



Scotland's National Marine Plan: Pre-consultation Draft Consultation response from RSPB Scotland

RSPB Scotland¹ is part of the RSPB, which speaks out for birds and wildlife, tackles the problems that threaten our environment and promotes the conservation of wild birds and their habitats. We are a charity supported by nearly 90,000 members in Scotland, based in coastal and rural areas as well as towns and cities, and 1,762 volunteers who contributed 82,558 man hours in 2008/09. Some 80% of our income, and thus our spend, is raised from the private sector and our membership, with the remainder coming from public funds, grants, trust funds and foundations.

RSPB Scotland's work covers a wide range of issues including planning, climate change, energy, water, agriculture and marine issues. We work with all marine-based industries including fisheries, aquaculture and marine renewables with the aim of developing sustainable businesses, supporting coastal communities, for the long term. We have practical experience of managing land and coast for conservation, farming, forestry and other enterprises. We undertake biological and economic research to underpin our policy analysis and advocacy.

As well as commenting on national policy issues, our professional planning and conservation staff comment on several hundred individual planning project proposals in Scotland each year. Together with our partners in Birdlife International, we have expertise in spatial planning, marine and sustainability issues within Scotland and throughout Europe and the world.

General comments on Marine Spatial Planning

RSPB Scotland has been a proponent of marine planning for many years. We wholeheartedly support the Marine (Scotland) Act 2010 with its three pillar approach to nature conservation, of which marine planning is a key 'wider seas' measure. While of course MPAs are a vital and valuable tool in delivering Scotland and the UK's marine nature conservation objectives, marine nature conservation is a wider concept than MPAs alone, instead covering the health and functioning of the entire marine ecosystem. Therefore, marine planners must consider the marine environment in its entirety when preparing plans and making decisions in accordance with these plans.

We support marine planning because, if carried out properly, as well as delivering benefits for industry and regulators it can ensure the sustainable use of marine space and resources, while protecting and supporting a healthy, functioning marine ecosystem.

¹ The Royal Society for the Protection of Birds (RSPB) is a registered charity: England and Wales no. 207076, Scotland no. SC037654



RSPB Scotland

Marine planning must ensure proper cohesion between marine and coastal areas. We are therefore pleased that Scotland's National Marine Plan will cover the entirety of Scotland's seas out to 200nm, and be 'signed off' in agreement with the UK Government, thus avoiding confusion over the artificial inshore/offshore boundary, and the political boundary of devolved/reserved issues.

There was widespread support for these aforementioned approaches to marine planning from industry, science and environmental groups who participated in the Cabinet Secretary's Sustainable Seas Task Force and its predecessor the Advisory Group on Marine and Coastal Strategy. These were further endorsed by the Environment and Rural Development Committee inquiry into the Marine Environment in 2007².

Overarching comments on the draft plan

RSPB Scotland welcomes the opportunity to comment on this pre-consultation draft of the National Marine Plan. We appreciate from discussions with Marine Scotland that this Plan is at an early stage of development, and we welcome the acknowledgement that a significant amount of further work is required before the formal consultation is launched later this year. We hope that our comments given here will be reflected in the development of the Plan, and we offer Marine Scotland our assistance in preparing further drafts.

RSPB Scotland is a signatory to the Scottish Environment LINK response to the pre-consultation, in which you will see our detailed comments on the draft Plan. RSPB Scotland's individual response will emphasise our great concern that, as currently drafted, the Plan would not fulfil the potential of marine planning to ensure better protection for seabirds and their marine habitats. One reason for this is because the draft Plan fails to give guidance to decision-makers on an ecosystem approach to planning in the marine environment, or to where certain activities are encouraged and where they should be avoided to protect sensitive sites and species. Instead, the current draft merely lists individual industry objectives, often for increased development. Even if it devolves detailed planning mechanisms to regional marine plans (which we would have some concerns about as resources for regional plans will be limited, and they may not cover all areas) the National Marine Plan must set the framework and practical ground rules for the regional plans to implement. RSPB Scotland's team of planning professionals has scrutinised the draft Plan and found that as yet it falls short of being a useful planning tool. Indeed, this failure will lead to actions or decisions which inadvertently contravene the EU Birds and Habitats Directives which of course apply to the marine environment.

We welcome comments made by Steve Brooker, Head of Planning at the UK Government's Marine Management Organisation, in a recent Planning Resource article, that *"he envisages core strategies and policy maps, rather like key diagrams in land*

² <http://www.scottish.parliament.uk/business/committees/environment/reports-07/rar07-04-00.htm>



*use plans, setting out objectives for each marine area. He also expects to see a mix of criteria-based policies, setting out general parameters within which particular activities will be encouraged, and site-specific policies for particular parts of the marine area”*³. The Plan must include these tools if Scotland’s marine planning system is to meet the requirements of the Marine (Scotland) Act 2010. For example, the Plan is the key tool to implement the UK Marine Policy Statement, which includes achieving the UK’s High Level Marine Objectives⁴, thereby “*ensuring a sustainable marine environment which promotes healthy, functioning marine ecosystems and protects marine habitats, species and our heritage assets*”⁵. The Plan must clearly state its role in meeting these legal requirements.

Marine planners must ensure that they consider the marine environment in its entirety when preparing plans and making decisions based on these plans, to ensure that due consideration is given to species such as seabirds that exhibit a strong terrestrial/marine interface. We would welcome further discussion before the next draft on how the Plan and subsidiary regional plans can deliver conservation benefits for internationally important seabird colonies in a more holistic manner, to improve upon the currently limited spatial protection afforded to certain species.

We believe that there should be a clear mechanism to review the competence of the Plan itself, as well as an appeal mechanism for decisions made on the basis of the Plan. There is no mention of a Public Inquiry or examination process for marine plans; we believe that such a process should be mandatory in certain circumstances, such as where there are outstanding objections to a plan, as for development plans on land.

Summary of key concerns

- We appreciate the benefits of being able to comment on an early draft Plan. However, significant additional work is required to most areas of the Plan before it goes out for full consultation. We would be happy to provide further informal comment on future working drafts in advance of full consultation.
- The Plan must contain clear guidance to decision makers on where certain activities are encouraged, and where they should be avoided to protect sensitive sites and species. It must also give more guidance on the relationship between the planning system and nature conservation, for example by highlighting legislative requirements (such as the Birds and Habitats Directive duties) and the mechanisms available through the Plan development process to ensure greater protection for seabirds and marine ecosystems.

³ <http://www.planningresource.co.uk/bulletin/planningdaily/article/1068069/offshore-operator/>

⁴ High Level Marine Objectives, UK Administrations, 2011
<http://www.scotland.gov.uk/Topics/marine/seamanagement/marineact/marineobjectives>

⁵ UK Marine Policy Statement, UK Administrations, 2011
<http://www.scotland.gov.uk/Topics/marine/seamanagement/international/MPS>



- The draft Plan contains a presumption in favour of development, with no accompanying reference to environmental limits. This could lead to unnecessary confusion, and is not consistent with the principles of sustainable development and therefore runs counter to the requirements of the Marine (Scotland) Act, Scottish Planning Policy and the UK Framework for Sustainable Development, to which the Scottish Government is a signatory. As such, all references to a presumption in favour of development should be removed.
- This presumption in favour of development is particularly inappropriate given the results of the Scottish Government's newly published Marine Atlas⁶, which indicates that many Scottish marine areas are deteriorating, while pressures on the marine environment are increasing. The Marine Atlas was prepared specifically to inform the Plan and should be referenced throughout future drafts.
- The sector plans include industry wish lists, often for increased development. Sector "challenges" should not feature in the Plan unless they have been subject to environmental assessment.
- The draft Plan does not assess in-combination or cumulative impacts on the marine environment. It is therefore unclear how the Plan will proactively reconcile conflicts and ensure that development is within the carrying capacity of the environment. This must be addressed in further drafts.
- The Plan must contain more specific guidance for regional plan makers. If the Plan is devolving detailed planning mechanisms to regional marine plans, the government must demonstrate its commitment to the establishment of these with adequate funding and support. If this support cannot be given, then the Plan must give very clear guidance to decision makers on project or activity level consenting and conflict resolution, eg guidance similar to that contained in the Scottish Planning Policy.
- We would like to see a clear statement in the Plan that it will be a key tool to achieve Good Environmental Status under the Marine Strategy Framework Directive. The Plan must give clear guidance to decision makers on Scotland's many legal commitments to conserving the marine environment.
- A healthy marine environment is the prerequisite for gaining economic benefit from our seas. Therefore, achieving the Marine Nature Conservation Objectives should be a priority for all other sectors, and this should be reflected appropriately in the Plan.

⁶ Scotland's Marine Atlas: Information for the National Marine Plan
<http://www.scotland.gov.uk/Topics/marine/science/assessment/atlas>



Comments on Chapters 1 – 6

Introduction

RSPB Scotland believes that a marine planning system should be based on an ecosystem approach to managing human activities, should contribute towards achieving sustainable development, and should operate in the long term public interest as, for example, is clearly set out in Scottish Planning Policy⁷. This long term public interest is served when marine planning ensures that marine biodiversity and ecosystems are protected, their resilience is maintained or increased, and additional pressures are avoided to enable the environment to shore up resilience to the current and predicted effects of climate change on the natural environment. We would like to see this language reflected in this chapter.

‘Sustainable development’ should be defined according to the five principles of the sustainable development enshrined in the UK Framework for Sustainable Development, to which the Scottish Government is a signatory⁸. The Scottish Planning Policy provides a good, concise description of how the terrestrial planning system should contribute to sustainable development. This is also usefully set in the context of achieving the Government’s ambition of achieving sustainable economic growth. This could easily be adapted for use in marine planning and would help ensure a measure of consistency between marine and terrestrial planning.

The UK Marine Policy Statement should be explicitly referenced in the text, not relegated to a footnote, including its objective to achieve the UK vision of “*clean, healthy, safe, productive and biologically diverse oceans and seas*”⁹.

Interaction with land planning

Marine planners must ensure that they consider the marine environment in its entirety when preparing plans and making decisions based on these plans, to ensure that due consideration is given to species such as seabirds that exhibit a strong terrestrial/marine interface. RSPB Scotland would welcome further discussion on how the Plan and subsequent regional plans can deliver conservation benefits for internationally important seabird colonies in a more holistic manner, to improve upon the currently limited spatial protection afforded to certain species.

It is essential that the marine planning system is coordinated with the terrestrial planning system and *vice versa*. This section should set out how the Plan will interact with the terrestrial planning system ie activities carried out by the Town and Country Planning Acts, or other relevant ‘planning’ systems such as River Basin planning under the Water Framework Directive. More guidance is required for developments authorised under other regimes, for example oil and gas, transport, and energy.

⁷ <http://www.scotland.gov.uk/Publications/2010/02/03132605/0>

⁸ <http://www.scotland.gov.uk/Publications/2010/02/03132605/7>

⁹ UK Marine Policy Statement p10.



The Plan must contain details on ways to handle differences or conflicting statements within the terrestrial and marine plans, or between different planning systems, and should clearly indicate which plan takes priority where the two systems overlap.

Summary – the way forward

This chapter summarises industry targets, many of which are wish lists for increased development. These should not feature in the Plan unless they have been subject to environmental assessment. Also, it is unclear how the Plan would reconcile conflicts between these expanding sectors. Without an assessment of in-combination or cumulative impacts on the marine environment, it is also unclear how the Plan will ensure that such development is within the carrying capacity of the environment. This must be addressed in further drafts.

The Marine Nature Conservation “key challenges” should include Scotland’s many EU and international commitments, such as the requirement to achieve Good Environmental Status by 2020, and a coherent network of Marine Protected Areas by 2012. We believe that achieving the nature conservation objectives is a prerequisite for achieving the other sector targets, and this should be reflected appropriately in figure 4.1.

Assessment of Scottish Marine Area

Scotland’s Marine Atlas was published as an information base for the National Plan, as required by the Marine Act. The Atlas shows that many marine areas are deteriorating, while pressures on the marine environment are increasing. For example, the Atlas reports that for Scotland’s internationally important seabird populations “abundance has been declining since the early 1990s” and “productivity... has declined to a low of 57% in 2007, since when there has been a very slight increase.” The Atlas states that “the key factors affecting the abundance and productivity of seabirds are food availability, weather conditions and the occurrence of predators” (pp130-132).

Further drafts must explicitly state how the Plan will guide damaging activities away from sensitive sites, and relieve pressure on already stressed environments. This must include a full assessment of in combination and cumulative effects of pressures on the marine environment.

Related European Directives

This chapter omits any reference to the Birds and Habitats Directives. The Plan must set out the responsibilities Scotland and the UK have to these key pieces of environmental legislation, including making clear the only circumstances in which a development that could affect a designated site would be allowed. Future drafts must ensure that the Plan accurately reflects the legal requirements of the Birds and Habitats Directives, for example to state that development must aim to avoid harm to features.

This chapter must make clear that Scotland has to ensure that estuaries and coastal waters are in good ecological status by 2027 in order to comply with the Water



Framework Directive. The Plan must clarify how it will integrate with WFD and MSFD to ensure that coastal waters are properly managed and that priority issues are fully addressed.

Comments on Chapter 7 – National Marine Plan Key Objectives

The Scottish Government's view that there should be "*a presumption of use for the marine area*" should be caveated with reference to sustainable development, defined according to the five principles of sustainable development enshrined in the UK Framework for Sustainable Development, to which the Scottish Government is a signatory.

We are extremely concerned that the term 'presumption of use' is open to misinterpretation due to how it has traditionally been interpreted under the terrestrial planning system. We assume here that presumption of use would only apply to marine activities licensed and permitted under existing rights, including environmental assessment. Otherwise such an approach would bypass EIA and Habitats and Birds Directives requirements for assessment and we could not support it. This chapter should be amended to reflect this, and to add a presumption against development that is not in accordance with to the Plan. Without this addition, the Plan will not meet the terms of the Marine (Scotland) Act, which states that authorisation decisions must be made in accordance with the Plan (s15).

We are concerned that this section states the Government's key purpose to be increasing sustainable economic growth. We note that the Government's use of the term sustainable economic growth remains undefined, but used variously to mean 'economic growth' and 'sustainable development'. This confusion is unsatisfactory and should be resolved. Rather, the ecosystem approach should be the basis for marine planning and any new planning system should be firmly underpinned by the five principles of sustainable development (as defined in the UK Framework) rather than economic growth per se.

In addition to the UK High Level Marine Objectives and indicators for good environmental status under the Marine Strategy Framework Directive, reference should be made to the Scottish Marine Ecosystem Objectives produced by SNH.

Comments on Chapter 8 – Climate Change Objectives

The draft Plan identifies 'human activity contributing to climate change' as one of two significant, widespread pressures on the Scottish marine area. Even now, climate change is having a major effect on Scotland's seabirds¹⁰. Climate-induced reductions in food availability during the breeding season is now causing declines in populations of some seabird species in many areas of Scotland. This throws into ever starker relief the urgency to ensure that human activities in the marine environment do not undermine the resilience of seabirds especially, but also entire marine ecosystems under increasing stress from climate change. Increasing seabirds'

¹⁰ <http://www.mccip.org.uk/media/7562/mccip-report-2010-2011.pdf>



resilience to future oceanographic change is also important for Scotland's rural economies: our seabird assemblage is of outstanding international importance, and so attracts millions of pounds in tourism revenue to our coastal communities¹¹. The Plan must acknowledge the immediate threat to seabirds from climate change, and must lay out urgent actions to mitigate this. This chapter should contain detailed objectives relating to the mitigation of, and adaptation to climate change.

We note that Scotland's adaptation response to climate impact is to be developed with guidance from the Scottish Government's Climate Change Adaptation Framework. However, we do not believe that this Framework and its associated Marine and Fisheries Sector Action Plan¹² strategically guides adaptation in this sector¹³ or contains enough detail to guide the development of the Plan's climate change objectives. Furthermore, the Adaptation Framework refers to the Plan for objective setting. We trust that this will be resolved before the next draft of the Plan, which should include detailed objectives on climate change. In addition, the agreed objectives must be reflected in the actions of the statutory Adaptation Programme, scheduled for 2013.

Comments on Chapter 9 – Scottish Government approach to development

We fundamentally disagree with the Scottish Government's presumption in favour of development in the marine environment. Failing as it does to make clear reference to environmental limits etc, this is not consistent with the principles of sustainable development and therefore runs counter to the requirements of the Marine (Scotland) Act, the Scottish Government's Marine Conservation Strategy and the UK Framework for Sustainable Development. As such, we ask that all references to a presumption in favour of development should be removed.

We seek clarification of the 'national priorities' in which context the draft Plan states any marine development will be considered, and how these priorities interact with the Plan's key objectives.

This chapter currently includes a number of inconsistencies with equivalent sections the Scottish Planning Policy, which further drafts must rectify. One inconsistency particularly concerning to us is where the draft Plan appears to undermine the level of protection afforded to European nature conservation sites. The Plan must make clear the only circumstances in which a development that could affect a designated site would be allowed, and this must be consistent with the requirements of the Habitats Regulations. Future drafts must ensure that the language and tone of this chapter, and throughout the Plan, accurately reflects the legal requirements of the Habitats Directive, for example to state that development must aim to avoid harm to marine ecology.

¹¹ <http://www.rspb.org.uk/ourwork/policy/economics/caseforature/Economies/charismaticspecies.aspx>

¹² <http://www.scotland.gov.uk/Topics/Environment/climatechange/scotlands-action/adaptation/AdaptationFramework/SAP/MarineandFisheries>

¹³ http://www.rspb.org.uk/Images/Adapting%20to%20the%20Changing%20Climate_tcm9-273876.pdf



We note that Regional Marine Plans will draw on relevant coastal plans or strategies. To achieve this, full consideration must be given to SEPA's national flood risk assessment and integration with the Flood Risk Management Plans, when published.

Comments on Chapter 10 - Interactions Matrix

An interactions Matrix should be included in the Plan only if there is a scientific basis for the assessment of interactions.

Comments on sector specific sections

Food - Fisheries

RSPB Scotland supports and works with sustainable fishing businesses; the integration of fisheries management with the marine planning system is essential to achieving our shared vision for the marine environment, which includes:

- An ecosystem approach to fisheries management, with routine use of selective and environmentally sensitive gear and closed areas
- Full compliance in a network of marine protected areas.
- Minimal impact on sensitive marine habitats and non-target species, and minimal discarding
- Mandatory Long Term Management Plans on the basis of mixed fisheries, where appropriate, and fleet capacity balanced with available resources.
- Effective governance based on sound science and monitoring and fit for purpose enforcement with routine use of observer methods.

This vision should be reflected in the fisheries objectives.

The Plan must acknowledge, and later adapt to, the reform of the Common Fisheries Policy in 2013 and the changes to fisheries management which will result from it. The text on Maximum Sustainable Yield should read '...to ensure levels of exploitation that restore and maintain populations above levels that can produce MSY, not later than the 2015 WSSD deadline'.

We welcome the recognition of the impacts fishing activity can have on the marine environment, and the recognition that these will have to be managed appropriately in order to achieve Good Environmental Status and abide by the Birds and Habitats Directives. The Plan must ensure that fishing activities with an adverse impact on MPAs must be appropriately managed to ensure they do not adversely impact on the features under protection. Consideration of this must include an assessment of the impacts of displacing fishing activity out of MPAs into wider seas, and displacement should be carefully monitored to ensure impacts are not simply shifted onto surrounding stocks and habitats. Fishing activities compatible with conservation objectives need not be restricted.

The Marine Atlas states that 'improved knowledge of fishing activity and its impact on the marine environment would be beneficial' (p002). This should be included as an objective for the sector. We must use this improved knowledge to put in place measures necessary to minimise the environmental impact of the sector. For example



improved knowledge will help the sector to *'embrace...procedures used to measure environmental, social and economic valuation of its activities, such as SEA and EIA'* as recommended in the independent report of the Inquiry into Future Fisheries Management¹⁴. Using these tools will help the industry prove their activities are compatible with Scotland's conservation objectives, and those of MPAs. Priority access to resources should be given to fisheries which can prove that their activities are sustainable and this should be factored into the marine planning system. The carbon footprint of various fishing metiers and methods should also be considered.

The Marine Atlas also states that *"...the establishment of new fisheries should only be undertaken following careful assessment of the viability and future sustainability of the fishery"* (p002) and *'currently, Scottish Ministers will not license any expansion in Scotland's existing fishing capacity'* (p149). This must be highlighted in the Plan.

Aquaculture

We are highly concerned by the 'challenge' to increase production of marine finfish by 50%, freshwater production of salmon and trout by 50% and shellfish by 100%. Such industry targets have no place in the plan unless they have been subject to environmental assessment.

Throughout the Marine Atlas there is reference to the local effects of aquaculture on seabed ecology (eg p002, p006). The Plan must include an objective to better understand, and mitigate, these effects on marine life. Other objectives must include:

- Data gaps on the impacts of aquaculture on the marine environment are filled before permissions are granted;
- Farm siting is not detrimental to protected areas and the wider environment;
- Aquaculture development is no barrier to Scotland achieving the aims of the Marine Act such as meeting High Level Marine Objectives, or achieving Good Environmental Status in Scottish waters;
- Methods of predator control on farms do not have adverse impacts on target and non-target species of conservation importance;
- Fish feed is sustainable both in terms of the pressure that it places on wild fish stocks, other marine wild life and ecosystems, and the potential environmental problems incurred by the search for non-fish protein and oil replacements such as Soya and palm oil.

The Plan must lay out the planning and licensing system for aquaculture, and the wider policy framework that guides the aquaculture sector, including the Strategic Framework for Scottish Aquaculture.

Energy - Introduction

RSPB Scotland is wholly supportive of marine renewable energy if developed in a sustainable manner: our vision is of a thriving industry that will help reduce the

¹⁴ <http://www.scotland.gov.uk/Topics/marine/Sea-Fisheries/common-fisheries-policy/future-fisheries-manageme>



causes of climate change and bring secure long-term jobs while safeguarding diverse, productive seas. Scotland's low carbon energy potential, if it succeeds in cutting CO2 omissions, will benefit all of us, and our wildlife.

Climate-induced reductions in food availability during the breeding season are already causing declines in populations of some seabird species in many areas of Scotland. This further highlights the urgent need to mitigate further climate change and to develop low carbon energy. We must also ensure that human activities in the marine environment do not undermine the resilience of seabirds and the entire marine ecosystem, which is under increasing stress from climate change.

RSPB Scotland supports the Government's ambitions to deliver marine renewables. However, the Plan must ensure that this is in line with the principles of sustainable development. Inappropriately designed and/or sited developments can also cause serious and irreparable harm to biodiversity, and could damage the public acceptability of the necessary transition towards renewables.

The Plan refers to Governments ambitions to bring financial dividends for the exploitation of Scotland's natural resources, and references the recent consultation entitled "Securing the Benefits of Scotland's Next Energy Revolution. We welcome the commitment that *"the pursuit of maximum value from this must be balanced with the lowest possible impact cost to the Scottish marine environment"*. We see income from marine renewables as a significant opportunity to deliver innovative and lasting projects to protect and enhance our environment, which would in turn bring social and economic benefits to communities across Scotland. By reinvesting money into projects which have positive environmental outcomes, the Scottish Government could:

- i. spread the benefits of the new energy revolution widely and equitably across Scotland, and
- ii. help the Scottish Government deliver its own objectives for clean, healthy, safe, productive, biologically diverse seas for future generations.

Oil and Gas

The ongoing exploitation of fossil fuels inevitably results in greenhouse gas emissions. Given Scotland's world leading climate legislation, Scotland should be seeking to reduce exploitation of oil and gas reserves rapidly. As such, it would be inappropriate for the Plan to promote maximum extraction of fossil fuels. As these issues are reserved to Westminster, scope for action depends on the UK Government's agreement to the Plan. We offer support to the Scottish Government in advocating a sustainable energy future in discussions with the UK Government.

We strongly believe that the findings and recommendations of the recent Energy and Climate Change Committee Report 'UK Deepwater Drilling - Implications of the



Gulf of Mexico Oil Spill¹⁵ must be acknowledged in the Plan as it has implications for the development of the sector in the Scottish Marine Area. The Committee unearths some very serious concerns about the regulatory regime and how unprepared the UK oil industry is for a spill event at the scale of Deepwater Horizon. In particular, we note the Report states “...we are concerned about the ability of oil spill response equipment to function in the challenging environment found in the seas West of Shetland.” The report states that “the environmental impacts of a sub-sea well blow out need to be understood and taken into account when a drilling license is issued in the UK.” Under the Habitats Directive, unless damaging effects on European species and habitats can be ruled out then consents should be withheld.

Carbon Capture and Storage

RSPB Scotland supports the transition to a low carbon energy supply, and the part CCS can play in this. However CCS projects must deliver an overall net reduction in carbon emissions, and so we favour retrofit wherever possible. CCS projects must not result in the destruction of other important environmental assets such wildlife habitat, whether on- or off-shore. This must be reflected in the Plan. We do not support the use of enhanced oil recovery techniques in CCS as this undermines the emissions savings of using CCS over traditional fossil fuels. The Plan should take into consideration the most feasible sites for storage of CO₂ but also which sites would not utilise enhanced oil recovery techniques.

Renewables

As stated above, RSPB Scotland supports and works with the marine renewable energy industry, as the expansion of our renewables capacity is needed to meet Scotland’s objectives of decarbonising the electricity sector and mitigating the worst impacts of climate change. However, renewables must be developed in a manner that ensures Scotland’s marine environment, and the resources it provides, is protected for future generations.

This section contains several inaccuracies and inconsistencies which further drafts must correct. The key challenges and objectives need significant work to make them compatible with SEA and Habitats Regulations. For example, the reference to BATNEEC is no longer appropriate, and the Plan must make clear that environmental impacts should first be avoided then minimised if work has to proceed. The objective to provide 10 Gigawatts generation capacity by 2020 needs clarification as it is not clear how this has been derived or subjected to environmental assessment. Omissions include no reference to the plan for offshore wind.

It is a startling omission that there is no objective to improve understanding of the impact of renewables on the marine environment. In addition to this, the Environmental Impacts section in particular needs significant work. For example, we do not agree that the impacts listed are the most significant for offshore wind;

¹⁵ The report can be accessed at - <http://www.publications.parliament.uk/pa/cm201011/cmselect/cmenergy/450/45002.htm>



displacement is likely to be of greater concern than collision for most seabirds. Reference should be made to the findings of the Marine Atlas, the Strategic Environmental Assessment (SEA) and Habitats Regulations Appraisal (HRA) for offshore wind energy.

We ask that the renewables section of the Plan is thoroughly revised before the next draft. We offer Marine Scotland our assistance in developing further drafts.

Tourism & Recreation

Putting marine conservation at the heart of planning and decision making also brings direct benefits to coastal communities; wildlife attracts visitors, who in turn spend money in the local economy. Half of all Scotland's wildlife is found around our coasts, so communities situated there should benefit from the growing popularity of marine wildlife watching. Seabirds alone attract millions of pounds in tourism revenue to our coastal communities¹⁶. Spending by visitors can benefit a wide range of enterprises in a local area, through direct, indirect and induced impacts, helping to provide income and employment for local people. An independent survey at RSPB's Mull of Galloway reserve, in a part of Scotland where much of the local economy depends on tourism, found that over 70% of respondents cited seeing seabirds as either their main reason or one of the reasons for visiting the area¹⁷. The Plan must ensure that coastal communities continue to benefit from a well protected marine environment.

Marine Environment

A healthy marine environment is the prerequisite for gaining economic benefit from our seas; a continued decline in marine biodiversity will directly impact on Scotland's marine industries. A government which fails to take this ecosystem approach to marine development also fails its businesses, and the communities reliant on them. The Plan must direct decision makers to support ecologically sustainable marine industries for the benefit of the wider marine environment *and* economically viable livelihoods. Therefore, achieving the Marine Nature Conservation Objectives should be a priority for all other sectors, and this should be reflected appropriately in the Plan. It is encouraging that the introduction to the objectives sections notes that "*nature conservation measures have an integral role in ensuring a healthy and resilient marine environment*" under, but there is no detail here or in the plan as a whole about how nature conservation will be integrated practically into the workings of marine industries.

Again, the draft Plan fails to provide the necessary framework for decision making or for informing subservient plans. For example, here the Plan must include policies on species and site protection. The Objectives section must clarify that Marine Protected

¹⁶[1] *Watched like never before: the local economic benefits of spectacular bird species* (RSPB 2006) pp 56–63 http://www.rspb.org.uk/images/watchedlikeneverbefore_tcm9-133081.pdf,

¹⁷ *The Local Value of Seabirds: estimating spending by visitors to RSPB coastal reserves* (RSPB 2010) http://www.rspb.org.uk/Images/localvalue seabirds_tcm9-258550.pdf



Areas includes Natura sites and new MPAs under the Marine (Scotland) Act. Under 'wider seas measures', the language is concerning, focussing on 'managing pressure' and promotion of 'sustainable use' rather than taking protection as the key principle of conservation. This must be corrected in future drafts.

The Marine Nature Conservation 'key challenges' should include Scotland's many EU and international commitments, such as the requirement to achieve Good Environmental Status by 2020, and a coherent network of MPAs by 2012.

There is a need for more clarity on the relationship between the marine planning system and nature conservation, with more detail on the potential mechanisms available through the marine plan development process to ensure greater protection for seabirds and other marine species, both within and out with the MPA network. The Plan must give direction on how the management requirements of MPAs will be integrated with the marine planning system.

We challenge the statement that we are "*making good progress in delivering conservation...especially in relation to EC coordinated action*". The Birds Directive required the designation of Special Protected Areas (SPAs) for seabirds by 1981. We are now 30 years beyond that deadline. To date we only have 3 truly marine SPAs in the UK, none of which are in Scotland. Although the extension of seabird colony SPAs in 2009 was a welcome step, important seabird foraging areas remain unrepresented in Scotland's Natura network. Additionally, we would argue that the designation of seabird MPAs under the Marine (Scotland) Act is critical to complying with the Birds Directive. The Birds Directive obliges the UK to put in place a protected area system for seabirds that protects and manages habitats to maintain and restore their populations throughout their range in the UK. SPAs can and will only do part of this job, because for most, if not all, Annex 1 and migratory species, SPAs alone are not sufficient to meet the requirements of Articles 3 and 4 of the Birds Directive, as is demonstrated on land, where the UK relies on both SPAs and SSSIs to meet those requirements. We strongly believe that in addition to SPAs, the new MPA mechanism will be required to deliver favourable conservation status for marine birds. At present, most of the initiatives relating to seabirds (Seabird Monitoring Programme etc.) are concerned with monitoring their continued decline, rather than implementing conservation measures to arrest it.

Coastal/Water

Marine plans must deliver a strategic approach to protection and management of habitats and species that transverse the land-sea boundary eg mobile species such as seabirds, to meet their ecological needs across such boundaries.

Coastal protection and flood defence

This section must refer to the Flood Risk Management Act and the requirements under the Act in relation to sustainable flood protection along coastlines. We believe the Plan should support and encourage managed realignment, enabling intertidal habitat such as mudflat and saltmarsh, to be created to compensate for areas lost to



erosion. This management facilitates adaptation to climate change, improving resilience that can deliver benefits for biodiversity as well as flood defence. This also fulfils the objectives of Scotland's Land Use Strategy¹⁸ (applicable on coastal and intertidal land) which are for land to be used and managed in accordance with the ecosystem approach and to realise multiple benefits.

Key challenges in this section must be amended to reflect the sustainability requirements of the FRM Act. For example, the key challenge *"To provide affordable protection against coastal change and flooding"* must be amended to replace affordable with sustainable, given that the FRM Act requires sustainable flood management. This should be addressed in further drafts.

Throughout this section there is much emphasis on beach replenishment and nourishment, and very little reference to coastal realignment techniques. We would hope to see the next draft offer more detail is given on managed realignment and regulated tidal exchange and the subsequent benefits for: mitigating habitat loss arising through coastal squeeze; climate change adaptation; and carbon sequestration¹⁹.

The 'Future' section requires much more detail and should clearly set out which policies and plans the Plan must integrate with, and a timeline for doing so. There is currently no mention of the FRM Act here, which a concerning omission. We offer Marine Scotland our assistance in revising this section before the next draft.

Water Abstraction

A key challenge must be to achieve sustainable water use, as this is central to ensuring that water resources are safeguarded in a changing climate.

The objective to *"Develop more sustainable urban drainage systems to reduce river pollution – ongoing work with farmers to reduce pollution from the use of nitrate-containing fertilisers"* should also make reference to phosphates and pesticides used in agriculture and amenity use in urban areas. The Water Framework Directive as implemented in Scotland extends to 3nm. The Future section needs a much more thorough assessment of current plans and policies e.g. the Flood Risk Management Plans, and the Water Resource Management Plans that are proposed under the Climate Change Adaptation Framework. Again, we offer Marine Scotland our assistance in revising this section before the next draft.

Waste water

The Urban Wastewater Treatment Directive must be included in the objective to *"Improve quality of wastewater treatment works discharges to ensure compliance with the environmental standards set out in the Freshwater Fish Directive."*

¹⁸ <http://www.scotland.gov.uk/Publications/2011/03/17091927/0>

¹⁹ Nellemann, C., Corcoran, E., Duarte, C. M., Valdés, L., De Young, C., Fonseca, L., Grimsditch, G. (Eds). 2009. Blue Carbon. A Rapid Response Assessment. United Nations Environment Programme, GRID-Arendal, www.grida.no



Again, this section would benefit from revision to include more detail on how sustainable water supply can reduce carbon emissions. For example, the Plan should highlight that there are statutory requirements for the water industry in Scotland to do this under the public bodies duties part of the Climate Change Act.

Comments on the interim Sustainability Appraisal

RSPB Scotland believes that that an SEA on its own is a better option than an SA with an SEA embedded within it. We are concerned that the rationale for carrying out an SEA may be lost within the wider SA process. We would like it made clear that the SEA Directive requires the identification, description and evaluation of 'reasonable alternatives', including each alternative's proposed measures "*to prevent, reduce and as fully as possible offset any significant adverse effects on the environment of implementing the plan or programme*" (SEA Directive 2001/42/EC, Annex I, para (g)). This reflects the key principle of the SEA Directive, in that it seeks to avoid impacts from occurring, rather than merely mitigating them.

The SEA Directive seeks to "*contribute to more sustainable and effective solutions*" (Recital 5) and its objective is "*to provide for a high level of protection of the environment and to contribute to the integration of environmental considerations into the preparation and adoption of plans and programmes with a view to promoting sustainable development ...*" (Article 1). Thus, in the context of the SEA Directive, making plans more sustainable means adopting more environmentally-acceptable solutions, identified through the assessment of alternatives. If the SEA of the Plan is not compliant with the SEA Directive, it is also not compliant with the Environmental Assessment (Scotland) Act 2005. To support greater clarity that these responsibilities are met fully, the Plan's SA must distinguish those elements which meet the requirements of the SEA Directive, and clearly set out how the outcomes of the SEA have specifically influenced the decisions made in line with the objectives of the SEA Directive. This is an important step that needs to be included at all points of the Plan's development. The key principle of SEA is to identify impacts and avoid them by amending the plan – hence, we believe that unless amendments are made (or non amendments properly justified) we believe the resultant National Marine Plan will be unlawful.

The interim SA report of the draft Plan does not appear to assess the environmental affects of what is currently contained in the Plan. In addition, there is no detail on the assessment of alternatives. This may be a reflection of the Plan being at an early stage of development; we would expect the SA to be much improved by the time the draft Plan is put out for consultation later this year. We offer Marine Scotland our assistance in further developing the SA.

Kara Brydson
RSPB Scotland
June 2011