



The Scottish Parliament
Pàrlamaid na h-Alba

Rural Affairs, Climate Change and Environment Committee

2nd Report, 2015 (Session 4)

Report on Scotland's National Marine Plan

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The Scottish Parliament
Pàrlamaid na h-Alba

Rural Affairs, Climate Change and Environment Committee

Remit and membership

Remit:

To consider and report on agriculture, fisheries, rural development, climate change, the environment and other matters falling within the responsibility of the Cabinet Secretary for Rural Affairs, Food and Environment.

Membership:

Claudia Beamish
Sarah Boyack (from 8 January 2015)
Graeme Dey (Deputy Convener)
Alex Fergusson
Rob Gibson (Convener)
Cara Hilton (until 8 January 2015)
Jim Hume
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The Scottish Parliament
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Rural Affairs, Climate Change and Environment Committee

2nd Report, 2015 (Session 4)

Report on Scotland's National Marine Plan

The Committee reports to the Parliament as follows—

EXECUTIVE SUMMARY

1. The Committee welcomes the principle of the Scottish Government adopting a National Marine Plan to provide guidance to decision-makers and users within Scotland's marine environment, and also welcomes the engagement and consultation process with stakeholders to date which has helped to shape the current draft. The Committee believes that the general policies set out in the draft plan provide an important framework and reinforce sustainability as an overarching principle.
2. However, the Committee is concerned that the draft, as it currently stands, is in parts too detailed and prescriptive and in other places too vague, and therefore requires amendment to make it fully fit for purpose. The final National Marine Plan should be a clear, concise document which stands as overarching framework that can be evenly applied across the country and which will help to make sustainable use of, and enable sustainable operation in, the marine environment easier rather than more difficult.
3. The Committee also has concerns about how regional marine planning will interact with the national plan and believes that the current draft does not give sufficient guidance to local authorities in particular, to ensure a consistent approach. Further information on the timescales and review of regional marine plans is sought from the Scottish Government. The Committee also has concerns as to whether all local authorities have the required levels of experience, expertise and resources to successfully develop and implement regional marine plans.
4. It is essential that the plan is appropriately and effectively monitored and assessed and that the online interactive version of the plan is established as the authoritative source for Scotland's marine areas. It is also vital that the interactive plan contains as much information, and is as up to date, as possible and that local authorities and other users are proactively encouraged to use and contribute to it.

5. The Committee sets out its views in detail below, including comment on the sector chapters on sea fisheries, aquaculture and submarine cables.

INTRODUCTION AND BACKGROUND

The legislative context for Scotland's National Marine Plan

6. Marine planning matters in Scotland's inshore waters are governed by the Marine (Scotland) Act 2010¹, an Act of the Scottish Parliament, and in its offshore waters by the Marine and Coastal Access Act 2009², an Act of the UK Parliament. The two Acts established the legislative and management framework for the marine environment.

7. Under the Marine (Scotland) Act 2010 Scottish Ministers must prepare and adopt a National Marine Plan covering Scottish inshore waters. In addition, the Marine and Coastal Access Act 2009 requires Scottish Ministers to ensure that a marine plan(s) is in place in the offshore region.

8. The Scottish and United Kingdom Governments have agreed that a marine plan for Scotland's inshore waters and a marine plan covering Scottish offshore waters will be published in one document and will be collectively referred to as the 'National Marine Plan'(NMP).

9. Scotland's Draft National Marine Plan³ (draft NMP) was laid in the Scottish Parliament on 11 December 2014. The Parliament has a period of 40 days to consider the draft NMP and give its views. The Scottish Government must then lay a final plan as soon as is reasonably practicable which must be accompanied by statements setting out any changes which have been made to the draft and the reasons for these changes.

The structure of the draft National Marine Plan

National and regional marine planning and licensing

10. The draft NMP sets out strategic policies for the sustainable development of Scotland's marine resources out to 200 nautical miles. Marine planning will be implemented at a local level within Scottish Marine Regions, extending out to 12 nautical miles. The boundaries of these regions are required to be set by secondary legislation and the draft boundaries can be found in the draft NMP. Regional marine plans will be developed by Marine Planning Partnerships (which are yet to be established, and will be led by local authorities) to take account of local circumstances and smaller ecosystem units.

11. The draft NMP sets out guidance for the regional marine plans. Many activities in the marine area already require licences and consents. These include licences and consents associated with:

¹ Marine (Scotland) Act 2010. Available at:
http://www.legislation.gov.uk/asp/2010/5/pdfs/asp_20100005_en.pdf

² Marine and Coastal Access Act 2009. Available at:
http://www.legislation.gov.uk/ukpga/2009/23/pdfs/ukpga_20090023_en.pdf

³ Scottish Government, *Scotland's National Marine Plan*, 11 December 2014. Available at:
<http://www.scotland.gov.uk/Resource/0046/00465865.pdf>

- marine activities such as deposits in, and removals from the sea and seabed; construction works; dredging and the use of explosives;
- fishing;
- aquaculture; and
- ports and harbours.

Vision, objectives and principles of the draft National Marine Plan

12. The draft NMPs vision for the marine environment is -

“Clean, healthy, safe, productive and diverse seas; managed to meet the long term needs of nature and people.”

13. Underneath this vision are strategic objectives and high level marine objectives. The strategic objectives are the Marine Strategy Framework Directive’s 11 descriptors of Good Environmental Status (see Box B in the draft NMP). The high level marine objectives (Box C in the NMP document) relate to the principles of sustainable development.

14. Chapter 4 of the draft NMP sets out general planning principles and the remaining chapters focus on specific sectors.

Sector Chapters

15. The sector chapters cover nationally important sectors relevant to the marine environment. There are eleven sector chapters and each follows a consistent structure starting with the objectives for the sector along with key references. Each chapter then includes the following sections: the background and context, key issues for marine planning and marine planning policies. These chapters conclude with commentary on the future for the sector.

Consultation

16. The Scottish Government carried out its consultation⁴ on the consultation draft NMP between 25 July 2013 and 13 November 2013. One hundred and twenty four responses⁵ to the consultation were received and are available online on the Government’s main Marine Planning / National Planning webpage⁶ alongside links to supporting systems and documents such as an interactive mapping system, Scotland’s Marine Atlas and a Statement of Public Participation.

17. The independent analysis of the responses to the consultation was published on 2 May 2014 and is available online⁷.

18. The Committee heard from the Cabinet Secretary that the consultation process involved intensive stakeholder engagement which was used to help shape

⁴ Scottish Government, *Planning Scotland’s Seas – Scotland’s National Marine Plan Consultation Draft*. Available at: <http://www.scotland.gov.uk/Resource/0042/00428577.pdf>.

⁵ Scottish Government, *Planning Scotland’s Seas – Scotland’s National Marine Plan Consultation Draft – Responses*. Available at: <http://www.scotland.gov.uk/Publications/2013/12/2681/0>.

⁶ <http://www.scotland.gov.uk/Topics/marine/seamanagement/national>.

⁷ Scottish Government *Planning Scotland’s Seas: Scotland’s National Marine Plan Analysis of Consultation Responses*, 2 May 2014. Available at: <http://www.scotland.gov.uk/Resource/0044/00448880.pdf>.

the draft NMP. This was supported by stakeholders who welcomed the interaction that had taken place and the changes that had been made to reflect their views.

19. The Committee welcomes the level of consultation and stakeholder involvement that has taken place in respect of the development of the draft NMP and notes that changes have already been made to earlier drafts to reflect the views of stakeholders.

ISSUES CONSIDERED BY THE COMMITTEE

Clarity and purpose

20. The Committee heard from Scottish Government Officials that the General Policies contained in Chapter 4 of the draft NMP are drafted as an overarching framework setting out the key parameters for sustainable development. It is anticipated that while sectoral policies would change significantly over time the general policies will provide a framework ensuring any emerging sectors will continue to be captured in relation to sustainability. **The Committee welcomes the General Policies set out in Chapter 4 and agrees their importance in reinforcing sustainability as an overarching principle of the draft NMP.**

21. The Committee raised concerns around the clarity and purpose of the draft NMP. It understands that the intention of the plan is to provide a framework for decision making that should be used by public authorities who make authorisation or enforcement decisions, or any other decision, that affects the marine environment, and by stakeholders who want to understand the factors that will affect decision making related to the marine environment. However the Committee is concerned there is a danger that, as currently drafted, the draft NMP will create conflict by having highly prescriptive actions in some areas while setting out vague aspirations in others. The Committee is concerned that this will ultimately lead to the creation of a “cat’s cradle of regulation and guidance”⁸.

22. These concerns were shared by stakeholders. Some felt that the draft NMP was still “pretty grey in areas” which led them to question whether the balance between general and specific was quite right. Others felt that while a broader marine planning process could provide a framework for assessing cumulative impacts across multiple sectors in a more streamlined way, the draft NMP did not set out how this would work in practice.

23. These issues were raised with Scottish Government officials during the oral evidence session on the 17 December 2014⁹. The Committee heard that the policies in the draft NMP have been written to provide a single framework for

⁸ Scottish Parliament Rural Affairs, Climate Change and Environment Committee. *Official Report*, 17 December 2014, Col 27 . Available at:

<http://www.scottish.parliament.uk/parliamentarybusiness/28862.aspx?r=9701&mode=pdf>

⁹ Scottish Parliament Rural Affairs, Climate Change and Environment Committee. *Official Report*, 17 December 2014. Available at:

<http://www.scottish.parliament.uk/parliamentarybusiness/28862.aspx?r=9701&mode=pdf>

future planning of our seas, to provide a practical framework to be used by planners at a regional level, to encourage conversations with developers, and others, to provide guidance to developers who would not routinely engage with planners at an early stage and to address potential conflicts.

24. The Committee appreciates the aspirations of the Scottish Government, however it is concerned that the interpretation and operation of the plan may become complex and restrictive at a local level. The Committee considers that the draft NMP should provide a simple framework for decision making and should not unintentionally produce a variety of prescriptive powers which will make operating in the marine environment more difficult.

25. David Palmer, Deputy Director of Marine Planning and Policy at the Scottish Government acknowledged¹⁰ that the Scottish Government was aware of this possibility and accepted that the “super structure around that [the draft NMP] might become a hindrance to it”.

26. During the evidence session with the Cabinet Secretary for Rural Affairs, Food and Environment (the Cabinet Secretary), the Committee explored his views on the purpose of the draft NMP. The Cabinet Secretary said that the draft NMP is the Scottish Government’s first attempt at producing a single framework to help manage the competing interests that exist in our marine environment. He suggested that it is a challenge to set out what is of national significance at the right level without making the draft NMP too vague by not including sufficient detail. The Cabinet Secretary stressed that the draft NMP could be amended in light of the Committee’s comments.

27. The Committee understands that the Scottish Government is required to publish a National Marine Plan for Scotland and therefore welcomes the publication of the document and the work that has gone into producing it. However, the Committee is concerned that, in its current form, the document does not provide a clear and concise set of principles that can be consistently applied by decision-makers and those using the marine environment and there is a danger that as currently drafted, the draft NMP will create conflict by having highly prescriptive actions in some areas while setting out vague aspirations in others.

28. The Committee is of the view that the draft National Marine Plan is both too detailed and prescriptive in some parts, and yet too vague in others. The Committee welcomes the Scottish Government’s commitment to consider its comments and look again at how the general principles of the draft NMP, and the specific sectoral policies, could be rebalanced. The Committee recommends that the Scottish Government revisit the document with a view to streamlining the information provided to ensure that the final National Marine Plan stands as a clear overarching framework for decision makers that can be evenly applied across the country.

¹⁰ Scottish Parliament Rural Affairs, Climate Change and Environment Committee. *Official Report*, 17 December 2014, Col 27 . Available at: <http://www.scottish.parliament.uk/parliamentarybusiness/28862.aspx?r=9701&mode=pdf>

Monitoring and measuring success

29. Stakeholders suggested that the framework for measuring and reporting on the effectiveness of the draft NMP is not clear. The Committee explored this with the Cabinet Secretary.

30. The Cabinet Secretary explained that the final NMP will be reviewed after five years, while any reserved issues covered in the plan, and the area from 12-200 miles, must be reviewed after three years with the information from that review feeding into the five year review. The Committee heard that the Scottish Government is also generally accountable under the statutory commitments and obligations referred to in the plan, such as European, UK or Scottish legislation. The Committee understands that the Scottish Government has the flexibility to adapt or amend the plan at any point in time by making a statement to Parliament setting out the reason for the changes.

31. The Committee believes that it is important that Scotland's performance in marine planning is monitored and measured regularly and effectively. The Committee recommends that the Scottish Government provides more information on the monitoring and evaluation framework for the plan, what will be measured, and how it will be undertaken. The Committee recommends that, as this is the first National Marine Plan, the Scottish Government gives serious consideration to reviewing it after three years to coincide with the review of the reserved issues and the areas from 12-200 miles. The Committee believes that this is appropriate as it is the first report and issues may emerge that require early action.

National and regional marine plans

Potential conflict between the national and regional marine plans

32. The Committee considered whether there is potential for the current level of detail in the draft NMP to be diluted or misinterpreted when being considered by local authorities and in drafting the eleven proposed Regional Marine Plans. The Committee queried whether having a shorter, simpler national plan would help ensure that it can be easily replicated on a regional basis and reduce the risk of different interpretations occurring when local authorities draft the eleven Regional Marine Plans.

33. The Committee received written evidence¹¹ expressing concerns that Scottish Ministers are able to overrule the decisions/representations of planning authorities after extensive work, community engagement and evidence-gathering has informed local decision-making, which then contributes to people feeling disempowered and disillusioned. The Committee was concerned about what would happen if decisions at a regional level were not agreed at a national level and whether the draft NMP in its current form could enable a situation to arise where a regional plan had taken the general principles into account but conflict arose in the detail of the plan.

¹¹ Scottish Parliament Rural Affairs, Climate Change and Environment Committee, Marine Issues. Available at:
<http://www.scottish.parliament.uk/parliamentarybusiness/CurrentCommittees/79255.aspx>

34. The Committee heard from Scottish Government officials that they did not believe there would be conflict between the national and regional plans as regional plans are required to accord with the national plan and, while they are developed at a local level, the regional plans require to be adopted by Scottish Ministers. They confirmed that a checking process will be in place to ensure that this is the case.

35. The Cabinet Secretary told the Committee that developers would be able to challenge regional plans where they believed they were in conflict with the national plan. Scottish Government officials also confirmed that a legal process is set out in sections 17 and 18 of the Marine (Scotland) Act 2010 which relates to both the national and regional plans and provides a direct route for external parties to make legal representations on the content of the plans.

36. The Cabinet Secretary advised the Committee he was hopeful that the regional plans for Shetland and Clyde, which are two of the eleven areas designated as marine regions, would be finalised in the near future as both areas had indicated their eagerness to be pilot areas. He confirmed that guidance would be published on the development of regional plans and it would be informed by the experiences of these pilot areas.

37. The Committee understands the logic of translating the guiding principles of a national marine plan into regional plans, given the variations in environment and activity around Scotland's coastline and in Scotland's marine areas. However, the Committee considers that as currently drafted, the National Marine Plan does not give sufficient guidance to local authorities on the process of drafting regional marine plans, but is in danger, in places, of its content being overly prescriptive about local situations.

38. The Committee welcomes confirmation that guidance will be published to assist with the development of Regional Marine Plans and asks the Cabinet Secretary to provide details on the expected timescales for this. The Committee seeks further information on the anticipated timescale for the completion and review of all Regional Marine Plans. The Committee also seeks further information on the process for review of Regional Marine Plans, to ensure consistency.

39. The Committee also seeks clarification on the status of the regional marine plans for Shetland and Clyde - are they expected to be formally established as pilot areas and if so, how will the pilots be run, what support is being made available to them and how and when will the experience of the pilots be disseminated?

Consistency between individual regional marine plans

40. A further concern was raised by stakeholder's evidence about the consistency between individual Regional Marine Plans and the concern that they may "vary wildly from area to area" as this could be problematic for industries such as aquaculture businesses which may operate at a national level and need a consistent regulatory environment to operate in.

41. The Scottish Salmon Producers' Organisation (SSPO) said that experience has shown that ensuring consistency between local authorities is very problematic. The SSPO is concerned that the new arrangements proposed in the draft NMP will mean the aquaculture industry will face real difficulties. Their view is that while local authorities eventually recognised the need to gain expertise, they did not appear to fully accept the need to come together and share that expertise and this situation may be replicated in Regional Marine Plans where each region works in isolation.

42. The Committee is concerned about the possibility of inconsistency between Regional Marine Plans and recommends that guidance in relation to Regional Marine Plans is explicit on how regional marine areas will be expected to work together to ensure that users of the marine environment operating at a national level do not face inconsistent or conflicting arrangements.

43. The Committee welcomes confirmation from the Scottish Government that Marine Scotland will provide advice and intervene to help resolve any issues or conflict that may arise either within or between different sectors in the marine environment. The Committee recommends that Marine Scotland proactively engages with local authorities, and relevant others, to ensure that they are aware of the support that is available to them.

Resources and expertise

44. Concerns were raised by stakeholders about the level of resources and expertise in local authorities to develop regional marine plans. Stakeholders questioned how some local authorities would be able to reflect what happens in other regions (such as Shetland which has its own planning powers) given their limited resources.

45. This issue was also highlighted by the British Ports Association which believes that the local authorities who currently own and manage ports may be better placed to deal with planning decisions relating to ports but are worried that those who did not have that experience may face difficulties as part of the new regional partnerships. This was a particular concern in relation to their role as statutory consultee on marine licence applications, some of which may be contentious.

46. In its response to the Scottish Government's consultation in 2013, COSLA highlighted its concern over lack of resources. The Committee sought COSLA's view on the level of resource and expertise available in local authorities. It responded¹² saying that previous marine developments have had an impact on the resources of local planning departments and it believed that if Regional Marine Plans are not fully resourced then there is a risk that existing resources for land use planning will be impacted at a time when local authorities face additional pressures. These pressures include continuous improvements in the speed of processing applications and the new powers given to Ministers through the Regulatory Reform (Scotland) Act 2014 to enable them to reduce planning fees on

¹² Written submission. COSLA

the basis of unacceptable performance. COSLA said that it holds no central data on the level of experience and expertise in marine planning in local authorities.

47. The Committee sought the view of the Cabinet Secretary on whether he believes that there is sufficient expertise and resource at a local level to develop Regional Marine Plans and asked what is being done centrally to support regional efforts.

48. The Cabinet Secretary stressed that a significant amount of effort will be needed in building up the required expertise at a local level, however he expressed his confidence that there is some degree of expertise at a local level as many coastal local authorities have experience in aquaculture, the offshore sector and in the consents process. He confirmed that Marine Scotland would be taking the lead in ensuring that best practice and expertise is shared throughout Scotland.

49. The Committee has serious concerns as to whether local authorities currently have sufficient experience, expertise and resources to successfully develop and implement Regional Marine Plans. The Committee is concerned that inconsistent guidance and decision-making could emerge as a result and this could have a detrimental impact on those operating in the marine environment. The Committee therefore welcomes confirmation from the Cabinet Secretary that Marine Scotland will take the lead in developing expertise and in sharing good practice. The Committee considers that a significant amount of work will be required with local authorities to build a sufficient level of expertise and questions whether Marine Scotland is currently resourced to effectively support this.

50. The Committee believes that it is critical that the proposed transfer of the Crown Estate's powers in relation to the seabed to Scotland, and then to local authorities, as discussed later in this report, and the impact of this on local authorities is taken into account when considering the level of resources and expertise required at a local authority level.

Other legislation and duties

51. A number of stakeholders highlighted the lack of reference in the draft NMP to other relevant duties and legislation. The Marine Conservation Society stated that the draft NMP does not explicitly link to the Scottish Biodiversity duty and the Scottish Fishermen's Federation (SFF), which represents an industry already subject to a substantial framework of legislation, believes it is not clear how the draft NMP relates to the existing fisheries legislation.

52. The Committee sought the views of the Cabinet Secretary on why there is little or no reference to existing relevant legislation in the draft NMP and whether he considered that including these links would help stakeholders understand how the draft NMP fits with other legislation and duties.

53. The Committee heard that one of the changes that has resulted from the consultation process was the addition of a 'key features' section at the end of each sector chapter, which highlights relevant policies, and this could be adapted to

include legislation and duties relevant to each section. This would provide the relevant links without adding substantially to the overall size of the document.

54. The Committee believes that it is essential that national and regional marine plans dovetail with existing legislation, duties and Scottish Government strategies, across the many areas covered by the draft NMP to provide clarity. The Committee recommends that the national and regional plans acknowledge the framework of legislation which exists for each of the sectoral headings and welcomes the Scottish Government's suggestions on how this can be taken forward through the key references section in each chapter and in the online version of the plan.

Enhancement of the natural heritage and adaptive management

55. The Committee heard concerns that the draft NMP does not sufficiently emphasise the potential enhancement of the natural environment. One example given was that the language used in GEN 9 is very constraining in its use of should "not result in significant impact" on the national status of Priority Marine Features, and this could instead be used as an opportunity to encourage the enhancement of the health or extent of the natural features.

56. The Committee sought the views of the Cabinet Secretary on how enhancement of the natural environment could be strengthened in the plan. The Cabinet Secretary told the Committee that in his view being too prescriptive could rule out the ability to treat each activity that may come forward on a case by case basis. He confirmed that the Scottish Government would not be supportive of activities that were detrimental to the natural heritage but acknowledged that some important activities may not provide enhancement. He said that any proposed activity would be required to go through its own assessment which should flag up issues of concern to the consenting authority.

57. The Committee welcomes the Scottish Government's confirmation that it would not support activities that are to the detriment of the natural heritage. Whilst the Committee heard the concerns in relation to the emphasis on enhancement the Committee understands that some activities may not result in enhancement to the natural heritage but are important for a number of other reasons.

58. Stakeholders raised the concern that in marine planning and in the licensing and decision making processes there are perhaps different interpretations of adaptive management. Concerns were also raised in written evidence about the possibility of ad hoc amendments being made to the plan as a result of adaptive management. There were concerns that development in the marine environment requires substantial investment and for development to happen investors need to be confident that there is stability around their investment.

59. The Committee asked the Cabinet Secretary whether he considers the tone of the adaptive management approach in the draft NMP is right and will ensure that the platform for investment and development is not continuously moving. The Cabinet Secretary agreed that it is important not to create instability around activities that people may be investing in but stressed that if new evidence

becomes available then it must be taken into account. He agreed that if evidence emerged on something that would have a serious detrimental effect on the environment he would expect developers to work together with the relevant authorities to see how this could be addressed.

60. The Committee notes the views of both stakeholders and the Scottish Government on how to ensure that the adaptive management approach will not create instability for possible investment and development in the marine environment. The Committee welcomes the Cabinet Secretary's commitment to reflect on this issue and consider the representations that have been made to the Committee when producing the final NMP. The Committee considers that further thought is needed in relation to conflict resolution mechanisms at a national level within the context of sustainable development.

Science

61. Concerns were raised by stakeholders that a consistent evidence based approach was not maintained throughout the draft NMP, and although setting out this general principles was welcome at the beginning of the draft NMP, there was disappointment that some of the principles appeared to be lost in the later stages of the document.

62. Stakeholders raised concerns that an evidence based approach had not been taken in the draft NMP, for example the SSPO highlighted that the presumption against aquaculture on the north and east coast had no evidence base and Scottish and Southern Energy Power and Distribution (SSEPD) argued that the requirement to bury submarine cables did not take into account a full cost benefit analysis. Both of these issues are considered in later in the report in the sectoral section.

63. Other stakeholders noted that, by its very nature, scientific evidence gathering is always evolving and improving and therefore it never reaches a definitive optimum moment. Science is therefore always the best available at the time, rather than the best that will ever be available. Stakeholders also noted that scientific evidence is always open to interpretation and therefore can, unwittingly, fuel uncertainty rather than establishing a definitive, widely understood and accepted evidence base.

64. The Committee agrees with the principle in GEN 19 that decision-making in the marine environment should be based on sound scientific and socio-economic evidence. However, the Committee shares concerns raised by some stakeholders that an evidence based approach is not consistently reflected throughout the draft NMP the Committee therefore recommends that the Scottish Government reviews the draft NMP and ensures that the general principle that decision-making in the marine environment should be based on the most up-to-date, sound scientific and socio-economic evidence remains clear throughout.

65. The Committee welcomes the Cabinet Secretary's acceptance that as new evidence emerges it must be reflected in the NMP and recommends that

the Scottish Government considers how a sound scientific evidence base is built in a reasonable, effective and efficient way. The Committee asks how this could be co-ordinated at a national level to ensure that it is accessible to those at all levels and sectors engaged in marine planning and operating in the marine environment.

National Marine Plan interactive (NMPi)

66. Various concerns were raised in evidence regarding the mapping intention of the National Marine Plan interactive (NMPi) online functionality. Those concerns focussed on what would be mapped (and therefore what would not be), and how the NMPi would establish and maintain itself as the single, first-class, authoritative mapping source.

67. One example of this is that the map of options for offshore wind and marine renewables on page 86 of the draft NMP does not show the current consented areas. The Committee is of the view that it is important the map clearly shows plans for the future and what areas have already received consents and it was pleased that Scottish Government officials confirmed that the map in the draft NMP could be updated and that the information could also be included in the National Marine Plan interactive (NMPi).

68. Some stakeholders also believe that unless local authorities and those taking forward the development of Regional Marine Plans have access to the same functionality, such as the Crown Estate's Marine Research System (MaRS), as Marine Scotland do, they will struggle to replicate or improve on the quality of planning at a national level.

69. The Committee welcomed confirmation from stakeholders that Marine Scotland was taking the lead in ascertaining the statutory port limits of major ports but queried why commercial anchorages and navigational approaches were not included as part of the NMP. Stakeholders also suggested that it was essential the NMPi contain a record of all known habitats.

70. The Committee believes that it is essential that the National Marine Plan interactive (NMPi) is established and maintained as the single first-class authoritative mapping source for Scotland's marine areas and welcomes confirmation from the Scottish Government that work is currently underway to update the NMPi with additional information available to it, such as fishing sensitivity data maps. The Committee notes this is an on-going process and recommends that the NMPi is updated to contain as much available information as possible including commercial anchorages, navigational approaches and all instances of known habitats, with data being added as soon as new information becomes known.

71. The Committee recommends that Marine Scotland works with local authorities proactively to encourage the use of the data held in the NMPi in the development of Regional Marine Plans and to ensure that all relevant data held by local authorities is added to the NMPi.

Smith Commission recommendations and Crown Estate responsibilities

72. The Committee is aware that the Smith Commission has proposed the transfer of the Crown Estate's seabed powers to Scotland and to particular local areas. Several of the written submissions received by the Committee questioned how these proposals would impact on the draft NMP. The Committee heard from the Crown Estate that there were only a few direct references to it in the draft NMP and it felt that only minor changes would be required to the text. Other stakeholders agreed that the Smith Commission proposals brought up a series of new issues but suggested that they could be dealt with elsewhere.

73. The Committee is aware that the proposals of the Smith Commission, if agreed, are likely to add to the demands placed on local authorities as discussed earlier in this report. **The Committee therefore welcomes the confirmation from the Crown Estate that while it is unable to comment on how this transfer of powers could work, it will make the information in its marine research system (MaRS) available when necessary.**

74. The Committee asked the Cabinet Secretary how the draft NMP may need to change in light of the Smith Commission's proposals on the Crown Estate. The Cabinet Secretary's view is that very little of the existing activity will change although there will be a change in who is responsible for managing the activity. The responsibility and accountability currently held by The Crown Estate will pass to the Scottish Government and will be further devolved to local authorities.

75. The Committee queried the extent of the marine limits the proposed devolution of the Crown Estate's powers would provide and whether this would be up to 12 or 200 nautical miles, as it is aware there is uncertainty around this matter following its consideration by the Devolution (Further Powers) Committee at its meeting on 4 December 2014¹³.

76. **The Committee agrees with the Cabinet Secretary that Crown Estate responsibilities to the 200 mile line should be devolved. However, clarity on the extent of the powers is required, therefore the Committee urges the Scottish Government to raise this issue with the UK Government as a matter of urgency.**

77. **The Committee recommends that the final National Marine Plan includes text which acknowledges the current Smith Commission process and states that national and regional plans will be reviewed once final decisions have been taken. The Committee also recommends that the Scottish Government consults with stakeholders during the process of devolving the powers of the Crown Estate, as those decisions may have a significant impact on national and/or local management of the marine environment**

¹³ Scottish Parliament, Devolution (Further Powers) Committee *Official Report* 4 December 2014. Available at:

<http://www.scottish.parliament.uk/parliamentarybusiness/28862.aspx?r=9674&mode=pdf>

Climate change

78. The Committee heard a concern from stakeholders that the draft NMP may provide a poor balance between adaptation to climate change and its mitigation, and that at times the plan is disproportionate. For example the draft NMP sets out how best to protect oil rigs from rising sea levels but does not appear to have the same emphasis on mitigating the climate change impacts of oil and gas. The Committee asked the Cabinet Secretary how the relative balance between climate change adaptation and mitigation had been addressed in the draft NMP.

79. The Cabinet Secretary said that the intention of the draft NMP is to help the move towards a low carbon economy and low carbon activities as well as support climate change adaptation. He acknowledged that while the emphasis may be different for different sectors the aim of the plan was to strike an overall balance.

80. The Committee welcomes the Cabinet Secretary's undertaking to reflect on the language used in the plan to ensure the balance between climate change adaptation and mitigation is clear.

SECTOR CHAPTERS

81. Much of the text of the draft NMP is contained in the sector chapters. Each of these detail a different marine industry or activity. The chapters provide an introduction to the activity, an indication of its importance, key issues for planning, marine planning policies and future planning issues. The comments and recommendations of the Committee in relation to the specific chapters are set out below.

Sea fisheries

82. The issue of how sea fisheries are considered in the draft NMP led to a detailed discussion during the Committee's evidence session with stakeholders. The Committee established that many of the initial concerns raised by the SFF had already been resolved in earlier drafts of the NMP. The Committee pinpointed three outstanding issues of concern to the SFF—

- there should be a presumption in favour of existing activity in the draft NMP i.e. fishing;
- sustainability should have an equal footing with other issues (such as economic and community issues) rather than taking prominence; and
- the draft NMP adds to the over regulation of the fishing sector.

83. The Committee heard that the SFF believes that where there is already an established sustainable use of the sea, such as fishing, then there should be a presumption in favour of this. The SFF believes that the current presumption in favour of sustainable development over existing economic activity, particularly fishing, should be removed because fishing contributes to food security and supports local communities. It suggests that this is specifically to protect existing use in the wild capture fisheries industry, and it would be even handed and fair to

do so. Additional written evidence¹⁴ by the SFF stated that they believe the presumption set out in GEN 1 in favour of sustainable use of the sea, including sea fishing, is eroded by the inclusion of the phrase “existing fishing opportunities and activities are safeguarded wherever possible” (p 52) in the sea fisheries chapter.

84. The Cabinet Secretary stated that he is of the view that the draft NMP aims to take a balanced and sensible approach that aligns with national policy and that the need to remain balanced means that it is impossible to address every issue raised by stakeholders.

85. The Committee acknowledges that Scotland’s fishing fleets are a major user of the marine environment and have a vital role to play economically, socially, and environmentally in sustainably delivering fish and shellfish to tables around the world. It agrees that the National Marine Plan should provide a level of protection for existing sustainable use in the wild fisheries industry and existing fishing opportunities and activities are safeguarded wherever possible, notes the Cabinet Secretary’s willingness to give consideration to the issue and recommends that the final NMP should provide this protection.

86. The Committee is also of the view that the presumption in favour of sustainable development as set out in the draft NMP is correct and should be maintained and highlights the work it has undertaken to date in relation to Marine Protected Areas.¹⁵¹⁶

87. The Committee expressed its concern earlier in this report that the draft NMP runs the risk of creating a “cat’s cradle of regulation” and it believes that due to the regulations emanating from Europe that already govern the fishing industry this is one of the areas this is likely to occur. The SFF is clear that it does not wish to avoid regulation but that it wants and needs to work within one coherent system.

88. When questioned on this the Cabinet Secretary was of the view that the draft NMP does not create further regulation but brings everything together in a single framework.

89. The Committee considers it is important that the national and regional marine plans give the fishing sector due prominence and explicitly state how fishing will interact with other uses of the marine environment. It is vital that this leaves no room for either contradiction with existing fisheries regulation, or widely varied interpretation by different marine users and decision-makers. The Committee recommends that the Scottish Government

¹⁴ Written submission. Scottish Fishermen’s Federation.

¹⁵ Letter to Cabinet Secretary for Rural Affairs and the Environment, 18 May 2013
[http://www.scottish.parliament.uk/S4_RuralAffairsClimateChangeandEnvironmentCommittee/General%20Documents/RACCE_Convener_to_Cab_Sec_on_Marine_issues\(1\).pdf](http://www.scottish.parliament.uk/S4_RuralAffairsClimateChangeandEnvironmentCommittee/General%20Documents/RACCE_Convener_to_Cab_Sec_on_Marine_issues(1).pdf)

¹⁶ Scottish Parliament Rural Affairs, Climate Change and Environment Committee. *Official Report*, 20 August 2014, Col 27 Available at:
<http://www.scottish.parliament.uk/parliamentarybusiness/28862.aspx?r=9505&mode=pdf>

works with the SFF and other stakeholders and reviews the sea fisheries chapter to ensure that it achieves these ambitions.

Aquaculture

90. Chapter 7 of the draft NMP sets out the background and context, the key issues, planning policies and the future prospects for the aquaculture sector in Scotland, including—

- identifying appropriate locations for future aquaculture development;
- links with terrestrial development plans;
- avoiding and/or mitigating adverse impacts upon the seascape, landscape and visual amenity of an area;
- a risk based approach to the location of fish farms and potential impacts on wild fish;
- interactions with seals;
- use of sustainable biological controls for sea lice; and
- maximising benefit to communities from aquaculture development.

Targets for the expansion of aquaculture

91. Scottish Government officials explained that they had taken the decision to include national targets in the draft NMP as targets play an important role in providing the industry with an overall context and direction. However stakeholders raised concerns that national targets for the expansion of the aquaculture industry were contained in the plan.

92. The Committee asked the Cabinet Secretary why targets for the development of aquaculture were included in the draft NMP and he responded saying that the targets reflect the national policy and therefore it makes sense to include them. He added that Scotland needs to secure food sources for the future and the aquaculture industry plays an enormously valuable role for both the Highland economy and the wider Scottish economy through the salmon processing industry.

93. Having questioned the need for the target for the development of aquaculture to be included in the draft NMP the Committee accepts that the target should be retained in the final document. However the Committee recommends the Scottish Government considers referencing some of the barriers which may be preventing the realistic sustainable achievement of the target, such as the current presumption against establishing additional farms in the north and east of Scotland.

Presumption against development in the North and East of Scotland

94. The SSPO argued that in light of the target for expansion of the aquaculture sector it found the “continuing presumption against marine fish farm development on the north and east coasts to help migratory fish species quite astonishing”. The Committee heard that the SSPO is concerned that this not only applies to salmon farming but to farming of all other species and in its view this creates a planning blight on a large part of the coastal estate and could lead to potential investors in

marine development going elsewhere. As discussed above the SSPO believe that this presumption is not evidence based.

95. The Committee asked the Cabinet Secretary whether the continuing presumption against marine fish farm development on the north and east coasts and the extension of this to other form of fish farming can be justified in light of the inclusion of the national target for expansion of the aquaculture industry, and the lack of evidence to support the presumption.

96. The Cabinet Secretary explained that the precautionary principle applied in relation to promoting aquaculture on the North and East coasts was due to the salmon rivers and the topography and nature of the inlets in the north and east of the country are different to those in the West. This policy has been framed on the basis that salmon is the species most likely to be proposed for new aquaculture developments and representations had been received that reflected the opposite view than that expressed by the SSPO and the Cabinet Secretary considered that a balance required to be struck.

97. The Scottish Government officials confirmed that to date there had been no demand with regard to other species and the presumption does not apply to closed inland recirculation facilities or shellfish so opportunities for development on the north and east coasts are available.

98. The Committee recommends that the Scottish Government reviews the science and evidence on the likely impact of different species of farmed fish on the North and East coasts, with a view to refining the presumption.

Requirement for Appropriate Assessment

99. An Appropriate Assessment (AA) is part of the Habitats Regulation Appraisal process which is necessary to determine the potential effects of a plan or project upon the integrity of a Natura site. Stakeholders argued that an appropriate assessment should be required for the draft NMP because they believe that the inclusion of ambitious targets for the aquaculture industry, and the related growth of the sector will potentially have an impact on European marine sites.

100. The Cabinet Secretary stated that it is important that the draft NMP reflects national policy and that appropriate assessments will be made of the plan overall. For example when an application is made for an aquaculture site it will require its own environmental assessment and this will apply to all proposals for individual sites.

101. The Committee seeks clarification from the Scottish Government on whether the draft NMP requires an Appropriate Assessment under the Habitats Regulation Appraisal process to determine the potential effects of the plan on the integrity of Natura sites, based on the inclusion of the ambitious targets for the aquaculture industry, which may impact on European marine sites.

Submarine cables

102. Chapter 14 sets out requirements in relation to submarine cables. The Committee heard that submarine cables are needed for power, information and international telecommunications infrastructure, creating offshore power grid, interconnectors, and communication and broadband provisions. According to the draft NMP over 95% of international telecommunication is by submarine cable and approximately 40% of all the UK's active international cables are on the Scottish seabed.

103. The Committee received written and oral evidence on three issues of concern related to submarine cables. These are set out below:

- The process of dealing with replacements and faults with electricity network submarine cables, especially in emergencies;
- The issue of the burial of cables; and
- The need for further consultation on Chapter 14.

104. The Committee heard evidence from Scottish and Southern Energy Power and Distribution (SSEPD) that the process set out in the draft NMP was applied when replacing the Mainland to Jura submarine cable which faulted in June 2014. SSEPD argue that the process in the draft NMP does not allow for a fast track approach for dealing with replacements and faults, especially in emergencies and this is something that needs to be reviewed to ensure customer's electricity supplies can be secured. The SSEPD also argued that the draft NMP process did not use an evidence based approach as a cost benefit analysis of cable burial was not carried out (as discussed earlier in this report).

105. The Committee asked the Cabinet Secretary whether the draft NMP should contain a fast track approach for the repair of faulty submarine cables to secure customer's electricity supplies. While the Cabinet Secretary recognised that the process around the Jura case took some time he also advised that this was because it was not deemed as a repair to an existing cable but as a replacement cable. He advised that a repair to an existing cable does not require to go through the consent process whereby the replacement of a cable does. He agreed however that lessons had been learned from the Jura case and that in future whenever it is possible to expedite the process then that should happen. The Cabinet Secretary reiterated that representations on safety issues must always be taken into account.

106. The Committee is of the view that the length of time it took to replace the power cable which supplies electricity to Jura, Islay and Colonsay was unacceptable and it welcomes the Cabinet Secretary's commitment to take forward the lessons that have been learned from this case with a view to improving the process to allow any future similar incidents to be resolved safely and as speedily as possible. The Committee requests that the procedure for this new fast track approach be detailed in the final NMP.

107. SSEPD stated in its written submission¹⁷ with respect to subsea cables the plan seemed to be “specific and explicit but unclear and confusing” and Appendix 2 of its written submission highlights several instances where it believes Chapter 14 to be unclear. In other written evidence the Committee heard that Scottish Renewables welcomed the policy, and in particular the plan to treat decisions on the burial of submarine cables on a case-by- case basis. The SFF indicated it was also happy with the policy set out in Chapter 14 and reinforced the importance of safety to users of the sea.

108. The Cabinet Secretary confirmed the draft NMP sets out a risk assessment based approach with decisions made on a case by case basis, which in practice will mean that some submarine cables may require to be buried while others will not.

109. **The Committee agrees that a risk assessed case by case approach is appropriate but considers that there appears to be some confusion around the drafting of Chapter 14 on submarine cables. The Committee recommends that the Scottish Government reviews the wording of Chapter 14 to ensure it is clear and contains all relevant information on the procedures to be followed.**

**ANNEXE A: EXTRACT FROM THE MINUTES OF THE RURAL AFFAIRS,
CLIMATE CHANGE AND ENVIRONMENT COMMITTEE**

RURAL AFFAIRS, CLIMATE CHANGE AND ENVIRONMENT COMMITTEE

MINUTES

33rd Meeting, 2014 (Session 4)

Wednesday 17 December 2014

Scotland’s National Marine Plan: The Committee took evidence from—

David Palmer, Deputy Director, Marine Planning and Policy, Scottish Government;
Anna Donald, Head of Marine Planning and Strategy Team, Scottish Government;
Amanda Chisholm, Strategic Environmental Assessment Specialist, Scottish
Government.

RURAL AFFAIRS, CLIMATE CHANGE AND ENVIRONMENT COMMITTEE

MINUTES

1st Meeting, 2015 (Session 4)

Wednesday 7 January 2015

Scotland’s National Marine Plan: The Committee took evidence from—

¹⁷ Written submission. Scottish and Southern Energy Power and Distribution

*Rural Affairs, Climate Change and Environment Committee, 2nd Report, 2015
(Session 4)*

Annie Breden, Senior Manager Consents and Regulatory Compliance,
The Crown Estate;
Richard Ballantyne, Senior Policy Adviser, British Ports Association;
Professor Phil Thomas, Chairman, Scottish Salmon Producers'
Organisation;
Lucy Greenhill, Research Fellow, Marine Planning and Renewable
Energy, Scottish Association for Marine Science;
Alan Broadbent, Director of Engineering, Scottish and Southern Energy
Power Distribution;
Bertie Armstrong, Chief Executive, Scottish Fishermen's Federation;
David Leven, Head of Energy Infrastructure, Scottish Enterprise;
Calum Duncan, Scotland Programme Manager and Convenor of Scottish
Environment LINK's marine taskforce, Marine Conservation Society and
Scottish Environment LINK.

RURAL AFFAIRS, CLIMATE CHANGE AND ENVIRONMENT COMMITTEE

MINUTES

2nd Meeting, 2015 (Session 4)

Wednesday 14 January 2015

Scotland's National Marine Plan: The Committee took evidence from—

Richard Lochhead, Cabinet Secretary for Rural Affairs, Food and the
Environment, Linda Rosborough, Director, Marine Scotland, and Anna
Donald, Head of Marine Planning and Strategy, Scottish Government.

RURAL AFFAIRS, CLIMATE CHANGE AND ENVIRONMENT COMMITTEE

MINUTES

3rd Meeting, 2015 (Session 4)

Wednesday 21 January 2015

Scotland's National Marine Plan: The Committee considered a draft report on
the Scottish Government's National Marine Plan and will consider a revised draft
at its meeting on the 28th January 2015.

RURAL AFFAIRS, CLIMATE CHANGE AND ENVIRONMENT COMMITTEE

MINUTES

4th Meeting, 2015 (Session 4)

Wednesday 28 January 2015

Scotland's National Marine Plan (in private): Scotland's National Marine Plan (in private): The Committee considered a draft report. Various changes were agreed to, and the report was agreed for publication.

ANNEXE B ORAL EVIDENCE AND ASSOCIATED WRITTEN EVIDENCE

33rd Meeting, 2014 (Session 4), Wednesday 17 December 2014

ORAL EVIDENCE

David Palmer, Deputy Director, Marine Planning and Policy, Scottish Government;
Anna Donald, Head of Marine Planning and Strategy Team, Scottish Government;
Amanda Chisholm, Strategic Environmental Assessment Specialist, Scottish Government.

1st Meeting, 2015 (Session 4), Wednesday 7 January 2015

ORAL EVIDENCE

Annie Breaden, Senior Manager Consents and Regulatory Compliance, The Crown Estate;
Richard Ballantyne, Senior Policy Adviser, British Ports Association;
Professor Phil Thomas, Chairman, Scottish Salmon Producers' Organisation;
Lucy Greenhill, Research Fellow, Marine Planning and Renewable Energy, Scottish Association for Marine Science;
Alan Broadbent, Director of Engineering, Scottish and Southern Energy Power Distribution;
Bertie Armstrong, Chief Executive, Scottish Fishermen's Federation;
David Leven, Head of Energy Infrastructure, Scottish Enterprise;
Calum Duncan, Scotland Programme Manager and Convenor of Scottish Environment LINK's marine taskforce, Marine Conservation Society and Scottish Environment LINK.

2nd Meeting, 2015 (Session 4), Wednesday 14 January 2015

ORAL EVIDENCE

Richard Lochhead, Cabinet Secretary for Rural Affairs, Food and the Environment, Linda Rosborough, Director, Marine Scotland, and Anna Donald, Head of Marine Planning and Strategy, Scottish Government.

SUPPLEMENTARY WRITTEN EVIDENCE.....

- [Marine Scotland following Committee Meeting on 17th December 2014 \(204KB pdf\)](#)
- [Letter from the Convener to COSLA regarding the local authorities and the National Marine Plan 8th January 2015 \(55KB pdf\)](#)

- [Letter from COSLA to the Convener regarding the National Marine Plan 12th January 2015 \(194KB pdf\)](#)
- [Letter from Scottish Fishermen's Federation following Committee meeting on 7th January 2015 \(211KB pdf\)](#)
- [Letter from Marine Scotland to Convener 19 January 2015 \(92KB pdf\)](#)

ANNEXE C LIST OF OTHER WRITTEN EVIDENCE

SUBMISSIONS RECEIVED IN RESPONSE TO CALL FOR VIEWS

- [Associated British Ports \(142KB pdf\)](#)
- [Argyll and Bute Council \(184KB pdf\)](#)
- [Association of Salmon Fishery Boards \(99KB pdf\)](#)
- [COSLA \(90KB pdf\)](#)
- [Forth Ports Limited \(154KB pdf\)](#)
- [No Tiree Array \(1317KB pdf\)](#)
- [Northern Lighthouse Board \(141KB pdf\)](#)
- [Royal Yachting Association Scotland \(156KB pdf\)](#)
- [Scottish Renewables \(170KB pdf\)](#)
- [Scottish Environment Link \(313KB pdf\)](#)
- [Scottish Natural Heritage \(170KB pdf\)](#)
- [Scottish and Southern Energy Power Distribution \(394KB pdf\)](#)
- [Scottish Salmon Producers' Organisation \(217KB pdf\)](#)
- [Subsea Cables UK \(329KB pdf\)](#)
- [United Kingdom Major Ports Group Ltd \(81KB pdf\)](#)

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