

A Marine Bill for Scotland: Urgently needed to sustain Scotland's seas



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The Problem: Healthy seas are essential for a flourishing maritime economy as well as the conservation of our environmental heritage. Yet the **health of Scotland's seas is failing:**

- 16 out of 21 Scottish fish stocks, including cod and Atlantic salmon, are beyond sustainable limits
- Important marine species and habitats, including common skate and seagrass beds, are in severe decline
- Seabird colonies are failing due to a shortage of food. Hundreds of guillemots are reported to have died of starvation across Scotland, especially on the west coast, with birds even swimming upstream into central Glasgow (Sept 2006)
- More than 1.7 million farmed salmon have escaped into the wild from salmon farms in Scotland since 1998

Why? Current management of our seas is **fragmented** with **no overall forward plan** and **no lead body** to implement plans and deal with enforcement. Consequently, maritime development and activities have been **based on exploitation** rather than sustainability. Climate change will put further pressure on our marine species to adapt, so we need urgent reform of our current management system in order to safeguard our seas for future generations to use and enjoy.

Scotland's seas are a valuable resource

Wildlife haven, livelihood for local communities, opportunity for maritime business, as well as source of enjoyment, recreation and relaxation for local people, day-trippers and tourists, whether sailing, diving, bird-watching, whale and dolphin watching, angling or simply visiting the beach – it is essential that our seas and coastal areas are well cared for. They are home to an estimated 8,000 marine plant, invertebrate, fish, bird and mammal species, and a diverse patchwork of habitats that form the very foundation of our coastal and marine economy, including fisheries, energy generation, aquaculture, oil extraction, shipping and tourism & recreation.



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The Issues

Competition for space and resources

Scotland's coasts and seas are becoming increasingly crowded. Wildlife tourism is growing, and new industries such as renewable energy and aquaculture now compete for space and resources with the traditional fishing industry, oil and gas exploration and shipping. Whilst on land, competition for space and resources is managed through the planning system, at sea there is no such legislation to deal with these potential conflicts. Without clear guidance on where they can develop sustainably, industries from marine renewables to tourism are likely to become embroiled in lengthy planning disputes that waste both time and money.

Lack of accountability

Over 50 pieces of legislation - some more than 100 years old - currently regulate maritime activity and over 20 bodies have jurisdiction, including international bodies such as the International Maritime Organisation that deals with international shipping issues; UK Ministry of Defence and Home Office; four different departments within the Scottish Executive, as well as government quangos such as SEPA and Historic Scotland.

Management of Scottish waters tends to be based on an *ad hoc* sectoral approach – concerned with energy for example, or fisheries. Reacting to problems as they arise sector-by-sector means current marine management lacks the attention to cross-sectoral linkages that integrated legislation would address. Voluntary, local management systems have been a positive development, yet they are under-resourced and without statutory endorsement are weak on enforcement. Fragmented, sometimes conflicting legislation and a lack of national leadership, with no lead body or overall management structure only increases the possibility of conflict.

Undemocratic structures excluding local communities

As the case of ship-to-ship oil transfers demonstrates (see Case Study 1), in the current system there are few mechanisms for local communities to have their say in marine policy that affects them. Currently, there is neither a local marine development plan, nor a decision-making body through which local communities can input into marine management. On land, the planning system does attempt to involve local communities, and they are at least able to object to their local plan if they are unhappy with some aspect of it. When it concerns the sea, similar rights for local communities do not exist. Many coastal communities are fragile and struggling to survive economically - so it is even more vital that they have their say.

No proper protection for wildlife and marine resources

The lack of a sustainable management framework for marine matters endangers marine biodiversity – with economic as well as environmental implications. **Scotland has no nationally important marine protected areas** – regions of sea and seabed effectively protected from some activities for marine species and habitats of national importance to Scotland. **Nationally important marine species and habitats**, such as black guillemots, sea grass beds, burrowing anemones and flameshell reefs, are under threat without the means to designate Nationally Important Marine Sites (NIMs) to protect them. A Marine Spatial Planning system is needed into which these NIMs are embedded and also to protect marine biodiversity beyond the boundaries of designated sites.

The Scottish Executive has committed to halting the loss of biodiversity by 2010, yet there is currently no means to establish Nationally Important Marine Sites.

Case study 1: Ship-to-ship oil transfers

Melbourne Marine Shipping's recent application to allow ship-to-ship oil transfers in the Firth and Forth has provoked sharp criticism from politicians, SNH and environment organisations. Ship-to-ship oil transfers would increase the risk of oil spills by one third, in an area that is considered internationally important for wildlife. Despite opposition from all the affected local councils (Fife, Edinburgh and the Lothians), and public opposition, it looks likely that consent will be granted for ship-to-shop oil transfer in the Firth of Forth.

The procedure by which consent is granted demonstrates some of the weaknesses of the current management systems:

- 8 pieces of legislation/regulations are relevant to the dispute including UK Merchant Shipping Act 1995, the Harbours Act 1964, EU Conservation Regulations and Forth Ports Bylaws
- The Maritime and Coastguard Agency (Transport Dept, Westminster) could only consult on changes to **oil spill contingency plans**. It had no overall powers of consent.
- Scottish Ministers had no powers to reject the plans despite objections from local Councils and SNH.
- The public were unable to object to the plans except through limited consultation exercises
- Forth Ports are a commercial organisation with a vested interest in giving ship-to-ship the go-ahead in their waters, yet *they* are recognised as the competent authority that can make a final decision on whether to consent or not.
- If a complaint is made to the European commission it is not clear where responsibilities will lie between the UK Government, Scottish Ministers and harbour authorities.

How would a Marine Bill for Scotland improve the situation?

Ship-to-ship oil transfers have to happen, so we need to work out where the best place for them would be. A Marine Bill for Scotland would put in place a national **Marine Spatial Plan** that would identify suitable places for ship-to-ship that would not threaten vulnerable wildlife habitats or conflict with other users' needs. The Scottish Environment Minister could then advise the UK Environment Minister, who would make the decision since oil transfer is a reserved matter. While the UK Minister should instruct, consent for ship-to-ship should be required under the Scottish **marine spatial plan**.

Case Study 2: Community of Arran Seabed Trust (C.O.A.S.T.)

The Scottish Parliament Environment and Rural Development Committee's recent away day included a visit to Arran to meet Community of Arran Seabed Trust (C.O.A.S.T.). The group had lodged a petition with the Scottish Parliament concerned with the denuded marine environment of Lamlash Bay, Isle of Arran. It calls for the creation of a No Take Zone to ban the harvest of marine life in one area of the bay in which a maerl bed remains, and the prohibition of access by mobile gear fishermen to the rest of bay, to enable regeneration of the maerl and associated fish and shellfish, including commercial species. C.O.A.S.T represents 1,600 members of the local community and the petition is a culmination of 10 years' campaigning on the issue. The Environment and Rural Development Committee have since heard evidence relating to the petition and written to the Environment Minister recommending a closure in Lamlash Bay to enable C.O.A.S.T.s proposal to go ahead with statutory underpinning.

How would a Marine Bill For Scotland improve the situation?

A Marine Bill for Scotland must include delegated powers and structures for local decision-making that would enable community input to local **marine spatial plans** and resource management decisions (including fisheries) that have a potential impact upon their coastal environment. With such a system in place, C.O.A.S.T. would not have had to wait 10 years to get this far.

The Solution: A Marine Bill for Scotland

In order to safeguard our seas for future generations, a **package of reform** including **marine spatial planning** and a series of **marine protected areas** underpinned by framework legislation through a **Marine Bill for Scotland** must be delivered in addition to the **UK Marine Bill** that will deal with reserved matters.

Why we need a Scottish Marine Bill

Westminster is currently consulting on a Marine Bill that would establish **marine spatial planning** and **marine protected areas** in UK seas. However, jurisdiction over most marine activities stops outside Scotland's 12nm limit. A Scottish Bill would plug the gap between 0 and 12nm that would remain largely unprotected by UK legislation. A Marine Bill for Scotland, properly integrated with the marine spatial planning system proposed by Westminster, would ensure Scottish accountability, as well as the local and regional flexibility necessary for effective marine management.

What would a Marine Bill for Scotland include?

1. It would establish a **Marine Management Organisation (MMO)** for Scotland that fits into the UK structure created by the Westminster Bill.

The MMO would be a national decision-making body overseeing marine strategic and spatial planning of devolved activities in Scottish waters. It would be the

central point of communication on marine matters in Scotland and would advise Scottish Ministers. Representing Scotland in the UK Marine Management Framework, it would co-ordinate its work with UK strategic thinking on reserved marine matters. Its role would be to:

- Develop, implement, monitor and enforce the Marine Spatial Plan
- Ensure adequate data collection on marine matters in Scotland
- Pull together research, stakeholder input and advice
- Set conditions on licenses, permissions and consents

2. Set up a **Marine Spatial Planning system** with the purpose of sustainable development. Led by the MMO, the system will pull all the information together, determine what constitutes the best public interest, and create the statutory master plan (incorporating regional and local plans) mapping where activities should take place. It should include:

- Statutory responsibility for the MMO to administrate permissions, licensing and consents for certain activities in accordance with the plan
- Structures to enable stakeholder participation in the development and consultation of plans
- Allow for **local input** to spatial planning and resource management through delegated powers and structures put in place for local decision-making

3. Adopt **Scottish Marine Ecosystem Objectives**

As is proposed in the UK Marine Bill, Marine Spatial Planning in Scotland should be based on the **eco-system approach**. This means that the success of the marine planning system is measured by monitoring the condition of Scotland's seas. The bill would establish a duty for the Scottish Minister to set, implement and monitor Marine Ecosystem Objectives – which would measure the health of Scotland's seas and necessitate the adjusting of the marine strategy according to how well the objectives have been met.

The bill should also establish a mechanism for reporting to Parliament on Marine Ecosystem Objective progress.

4. Establish **Nationally Important Marine Sites** within Scottish waters in order to protect marine species and habitats of national importance according to their ecological needs. Such a network is needed in order to help halt the loss of Scotland's marine biodiversity and will complement existing European Marine Sites and the forthcoming Coastal and Marine National Park. Marine species and habitats not currently receiving adequate protection include black guillemots, basking sharks, seagrass beds, flammingshell beds and northern fan coral communities.

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