



WWF *for a living planet*

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Monday 06 October 2008

Dear Sir/madam

Please find attached a response from WWF Scotland to the Government consultation document 'Sustainable Seas for All: A consultation on Scotland's first marine bill.'

WWF Scotland have campaigned for improved marine legislation for more than ten years and we welcome this opportunity to contribute to the development of a new legislative framework for managing Scotland's seas.

Yours faithfully

Dr Dan Barlow
Head of Policy



Director of WWF Scotland: Dr Richard Dixon
President: HRH Princess Alexandra,
the Hon Lady Ogilvy KG, GCVO
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Q1 Do you agree that change is needed to the management and legislative framework for managing Scotland's seas?

Yes: WWF Scotland have campaigned for improved marine legislation for more than ten years. Our reports 'Tangle of the Clyde' (2004) and 'Tangle of the Forth' (2006) set out the case for a Marine Act for Scotland - identifying the many competing, and sometimes conflicting, demands upon the marine environment and the complex and confused management and regulatory framework that currently exists. We contributed to the work of AGMACS and the SSTF to support the development of a new legislative framework for managing Scotland's seas.

Changes to the management and legislative framework are also required to ensure Scotland is able to deliver on international obligations under the EU Marine Strategy Framework Directive and commitments under OSPAR and the World Summit on Sustainable Development.

Q2 For each of the following areas, do you agree that Scottish Ministers/Scottish Parliament should put in place a new legislative and management framework to deliver:

a) a new system of marine planning for the sustainable use of Scotland's seas;

Yes. Such a statutory framework is critical if we are to manage and protect our marine environment in an integrated and comprehensive manner. Central to this planning system will be co-ordination between Scotland and the UK in producing a regional seas approach to the management of our marine environment, jointly agreeing UK-wide High Level Policy Statements and marine spatial plans for regional seas.

b) improvements to marine nature conservation to safeguard and protect Scotland's marine assets;

Yes. We fully support improvements to marine nature conservation and welcome paragraph 35 which notes that 'ecosystems' will be at the heart of Scotland's marine management. In order to help deliver this aspect we would support a duty for Scottish Ministers to use the powers proposed to establish an ecologically coherent and representative network of MPAs.

c) a streamlined and modernised marine licensing and consents system;

Yes. Streamlining and modernisation should be co-ordinated with proposed changes in England and Wales to support seamless licensing at the borders.

d) better stewardship backed up by robust science and data

Yes, this is essential to the delivery of a, b, and c.

e) a new structure, Marine Scotland, to deliver sustainable seas for all?

Yes. We fully support the proposal to establish a dedicated marine management organisation. This must have responsibility for the stewardship of Scotland's seas including planning, licensing, compliance monitoring, enforcement, science and data and to act as the competent authority for the implementation of the MSFD. It will be critical that Marine Scotland works closely with any equivalent MMO (and vice-versa) established by the UK Marine Bill to ensure a coherent and joined up approach.

Q3 What difference would these changes make to your area of interest?

These changes would help ensure that an ecosystem approach and a sustainable approach is adopted for the management of Scotland's marine environment, aiding the recovery of our marine ecosystem with long term benefits in terms of nature conservation and communities whose livelihoods depends on a healthy marine environment.

Q4 Scottish Ministers believe there are strong practical reasons for further discussion with the UK Government on the allocation of responsibilities around the seas of Scotland. Do you agree with this approach?

WWF agree that the Scottish and UK Government should discuss the issue of devolved and reserved responsibilities around the seas of Scotland. We fully support the devolution of marine nature conservation duties beyond 12 nm around Scotland and believe this would support a more integrated approach. On the issue of marine planning the focus should be on securing a joint approach to UK seas reflecting the mix of responsibilities over different functions that exist – for example energy. It is critical that plans are integrated and all UK Administrations work together across boundaries in regard to cross-border issues reflecting an ecosystem approach in the management of the marine environment across the whole of the UK.

CHAPTER 2 – CREATING STABILITY: MARINE PLANNING AND INTEGRATED COASTAL ZONE MANAGEMENT

Q5 Do you agree with the overall 3-tier approach to marine planning in Scotland?

We support this approach to marine planning in Scotland and welcome the proposal of a statutory system. In order to implement an ecosystem approach, as required by the MSFD and signed up to by all four UK administrations, marine management for UK seas must be based on biogeographical rather than political boundaries. We therefore propose the adoption of a regional seas scale approach. Defining areas of distinct physical, geological or biological characteristics such as the Northern North Sea or Irish Sea (as designated by JNCC) would involve joint planning between administrations and agreement between administrations for an ecologically-based planning system. As such the Marine Bill should therefore require joint planning with other UK Administrations.

The basis for the marine planning system should be to deliver the 5 principles of sustainable development - rather than “ensure sustainable economic growth”.

Q6 Do you have any comments on the proposals for a National Marine Plan and the role of Marine Scotland in relation to planning at the Scotland level?

Marine Scotland should be responsible for the creation of the National Marine Plan. We welcome the proposal to charge Marine Scotland with a requirement to deliver ecosystem management and similarly support the proposal that as a statutory plan Scottish public bodies will have to act in accordance with it. Marine Scotland should be provided with full emergency powers to stop damaging activities. We would support that UK bodies should also be required to act in accordance with this plan.

Q7 Do you have any comments on the approach to setting out national objectives for marine planning?

WWF support the proposal that marine objectives be founded on the five guiding principles of sustainable development. It is right that Marine Scotland should ensure that local/regional objectives are consistent with national marine objectives. Similarly, national objectives should be compatible with UK marine objectives. Scottish Ministerial participation in the joint UK-wide Marine Policy Statement and High Level Marine Objectives would support such an approach. We support the finding of the Joint

Committee on the draft UK Marine Bill which noted “*The [UK] Marine Policy Statement...must be subject to a high level of Parliamentary scrutiny, and should not be adopted before every effort has been made to reach agreement with the devolved administrations on it.*”

Q8 Do you agree with the overall approach to planning at the international level beyond Scotland? Do you have any further suggestions or comments to add to the proposed approach, in particular on the UK high level objectives?

It is encouraging that Scottish Ministers intend to consult with partners across national or international boundaries. We also believe that it is essential that Scottish Ministers participate in the development and agreement of the UK Marine Policy Statement. It is important that the Bill includes mechanisms for cooperative working between Marine Scotland and the UK MMO. Every possible attempt should be made to integrate the UK high level marine objectives and the Scottish Marine Ecosystem Objectives to help deliver an ecosystem approach at a regional seas level.

Q9 Should Scottish Ministers use the Marine Planning system to deliver Scotland’s obligations under the Marine Strategy Framework Directive?

We believe the Marine Planning system can support delivery of our obligations under the Marine Strategy Framework Directive. Given that the requirement is for the UK to produce Marine Strategies and programmes of measures that when combined with those from other Member States secures Good Environmental Status of the Marine (Sub-) Regions it will obviously be critical that UK Administrations work together to ensure a coherent approach to marine management. Such an approach would be supported through a UK-wide Marine Policy Statement and joint planning, involving all UK Administrations.

Q10 Do you agree with the overall approach and functions for Scottish Marine Regions? Do you have any further comments on the proposed approach to planning at a regional level?

Scottish Marine Regions

We would support that marine planning at this level have a statutory force.

Inshore Fisheries Groups

We support the establishment of Inshore Fisheries groups to manage local fisheries issues. We support the suggestion that each SMR Board would have representation from the relevant IFG and take into account the fisheries management framework developed by IFGs in drawing up regional plans. We would also suggest that the SMR Board have a place on the relevant IFG’s advisory group.

Presumption of Use

We are concerned at the suggestion of a ‘Presumption of use’. The planning system should be about determining what and where activities can occur taking into account all the different interests. Similarly such an approach must not bypass EIA requirements.

Appeals: WWF Scotland strongly believe that there should be a mechanism to appeal on the competence of the plan itself, rather than just on decisions made on the basis of the plan. There is no mention of a Public Inquiry process for marine plans and LINK believe that such a process should be mandatory, as for plans on land. There is also no mention of the SEA process.

Q11 Do you agree that Scottish Marine Regions should be responsible for integrated coastal zone management?

Yes.

CHAPTER 3 – REDUCING THE BURDEN: LICENSING AND ENFORCEMENT

Q14 Does licensing remain an effective method of delivering both certainty for investment purposes, and protection for the marine environment?

Q15 The existing licensing system covers most of the impacts on the seas from existing activities. One area of activity that has potentially large impacts and is not licensed is dredging. Scottish Ministers propose to license all new forms of dredging (i.e. those forms that agitate the sea bed). Do you agree? Are there other activities that should be licensed?

We agree that all new forms of dredging should be licensed.

Q16 Scottish Ministers intend to create powers to set out a list of licensable activities in regulations. Do you have any views on this approach?

This would appear to be a sensible approach, allowing Scottish Ministers to amend the list as new activities arise. Such a system would need to be flexible enough to deal with all forms of new activity, and subject to Environment Impact Assessment as mentioned in Box 3.1.

Q17 The proposed Marine Scotland should have general responsibility for the delivery of the marine licensing system. Do you agree?

Yes, we support the proposal to bring planning and licensing together under Marine Scotland.

Q18 Scottish Ministers intend to reduce the numbers of marine licences that developers require to get before an activity can take place. There are two ways to reduce the numbers of licences either by creating a single licence for all marine impacts or by creating a single licence for each activity. Which system do you prefer?

Q19 Marine Scotland could undertake the licence work itself or operate as a front door coordinating the work of others. Do you have any views on these options?

Marine Scotland could deal with all devolved licences, thereby meaning that fewer agencies would deal with consents and co-ordinate an approach to support both reserved and devolved licensing processes to be coordinated by Marine Scotland.

Q20 Do you agree with the proposed approach to consultation involving local stakeholders? Do you have any further comments?

We support the principle of improved local involvement in licensing decisions and new mechanisms to increase local accountability. We would therefore support the principle of non-statutory bodies being consulted although this would have to be done according to agreed and consistent criteria.

Q21 Do you agree that the revised licensing system should incorporate the simplified CAR model throughout, to focus scrutiny on higher risk activities/impacts and reduce the regulatory burden?

Q22 Scottish Ministers intend to provide Marine Scotland with powers to insert conditions into licences. Do you agree with this approach? In particular Scottish Ministers intend to create a standard condition on removal of redundant kit and installations, do you agree?

Yes. Impact monitoring should be a requirement and Marine Scotland should also be able to set standards such as minimum standards and good-practice standards.

Q23 Scottish Ministers believe an appeals procedure for those directly involved in the licence application would be a beneficial development. Do you agree?

Yes. We support an appeal process but any such process should also allow appeals by interested/affected parties as well as the applicant.

Q24 To provide an easy and transparent system, do you agree that a scale of charges related to cost recovery is the most appropriate way to recover the costs of assessing, issuing, monitoring and enforcing licences?

We support the polluter-pays criteria and note that the EU MSFD states that programmes of measures *should be devised on the basis of the precautionary principle and the principles that preventative action should be taken, that environmental damage should, as a priority, be rectified at source, and that the polluter should pay.*

Q25 The Scottish Government proposes a review of existing licence monitoring and enforcement provisions relating to the marine environment and wishes to consolidate them into a single set of coherent powers and remedies. Marine Scotland should be tasked with ensuring compliance monitoring and enforcement activity is carried out consistently and efficiently. Do you agree?

Yes - we need strong and visible monitoring and enforcement - it should be possible to check on a public register that all conditions are being complied with. We would also suggest that there should be a process to review licenses on a regular basis.

Q26 Please provide any further comments you have on the licensing provisions in the consultation paper.

CHAPTER 4 – SECURING THE FUTURE: NATURE CONSERVATION

Q27 Do you agree that our system of marine nature conservation should be based on the three pillar approach?

Yes. Both the AGMACS and SSTF processes gave widespread support for such an approach. We are disappointed that there is no specific mention of the ecosystem-based approach in this section.

Q28 Please provide your views or comments on the application of Marine Ecosystem Objectives for marine nature conservation.

WWF believe that Marine Ecosystem Objectives are central to the success of the Scottish Marine Bill and that high level marine ecosystem objectives should underpin the Scottish Government's policy on the marine environment and there should be a duty for Scottish Ministers to implement such MOs. We support AGMACS Recommendation 6.4.2. *“that a Scottish set of Marine Ecosystem Objectives (MEOs) should be drawn together, with full stakeholder engagement, during 2007. These should have the ecosystem approach at their heart, and should be fully integrated with the broad policy approach of 'living within environmental limits'. They should be nested within a wider set of MEOs for UK waters and for the Regional Seas around Scotland.”* A route map for the development of Scottish MEOs is required.

It is not clear whether it is the Scottish Government's intention that MEOs should apply only to marine nature conservation or to the entire Bill, including planning. As stated above we believe that MEOs should underpin the entire bill and not be applied only to marine nature conservation.

Q29 Do you agree it would be worthwhile to have a biodiversity duty in the offshore area around Scotland?

Yes, we support such a measure.

Q30 Do you have any other suggestions for making improvements to Pillar I – wider seas measures?

The marine planning system can have a significant contribution for marine nature conservation, but in order to achieve this aim there must be a clear sustainability purpose for the planning system, with the planning system underpinned by the 5 principles of sustainable development, rather than economic growth.

Q31 Do you agree with the proposals for a science based review of whether new marine species need to be added to the existing list of protected species?

Yes.

Q32 Do you have any further comments or suggestions for making improvements to Pillar II - species conservation?

In line with our support for granting of powers for marine nature conservation to 200nm, the Wildlife and Countryside Act 1981, the Conservation (Natural Habitats, &c.) Amendment (Scotland) Regulations 2004 and any associated legislation should also be extended and enforced to 200nm.

Q33 Do you agree with the overall principle of the introduction of a power to select new types of site?

Yes. We support this principle. The Scottish Bill should deliver networks of sites rather than individual sites. In order for the power to be used, we would like to see a duty in the bill for Scottish Ministers to deliver a ecologically coherent and representative network of MPAs.

Q34 Do you agree with the assessment of the three main types of requirements for site protection? Do you have any further comments on this?

We support the three requirements for site protection and in addition we would like to see protected areas for ecosystem recovery.

Q35 Do you have any views on whether or not a “single approach” should be taken for marine historic and natural environment site protection?

Q36 Do you agree with the proposals on how a new flexible site protection power will be used? Do you have any other comments?

We would support a duty to identify and designate new types of sites and a duty to create an ecologically coherent network of MPAs. We are concerned that proposals to allow de-selection of a site on the grounds of socio-economic impacts have the potential to compromise the marine environment on the grounds of changing economic priorities.

Q37 Do you have any views or comments on whether a single integrated power should be used to deliver these proposals?

Q38 Do you agree with the proposals for how sites will be managed, including the site by site approach and overall context of sustainable development? Do you have any additional comments?

We believe that nationally important marine features should be protected from potentially damaging activities according to their ecological need. We recognise that for some sites this may make minimal difference to human activities that take place with them, whilst others may require greater difference in the nature of human activities that are appropriate. It is important that cumulative impact be considered when considering the impacts of activities.

Q39 Please provide us with your views on the role that a wider planning system should have in the identification of Marine Protected Areas?

The wider planning system provides the framework within which a range of spatial designations and management conditions exist including a network of MPAs. The wider planning system will manage / regulate activities beyond MPAs which could have an impact on individual MPA sites. The identification of MPAs must be science-driven. As such we therefore support the proposal that Scottish Ministers have a separate power to create MPAs (Paragraph 147). Given our international commitments to deliver an ecologically coherent network of well-managed marine protected areas by 2010 and the establishment of representative networks for marine protected areas by 2012 under OSPAR and WSSD respectively, and the time-frame required to set up a system of marine spatial planning, it is clear that such a separate power would need to be used for the majority of sites.

Q40 Do you have any other comments or suggestions for making improvements to Pillar III - site protection?

Q41 Would you agree with the principle that the offence against damage to Natura sites should apply to marine sites? What are your views on whether a similar offence should be introduced for damage to other Marine Protected Areas?

Yes - operators should have to demonstrate that their activities will not have a significant impact, either singly or cumulatively, to be allowed to operate within Natura designated sites.

Q42 How can we enhance the contribution which the wild marine environment makes to Scotland's economy?

APPENDIX TO CHAPTER 4 – SEALS FORUM REVIEW OF THE CONSERVATION OF SEALS ACT 1970

Q43 Do you have any views or comments on the options for improving conservation measures for seals?

CHAPTER 5 – UNDERSTANDING OUR SEAS: SCIENCE AND DATA

Q44 Do you agree that Scottish Ministers should develop a marine science strategy to focus marine scientific effort, integrate socio-economic considerations, and to create a framework for wider stakeholder input?

Q45 Do you have views on how to integrate scientific evidence with stakeholder and local knowledge?

Q46 What do you think are the potential priorities for further work?

Q47 Scottish Ministers propose that the strategic role for the monitoring and assessment of Scotland's seas lies with Marine Scotland, do you agree?

Yes. In order to deliver an ecosystem approach to the management of UK seas, there should be a duty for Marine Scotland to co-ordinate its functions, including monitoring and assessment, with the UK MMO.

Q48 Scottish Ministers propose to instruct Marine Scotland to take forward the development of GIS as a matter of priority. Do you agree?

Yes.

CHAPTER 6 – MANAGING OUR SEAS: MARINE SCOTLAND

Q49 Scottish Ministers propose to develop Marine Scotland to champion the seas and their use and provide better integrated and streamlined delivery in the marine area. Do you agree?

We fully support the proposal to develop Marine Scotland with an integrated responsibility for the stewardship of Scotland's seas, including planning, licensing, compliance monitoring, enforcement, science and data and as the competent authority for implementation of the Marine Strategy Framework Directive.

We are concerned that a key role for Marine Scotland is suggested to be the delivery of 'increased economic growth for the marine area' (Paragraph 197), given that Marine Scotland will also take responsibility for marine nature conservation. In accordance with principles of sustainable development any activity in the marine environment must be within environmental limits and support a strong, healthy and just society. The goal of 'increased economic growth' should therefore not be a key duty of Marine Scotland.

We would support Option B (partial or total integration) rather than 'virtual' coordination as the most effective option. We agree that SNH's and relevant parts of the Scottish Government's regulatory responsibilities should be transferred to Marine Scotland, however SNH must remain independent in providing its statutory advisory and wider natural heritage 'promotional' roles.

Q50 Scottish Ministers propose that Marine Scotland deliver marine planning proposals as set out in Chapter 2. What are your views on this proposal?

We support the proposal that Marine Scotland be responsible for delivering marine planning proposals and we are pleased to see a duty on Marine Scotland to deliver ecosystem management.

Q51 Do you agree with the approach set out for fisheries and aquaculture management? Do you have any further comments in connection with this approach?

Yes, it is vital that responsibilities for aquaculture and fisheries are integrated within Marine Scotland.

Q52 What are your views on the arguments relating to where control for aquaculture should lie?

Control over aquaculture should rest with Marine Scotland.

Q53 Do you have any views on the role that FRS should take?

Q54 What are your views on the creation of Marine Scotland and the proposed range of functions it should deliver?

We support the establishment of a Scottish MMO. Safeguarding the sea and supporting its management in a sustainable manner should be the central role of Marine Scotland. Marine Scotland should have lead responsibility for marine planning, coordination, management and monitoring of underpinning science and data, and as competent authority for the implementation of the MSFD in Scotland. We note that the later responsibility will require close coordination with the UK MMO. We support the integration and management of fisheries and aquaculture with the other responsibilities of Marine Scotland but emphasise that sustainable development rather than economic growth should be the priority. We support SNH retaining its statutory advisory responsibilities, but there should also be a duty on Marine Scotland to have regard to such advice.

Q55 Do you have any views on the development of Marine Scotland's role and functions over time?

Q56 Ministers believe Marine Scotland should form part of Scottish Government with appropriate safeguards for science and the appeals process. Do you have any views?

In our view, and supported by legal advice undertaken for Scottish Environment LINK we would support Marine Scotland being established as a Non Departmental Public Body. Such an approach would both increase the independence of Marine Scotland from Government and aid co-ordinated working with UK MMO which is set to be established as an NDPB.

In terms of management of marine consents we would favour either integration of responsibility for environmental regulation of inshore waters within SEPA, with other marine regulatory functions resting largely within Marine Scotland, or integrating responsibility for marine environmental regulation in Marine Scotland. If the former option is followed it is vital that there is effective coordination between SEPA and Marine Scotland within 3nm.