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Assembly

## Research and Information Service Briefing Paper

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# Marine Scotland Visit

In April 2012 the Environment Committee travelled to Scotland during its consideration of the NI Marine Bill to meet with Marine Scotland, the Scottish Environmental Protection Agency and a number of NGOs involved in the creation of the Marine (Scotland) Act. This paper gives a summary of the meetings and highlights the main points discussed.

## Marine Scotland

### Introduction

The Environment Committee met with Officials from Marine Scotland who were involved in the drafting of the Marine (Scotland) Act. They began the meeting by explaining that Marine Scotland was created as a directorate of the Scottish Government in advance of the enactment of the legislation. It consolidates the broad range of functions needed for the management of the marine environment into a single body, while not being completely independent from government. Its roles include:

- Oversight of marine planning and licensing;
- Promoting economic growth for the marine renewables industry;
- Managing fisheries and the aquaculture industries;
- Ensuring a sound evidence base to inform the development of marine policy;

- Ensuring effective compliance and enforcement arrangements; and
- Is responsible for activities up to 12 nautical miles.

Officials explained that Marine Scotland was not specifically provided for in the Marine (Scotland) Act, but was facilitated by the non-departmental structure of the Scottish Government.

### **Structure**

The view was that Scotland is too small a region to justify the creation of a NDPB, when the aim has been to reduce the number of NDPBs. Therefore the directorate approach was adopted which lends itself to the small departmental structure in Scotland.

## **Marine Science**

### **Marine Scotland Science Advisory Board**

Marine Scotland has an independent Science Advisory Board which ensures science is accountable and impartial. The Board provides in-house advice (different to the MMO) and includes representation from the Fisheries Research Service. It works directly for the Minister of Environment.

It was explained that there is cross-fertilisation where meetings will be held with a number of different Ministers to discuss cross-cutting topics, and regular meeting held with other departments.

For transparency and accountability Marine Scotland uses the Marine Strategy Forum, which was established in July 2009 to provide advice on Marine Scotland's key strategies and priorities.

According to the Officials Marine Scotland took over some powers from different departments, for example, Electricity Act consents taken from Department of Energy. It was felt that in order to develop the marine environment, marine expertise was needed, and therefore responsibility was handed over to Marine Scotland.

Along with the Board, Marine Scotland also makes use of the following resources:

### **The Marine Science Co-ordination Committee. (MSCC)**

The MSCC is composed of senior representatives from the major marine science funding Departments, the Devolved Administrations, and key marine science providers. It reports directly to a group of Ministers, chaired by the UK Marine Science Minister. It has two main responsibilities: to deliver the Marine Strategy Framework Directive through the UK Marine Science Strategy (2012); and to improve marine science co-ordination.

## **The European Marine Experimental Centre (EMEC)**

Officials explained that wind and tidal energy is one of Scotland largest renewable energy resources, and is focused around the North coast of Scotland and the islands, whereas wind is more to the east of Scotland due to the suitability of the sea bed.

The EMEC is the first of its kind in the world; based in Orkney it provides developers of wave and tidal energy with purpose built testing facilities such as:

- the largest tidal test site in world off Island of Eday; and
- a wave test site at Stromness, Orkney.

## **Implementation of the Marine (Scotland) Act**

In relation to the drafting of the Bill, officials explained that the concept was to keep it broad and general so as to get involvement from more people. They stayed away from detail of marine planning and licensing within the Bill, where detail was dealt with in subsequent legislation and the marine plans. The Sustainable Seas Taskforce brokered agreements and conflicts, and according to the officials it was key to the success of the Bill.

### **Pressure from stakeholders**

Marine Scotland uses the Forum to get stakeholders on board. Face to face meetings are held between stakeholders once every three weeks which according to the officials of Marine Scotland helps to keep relationships.

Officials mentioned that they did receive pressure for an MMO, however:

Marine Scotland was in operation a year before the Bill came into force, therefore it hit the ground running from the beginning, whereas according to the officials, the UK MMO has taken two to three years to get up and running meaning that there were a couple of years of a lag where it couldn't deliver its functions.

Due to its independency the MMO moved to Newcastle, with this move it lost access to a number of resources i.e. lost legal experience with the move to detach itself, whereas Marine Scotland is all in the one location.

In relation to costs, officials informed that Marine Scotland costs £50 million - £60 million per year.

## **The Marine Plan**

A pre- consultation on the Draft National Plan was conducted due to the lack of time to perform a full consultation before the elections. However, Marine Scotland wanted to issue something to inform stakeholders. The aim of the National Plan was to provide a

spatial view, providing more theory on marine planning and using a more holistic ecosystem based management perspective.

### **Scotland's Marine Atlas:**

Currently Marine Scotland is working on a Draft Consultation document for late 2012 for Whitehall. The consultation document comes together with Scotland's Marine Atlas which is the evidence base for the National Marine Plan. The Atlas provides an assessment of the condition of Scotland's seas, based on scientific evidence from data and analysis.<sup>1</sup> A requirement of the UK Marine and Coastal Access Act was to have an assessment of the seas to inform the national plan

In preparation of the Atlas, the government produced 'The State of Scotland Seas' report in 2008 (similar to State of the Seas Report in NI), which was produced from the UK assessment 'Charting Progress' and took 2.5 years to develop. It had contributions from a number of the scientists involved in the UK 'Charting Progress', and involvement from the Agri – Food and Biosciences Institute (AFBI).

It is unclear how often updating will be required as it will depend on how much and how often stats change.

### **Marine Protection Areas (MPAs)**

Identification of MPAs was run in parallel to the development of the Bill. Marine Scotland aims to identify a network of MPAs by the end of 2012.

The marine plan:

- helps to manage MPAs and local authorities
- identifies MPAs, roughly 30 in total which include inshore MPAs, offshore MPAs, research MPAs

Officials informed that they estimated the cost of identifying, managing and monitoring MPAs, and then estimated how many extra sites above the existing OSPAR sites would be allocated so as to give an idea as to whether more or less can be designated depending on budget and cost.

Marine Scotland ran workshops with stakeholders, and as a result officials stated that the majority of MPAs will be designated without much conflict. Lessons learned from stakeholder events included that the importance is not what the clauses say in the Bill, but what they could mean for those they will impact. For example, there were concerns expressed that sustainable use of areas within an MPA could actually result in 'no take zones'.

According to officials, concern with no take zones developed due to stakeholder's views that site specific protection on land didn't really work before.

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<sup>1</sup> [Scotland's Marine Atlas - Information for the National Marine Plan](#)

There was thought given to the use of MPA powers to benefit fishermen e.g. by determining whether certain species within an MPA need protection if numbers are plentiful. Officers highlighted the importance of using science to provide unbiased evidence.

### **Historic Sites**

Ministers agreed to have these in the Bill from the very beginning and to reform the Wrecks Act 1973.

At the beginning Scotland was part of the UK approach, however Scotland withdrew so as to bring protection/conservation, and new planning and licensing under the one piece of legislation. It was felt that this would prevent duplication and would align better with the new planning system.

### **Seals**

Marine Scotland agreed that it should be made an offence to kill, injure or take a seal at any time of the year except to alleviate suffering or, where a license has been issued by Marine Scotland under part 6 of the Act allowing for the controlled shooting of seals, mainly for the protection of fish stock.

Aquaculture planning and consenting rests with local authorities, however the officials expressed that up until now, local authorities haven't taken much interest in the Marine Bill.

Local authorities have taken a strong role in relation to determining marine regions in terms of how these will roll out and what their role will be in the development of these regions. It was suggested that this interest could be due to financial concerns in relation to the requirements. However officials discussed that there appears to be an unbalanced appreciation for the legislation between local authorities where the central belt doesn't take as much interest, and tends to pass it to the highland councils.

### **Fisheries**

Officials stated that in relation to fisheries, the Common Fisheries Policy takes priority and is the key issue.

The Inshore Fisheries Group will be the main fishery authority in each region.

The main challenge for planning in the future is how the industry is going to change due to the effects of climate change, resulting in the possible introduction of new species etc.

### **Terrestrial and marine overlap**

It was explained that there is an overlap of the two systems – with terrestrial planning being responsible down to the low water mark, and marine up to the high water mark.

Therefore it must be ensured that terrestrial planners will have regard to the marine plan.

## Scottish Environmental Protection Agency

SEPA is the Environmental regulator for Scotland (similar to NIEA).

It is responsible for the rolling out of the Water Framework Directive which covers out to three nautical miles. With the Marine Bill (out to 12 nautical miles) in conjunction with this, SEPA pointed out the possibility of dual regulation.

Scottish National Heritage is part of SEPA which gives scientific advice. SNH and SEPA are statutory both statutory consultees.

## Licensing and responsibilities

Under the Marine Bill SEPA has responsibility for licensing, which comes in a 3 tier level for flexibility. Therefore if an activity escalates over time it can be moved up a level of importance and vice versa.

According to SEPA, the simple rule of play is if you comply then you are covered, where as if something is more complicated it is only covered under bespoke regulation. SEPA's remit stops with discharges, anything which is engineering is covered by Marine Scotland, therefore it is important that they know their role and where it stops.

In terms of the importance of knowing boundaries of responsibilities, SEPA have found difficulties surrounding sand dunes and determining which part is saline, and which is non-saline or terrestrial and under the remit of a local authority.

Marine Scotland has survey vessels and a marine fleet; the SEPA vessel focuses on one coast while marine Scotland deals with the other for compliance with EU Directives

Before the legislative change was made, licenses were needed under Part 2 of the Food and Environment Protection Act 1985 (FEPA) and Part 2 of the Coast Protection Act 1949 (CPA) – under the Marine Bill the process was streamlined so that Marine Scotland became the single point of licensing for FEPA and CPA licenses, or as Marine Scotland calls it '*a ones stop shop for marine licensing*'. The process was implemented before the legislation came into force; therefore the public were already familiar with the new system.

In general, the process has been made less complicated: license applications go out to statutory consultees i.e. SEPA and its scientific arm, the coast guard and non-statutory consultees. The turnaround is approximately 21 days, however for more complex applications such as wind farms it can take 9 months.

Licensable activities include:

- Coastal and marine developments;
- Wind farms;
- Wave and tidal power; and
- Removal and disposal of marine dredged material at sea.<sup>2</sup>

### **Pre-consultation**

Some activities are registered; these include activities that are exempt from licensing so as to monitor their impact. Activities with potential for significant environmental impact are subject to pre-consultation i.e. wind farms. The applicant must consult with the public and a stakeholder event is held 12-6 weeks before submission of an application. This allows the applicant to adapt the application according to stakeholder response – according to SEPA, this makes the process more open to the public and generates efficiency savings by short cutting the process and addressing problems at the very beginning.

## **Scottish Marine Regions**

The National Marine Plan sets out the strategic objectives for the Scottish marine area, however it was agreed that to forward the objectives, smaller Scottish Marine Regions (SMRs) would be established to allow planning to take place at a local level. It was agreed that functions would be delegated to Marine Planning Partnerships that would be responsible for the development of regional marine plans.

These Marine Regions are established through secondary legislation once boundaries are determined and agreed on by consultation. Marine Planning Partnerships comprise public authorities, representatives with commercial, recreational and conservation interests of a particular region.

Marine Scotland officers are to support the work of the Marine Planning Partnerships by providing technical capacity through funding or by using Marine Scotland's planning resources. Marine Scotland will provide a Chairman for these partnerships. As boundaries will not interlink, SEPA suggested that it will be up to the Chairman to ensure interaction with other regions, so as to avoid duplication and fatigue.

As well as marine planning, and stakeholder engagement, Integrated Coastal Zone Management will be a core function of the partnerships recognising the need for interactions of coastal activities with terrestrial and marine environments.

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<sup>2</sup> For more information visit <http://www.scotland.gov.uk/Topics/marine/Licensing/marine>

## NGOs

- Scottish Fishermen Federation (SFF) - Patrick Stewart
- Marine Conservation Society (MCS) - Calum Duncan

According to SFF the fishing industry was not supportive of the Marine Bill as they feared the potential effects on the industry.

Government tried to assure the industry that the Bill would help secure a future for younger generations (even if not addressing the immediate needs of the present industry). However this was a very difficult message to put across when the industry is in decline and looking to address current needs.

In comparison MCS felt that strategic management of the seas and a process for planning, licensing and conservation, that could be understood by everyone was lacking, and felt that the Bill would be useful in addressing this.

MCS was of the opinion that Marine Scotland brought fisheries research and scientific arm together and created space for dialogue between Department officials, the environmental community and stakeholders. The process was successful due to dialogue and openness around the detail of the implementation of the Bill.

## Issues with the Bill

It was felt that the early draft lacked general duties especially in relation to sustainable development and in terms of what the Bill was trying to achieve – that it was not only about management and maintaining the status quo but that it could bring about improvement.

SSF wanted to ensure the legislation balanced the aspirations of government, NGOs and maintaining an environment for those who make a living from the marine environment.

### Wording

In general it was felt that the wording of the Bill was very vague, however, according to Marine Scotland the reason for vagueness was to allow for flexibility when developing the detail.

SFF remarked that the Bill is now stronger in term of the process to assess impacts on fishing.

MCS pointed out that the designation of MPAs was firmed up to make it a duty, this gave stakeholders more clarity and an idea of what 'will' happen, not what 'might'



## **Fishing Industry**

There has been no direct experience of the implementation of the Bill as yet, but there have been cases where the fishing industry has made small amendments to boundaries even after approval by Brussels, showing that flexibility is there for alteration.

SFF commented that if there is no space in the NI Bill for 3<sup>rd</sup> Party proposals, NGOs may feel unrepresented.

MCS stated that they accept Marine Scotland as a step in the right direction in terms of governance, but would like to see it more at arm's length and would prefer a NDPB, meaning that if they are not happy with any decisions made by it they can appeal to Government. However, due to the body being a directorate of Government, a decision can only be appealed by judicial review.

MCS also commented that the marine national plan and regional plans must reflect Marine Protected Areas, and that marine planning alone is not sufficient.

According to the FSS the Marine Strategy Framework Directive explicitly refers to the Common Fisheries Policy in relation to fisheries management and their feeling is that they do not want a third policy of fisheries management.

## **MPAs/MCZs**

With regard to Marine Conservation Zones (MCZs) in the NI Bill, FSS commented that the lack of provision from Government gives the fishing industry cause for concern especially in relation to displacement. There is no compensation for the industry in the Bill, and no re-arrangement of the industry where it is expected to adapt to the situation.

FSS also suggested that where a MPA or MCZ causes displacement, there must be dialogue between Government and all those affected. The main concern is that with no rights of ownership in fishing grounds as there is with farming grounds, there is no requirement for compensation where displacement takes place.

MCS was of the opinion that science should drive where these conservation zones should be, and that management of a site should be to set up it to address what the site is for.

MCS continued that MPAs are for protection and not fishery management; however there could be cases where an MPA could benefit the fishing industry i.e. by protecting a habitat that generates more species for fishing.

There will only be consensus when users of the sea recognise the benefits of the process and protection, and therefore, MCS commented that an over-arching body would be useful in contributing to this.