

EU Exit: Guidance for Scotland's National Marine Plan

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1. Background

- 1.1. Scotland's National Marine Plan¹ ("the Plan") was published and adopted in 2015, creating a single planning framework to manage Scotland's seas. The Plan ensures that increasing demands for the use of our marine environment are managed, encouraging economic development of marine industries and incorporating environmental protection into marine decision making.
- 1.2. Marine planning in Scotland's inshore waters is governed by the Marine (Scotland) Act 2010², an Act of the Scottish Parliament, and in its offshore waters by the Marine and Coastal Access Act 2009³, an Act of the UK Parliament. Under the Marine (Scotland) Act 2010, the Scottish Ministers are required to adopt a marine plan covering Scottish inshore waters and the Marine and Coastal Access Act 2009 requires a marine plan covering the offshore region. The Scottish and United Kingdom (UK) Governments agreed that the two marine plans should be published in one document (the Plan).
- 1.3. The Plan therefore applies to the exercise of both devolved and reserved functions and to both Scottish inshore (out to 12 nautical miles) and offshore (12 to 200 nautical miles) waters.
- 1.4. Management of Scotland's environment was, prior to the UK's exit from the European Union (EU), underpinned by EU laws and standards. The National Marine Plan was implemented under domestic legislation, however it was developed in accordance with the EU Marine Spatial Planning Directive⁴ and contains numerous references to legislation and processes which are no longer appropriate now that the UK has left the EU.
- 1.5. This guidance sets out how references to EU law and processes within the Plan should be interpreted to ensure that the Plan can still be understood and effectively implemented.

¹ Scotland's National Marine Plan. A single framework for managing our seas (2015). Available from <https://www.gov.scot/publications/scotlands-national-marine-plan/>

² Marine (Scotland) Act 2010. Available from www.legislation.gov.uk

³ Marine and Coastal Access Act 2009. Available from www.legislation.gov.uk

⁴ Directive 2014/89/EU of the European Parliament and of the Council of 23 July 2014 establishing a framework of maritime spatial planning. Available from www.eur-lex.europa.eu

1.6. Separate guidance⁵ has been developed by the UK Government to aid interpretation of the UK Marine Policy Statement⁶, a document which was jointly agreed between the four UK administrations and sets the high level policy context for marine plans developed within each administration.

2. References to EU Directives

2.1. The National Marine Plan contains references to various EU Directives, including the Marine Spatial Planning Directive⁷, the Water Framework Directive⁸, the Marine Strategy Framework Directive⁹, the Habitats Directive¹⁰, the Wild Birds Directive¹¹, the Bathing Water Directive¹², the Environmental Noise Directive¹³, the Offshore Safety Directive¹⁴, the Carbon Capture and Storage Directive¹⁵ and the Shellfish Directive¹⁶.

2.2. Subject to the following exceptions, a reference to a Directive¹⁷, or provisions of that Directive, should be read as reference to the legislation which gave effect to the requirements of that Directive (or the provision of that Directive) in the UK, as amended.

⁵ EU Exit Guidance to the UK Marine Policy Statement

⁶ UK Marine Policy Statement (2011). Available from <https://www.gov.uk/government/publications/uk-marine-policy-statement>

⁷ See footnote 4

⁸ Directive 2000/60/EC of the European Parliament and of the Council of 23 October 2000 establishing a framework for Community action in the field of water policy. Available from www.eur-lex.europa.eu

⁹ Directive 2008/56/EC of the European Parliament and of the Council of 17 June 2008 establishing a framework for community action in the field of marine environmental policy (Marine Strategy Framework Directive). Available from www.eur-lex.europa.eu

¹⁰ Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora. Available from www.eur-lex.europa.eu

¹¹ Directive 2009/147/EC of the European Parliament and of the Council of 30 November 2009 on the conservation of wild birds. Available from www.eur-lex.europa.eu

¹² Directive 2006/7/EC of the European Parliament and of the Council of 15 February 2006 concerning the management of bathing water quality and repealing Directive 76/160/EEC. Available from www.eur-lex.europa.eu

¹³ Directive 2002/49/EC of the European Parliament and of the Council of 25 June 2002 relating to the assessment and management of environmental noise. Available from www.eur-lex.europa.eu

¹⁴ Directive 2013/30/EU of the European Parliament and of the Council of 12 June 2013 on safety of offshore oil and gas operations and amending Directive 2004/35/EC. Available from www.eur-lex.europa.eu

¹⁵ Directive 2009/31/EC of the European Parliament and of the Council of 23 April 2009 on the geological storage of carbon dioxide and amending Council Directive 85/337/EEC, European Parliament and Council Directives 2000/60/EC, 2001/80/EC, 2004/35/EC, 2006/12/EC, 2008/1/EC and Regulation (EC) No 1013/2006. Available from www.eur-lex.europa.eu

¹⁶ Directive 2006/113/EC on the environmental quality of shellfish waters. Repealed by Directive 2000/60/EC of the European Parliament and of the Council establishing a framework for the Community action in the field of water policy (available from www.eur-lex.europa.eu) implemented in Scotland by the Water Environment and Water Services (Scotland) 2003.

¹⁷ Including entries in the glossary

2.2.1. Reference to “priority habitats and species” in section 4.44 of the Plan should be read as reference to those habitats or species as listed in Annex I of the Habitats Directive¹⁸ as it was when we left the EU, or in accordance with provision made regarding how that Annex is to be read in legislation applicable in Scotland (including to Scottish offshore waters) at any time after exit day.

2.2.2. In accordance with the Marine Strategy Regulations 2010, references to descriptors of Good Environmental Status¹⁹ should be read as references to those descriptors as they were listed in Annex 1 of the Marine Strategy Framework Directive²⁰ at EU exit day, with the exception of the reference to “Community legislation” in descriptor 9, which should be read as if it were reference to relevant legislation applicable in the UK.

2.2.3. For the avoidance of doubt, the term “European Protected Species” is being retained, and the protections afforded to these species are retained under relevant national legislation.

2.3. There are references within the National Marine Plan to legislation that gave effect to the requirements of EU Directives in all or part of the UK (for example, reference to the Conservation (Natural Habitats, &c.) Regulations 1994). Such references are to the legislation as amended. It should be noted that the legislation may have been amended as a consequence of EU exit²¹.

2.4. The reference to “EU environmental legislation” in section 6.4 of the Plan should be read as “UK environmental legislation”.

3. References to the Natura 2000 network

3.1. The terms “Special Area of Conservation” (or “SAC”, in the abbreviated form) and “Special Protection Area” (“SPA”) are being retained and refer to sites of that type in the UK, whether designated as such before or after EU exit.

¹⁸ See footnote 10

¹⁹ See section 3.6, 4.58, Annex B and glossary entry

²⁰ See footnote 9

²¹ In the case of the reference to the Conservation of Offshore Habitats and Species Regulations 2007 (“the 2007 Regulations”), this is an out of date reference. The 2007 Regulations have been replaced by the Conservation of Offshore Habitats and Species Regulations 2017 (“the 2017 Regulations”). The reference to the 2007 Regulations should therefore be read as reference to the 2017 Regulations.

3.2. Special Areas of Conservation (SACs) and Special Protection Areas (SPAs) in the UK designated in accordance with the Habitats and Wild Birds Directives no longer form part of the European Union's Natura 2000 network. Instead, they form a UK-wide network of protected sites, called the "UK site network²²" or the "national site network²³" (the terminology varies between the relevant legislation). This network is made up of SACs and SPAs designated before EU exit (i.e. sites in the UK that previously formed part of the Natura 2000 network) and any sites designated after EU exit under legislation that implemented the Habitats and Wild Birds Directives²⁴ in the UK.

3.3. References to the "Natura 2000 network" (or the "Natura network", in the abbreviated form)²⁵ should therefore be read as the "UK site network" or the "national site network", and references to a "Natura Site" should be read as a reference to a site forming part of that network. These sites still contribute to delivering national and international biodiversity objectives and continue to form the UK's contribution to the Bern Convention's Emerald Network. Marine sites also contribute to the network under the OSPAR convention.

4. References to the Common Fisheries Policy

4.1. The National Marine Plan contains references to the "EU Common Fisheries Policy" (CFP)²⁶. The CFP comprised around 100 EU Regulations that were directly applicable in the UK. As a consequence of EU exit, those EU Regulations have been incorporated into domestic law and amended so that they work appropriately following EU exit, or in some cases, revoked. References to the "EU Common Fisheries Policy" or "the Common Fisheries Policy" should be read as references to those fisheries Regulations that have been incorporated into domestic law. The exception to this general rule is the reference to the CFP in footnote 65. Part 1 of Chapter 6 of the Plan should be read as if that footnote were omitted.

4.2. The Plan references "the EU's obligation to land all catches of quota stocks"²⁷, a policy implemented under the CFP. The obligation to land all catches of quota stocks still exists, therefore this sentence should be read as if "EU's" were omitted.

²² As defined in the Conservation (Natural Habitats, &c.) Regulations 1994 (as amended)

²³ As defined in the Conservation of Offshore Marine Habitats and Species Regulations 2017 (as amended)

²⁴ See footnotes 9 and 10.

²⁵ See section 4.41, 4.42, 4.43, 4.50, footnote 123 and glossary entry

²⁶ See section 2.22,, p38, key references p40, section 6.4, section 6.52

²⁷ See p37, point 8

4.3. Paragraph 6.43, contains references to existing spatial management measures, such as areas closed to fishing to protect vulnerable marine ecosystems on the Rockall Bank and Darwin Mounds, which “are managed at an EU level or through the North East Atlantic Fisheries Commission (NEAFC)”. These existing measures remain in effect but are either instead managed by the Scottish Ministers or, as previously, through NEAFC. In the same paragraph, the Plan states that “National measures can be put in place by Scottish Ministers but outside the 6-mile zone other EU Member States are not obliged to observe these closures”. As a result of EU exit, EU Member State vessels are now obliged to observe all closures up to 200 nautical miles. Paragraph 6.43 should be read accordingly.

5. References to the EU Commission

5.1. The National Marine Plan contains references to the role of the European Commission which are no longer appropriate as a consequence of EU exit.

5.2. The European Commission will no longer provide an opinion in relation to whether there are reasons of overriding public interest for a plan or project to be granted consent within an SAC or SPA in Scottish inshore²⁸ or offshore²⁹ waters, where an adverse effect on site integrity cannot be ruled out. Consequently, paragraph 4.44 should be read as if the words “European Commission via” were omitted.

5.3. The EU Commission no longer plays a role in policy development in the UK. Paragraph 10.21 should be read as if the words from “and the Scottish Government” to the end of that paragraph were omitted.

²⁸ The Conservation (Natural Habitats, &c.) Regulations 1994

²⁹ The Conservation of Offshore Marine Habitats and Species Regulations 2017



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