in developing and implementing plans.

Q 21: What are your views on the plan making process?

We support the outline given of the plan-making process, including the development of a marine data portal, identification of preferred areas and a mechanism to handle conflicts, and look forward to commenting on the detail of this process as it is developed. Adequate training and resources must be given to those involved in developing plans.

SEA will be crucial to integrating the various environmental and sectoral objectives that Marine Spatial Planning seeks to bring together, and will provide a clear focus for stakeholder input and involvement.

Q 22: How should conflicting demands on marine space be addressed in the development of spatial plans?

By taking a strategic view of regional seas, in a fully transparent manner, with input from all relevant regulators and stakeholders, Marine Spatial Planning should reduce conflict over the use of sea space. Marine Spatial Planning can also help to identify alternative areas for activities, away from Marine Protected Areas and other designated sites that must be respected by the Marine Spatial Planning process.

Q 23: What are your views on the allocation of ‘preferred areas’ for certain activities, future development or protection of resources?

LINK is content with the proposal to allocate “preferred areas”, provided these take full account of nature conservation interests and priority is given to the designation of MPAs (including Natura 2000 sites, Nationally Important Marine Sites and Highly Protected Marine Reserves). We also expect decisions taken in the context of Marine Spatial Planning regarding non-designated areas to take full account of biodiversity. We note that a variety of zoning tools are already used to restrict or promote activities in the marine environment – e.g. MPAs, MEHRAs, fisheries management zones – and that Marine Spatial Planning must integrate these.

Q 24: What are your views on the process of developing maps or charts as part of the marine spatial planning process?

Mapping of data is an important tool in developing plans and we strongly support the development of such maps, diagrams, illustrations or other descriptive or explanatory materials to assist in plan development. Training and resources must be made available to those with responsibility for developing and implementing plans.

Q 25: Do you have any views on the need to consider the sustainability and environmental impacts of spatial plans, including the use of SEA in the process?

The use of cross-sectoral SEAs for each regional sea will be a key advantage of developing Marine Spatial Plans, as these will allow an assessment of cumulative or in-combination impacts. However, the success of these will rely on access to quality data. Marine Environmental Objectives (MEOs) and their associated indicators will be important in monitoring the success of the plan.

Q 26: In what ways could Government ensure that marine spatial planning would be open, transparent and inclusive?

Marine Spatial Planning must be transparent and involve all stakeholders. SEA will be crucial to integrating the various environmental and sectoral objectives and encourage joined-up decision making and consensus building. LINK believes that the MMO should set up a Stakeholder Advisory Group, to work alongside the development of Marine Spatial Plans and provide an advisory role to the MMO. Similar groups, operating at regional seas level and/or at the devolved administration level might also be appropriate, such as the Scottish Coastal Forum and existing Firth Partnerships, subsequent to a Marine Act for Scotland. The advisory group must include representatives of non-statutory stakeholders, for example NGOs, leisure users such as anglers, and fishermen.

Q 27: What are your views on the way in which the rights of individuals or organisations may be affected by the planning process?

We do not consider MSP to represent an additional restriction on individuals’ rights to use the marine area sustainably. Rather, we believe that it will offer a more coherent approach to the management of marine activities, in line with Government’s objectives for the marine environment.

A Marine Spatial Plan, and its policies and proposals, must be made available for the public and interested organisations to consider and comment. Key issues and objections arising will need to be considered in public (e.g. through a Public Inquiry or Examination-in-Public). The MMO should be responsible for ensuring public access to all relevant documents including EIAs and SEAs, and responses from statutory advisors. A clear, objective-led and

transparent process will help ensure that any rights that are removed or reduced as a result of an agreed Marine Spatial Plan, will be understood to be in the public interest.

Q 28: What are your views on establishing a forum or scrutiny process to test the soundness of the plans?

Please see our response to Q 21, 27

- LINK recommends giving the plans a clear statutory purpose and objectives and using stakeholder advisory groups in the plan-making and implementing process.
- An appeals process, probably involving an independent body, will have to be developed to test challenges to the plans or to decisions made on the basis of plans.

Q 29: Do you have any views on the implementation, monitoring and review of plans?

Implementation: The MMO must be responsible for implementing the plan (see Q 14).

Monitoring: Marine Ecosystem Objectives (MEOs) and their associated indicators will be important in monitoring the success of the plan. The MEOs and associated indicators must therefore be developed with all regional seas in mind.

Review: The MMO (or devolved counterpart) should take overall responsibility for monitoring and review of all plans, with sub-regional bodies (eg local authorities and stakeholder advisory groups such as ICZM partnerships) assisting the MMO with monitoring and review of sub-regional or local plans.

Q 30: Do you have views on how the duration of time for which plans should apply and how often plans should be formally reviewed or modified outside of such reviews?

Plans should apply for 10-20 years, but be forward looking to 100 years time span, to take a long-term view on issues such as climate change. The plan should be monitored, reviewed, modified and updated every 5 years and remain flexible to emerging knowledge and developments in international policy and technology.

Q 31: Do you have any views on how UK Government can ensure marine spatial planning works effectively with other planning systems, particularly in the coastal zone, in order to achieve the aim of integrated coastal zone management?

Please see response to Q 9 & Q 17

4. Licensing marine activities

Summary and general remarks

LINK welcomes the opportunity the Marine Bill provides to improve and integrate the licensing system for development in UK waters and at the coast. LINK welcomes the fact that the licensing system must operate within the context of a Marine Spatial Planning system as this will enable more effective management of conflicting uses in UK seas, address the cumulative and in-combination impacts on the marine ecosystem, and enable UK Government to adopt a longer term more strategic view of the UK maritime area.

In addition, LINK feels the improved licensing system for all uses must take full account of Marine Spatial Planning in UK seas, including the policies set out in the relevant plans, as

well as relevant international obligations and commitments, such as those under OSPAR and the CBD.

There is a need to ensure that all activities that are licensed “at sea” by the Scottish MMO, in accordance with the relevant Marine Spatial Plan, are also subject to the same regime “within harbour activities” and are not approved by Port Authorities independently.

Q 32: Do you have any views on whether it is appropriate to use the Marine Bill to simplify and streamline the licensing system for marine activities?

LINK supports simplification and streamlining that enables efficient planning and licensing as long as all licensing systems are aligned with ecosystem-based management in the marine environment. Of course, this must not mean a reduction in the environmental requirements of the various regimes. Securing protection of the marine environment must be a core objective of any marine licensing regime, and the Marine Bill should deliver this.

We also support a more efficient system provided the result is a more integrated approach to decision-making, reducing efforts spent by SNCOs, government departments and stakeholders (including developers and NGOs) in the current unwieldy and under-resourced licensing system.

There is a need for a readily transparent process, including feedback to those who have sent in comments about licence applications. ‘Simplifying and streamlining’ must not result in less consultation. However, quicker and more efficient routes to obtain the views of government bodies and other organisations should be found.

Q 33: Are there any particular emerging trends, new technologies or novel types of activity, which any future licensing system should address?

The growing development of offshore wind technology has demonstrated the importance of an integrated marine planning and regulatory system in which the marine environment – particularly designated sites and protected species – is properly taken into account. Wave and tidal power technologies currently at demonstration stage will need to be integrated into any future licensing system. All activities noted in this section of the consultation require licensing in conjunction with careful planning through a Marine Spatial Planning regime, and similarly this should be applied to any activity emerging in the future.

The new licensing regime should avoid a developer using a terrestrial planning consent (e.g. a development on land that favoured job creation) as a ‘lever’ to gain another consent (e.g. a marine consent for a navigational channel in a sensitive area). Coherence between marine and terrestrial plans in the coastal zone, by placing a duty on the terrestrial and marine planning regimes to have regard to one another, should help to reduce the likelihood of this.

LINK believes the Marine Bill must seek to ensure that new technologies and trends, such as carbon sequestration, will be properly considered, so they can also be managed in a way consistent with the underpinning policies of Marine Spatial Planning, including an ecosystem approach and the precautionary principle. The Marine Bill should make provisions for new and even currently unknown technologies to be dealt with, including for example bio-prospecting, in order to protect biodiversity and sustainable use of marine resources in the future.

Q 34: Do you have any views on the inclusion or exclusion of certain regimes from the scope of the proposed licensing reforms in this consultation?

LINK believes that all of those regimes outlined in Section 9.25 of the Consultation should be included in consideration of a new, integrated licensing regime. We are very disappointed and concerned that controls relating to oil and gas exploration and exploitation have been excluded at the Consultation stage.

Marine Spatial Planning must include all information on current and proposed oil and gas exploration and extraction. In addition, consents for oil and gas exploration and extraction must take full account of and be guided by Marine Spatial Planning policies and plans for each regional sea in UK waters.

The objectives of the reformed licensing system must result in regulators adopting a more holistic and long term approach to the management of the marine environment, streamlining current arrangements and improving the way in which regulators work together and develop consistency. In addition LINK is concerned that using Carbon Capture and Sequestration (CCS) in order to push more oil out of the seabed will also be exempt from general licensing and planning conditions, and believe this is unacceptable.

More stringent assessment of interconnections like cables and pipelines must be applied, so that cables and pipelines are subject to EIA in the marine environment and in particular when passing through areas for nature conservation. Applications for the laying of pipelines and cables should be considered together with the application for the installation where they are connected. This is fair to the developer and for nature conservation. Cables and pipelines may disturb a relatively narrow corridor of the seabed, but over the whole distance required, this can amount to a large area of marine habitat being destroyed. In some cases, a small diversion of the cable or pipeline could avoid destruction of an important marine habitat.

LINK welcomes the statement that SEAs will be applied to each Marine Spatial Plan, and believes this must include working with an appropriate group of stakeholders. This will ensure that cumulative and in-combination impacts are considered as far as is possible in the overall plan for each regional sea.

In section 9.26 other exclusions are explained, including consents for discharges in coastal waters and consents under the Water Framework Directive. LINK believes that all consents that may affect the marine environment must take full account of the Marine Spatial Planning policies and regional Marine Spatial Plans that emerge as a result of the Marine Bill. There must be cross-collaboration, for example between implementation of the Water Framework Directive and Marine Spatial Planning, and each regime must inform the other to ensure activities on the land and at the coast are properly managed with regard to the way they affect our seas. This includes consenting for discharges into coastal waters, which in Scotland is the responsibility of SEPA under the Control of Pollution Act 1974 (recently transferred to Controlled Activities Regulations 2005), and engineering works out to 3nm as required by the Water Environment and Water Services Act 2003. SEPA and other agencies must have regard for the relevant Marine Spatial Plan when consenting for these discharges, and take account of the policies and the data that informs the plan.

It should also provide any data it holds for coastal waters to inform the plan. Beyond this, in implementation of the Water Framework Directive further inland, SEPA must take steps to avoid nutrients or pollutants that would have an adverse impact in marine waters entering river basin catchments. Again, SEPA must have regard for the Marine Spatial Plan when managing river basins, and must take account of the Marine Spatial Planning policies and the data that informs the plan, in particular data on adverse impacts of pollutants and nutrients, and species and habitats sensitive to these. SEPA should use the River Basin

Management Planning process to address these issues at a catchments scale with the involvement of all relevant stakeholders.

Q 35: Do you have any views on improvements that might be made to the process and administrative aspects of marine licensing, which UK Government could consider throughout the development of proposals for the Marine Bill?

As explained in response to questions 46 and 47, LINK favours the introduction of a new integrated licensing regime, administered by the UK MMO and Scottish counterpart.

We reiterate here that Link believes all human activities and plans, including oil and gas, must be considered under one single marine planning regime. All license applications must take account of and be guided by marine spatial plans for each regional sea in UK waters. In this way an integrated approach to management of UK seas can be achieved. A reformed planning and licensing system should aim to provide and encourage exemplar experience, knowledge, and best practice and make the licensing system much more effective for everyone involved. We believe that MSP itself will bring improvements to licensing, for example by informing sea users as to the best locations for applications. The licensing body for matters devolved to Scotland must be the Scottish counterpart of the MMO.

Q 36: How do we insure that the Marine Bill reduces the regulatory burdens within Government and on business within the licensing system?

LINK believes the current licensing system creates a regulatory burden on SNCOs and stakeholders such as NGOs. This is a particular problem when nature conservation issues are at stake and resources are diverted from actually conserving nature and designating sites, to fire-fighting planning applications. LINK wishes to see this burden on nature conservation organisations reduced, whilst marine and coastal licensing systems are improved.

Q 37: Are the objectives for a reformed licensing system laid out above sensible?

The objectives laid out in 9.37 are sensible. LINK particularly welcomes a) a more holistic, long-term approach to manage human activities at sea and h) public involvement in and transparency of the decision-making process, to the greatest extent possible. LINK wants to see all licensing of marine and coastal operations undertaken in the context of the Marine Spatial Planning framework and regional Marine Spatial Plans, in order to deliver an ecosystem based approach to management.

Q 38: Are there any other key principles that should be considered as part of any changes to the regulatory system?

LINK is concerned that some stakeholders may misinterpret 'sustainable development' as endorsement to proceed with development activities, beyond the carrying capacity of the ecosystem. The concept of 'living within environmental limits' is well defined as an 'end goal' of the Scottish Executive's *Choosing Our Future: Scotland's Sustainable Development Strategy* (December 2005) (SSDS).

We would like sustainable development to be clearly defined in any future Bill in the terms outlined in the SSDS, encompassing a range of principles including environmental limits, ecosystem approach, precautionary and polluter-pays principles.

We would like to see the ecosystem approach enshrined in the Marine Bill legislation as the key management tool for implementing long-term sustainable use of marine resources, as committed to under the Convention on Biological Diversity (CBD). LINK believes the UK

Marine Bill must seek to implement the 'agreement for action' text of the CBD as well as an ecosystem based approach to management.

As noted in our response to Q.6 para 4.8 of the consultation states *'there are also a number of European and internationally-recognised principles that should also be applicable through any new framework. These include the precautionary principle and the polluter-pays principle'*.

LINK take this to mean that the precautionary principle and the polluter-pays principle will be incorporated into all regimes falling within the Marine Bill framework and would like this to be made explicit in relation to any new marine management system.

Q 39: Are these appropriate options to consider in this consultation? Are there alternatives to, or variations on the above options, which should be considered?

LINK believes it imperative that the issuing of all licences is guided by Marine Spatial Planning to ensure an ecosystem approach to management of UK seas and sustainable use of marine resources. The issuing of all licences should demonstrate that account has been taken of international and national policies, and the implementation of the UK's Marine Spatial Planning system, thus ensuring that due account is taken of protection for UK's marine biodiversity and that all efforts are made to minimise adverse impacts on the marine environment and cumulative impacts are avoided.

To achieve an integrated approach to management of UK seas, all license applications must take account of and be guided by UK and (where appropriate) Scottish policies and marine plans for each regional sea in UK waters.

Q 40: What are your views on the advantages or disadvantages of the 'Do Nothing' option?

LINK believes that to 'do nothing' when there is such an opportunity to make much-needed improvements to the licensing system would be disastrous. As noted in para 9.50 Government would still be obliged to make necessary changes to licensing regimes as a result of European law, international obligations and to address new or novel activities. Reform of marine licensing should ensure that Government:

- Honours its commitments as set out in Safeguarding our Seas
- Meets its domestic and international commitments to nature conservation, for example the CBD;
- Deal with new or novel activities so that they are controlled through an ecosystem approach and before they damage the marine environment, rather than waiting for new laws to be made in order to deal with them.

Q 41: Would Option 1 address the objectives and key underlying principles for an updated licensing system, as set out in paragraphs 9.38 to 9.43 of this consultation document?

No it would not. The only improvements remaining possible under 'Option 1' would be to provide more resources for the current unpopular and inefficient system.

Q 42: What are your views on the advantages or disadvantages of Option 2, to ‘merge the environmental and navigational controls’?

Q 43: Would Option 2 address the objectives and key underlying principles for an updated licensing system, as set out in paragraphs 9.38 to 9.43 of this consultation document?

LINK would welcome the merging of features and controls currently exercised under FEPA and CPA into one fit-for purpose, cross cutting regime as explained in 9.52 to 9.58. This is one step in the right direction in order to streamline consents, but not the whole solution. On its own, Option 2 would not address the objectives and key underlying principles as set out in paragraphs 9.38 to 9.43, hence LINK favour Option 4.

In addition, small applications should be dealt with at a local level, for example applications for local slipways, in order to increase efficiency in government, and reduce frustrations concerned with local planning applications at the coast that are currently dealt with at government level. However such local decisions must be in accord with overarching policies contained in future Marine Spatial Plans.

Q 44: What are your views on the advantages or disadvantages of Option 3, a simplified sectoral regime?

Q 45: Would option 3 address the objectives and key underlying principles for an updated licensing system, as set out in paragraphs 9.38 to 9.43 of this consultation document?

Option 3 offers some changes to the current regime by offering a unified regime for each sector, incorporating FEPA and CPA within sectoral legislation. However, each leading or sponsor government department responsible for each sector regime would still hold separate responsibilities for sectoral development in the marine environment. LINK is concerned that the approach of Option 3 would be open to the risk of competition between sectors for space in our seas, and that it would be difficult to facilitate a fully integrated approach to Marine Spatial Planning or to reach fair decisions taking all issues into account while also protecting our marine biodiversity.

Q 46: What are your views on the advantages or disadvantages of Option 4, an integrated regime?

Q 47: Would Option 4 address the objectives and key underlying principles for an updated licensing system, as set out in paragraphs 9.38 to 9.43 of this consultation document?

LINK favours this option because it offers “*a new integrated approach, bringing together a number of regimes into a single marine system, allowing the environmental and navigational safety considerations to be considered together with sectoral concerns, and therefore enabling full consideration of the combined and cumulative effects of the different aspects of a particular development or activity (9.69).*”

LINK believes that Option 4 can address the objectives and key underlying principles for an updated licensing system, as set out in paragraphs 9.38 to 9.43. We believe that all licensing in the marine environment should be brought under the new MMO so that decisions are made with consideration for all activities and protection of the marine environment by one body. All licensing in Scotland should be brought under the Scottish MMO with close links and communication where appropriate between the UK and Scottish MMOs.

Q 48: Do you have any views on the storage of natural gas in sub-sea bed geological structures and the provision of facilities to unload gas that has been transported by ship?

LINK is concerned about the proposal to store natural gas in sub-sea bed geological structures. Such storage poses another threat to habitats on or near the sea bed. Unloading gas that has been transported by ship creates another hazard in our seas, of both environmental and health & safety concern. Before any such activity is permitted, we believe that generic safety and environmental implications need further investigation; any specific technology designs will also need assessment; and specific proposals should be subject to the strictest environmental assessments (including Appropriate Assessment under the Habitats Directive), and assessed together (strategically) with other activities that may cause problems when considered in-combination.

Q 49: Do you have any views on the proposal to create a fit-for-purpose licensing proposal for the storage of natural gas that has been transported from elsewhere, in sub-sea bed geological structures?

LINK would prefer that natural gas is not transported by ship and then stored in sub-sea bed geological structures. However, as stated above, we support the introduction of an integrated licensing regime for marine industrial processes. If the activity were to be considered, it must therefore be licensed and regulated by the MMO, alongside all other marine industries, in the context of a single, integrated marine spatial planning and licensing regime.

Q 50: Do you have any views on the capture and subsequent storage of carbon dioxide in naturally occurring sub-sea-bed geological structures to alleviate the effects and impacts of climate change and ocean acidification?

Q 51: Do you have any views on the creation of fit-for-purpose licensing provisions for the capture and storage of carbon dioxide in naturally occurring sub-sea bed geological structures?

LINK has a number of concerns about Carbon Capture and Sequestration. CCS must not be exempt from general licensing and planning conditions and we do not wish to see CCS used as an excuse to continue emitting CO₂ *ad infinitum* into the future.

CCS should only be used as a bridging technology while society rapidly moves to a carbon free economy. In order for CCS to be successful as a mitigation measure it needs to be: thoroughly assessed to ensure that, with full life cycle analysis, it will reduce the amount of CO₂ in the atmosphere; regulated and monitored with strict criteria to ensure CO₂ reductions are achieved; assessed through EIA and SEA, and RIA; paid for by industry under the polluter pays principle; accepted that it will not extend the life of the fossil fuel industry; strictly monitored to ensure the CO₂ remains securely stored; not relied upon as a CO₂ reduction measure unless and until it is proven to do so; carried out in accordance with IPCC carbon accounting, and; must not deflect money, political attention or motivation away from measures to reduce energy consumption, energy efficiency and renewable energy development.

If following thorough environmental assessment the decision is taken to implement CCS, we believe that the regulation of this new activity should take place through an integrated marine spatial planning and licensing regime. CCS should be licensed by the MMO for integration and minimization of the impacts on the environment and other sea users, and the licensing provisions must be integrated with terrestrial planning and regulatory frameworks.

5. Improving nature conservation

5.1 Marine Ecosystem Objectives

Summary

LINK welcomes the development of thinking on Marine Ecosystem Objectives (MEOs), which we believe should relate specifically to marine ecosystem components (species, habitats and processes). We also welcome the undertaking in 'Safeguarding Sea Life', the joint UK response to the Review of Marine Nature Conservation report, to integrate consideration of marine ecosystem objectives into marine management processes. We recognise that a framework of objectives to make the link between the UK's vision for the marine environment and practical marine management is central to implementing an ecosystem-based approach to managing all human activities in the sea, which will allow us to operate 'within environmental limits'. UK MEOs need to be developed by Westminster in close collaboration with the devolved administrations. We will continue to campaign for a Marine Act for Scotland, which would include measures to underpin a set of MEOs developed for devolved issues, integrating fully with the UK MEO set.

Q 52: Which marine management regimes or processes should include the consideration of marine ecosystem objectives?

Holistic, integrated management of all human activities at sea is necessary to deliver an ecosystem-based approach to marine management. MEOs are a key component of this approach, as they help to define what impacts on the ecosystem may or may not be acceptable at a given scale. MEOs can be implemented through various management processes:

Marine Spatial Planning

MEOs should be integrated into the development of marine spatial plans. Monitoring against MEOs should inform whether and how plans may need to be adapted.

Licensing

MEOs will be relevant to all licensed activities. Guidance will be necessary, as well as sector-specific management measures to help sea users take MEOs into account, and to enable competent authorities to assess applications.

Fisheries

MEOs must be integrated into the management of inshore fisheries. We advocate that measures are identified which should be triggered according to particular indicators, e.g. benthic disturbance. Fisheries in the area beyond UK competence will impact upon whether some MEOs can be achieved – monitoring of MEOs should allow any such unsustainable impacts to be identified, and assist the Government in bringing issues to the attention of the European Commission.

Unlicensed activities

We believe that measures are necessary to control the impacts of unlicensed activities on marine species and habitats. Monitoring of MEOs and of the efficacy of management measures may indicate the need for revision of measures or the introduction of new ones. LINK advocates the introduction of Biodiversity Stop Orders, which could be used by the conservation agencies to control unlicensed activities under certain circumstances, along with byelaws (see section 5.3 of this response) – changes in the condition of MEO indicators could prompt the use of these tools, for example.

Nature conservation

We believe that new tools to deliver marine nature conservation, such as Marine Protected Areas, will be key to the delivery of MEOs.

Government policy

Monitoring MEOs should provide the information needed to assess whether government policies are capable of achieving international objectives and delivering an ecosystem based approach in the marine environment. It should also allow the Government to make a clear case for changes to international management regimes (eg. the Common Fisheries Policy) where they are demonstrated to be incompatible with the overall goal of healthy ecosystems.

Sustainability and Sustainable development

MEOs can be used to inform sustainable management of marine ecosystems and resources; to measure success of sustainability.

Adaptive Management

It is necessary to respond to MEOs and reassess management schemes, subsequently adapting the management process and practices where MEOs indicate that sustainability is not being achieved.

Ecosystem Based Approach

It is fundamental to the delivery of sustainable development and compliance with national and international obligations that the ecosystem based approach is integrated with adaptive management and is informed and monitored through a suite of MEOs.

Q 53: Should consideration of objectives be required through policy guidance, changes to management regimes or sustainable development?

LINK believes that all three approaches will be necessary. We agree with the statement in paragraph 10.43 that describing or setting the MEOs should not be included in the Marine Bill. However, the Bill must contain a number of statutory duties in relation to MEOs, including (but not limited to):

- A duty on the Secretary of State to develop a set of MEOs in collaboration with the devolved administrations for the purpose of achieving the UK's vision for the marine environment, and to review regularly the set of objectives.
- A duty on all public bodies to further MEOs in the exercise of their functions (e.g. through preparation of sustainable development objectives, Marine Spatial Plans, and SEAs; considering licensing applications; and exercising direct management tools)
- Duties on public bodies to carry out monitoring (through a range of tools such as SEA and MPAs) in order to measure progress against MEOs
- Duties on competent authorities to review management measures where monitoring indicates that MEOs are not being met

Parallel duties on Scottish Ministers and relevant Scottish public bodies should form part of the Marine Act for Scotland. Policy guidance will be necessary to enable sea users and managers to ensure that MEOs are adequately addressed in their activities.

5.2 Marine Protected Areas

Summary

LINK welcomes consultation proposals relating to the designation and protection of marine protected areas (MPAs), and believes that it is vital for coherence, geographical coverage to

200nm, and ecosystem management that parallel Scottish legislation delivers a network of marine protected areas.

The UK Marine Bill offers a unique opportunity to improve on the current MPA system and ensure that national and international obligations under the OSPAR Convention and the World Summit on Sustainable Development (WSSD) are met. The UK Bill (and we would hope forthcoming Scottish legislation) should supplement the existing system by providing for a representative network of statutory Nationally Important Marine Sites (NIMSSs), including strictly protected areas (Highly Protected Marine Reserves). All MPAs should have the express and primary purpose of supporting the recovery and conservation of biodiversity and ecosystem processes. The new MPA network will be a key tool in Marine Spatial Planning and the achievement of Marine Ecosystem Objectives as well as contributing to the achievement of 'good environmental status' as required by the European Marine Strategy.

If the UK Bill (and Scottish legislation) do not provide a mechanism for delivering a coherent network of well-managed MPAs for biodiversity conservation and recovery including sites for nationally important marine features and sites for stricter protection, it is LINK's view that they will have failed.

Q 54: Do you agree that a mechanism for the designation of protected areas should be introduced in the Marine Bill? Paragraphs 10.47-10.51.

Consistency across UK administrations

LINK welcomes the reaffirmation of the joint administrations' commitment, made first in 'Safeguarding Sea Life', to *'establishing networks of marine protected areas to contribute to the attainment of healthy, functioning and resilient ecosystems and to help to halt the decline in marine biodiversity'* (para 10.47).

We support the three functions of marine protected areas outlined in paragraph 10.47 of the consultation to protect threatened and representative marine features and those that support ecosystem function.

The Joint Administrations' commitment to an integrated approach to marine management based on ecosystem needs and coherence clearly points to the need for a protected areas system that is consistent in all UK waters, from the coast to 200nm.

We strongly advocate that a new protected areas mechanism for UK-administered waters is introduced by the UK Marine Bill, and that parallel Scottish legislation for a fully consistent system is introduced as part of a Marine Act for Scotland.

What mechanism?

A new, improved system - LINK shares the view (paragraphs 10.48-50) that the existing protected area system, based on a limited suite of habitats and species of European importance, terrestrial-coastal SSSIs and a flawed and ineffective Marine Nature Reserve mechanism, is inherently unable to protect the range of nationally and internationally important features required to meet the UK's OSPAR and WSSD commitments to a marine protected area network or indeed to fulfil the three functions listed in 10.47.

Biodiversity-driven - Experience in the UK has demonstrated that fisheries management and planning tools are no substitute for a dedicated, fit-for-purpose biodiversity conservation framework driven by biodiversity conservation rather than stock management or other objectives.

Statutory - LINK believes that only a statutory approach to MPA designation will be robust enough to deliver the appropriate measures to ensure recovery and conservation of

biodiversity. The various voluntary MPAs around the UK coast have been shown not to have the tools or the 'teeth' needed to control damaging activities.

The UK Marine Bill (and Scottish legislation) must therefore introduce a new statutory mechanism for the designation, (including selection, management and enforcement), of a network of marine protected areas.

Statute should be accompanied by clear policy guidance and a stakeholder participation strategy (see New Zealand's MPA Policy and Implementation Plan²)

Legislation must enable the designation of marine protected areas in a way that is responsive to ecosystem needs and should not prescribe limits on number or percentage area.

Two-tier model - LINK supports two tiers of site protection for marine biodiversity, a model which it believes necessary for ecological coherence, to meet international obligations, and to help to deliver ecosystem-based Marine Spatial Planning, Marine Ecosystem Objectives and wider marine nature conservation measures:

- **Marine Protected Areas** (including Natura 2000 sites, intertidal SSSIs and a new protection mechanism for Nationally Important Marine Sites (NIMS)). These are sites within which a variety of activities may take place provided that they are consistent with the site's conservation objectives (including when effects are considered in combination with those of other activities). LINK envisages that such sites will allow for a flexible approach from minimal management to a range of restriction and mitigation measures for a number of extractive and non-extractive activities, as appropriate to delivering site and network objectives.
- **Highly Protected Marine Reserves (HPMRs)**. These sites are afforded a higher level of protection, excluding all damaging activities. These could be stand-alone sites or highly protected zones within larger MPAs.

Two new types of MPA - The UK Marine Bill (and parallel Scottish legislation) must therefore introduce provisions for the designation and implementation of two new types of MPA to fill the existing gaps of national importance and strict protection.

- **Nationally Important Marine Sites** – In addition to providing protection for rare and threatened habitats and species that are of national importance, 'plugging the gaps' of Natura coverage, these would also protect representative examples of the full range of the UK's biodiversity. In doing so, they represent a shift to an ecosystem approach to MPAs, helping to underpin the functioning of the wider marine ecosystem rather than focusing on a few selected components. Nationally Important sites are the main building blocks in the ecologically coherent network of MPAs required under OSPAR and the WSSD. They also represent an important route to the contribution of 'good environmental status' as required under the European Marine Strategy.
- **Highly Protected Marine Reserves** – The need for HPMRs benefiting from the highest level of protection is referred to in paragraph 10.65 of the consultation. They provide breathing space for marine habitats and wildlife to exist and recover in conditions that are as near as possible to the unexploited state, increasing the resilience of marine ecosystems in the face of climate change, and providing a vital feedback mechanism for adaptive management, as well as a resource for research and education.

² Department of Conservation and Ministry of Fisheries, New Zealand, December 2005

Q 55: Should the new mechanism complement or replace legislation for Marine Nature Reserves? Paragraph 10.52.

The new mechanism should replace legislation for Marine Nature Reserves, but without leaving any gap in protection.

Q 56-57: Which of the purposes listed should the new mechanism cover? Are there any others that should be considered? What are your views on site protection measures being used to protect interests other than those for which a site is primarily designated? Paragraphs 10.53-10.58.

Biodiversity-driven, multi-use not multi-purpose - LINK supports the establishment of 'a mechanism that can conserve and promote the recovery of:

- a. *vulnerable species and habitats* (NB This should include rare, threatened and sensitive habitats and species).
- b. *representative species and habitats* (NB We believe that this should be fully representative, rather than focusing exclusively on "*those that play an important role in supporting marine ecosystems and biodiversity*", due to our limited understanding of what is required to support marine ecosystems and biodiversity, and the need for a precautionary approach).
- c. *physical marine features and ecological processes* (see comment in reference to 'b' above).'

We believe that the conservation and recovery of biodiversity, natural marine features and ecosystems, through protection of the elements listed above, should be the express and primary purpose of designating the new MPAs.

While there is undoubtedly potential for some MPAs to offer protection for non-biodiversity purposes (paragraph 10.54, items d to h), these should be secondary and agreed on a site-by-site basis.

We believe that MPAs may be multi-use areas but should not be multi-purpose. We fear that a multi-purpose site protection mechanism would lack the focus required to deliver biodiversity conservation on the ground. NIMs and HPMRs are biodiversity conservation tools, and the policy and legislation behind them must reflect this. Where synergy with other purposes (e.g. ecosystem research) may exist, this should be explored and developed at the site or regional sea level rather than being driven by multi-purpose legislation. Site designation systems for other purposes (such as nursery spawning areas and historic sites) already exist, or should be developed separately.

Q 58: Do you agree that, where options exist, a range of factors including social and economic considerations should be taken into account in choosing between sites? Paragraphs 10.59-10.62.

Many social and economic goods and services from the sea derive from the conservation of biodiversity, and loss of marine health and quality leads to long-term and permanent loss of economic productivity and social decline. It is therefore important the creation of an ecologically-coherent network of sites must be undertaken first and foremost on the basis of ecological need rather than social and economic considerations.

LINK agrees with paragraph 10.59 that some sites or features are so important that their protection is imperative, irrespective of the socio-economic impacts. It is the role of the SNCO to identify and prioritise these.

Where there is a choice of possible sites, for example of a representative feature, initial selection and short-listing by the SNCO should be based on biodiversity alone, with socio-economic considerations factored in at a later stage. If socio-economic factors were introduced at the earlier stage, the driving factor in site selection would be the avoidance of areas with any significant immediate economic value, rather than the selection of areas of importance for biodiversity supporting longer-term resource management.

Q 59: Should we include provision for altering site boundaries, or de-designation of sites? Under what circumstances? Paragraph 10.63.

NIMSSs and HPMSs should be viewed as permanent designations in order to derive full benefits in the long term. However, LINK accepts the need for provision for altering site boundaries or de-designation under specified circumstances relating closely to the conservation purpose of the site and the network function. For example, climate change may result in changes in species or habitat distribution requiring extension or alteration of boundaries, although any boundary alterations must be predicated on biodiversity conservation grounds alone. There must be a transparent process with clear criteria for agreeing and implementing these changes.

LINK recommends that MPA boundaries accommodate buffer zones where appropriate around key features to protect ecological processes as well as habitats and species. This would also reduce the need for boundary relocations, such as in response to climate change.

Q 60: Do you agree that different marine nature conservation sites will need to have different levels of objectives?

LINK supports as key principles that:

- all MPAs should have biodiversity and ecosystem recovery and conservation as their express and primary purpose (through the elements listed in paragraph 10.47 - protection of threatened and representative features and ecosystem function);
- the precautionary principle is adhered to;
- potentially damaging activities are effectively controlled as required.

LINK agree that site objectives, management measures and levels of protection will vary from site to site, dependant on the particular features or processes being protected, however we do not agree with setting different 'levels of objectives'.

As ecosystems respond to climate change, it is even more important that MPAs need to be designated with the objective of protecting the integrity of the wider marine environment, an approach not previously taken. Buffering predicted future impacts will be a specific objective of future MPAs, and has not been explicit in the current system. Such an approach will involve identifying MPAs for areas of both natural resilience and sensitivity to predicted climate change impacts, among a range of other criteria as outlined in the Review of Marine Nature Conservation.

Q 61: What are your views on a flexible site mechanism where levels of protection can be altered to meet site needs and objectives? Paragraphs 10.64-10.66.

Flexibility in management is acceptable, so long as this is compatible with the site's nature conservation objectives, and there is a transparent process with clear criteria for agreeing and implementing these changes. Management decisions must be made according to a defined process that sets nature conservation objectives against management objectives and

reaches decisions according to tests of importance, as provided for by Article 6 in Natura sites.

LINK is strongly opposed to the concept of reducing the level of protection for NIMs and HPMPs that are perceived to have recovered. We believe this could allow levels of protection to be undermined subject to social or economic pressures, prompt ongoing negotiation and conflict over the level of protection at a particular site and ultimately negate the critical long-term benefits of MPAs and the MPA network.

As stated in response to Q 54 above, we support a two-tiered mechanism that incorporates both variations in management measures (NIMs, Natura, coastal SSSIs etc), and simpler strict protection (HPMPs).

Q: 62-63: What are your views on whether MPAs should directly control activities managed at the national level, or provide protection through wider marine management mechanisms? What would be required to make each approach effective? Are there any other mechanisms that we should consider introducing for site protection? Should we introduce a requirement for an appropriate assessment to be carried out where activities are likely to cause significant damage to a site?

In Natura 2000 sites, the relevant authorities have frequently been unable or unwilling to use their powers to provide appropriate indirect protection, resulting in site damage. Experience from protected areas in the UK and overseas suggests that there should be both direct and indirect control of activities within MPAs.

Indirect control - We support the use of wider marine mechanisms like Marine Spatial Planning, sectoral strategies and restrictions, eg fishing or navigation, or voluntary codes and stakeholder stewardship, which have a role to play in broadening responsibility and buy-in and encouraging practices that avoid and pre-empt damage. The UK Marine Bill (and Scottish legislation) should place a duty on public bodies to fulfil their functions (including spatial planning and licensing) in a way that is compatible with the conservation of MPAs, including Natura sites, NIMs and HPMPs.

Direct control - Wider marine mechanisms and indirect controls have been shown to be insufficient on their own. LINK advocate that the appropriate SCNO exercise direct control of NIMs. The SNCO is the most appropriate body for site management planning, regulation and consenting of potentially damaging activities, and associated recommendations on mitigation. The UK Marine Bill (and Scottish legislation) should provide for more 'top-down' direct controls to be exercised by the SNCO, eg byelaws and Stop Orders, as an effective and straightforward way of ensuring site protection. We support a direct management approach, with the SNCO taking lead responsibility for assessing activities and enforcing protection. There should be a presumption against activities that could have a significant detrimental impact on the site.

There is a need for a mechanism to influence activities regulated at a European (or UK in the case of Scotland) level where these are impacting on the MPA.

Q 64-66: Do you consider that the seaward boundary of SSSIs should be clarified? Which option would you prefer for the interface between the two regimes? What are the key considerations? What do you consider are the best options for the landward boundary for MPAs and the seaward boundary for SSSIs, and why? Paragraph 10.70.

LINK considers that the seaward boundary of SSSIs should be clarified to take account of the new MPA regime. We advocate a pragmatic approach that aims to avoid duplication and overlap of designations while focusing on maintaining the ecological integrity of the site.

We support Option 2, whereby there is a common boundary between SSSIs and MPAs when two such site designations are abutting. Whether that shared boundary is at Highest Astronomical Tide or Mean Low Water can be flexible depending on the features being protected. When either a SSSI or MPA is in isolation, we support the idea of flexibility to enable either designation boundary to be extended in order to offer the most suitable protection for the interest features. Therefore we suggest that the default landward boundary of MPAs should be Highest Astronomical Tide and the default seaward boundary of SSSIs at Mean Low Water, but with flexibility in either direction.

Whilst an overlapping regime would give even greater flexibility in terms of management options, we feel that this could result in unnecessary bureaucracy.

5.3 Species conservation measures

Summary

LINK welcome Defra's stated commitment to protecting marine species that are vulnerable to human impacts (p. 106) and looks to the marine bill to introduce wide-ranging measures to support the protection, conservation and recovery of biodiversity, throughout the marine jurisdiction (i.e. to 200nm). Since nature conservation from 0 – 12nm is a devolved issue, LINK believe such an approach also requires a parallel Marine Bill for Scotland. We recognise that some marine species particularly threatened by human activities are currently offered a degree of protection under the Wildlife and Countryside Act 1981 (WCA) as amended by the Nature Conservation (Scotland) Act 2004. Such levels of protection must remain but also be augmented, whether in the UK Marine Bill and devolved legislation itself or through those existing Acts being amended by the UK Bill and subsequent Scottish legislation.

LINK believes that improved measures are also essential for biodiversity protection and recovery in the wider sea beyond Marine Protected Areas. These measures should not replace the roles of the WCA and NCSA in protecting marine species but rather complement them³.

LINK also recommends measures requiring public bodies to work towards agreed targets and status for marine features, as suggested in the RMNC report (para 7.32). MEOs could be used to set lower limits below which the population/extent of priority Nationally Important Marine Features (NIMFs) must not fall.

Q 67: Are there threats to the conservation of marine species in the offshore area or elsewhere that are not addressed by existing measures and controls? Please give examples

The offshore area (beyond 12 nautical miles) is rich in marine biodiversity, from coldwater corals to basking sharks. Human activity, whether oil extraction, deepwater fishing, seismic surveys, boat traffic and military sonar are also increasing in the area, impacting on marine biodiversity such as deepwater fish, coldwater corals and cetaceans⁴. Many marine species, such as cetaceans, basking sharks and marine turtles, regularly move between inshore and offshore waters yet receive no protection beyond 12nm. The 'biodiversity duty' under the NCSA only applies to Scottish waters to 12nm and is not linked by statute to a particular list of important marine features.

³ There is already coverage to 200nm in many cases. WCA 81 pt 1 (unamended since 1999): applies Scotland 12 – 200
WCA 81 pt 1 (amended by NCSA 04) Applies Scotland 0-12nm

WCA 81 pt 1 (amended by CROW 2000 and NERC 06 applies Eng & Wales 1 – 200nm

⁴ Simmonds, M.P., Dolman, S. and Weilgart L. 2003. Oceans of Noise. Published by WDCCS – available on WDCCS website: www.wdcs.org

LINK believe that nationally important marine biodiversity should be protected throughout UK waters. In order to achieve this, the 'biodiversity duty' should be applied to all UK waters and linked by statute to the Biodiversity Action Plan list and to the Nationally Important Marine Features (NIMF) list currently in preparation. (See response to Q68)

In addition to this we believe the Marine Bill should improve enforcement of existing laws to prevent intentional or negligent impacts on protected species beyond 12nm.

Climate change

Climate change is also a threat not addressed by existing measures and controls. There is currently little practice of regulation in the marine environment addressing the causes of climate change and ocean acidification. However, there are opportunities for this to occur under the Habitats, EIA and SEA Directives that could be applied. Since about 80% of the UK's CO² emissions come from oil and gas from UK Continental Shelf Seas (Therivel, in press), the SEA directive could be applied to marine activities to reduce climate change.

Q 68: Which option for species protection in the Marine Bill would be most compatible with the principles described in section 4? Are there any other options that should be considered?

The Marine Bill should introduce wide-ranging measures to support the protection, conservation and recovery of marine species, building on existing provisions in the 1981 Wildlife and Countryside Act and 2004 Nature Conservation (Scotland) Act.

We are concerned that one of the options is to repeal (and not replace) the existing species protection legislation for the marine area. LINK would therefore support either: replacement of relevant sections of the WCA with clauses in the Marine Bill more specific to marine species, with additional, new measures for the conservation and recovery of biodiversity in the wider sea; or amendment of identified elements of the WCA to address loopholes and ensure their applicability to the marine environment (alongside extension of the provisions to 200nm, and new measures for protection, conservation and recovery of marine biodiversity).

Q 69: Do you consider that unlicensed activities currently threaten the conservation of marine ecosystems and biodiversity? If so which activities are of most concern and why?

Yes. Unlicensed activities, such as jetskis and wildlife watching boats can affect wildlife as a result of propellor damage, underwater noise and harassment. LINK is concerned at the effect of wildlife watching boats and leisure craft on biodiversity 'hotspots' such as cetacean and basking shark breeding and feeding areas and on seabird aggregations floating on the sea surface. Military sonar also threatens the conservation of cetaceans in UK waters and must be included in consideration of MEOs, Marine Spatial Planning and cumulative/antagonistic and transboundary impact assessments.

Q 70: What are your views on the introduction of byelaw-making powers for the control of unlicensed activities?

LINK believes that powers should be given to competent authorities to create zones where, for example, speed restrictions can be put in place or vessels restricted from entering, for reasons of wildlife protection. Such powers could be used flexibly, to protect specific areas at certain times of the year, for example seal haul-outs during seal pupping season, whilst not restricting activities outside these areas or at other times of the year.

Q 71: Are there alternative regulatory approaches to the control of such activities that we should consider?

LINK does not consider the following to be alternatives to the above, but measures to be used in conjunction with those outlined in other sections.

Marine Wildlife Watching Code

A UK-wide, consolidated code of conduct for marine wildlife watching is needed and legislation could achieve this. The Nature Conservation (Scotland) Act placed a requirement on SNH to produce a Marine Wildlife Watching Code. Although a welcome development the code itself is not binding and those breaking it cannot be prosecuted. The Scottish code could serve as UK-wide template which was then given statutory underpinning.

Biodiversity stop orders

The SNCO should be given powers to call an urgent halt using Biodiversity Stop Orders to activities likely to damage Nationally Important Marine Features and Biodiversity Action Plan habitats and species. Such powers would be relevant where, for example, ongoing operations were discovered to be having an unacceptable impact upon a species or habitat, or where a population of a mobile marine species unexpectedly occurred in an area where an operation could impact upon it.

We believe Biodiversity Stop Orders are a vital tool, given the fragility of some marine communities and the long-term damage that can be caused by a single activity during a short timescale. They should be quick to enact, providing an effective tool by which activities can be stopped until a byelaw or other appropriate mechanism can be implemented. Monitoring of the effectiveness and compliance with Biodiversity Stop Orders and byelaws will also be required.

Q 72: Should any powers to control unlicensed activities be related to marine protected areas, or capable of wider application?

LINK believes that any powers to control unlicensed activities should be capable of wider application. Many of the species (e.g. cetaceans and basking sharks) that attract wildlife watching, range over such large areas that spatial restrictions alone are not practical. Spatial measures could prove useful at known migration bottlenecks or reliable feeding or pupping areas, but outside such areas, a combination of Codes of conduct and licensed regulation would be more appropriate.

In order to facilitate biodiversity conservation in the offshore area it is important that where the UK is unable to take unilateral action, a clear remit and process for competent authorities (e.g. government departments) is set out in policy guidance to seek action through the relevant international bodies. For example, where fisheries issues which fall under European Community competence impact on the UK's ability to achieve domestic conservation objectives, the Secretary of State should be required to report to the European Commission.

Enforcement

Q 73: What do you think are the most important improvements that the Government could make to the prevention of marine nature conservation offences and the enforcement of relevant legislation?

There have been no prosecutions under the WCA for offences to marine species since 1981, despite reported impacts on protected species. This does not mean that the legislation is redundant, but instead highlights the need for effective enforcement.

In a similar way to that in which sea fishery officer duties are often endowed upon other authorities (e.g. Royal Navy, SNCOs), powers for the enforcement of nature conservation legislation could be given to all appropriate competent marine authorities, including the newly formed Marine Fisheries Agency (MFA), Royal Navy, and Maritime and Coastguard Agency, thus providing an efficiency gain. There should be a requirement for all authorities involved to work together, and develop best practice and an effective framework for joint enforcement of marine wildlife protection measures. We note that the MFA may be integrated into a new MMO, and suggest that the MMO could play a co-ordinating role in nature conservation enforcement.

A centrally co-ordinated system for recording wildlife crime incidents should be established which would result in more effective use of resources, allowing their direction towards conservation priorities and the identification of areas where there is a high incidence of wildlife law breaches.

**Q 74: What are your views on which organisations should (or should not) carry out different stages of marine nature conservation functions arising from the Marine Bill to ensure the principles in section 4 and those in paragraphs 11.16-11.25 are delivered?
Q 75: Do decisions on which organisations fulfil which roles affect any of your answers on other questions in this consultation document? If so, how?**

LINK believes that the SNCOs must retain their independent nature conservation advisory role in relation to all aspects of marine management. They should also have responsibility for the identification, designation, direct management and monitoring of MPAs.

We also advocate that appropriate powers, duties and functions be given to the appropriate authorities to enforce marine nature conservation legislation, including the Royal Navy, the Maritime and Coastguard Agency and the Marine Fisheries Agency. We note that this latter may be integrated into the new MMO, and we suggest that the MMO could provide the necessary co-ordination between nature conservation enforcement bodies (see Q.73).

Furthermore, we believe all public bodies and office-holders should be given a statutory duty to further the conservation of biodiversity (see Q.76) and to contribute to the achievement of MEOs (Q.53 also outlines a number of other duties in relation to MEOs).

Q 76: Do you consider that any changes to functions, powers or duties of delivery organisations are needed to facilitate the implementation of nature conservation legislation in the Marine Bill?

Biodiversity Duty and Nationally Important Marine Features

A general duty should be placed on all public bodies and office-holders to further the conservation of marine biodiversity out to 200nm. We would urge the Bill Drafting team to consider stronger wording similar to that contained within the The Nature Conservation (Scotland) Act 2004: "*It is the duty of every public body and office holder in exercising any functions, to further the conservation of biodiversity so far as is consistent with the proper exercise of those functions*". We believe that a requirement for public bodies to further, rather than simply have regard to, biodiversity conservation throughout UK waters (0 – 200nm) would demand greater attention to the needs of biodiversity in the exercise of their functions.

Following on from the RMNC process, work is currently underway at both the UK and Scottish level to develop lists of nationally important marine species and habitats, which together are known as Nationally Important Marine Features (NIMFs). LINK considers that a number of measures will be needed to provide for the conservation and/or recovery of

NIMFs, both through the designation and protection of important areas, and in the wider sea. The UK (and Scottish) lists should be given legal status and be revised on a regular basis.

Marine Ecosystem Objectives

LINK believe that objectives and indicators relating to the list of Nationally Important Marine Features (NIMFs) currently under development by JNCC and others should be integrated into MEOs, and that a number of statutory duties are required to ensure MEOs are taken into account in all aspects of marine management (See responses to questions 52 and 53).

Powers for competent authorities

LINK believes that powers should be given to competent authorities to create zones where, for example, speed restrictions can be put in place or vessels are restricted from entering, for spatial and temporal reasons of wildlife protection as outlined in answer to question 70.

Measures to address noise pollution

There is considerable evidence that human activities have significantly increased the overall level of sound in the oceans during the last few decades. Accordingly, there is growing concern that this trend is having a significant negative impact on marine life, including echo-locating species, such as cetaceans, in particular.

Statutory acoustic guidelines should be developed for all activities that introduce potentially harmful noise into the marine environment, with subsequent impact avoidance, reduction, mitigation, monitoring and reporting requirements and enforcement. Regulatory standards for the construction, design and use of technology in the marine environment should consider noise production levels along with other environmental concerns. Noise pollution should also be considered in the development of Codes of Conduct for unlicensed activities.

6. The potential for a new Marine Management Organisation

Summary

LINK support the establishment of a UK Marine Management Organisation (MMO) responsible for managing reserved matters throughout UK waters. **LINK believes there must also be some form of lead Scottish decision-making 'body' or affiliated counterpart of the UK MMO.** Whatever form it takes, the Scottish body must be answerable to Scottish Ministers, with its own budget and responsible for overseeing strategic and spatial planning of devolved activities in those regional seas which are wholly or partially coincident with Scottish waters, in close co-ordination with the UK MMO, who would have responsibility for reserved matters.

Q 77: Have we correctly identified the functions that are 'core' to deciding whether to create an MMO? Q 78: Are there other functions that you consider 'core' to an MMO? Why?

LINK agrees that Marine Spatial Planning and management of a new, integrated licensing regime are new 'core' functions for which the new MMO (and Scottish counterpart) must be responsible.

Strategic Marine Planning Policy Framework

As discussed in answer to Question 13, Government Departments and devolved administrations would be responsible for, and have "ownership" over, the preparation of the Strategic Marine Planning Policy Framework statement, whilst the MMO would be the key co-ordinating and integration body in the development of that framework. A new MMO must have clear lines of responsibility to Government.

Marine Spatial Planning

LINK agrees that core Marine Spatial Planning functions for which the MMO should be responsible are data collation, mapping, Strategic Environmental Assessment, consultation and monitoring and review. There is an urgent need for data to be managed and facilitated centrally and to common standards. A new MMO could manage data to enable organisations and government departments to find and access information quickly so that, once recorded, the knowledge can be used repeatedly for different purposes, therefore greatly increasing its value.

Data

Data held in Scotland must be freely available to a UK MMO and vice versa in order to aid and inform cross boundary issues. The MMO must cooperate closely with all relevant Government Departments and the Scottish MMO where appropriate.

Strategic Environmental Assessment

LINK welcomes government's aim to implement the SEA process on each Marine Spatial Plan. SEA is a key tool to ensure best use of marine resources with minimum adverse impact on the environment.

Q 79: Do you consider that the Marine Fisheries Agency should be merged into an MMO, if established?

LINK can see some advantages in the Marine Fisheries Agency (MFA) becoming an arm of the new MMO. The MFA's experience of enforcement could be capitalised upon, and its enforcement powers should be extended to support other MMO functions (i.e. license conditions), as well as nature conservation (the MFA's monitoring of vessels' VMS data is particularly relevant to these roles). In addition, incorporating the MFA into the MMO could help ensure that fisheries considerations are integrated into wider marine management, in particular through MSP.

However, not all of the listed MFA functions (Annex 5D, Appendix i, i.v) so clearly enhance the MMO's core functions. We would stress that the body implementing the MFA's functions must retain a clear link to those in Government responsible for fisheries policy i.e the Marine and Fisheries Directorate of Defra. The work of the Scottish fisheries enforcement body should be closely integrated with the MFA (whether or not it is included in the new MMO).

Q 80: Do you consider that CEFAS should remain outside an MMO, if established?

LINK agrees with the statement in paragraph 11.46 that it would be inappropriate to integrate CEFAS, as a whole, into a new MMO. The range of functions which CEFAS currently undertakes, and the way in which it undertakes them (often on a consultancy basis) would not sit well with the MMO's core functions. However, we also agree that further consideration should be given to integrating certain discrete CEFAS functions.

Q 81: Have we identified the right marine organisations for potential inclusion in an MMO?

We note that the Government is currently not minded to include the MCA within the MMO. The MCA should provide information to the MMO that will inform MSP, for example shipping movements in relation to offshore energy developments. The MCA should also work closely with the MMO, to contribute to enforcement for the protection of the marine environment, including managing disturbance and destruction of marine habitats and species, and pollution by shipping.

Q 82: Are there other marine organisations that we should be considering merging into an MMO?

No, there are no other marine organisations that LINK believes should be merged into an MMO. Some functions of other organisations should, however, be transferred, therefore the staff and costs of these functions should not be treated as 'new'.

Q 83: Do you wish to make any points to be included in our consideration of whether individual non-core functions should be delivered by an MMO?

With reference to Table 2, 'Potential MMO functions' LINK agrees that the Core functions of an MMO are Marine Spatial Planning and delivery of an integrated licensing regime.

Under Non-Core Functions, LINK's view is as follows:

11.48 MPAs: The SNCOs must retain their powers to be the lead bodies in the designation of MPAs and protection of marine species and habitats. They should therefore be undertaking the:

- 'initial analysis of areas in need of protection and options for representative sites',
- site selection,
- site designation
- development and agreement of site objectives,
- selection of measures for site protection, and site casework.

The SNCOs are experienced in stakeholder engagement, and always consult on and carefully consider socio-economic factors in the designation of sites. LINK recognises and supports that the MMO (UK and Scottish), working closely with the appropriate Statutory Nature Conservation Organisation and JNCC, will be well placed to undertake national stakeholder engagement and consultation, consideration of social and economic factors, management and/or appeals. In addition, the SNCOs and MMO (UK and Scottish), must also collaborate to consider requests for statutory MPAs submitted by other organisations, for example NGOs and developers, and designate these if deemed appropriate.

11.49 Natura 2000: Designation of Natura 2000 sites should remain the duty of the Secretary of State and Scottish Ministers following advice from the SNCOs. Selection should be done in close collaboration between the MMOs and SNCOs.

11.51 MFA & recreational fisheries: The MFA 'arm' of the MMO and equivalent in Scotland can aim to achieve better management of recreational sea angling, including a licensing system.

11.52 – 11.53 MFA and enforcement of nature conservation measures and marine licences: As stated above in answer to question 79, the MFA should use its sea-going capability to aid enforcement and monitoring in UK seas, not only for fisheries and 'no take zones', but for nature conservation and the protection of marine species and habitats. This can include enforcement of licences. LINK would particularly welcome the MFA having sufficient resources to monitor and enforce 'best practice' amongst developers, thereby holding them to the conditions of their licence. This should include enforcement of licences for aggregate extraction, and oil and gas extraction, including monitoring of pollution incidents.

11.54 The MFA and potential ELD (European Liability Directive) Potential Competent Authority Role in relation to biodiversity (new role): The MMO will be best placed to

administer the 'polluter pays' principle under this Directive, although in wide ranging impacts, such as CO² release from oil and gas from the seas, wider interpretation and enforcement of this principle may be necessary though integration with other authorities. The MMO should work to enforce this Directive in close collaboration with the Environment Agency or SEPA, and the MCA, and can employ the ships of the MFA for this role.

11.55 – 11.58 The role of CEFAS

Marine research on behalf of UK Government & Marine Monitoring on behalf of government: CEFAS and other research bodies could have a special relationship with the MMO to provide the services required for these functions, without being subsumed into the MMO.

11.57 Targeted additional marine data collection (new role): LINK believes there must be resources and effort made to target additional data collection to aid Marine Spatial Planning. There must be a mechanism for Scottish data to be held in Scotland and easily accessed by the UK MMO. There are plans for the Scottish Coastal Forum to co-ordinate a Scottish Marine Observatory, and this must be made easily accessible to Scottish and UK MMOs and other UK interests that must ensure they have compatible storage methods.

11.58 Co-ordination of existing data: The MMO and Scottish MMO should have overall responsibility for this but could delegate this role.

11.59 Support and guidance functions for ICZM (new role): It would be advantageous for the MMO to take on this role of centralised support and guidance for ICZM initiatives. The MMO should also use the stakeholder networks and other benefits of ICZM initiatives to ensure joined up management at the coast under Marine Spatial Planning. This should include assisting with the establishment of ICZM initiatives where they are needed, but presently lacking, and developing a standard ICZM approach. In Scotland, existing and potentially new Coastal Partnerships could work as advisory bodies for a Scottish MMO without the need for additional powers, however there is a need for these bodies to have a specific structure and additional funding. These 'advisory bodies' are necessary to fulfil ICZM commitments as well as co-ordinate stakeholder views.

11.60 Marine Ecosystems Objectives – stakeholder engagement & consultation; consideration & agreement; monitoring & reporting on delivery (new role):

The MMO is likely to be well-placed to carry out the appropriate consultation with stakeholders and to communicate information about MEOs and what they mean in terms of regulation and management. While consultation will be important in developing an initial set of MEOs (and revising them in the future) we are not convinced that it will be possible or appropriate to develop consensus on where "targets" for specific ecosystem elements should be set (as outlined in our response to Section 10, we do not believe it will be possible to set specific target or limit reference points for all ecosystem elements in any case). We would like to stress the importance of scientific input to the development of MEOs, including from the nature conservation agencies.

11.61 Environmental byelaws: identification of need for controls; their development; Stakeholder engagement & consultation; consideration and agreement of controls; appeals (new roles):

LINK advocates the use of byelaw making powers for the purpose of nature conservation. We suggest that SNCOs as well as the MMO should use such powers. The MMO could facilitate the appropriate consultation with respect to byelaws.

11.62 Statutory (marine) nature conservation advisory role; Advice on marine nature conservation should remain with the Statutory Nature Conservation Organisations.

Q 84: Do you agree that we should exclude the potential transfer of statutory (marine) nature conservation advisory roles to the MMO from further consideration?

LINK believes that the SNCOs must retain their powers to play a primary role in designation of Marine Protected Areas and protection of marine species and habitats. Their stature as an independent government body should not be subsumed by the MMO, and they should continue to give advice in an independent capacity.

11.63 (Marine) Historic environment advisory role : Advice on marine heritage should remain with English Heritage, as it should with Historic Scotland (HS) in Scottish Territorial waters. However, both EH and HS must collaborate closely and be involved in relevant Marine Spatial Plans.

11.64 Potential EU Marine Strategy Directive functions (new role):

It is likely that a new MMO will be an appropriate body to take on functions under the Marine Strategy Directive – we believe that this role would fit with the Core functions of the MMO (above). More information is needed both on the MMO itself and on the final form of the Directive before proper assessment can be made on this point.

Q 85: Are there any other ‘non-core’ functions that we should be considering for inclusion in an MMO?

We have no further suggestions at this stage.

Q 86: Are there functions you consider incompatible - i.e. they should not be undertaken in combination – whether by an MMO or another body?

Link reiterates here that advisory functions must be separate from planning and licensing functions, thus the Statutory Nature Conservation Organisations must retain their powers to play a primary role in designation of Marine Protected Areas and protection of marine species and habitats. Their stature as an independent government body should not be subsumed by the MMO, and they should continue to give advice in an independent capacity.

Q 87: Are there functions that you consider should be grouped together - i.e. undertaken within the same organisation? If so, should this be the MMO or not?

See our comments above with reference to Table 2.

Q 88 Do you have views on the most appropriate status for an MMO?

At this stage in development of the government's Marine Bill, LINK is merely concerned that the MMO will be empowered to undertake the functions as discussed in several answers above. LINK wishes the MMO to have appropriate status for it be effective for those functions we have favoured in our answers to the above questions.

Q 89 Do you have views on the nature of the relationship that an MMO would need with other bodies?

LINK believes there must be some form of lead Scottish decision-making 'body' or affiliated counterpart of the UK MMO. Whatever form it takes, the Scottish body must be answerable to Scottish Ministers, with its own budget and responsible for overseeing strategic and spatial planning of devolved activities in those regional seas which are wholly

or partially coincident with Scottish waters in close co-ordination with the UK MMO, who would have responsibility for reserved matters.

Q 91: Are there any other comments you want to make regarding the potential creation of an MMO?

The MMO could be a cross-border UK body where reserved functions and responsibility for overarching issues were retained by Westminster, for example in dealing with oil and gas. This system should allow both reserved and devolved issues to be dealt with in a coordinated manner.

The overarching body could be established using the UK Bill, including a requirement for the UK and devolved administrations to coordinate their responsibilities. This would also allow for 'future proofing', for example: in case of further Scottish devolution as well as the future development of a Marine (Scotland) Act, for which LINK is actively lobbying. The Marine (Scotland) Act should then specify the powers, functions and duties of a Scottish MMO in regard to devolved matters. This would also allow full integration of any future Scottish Marine Bill as well as facilitating and streamlining the establishment of a Scottish MMO.