

Response to the UK Draft Marine Bill – June 2008

Introduction

- **Scottish Environment LINK is the umbrella body for Scotland's voluntary environmental organisations, representing around 500,000 members.** Scottish Environment LINK's Marine Task Force and its campaign for UK and Scottish Marine Bills is supported by:
 - Hebridean Whale and Dolphin Trust
 - Marine Conservation Society
 - National Trust for Scotland
 - RSPB Scotland
 - Scottish Wildlife Trust
 - WWF Scotland
 - Whale and Dolphin Conservation Society

- Scottish Environment LINK's Marine Task Force want to see protection for all of the UK's Seas. We welcome the opportunity to respond to DEFRA's consultation on the draft UK Marine Bill, but due to the mix of devolved and reserved matters both within and beyond 12nm we also recognise the vital importance of parallel marine legislation being developed in Scotland and Northern Ireland. We therefore strongly welcome the Scottish Government's proposal to develop a Scottish Marine Bill. Scottish Environment LINK's Marine Task Force is calling on all four administrations to ensure that these separate pieces of legislation are compatible, and that their implementation delivers comprehensive and coherent protection and management throughout UK seas.

- In responding to this consultation we have placed an emphasis on issues that relate to Scotland. For this reason we have commented only on Parts 1-4 and 7-8 of the draft Bill. Scottish Environment LINK works closely with sister Link organisations in England, Wales and Northern Ireland who will also be submitting responses and we support the issues put forward by these organisations. Some members of Scottish Environment LINK's Marine Task Force are also represented on our sister Link organisations and we further support the responses of these member bodies.

Overarching Comments

We welcome publication of the draft UK Marine Bill but would like to make the following overarching comments:

- There is insufficient detail in the policy documents to understand how matters will work in practice or indeed what is trying to be achieved by the Draft Bill. We are particularly concerned about the lack of detail in the policy documents regarding the arrangements with Scotland and we are therefore unclear as to what the Draft Bill is trying to achieve regarding the split of responsibilities between Scotland and the UK.
- The purpose of the Draft Bill is to bring integration into the planning, enforcement and management of the seas around the UK. It is unclear how such integration will work between the UK Government and devolved administrations, Scotland in particular. The split of powers and responsibilities between the UK and Wales/NI is much clearer than that between the UK and Scotland.
- The draft Marine Bill is weak in terms of sustainable development and does not enhance, or to a degree achieve, the principle of sustainable development as a prime motivation. There should be a stronger section in the Bill setting out the overall aims and objectives of the Bill, which should include a precautionary approach to the protection of the seas around the UK, and against which the rest of the Bill should be interpreted. Indeed, the precautionary principle should be a guiding principle throughout the Bill.

Part 1 – The Marine Management Organisation

1. The MMO will deliver reserved marine management functions on behalf of the UK Government, and Welsh Ministers will be responsible for devolved functions in Welsh territorial waters. The Scottish Government's Sustainable Seas Task Force has been discussing the likely proposal to create a Scottish MMO through its own legislation to undertake devolved functions, while the Northern Ireland Executive is considering various delivery options, including an MMO.
2. To secure the maximum benefits for the marine environment, the UK MMO must be designed to facilitate formalised working arrangements with the expected Scottish MMO, Welsh Ministers, potential Northern Irish MMO or any such organisations or appropriate bodies in the devolved administrations carrying out such functions and *vice versa*. Whilst we recognise that amendment(s) to the draft UK Bill could be seen as premature, at a point at which there are no specific proposals in place to create a Scottish or Northern Irish MMO, we believe that an appropriate amendment could be worded in such a way as to cover e.g. any bodies set up by the devolved administrations that have substantially the same objectives as the UK MMO. The most logical place for such an amendment would appear to be Clause 24. Such formalised working arrangements will assist sharing of information and best practice, and ensure that the UK's seas are managed in a coordinated and coherent manner resulting in ecosystem-based management.
3. The duty on the MMO to take into account guidance from the Secretary of State on achieving the overall objective of "making a contribution to the achievement of sustainable development" is weak. The role of the MMO should be made stronger by identifying the task as one of furthering or promoting sustainable development rather than contributing to it. If the MMO is to be seen as leading the task of delivering sustainable use and conservation of marine resources then the Draft Bill does not adequately reflect such a role. The Draft Bill should be amended to refer to a duty to further sustainable development and there should also be a clear conservation duty on the MMO in carrying out all of its functions.
4. There would appear to be some confusion about the role of the IPC in Scottish Waters. We share the concerns of our sister Link organisations with regard to the IPC and believe that the MMO is the logical body to licence all marine projects for reserved matters, irrespective of their size. We would like to seek clarification of the role of the IPC in Scottish waters and in particular that the provisions of the Planning Bill, currently before the Westminster Parliament, appear to extend only to Scotland insofar as required for the purpose of the construction of an oil or gas cross-country pipe-line, one end of which is in England or Wales, and the other end of which is in Scotland (Clause 198).
5. There is no Government commitment to investment in new surveys to underpin the marine plans and associated Strategic Environmental Assessments and fill key data gaps in seabed mapping and species data to inform the designation of MCZs. The MMO needs to not only pool data but ensure it is 'fit for purpose' and up to date; and that data gaps continue to be filled to inform planning, management, designation of MCZs and the sustainable development and exploitation of UK seas. Such investment in new surveys is essential, and must be in addition to existing surveys.

Part 2 – Marine Planning

6. In order to implement an ecosystem approach, as required by the Marine Strategy Directive and signed up to by all four administrations¹, marine management for UK seas must be based on biogeographical rather than political boundaries and therefore we believe that marine management on a regional seas scale is the most coherent approach. Regional seas have been defined as areas of distinct physical, geological or biological characteristics such as the Northern North Sea or Irish Sea. The main aim of the Marine Strategy Directive is “*to achieve or maintain good environmental status in the marine environment*” by 2020. Should provisions be included in the UK Marine Bill to allow devolved administrations to produce joint plans with the UK MMO at the regional seas level it would be much more likely that good environmental status can be achieved. Given that Scottish waters (territorial waters and offshore areas in the Scottish fishing zone adjacent to Scotland) make up approximately 60% of UK seas, the importance of joint planning at the regional seas level is clearly critical in achieving good environmental status and meeting our international commitments.
7. A Marine Policy Statement should be developed and agreed jointly by all four administrations and we therefore urge the UK Government to work with Scottish Ministers, and *vice versa*, to ensure full participation in the joint UK-wide Marine Policy Statement. Additionally, we would want to see high level objectives which deliver the ecosystem approach forming the basis of such a marine policy statement. We would refer to Wildlife & Countryside Link’s response on high level objectives and also the work by the Advisory Group on Marine and Coastal Strategy/Sustainable Seas Task Force in Scotland on marine objectives and desired state. We believe that a shared, high level policy statement, based on ecosystem objectives is essential to secure coherent, ecosystem-scale marine management across UK waters.
8. In order to implement an ecosystem approach, we would advocate a joint approach to marine management for UK seas. It is clear that the draft bill does not contain a proposed system of marine planning that is consistent with joint planning across administrative boundaries. Scottish Environment LINK’s Marine Task Force is disappointed that the draft bill does not contain powers for marine planning authorities to ensure that plans are joined-up across borders. We believe that there should be greater integration of plans and the ability to establish joint planning arrangements as well as a commitment from all UK Administrations to work together across political boundaries, even where different legislation is used to deliver planning. There should also be a duty to consult on cross border issues as well as across devolved/reserved issues. See Scottish Environment LINK Marine Task Force’s proposed model for joint planning based on a regional seas model at ANNEX A.
9. The precautionary approach must be a key principle of marine planning where there is a lack of data, high risk of environmental damage or MCZs have not yet been designated. Monitoring and review of plans to enable future adaptive management, particularly as new data or experience becomes available, will also be essential.

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

Part 3 – Marine Licensing

10. There are a number of confusions with regard to the licensing provisions in the Bill which need clarification which we intend to follow up with officials from the Scottish Government and DEFRA. For example, in clause 60(1)2., “*depositing of substances or objects in the sea or on or under the seabed from a British vessel, aircraft or marine structure or a container if the deposit is controlled from a British vessel, aircraft or marine structure*”, has no geographic limit therefore implying that it includes the Scottish inshore region. This is probably unintentional, but the implication of this is that Scottish Ministers would be the licensing authority for the offshore area adjacent to Scotland, but that the licensing authority for the inshore region would be the Secretary of State. Similarly, there are other similar examples in clause 60 where no geographic limit has been specified.

Part 4 – Marine Conservation Zones

11. Initial conclusions from the Sustainable Seas Task Force, the stakeholder group set up by the Scottish Government to develop proposals for Scottish Marine legislation and form the basis for consultation, indicate that the Scottish Marine Bill will include a three pillar approach to marine nature conservation including a network of marine protected areas currently labelled Nationally Important Marine Areas (NIMAs). Under the current devolution arrangements these NIMAs could only apply out to 12 nm. The Scottish Government has also stated the intention to seek devolution of marine nature conservation powers out to 200 nm. Scottish Environment LINK’s Marine Task Force believe that devolution of marine nature conservation duties/powers beyond 12 nm around Scotland should be further considered as this would ensure that conservation delivery is integrated with accountability for action e.g. designation and enforcement of marine protected areas should be linked, particularly as in the Scottish Fisheries Zone the Scottish Fisheries Protection Agency is responsible for fisheries enforcement. We note in the draft Marine Bill that no body is given the responsibility of enforcing Marine Conservation Zones in the offshore waters adjacent to Scotland and clarity is needed on this point.
12. The UK and Scottish Governments should ensure that NIMAs, MCZs and Natura sites deliver a coherent and representative network of Marine Protected Areas throughout UK waters. This is vital if the UK Government is to meet its commitments under OSPAR and the Marine Strategy Directive.
13. It is also critical that the provisions in the Bill for MCZs are strong enough to meet good environmental status by 2020. We believe that the Bill should provide for the development of a network of MCZs rather than individual sites only and there should be a clear duty to designate sites in order to achieve an ecologically coherent and representative network of MCZs.
14. We note that the only proposal for marine nature conservation in the Draft Bill is a network of marine protected areas, with no specific proposals for further species protection or a Biodiversity Duty beyond 12 nm. We would refer the committee to the Nature Conservation paper from the Sustainable Seas Task Force (SSTF) in Scotland. In the absence of further devolution of marine nature conservation we would want to ensure that any proposals for the Scottish Offshore Zone were at least as strong as those proposed in this SSTF paper. These proposals include extension of Part One of the Wildlife and Countryside

Act 1981 beyond 12nm and the Biodiversity duty as per the Nature Conservation (Scotland) Act 2004, extended to 200nm. In particular we note that, as proposed by the SSTF, designation of marine protected areas would be on purely scientific grounds and socio-economic factors would only be taken into account in the future management of sites.

15. Scottish Environment LINK's Marine Task Force consider that sites (MCZs and NIMAs) should be identified, selected and designated using scientific criteria alone. We are concerned that, as currently drafted, the legislation has the potential to allow socio-economic factors to override national and international conservation priorities and hinder site designation. This is likely to result in fewer sites being designated, the most important sites for biodiversity potentially remaining unprotected, and a network that as a whole is neither comprehensive nor ecologically coherent.
16. We believe that there is already sufficient data to start designating sites. In the marine environment it will always be necessary to operate with a level of uncertainty and it is vital that the general need for more marine information does not delay the designation of specific sites that are already well described and known to merit protection. Indeed, a great deal of data is already available, particularly for inshore sites and sea lochs in particular. There must also be provision for addition or alteration to the network as new information becomes available. This will be particularly relevant in the offshore area, where the state of knowledge could advance rapidly with sufficient investment in data collection. The UK government and devolved administrations must dedicate significantly more resources to collecting new marine data, and use it to establish a comprehensive network of protected areas.
17. Sites must be monitored in order that they can be managed effectively. There should be a duty on the relevant conservation authority to produce and regularly review a management plan for each area and report on site condition, achievement of site conservation objectives and, on a wider scale, fulfilment of the purposes of the network.
18. Scottish Environment LINK's Marine Task Force would advocate that the management of all sites is dictated by the conservation objectives rather than setting a specific proportion of the network that is highly protected. The Bill should include a duty on the statutory nature conservation agencies to define a site's conservation objectives prior to designation. In order to ensure that the required level of protection is achieved (whether highly protected or less so), there should be a duty on public bodies to consult the statutory nature conservation agencies when they consider that exercising their functions – including consenting to any development – might hinder achievement of site objectives.

Part 7 – Fisheries

19. The draft UK Marine Bill is silent as to how the UK MMO would engage with Scottish authorities on fishing and the enforcement of marine Special Areas of Conservation and Marine Conservation Zones in offshore waters adjacent to Scotland. Scottish Environment LINK's Marine Task Force would again urge constructive engagement between the UK MMO and whichever body in Scotland ultimately has fisheries responsibilities. We believe a model based on joint planning according to the regional seas approach and a Scottish Marine Management Organisation having responsibility for fishing and enforcing marine nature conservation to 200nm (as set out in 11. above) is a practical solution.

Part 8 – Enforcement

20. Part 8 of the Draft Marine Bill illustrates the patchy nature of conservation management and the unsatisfactory split of powers between Scotland and Westminster, whatever the politics of control over the seas. This is an area where there is a real risk of the environment suffering due to confusion, lack of clarity and artificial splits in power. As an example, the operation of Marine Enforcement Officers in Scotland will be limited. Section 204 sets out where Marine Enforcement Officers can use their powers. The powers of Marine Enforcement Officers, as set out in Clause 204, do not extend to the inshore waters around Scotland or to the offshore area around Scotland. However, the MMO itself has jurisdiction for reserved matters in the offshore area, and this seems to be contradictory.

Scottish Environment LINK Marine Task Force
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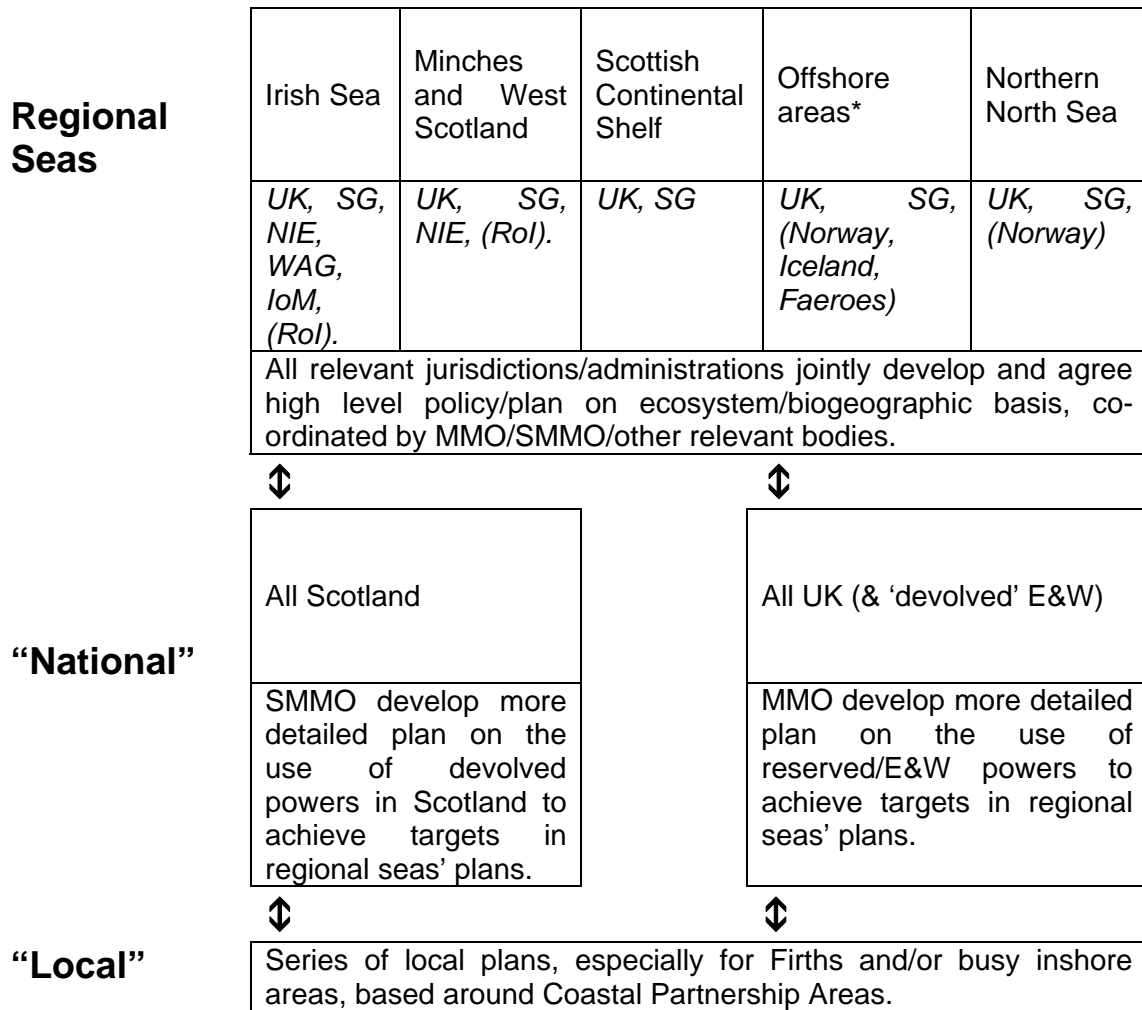
For further information please contact.

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ANNEX A: Outline structure of “three tier” MSP system within a devolved-reserved structure



*Faeroe Shetland Channel; Rockall Trough and Bank; and Atlantic North West Approaches (together or separately).

LWA
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Please contact Scottish Environment LINK if further explanation on above is required.