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About RSPB Scotland

RSPB Scotland 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 2,358 volunteers who contributed 131,904 hours in 2011/12. 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, agriculture and marine issues. We work with all marine-based industries including renewable energy and fisheries 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. As well as commenting on national policy issues, our professional planning and conservation staff comment on several hundred individual 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.

RSPB Scotland's key points in response to this consultation

Scotland is home to 24 species of breeding seabirds. Scottish Natural Heritage reports significant declines in our seabird colonies since 1986 – as much as 80% decline in Arctic skua, and 68% in black-legged kittiwake¹. Using RSPB Scotland's most recent data, scientists predict that some of Scotland's globally important seabird colonies could soon be extinct in parts of the country.

Marine Planning is the tool to achieve sustainable development of our seas that protects Scotland's marine environment, including our internationally important seabird populations. Scotland's National Marine Plan could place Scotland as a world leader in high quality, sustainable marine spatial planning. The Marine (Scotland) Act 2010 duty requires the Plan to *further the achievement of sustainable development within the marine environment, including the protection and, where appropriate, enhancement of the health of that area*².

During his evidence to the Scottish Parliament's RACCE Committee the Cabinet Secretary for Rural Affairs and the Environment, Richard Lochhead said:

“the purpose of the Marine (Scotland) Act 2010 is to protect our marine environment, so the outcome has to be that we find a way in which we can allow economic activity at sea while protecting the marine environment, which has to be the number one priority”. (8th May, 2013).

RSPB Scotland is greatly concerned that, as currently drafted, the draft Plan will not fulfil the potential of marine planning to deliver sustainable development of Scotland's seas or contribute towards Scotland's many environmental duties and commitments. Our key concerns are:

1. The Plan, as currently drafted, fails to apply an ecosystem-based approach to the management of Scotland's marine resources, nor does it adequately guide how to deliver this approach at the regional level. This failure will lead to actions or decisions which contravene duties under the Marine (Scotland) Act and Marine Strategy Framework Directive, the EU Birds and Habitats Directives, the Climate Change (Scotland) Act 2009, and commitments in the UK Framework for Sustainable Development. Some examples of where in delivering Scotland's National Marine

¹ <http://www.snh.gov.uk/docs/B424907.pdf>

² http://www.legislation.gov.uk/asp/2010/5/pdfs/asp_20100005_en.pdf Part 2 (3)

Plan, Government must meet the requirements of existing international and national legislation include:

- Under the Marine Strategy Framework Directive (MSFD³): *prioritise the achievement or maintenance of good environmental status of Scotland's marine area (Article 1, 1); protect and preserve the marine environment, prevent its deterioration and where practicable, restore marine ecosystems..... (Article 1(2)(a)).*
- under the Water Framework Directive (WFD⁴) the Plan must contribute towards the achievement of *good status* (good ecological status) of Scotland's water, which includes coastal waters (Part 1(25)).
- The UK Marine Policy Statement⁵ seeks contribution to the achievement of sustainable development in the UK marine area,
- while the Marine (Scotland) Act 2010⁶ *duty requires* Scotland's National Marine Plan to *further the achievement of sustainable development within the marine environment, including the protection and, where appropriate, enhancement of the health of that area (Part 2 (3)).*

2. The draft Plan is not clear on its purpose, aims and objectives, all of which are well documented in existing legislation and policy. We want to see this context set at the very front of the document, so that planning practitioners are clear that the Plan should steer decision making which:

- Delivers achievement or maintenance of good environmental & ecological status of Scotland's marine area;
- Furthers the achievement of sustainable development within the marine environment; and
- Ensures protection and, where appropriate, enhancement of the health of the marine area.

This clarity will help users of the Plan contribute towards achieving Scottish Government's vision for the marine environment which is for *'clean, healthy, safe, productive and biologically diverse and managed to meet the long term needs of nature and people'*⁷.

³ Marine Strategy Framework Directive – Directive 2008/56/EC, L164, p.19 25.6.2008

⁴ Water Framework Directive – Directive 2000/60/EC, OJ L 327, p.1 22.12.2000

⁵ HM Government. 2011. The UK Marine Policy Statement

⁶ Scottish Parliament. 2010. Marine (Scotland) Act 2010 (asp 5)

⁷ <http://www.scotland.gov.uk/Publications/2013/07/9185/4>

3. The draft Plan utterly fails to indicate how each of Scotland's marine sectors will contribute to the requirements and duties of the legislation listed above. Instead, the Plan allows each sector to present a 'wish list' of ambitions for growth. This means that the Plan will not provide any better conservation of the marine environment than the status quo, nor facilitate its recovery. In fact, the Plan's current ambition to see growth in all marine sectors, including offshore wind development, aquaculture and fishing, will ultimately increase the risk of conflict between sectors and increase pressure on the marine environment, and will therefore have a deleterious and long-term impact on the health of our seas. This is entirely counter to sustainable development, nor does it conform with the draft Plan's own policies, specifically GEN 12 & GEN 19.

We stress the importance of the Scottish Government's obligations to achieve sustainable development of the marine area. This requires Government to support, equally, the five guiding principles as set out in the UK's shared framework for sustainable development. To achieve this, the National Marine Plan must ensure all marine activities exist and progress by respecting the limits of the marine environment, its resources and its biodiversity so that the marine environment and the natural resources it provides are unimpaired and remain so for future generations.

4. RSPB Scotland's team of planning professionals have scrutinised the draft Plan and found that it falls short of being a useful planning tool. The Plan must give more prescriptive guidance on how to manage the marine environment in a manner which achieves sustainable development. Planning practitioners will need to balance conflicting priorities from different sectors that are set within existing environmental constraints and capacities. Setting this balance now is vital in order to prepare for the next 'tier' of regional marine plans. We recommend that Government hosts a workshop to test the efficacy of the Plan in supporting decision making and delivering sustainable development. Working through scenarios with marine planners and key stakeholders using the Plan as their guide will help identify areas of the Plan that require improvement.
5. The Plan does not appropriately set out the requirement for integration of terrestrial and marine planning. Beyond the legislative requirements set out in the Plan, there is little steer on how planning practitioners can and should integrate the two systems. The Plan must contain details on ways to handle differences or conflicting statements

within the terrestrial and marine plans, or between the different planning systems, and should clearly indicate which plan takes priority where the two systems overlap. Both planning systems must act to establish close integration as a priority to ensure effective management of the marine area.

6. The draft Plan lacks any timeline setting out short, medium and long term aims, nor is there any indication of the lifespan of the Plan or requirement for periods of review. In the absence of such a timeline, the Scottish Government will be unable to monitor progress and the effectiveness of the Plan.

RSPB Scotland's response to the consultation questions

Q1. Does the NMP appropriately guide management of Scotland's marine resources?

No. The Plan, as currently drafted, fails to appropriately guide management of Scotland's marine resources and fails to implement the duties of the Marine Act or contribute to the achievement of national and European legislation.

The draft Plan is an improvement on the pre-consultation draft and we welcome the reference and integration of sustainable development throughout the document, in addition to the ecosystem approach and recognition of the importance of the marine natural environment in sustaining existing and future marine activities.

However, the Plan must provide greater clarity and give more prescriptive guidance on how to manage the marine environment in a manner which achieves sustainable development. We highlight here headline recommendations as to where improvement can be made and we elaborate on these in following questions.

1. The National Marine Plan must make clear what its objectives are and what it will deliver. The Plan should:
 - *Deliver achievement or maintenance of **good environmental & ecological status** of Scotland's marine area;*
 - *Further the achievement of **sustainable development** within the marine environment; and*
 - *Ensure **protection** and, where appropriate, **enhancement** of the health of the marine area.*

These objectives are taken directly from international and national legislation and policy including the UK Marine Policy Statement, the Marine and Coastal Access Act 2009, the Marine (Scotland) Act 2010; the European Marine Strategy Framework Directive (MSFD) and the Water Framework Directive (WFD). Together these objectives will help contribute towards achieving Scottish Government's vision for the marine environment which is for '**clean, healthy, safe, productive and biologically diverse and managed to meet the long term needs of nature and people**' (page 14 of draft Plan).

The Plan does not provide, with any clarity, its purpose, aims and objectives that are well documented in existing legislation and policy. We believe this context set out at the very front the document, so that users of the Plan are clear as to its use, purpose and guiding principles.

Within this context, a notable omission is the lack of a timeline setting out short, medium and long term aims or goals. Nor is there any indication of the lifespan

of this Plan and requirement for periods of review. In the absence of such a timeline, Government will be unable to monitor progress and effectiveness of the Plan.

The Plan must provide details that set out the period for which this Plan applies and explanation of the overall direction of travel for achieving the Plan's vision. Long-term goals will provide consistency across this Plan and any future iteration, whilst enabling short term goals to be adjusted and adapted when required.

2. There is a lack of clarity on how the ecosystem approach has been an integral element of the plan preparation process. Taking an ecosystem approach is fundamental to achieving sustainable development and we discuss this in more detail in sections below. However, setting this context early on in the document is important as it provides the framework steer within which future regional marine plans will be established.
3. As a document that must aim to achieve sustainable development, it lacks the guidance required by marine planning practitioners. Practitioners will need to balance conflicting priorities from different sectors that are set within existing environmental constraints and capacities, however at present the Plan simply supports, in equal measure, all sectors. It is recommended that Government takes forward a workshop that focuses on testing the efficacy of the Plan in supporting decision making. Working through a number of scenarios with marine planners and key stakeholders using the Plan as their guide will help identify areas of the Plan that may require improvement.
4. The Plan should operate in the long term public interest as, for example, is clearly set out in Scottish Planning Policy. Long term public interest can only be served when the Plan ensures that marine biodiversity and ecosystems are protected and enhanced, 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. This language must be reflected in the Plan rather than what is presented as a set of industry targets that simply supports increased development and which lacks any anticipatory guidance of what should happen when activities demonstrate cumulative impacts or conflicting pressures.

Note: The recent opinion of Lady Clark of Calton in the Petition of Sustainable Shetland for the Judicial Review of Scottish Ministers' consent for the construction of the Viking Wind Farm on Shetland has highlighted the importance of taking a more holistic approach to the management of our environment. The windfarm will have an adverse impact on whimbrel, a bird species already not in favourable conservation status in the UK.

The judgement is likely to be particularly relevant in the offshore environment because a number of seabird species are in decline and/or have unfavourable

conservation status. Since the Regulations and Directives apply to plans or projects, it would seem likely that marine planning documents and decisions on projects will be affected. In her lengthy and detailed judgement, Lady Clark made a number of points that will need to be considered as part of the development of the National Marine Plan and measures to ensure better management of our marine environment. These include:

- She ruled that Scottish Ministers had not adequately demonstrated how they had taken the requirements of the Habitats Regulations and the Birds Directive into account in reaching their decision to grant consent for the Viking Windfarm. When considering future consents for projects or plans in similar circumstances decision makers will need to be much more explicitly clear on how they have had regard to the Regulations and Directive. This is likely to include being able to demonstrate broader environmental management measures that are being undertaken which may not be directly connected to the development or plan being considered.
- Her judgement indicated that in these circumstances additional or extended SPAs may be required, or other measures may be needed, to ensure the requirements of the Birds Directive to “...strive to avoid pollution or deterioration of habitats”. An obvious measure that may assist here, in addition to the completion of the Natura network, might be the identification of a comprehensive and effective network of Marine Protected Areas for seabirds. Measures to identify what is causing species to be in decline or in unfavourable status will also be important.

Lady Clark’s opinion may be subject to an appeal and so may not be final. However, it could well be final by the time the National Marine Plan is finalised so it would be pragmatic to consider the potential implications of the opinion should it be confirmed.

Q2. Does the NMP appropriately set out the requirement for integration between marine planning and land use planning systems?

No, The Plan does not appropriately set out the requirement for integration of terrestrial and marine planning.

Beyond the legislative requirements set out in the Plan, there is little steer on how planning practitioners can and should integrate the two systems. Policies GEN6 and GEN7 refer to the need to integrate and comply with existing plans, but this lacks a framework that would help make decisions. 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.

Furthermore, the Plan must emphasise the importance and necessity of taking an

ecosystem approach that seeks to consider the interrelationship between terrestrial and marine activities and the effects both have on the marine environment. Both planning systems must act to establish close integration as a priority to ensure effective management of the marine area.

Q3. Does the NMP appropriately guide development of regional marine planning? What, if any, further guidance is required for regional marine planners in terms of implementation and how to interpret the NMP?

No, the Plan does not appropriately guide development of regional marine planning. There is a fundamental lack of prescriptive or explicit guidance provided within the Plan to inform the preparation of regional marine plans. Further explanation of duties, commitments and obligations required of Marine Planning Partnerships and marine users, is required, particularly with regard to nature conservation legislation and policy.

Overarching guiding principles of sustainable development, the ecosystem approach and the requirements of the nature conservation hierarchy of designations and requirements of national and international environmental legislation is required (such as Strategic Environmental Assessment, Habitats Regulations Appraisal and project level Environmental Impact Assessment).

Q4. The Marine Regional Boundaries Consultation proposed that in addition to regional marine planning, further integrated management of key marine areas would be achieved by designating the Pentland Firth; the Minches and the mouth of the Clyde as Strategic Sea Areas. Should the NMP set out specific marine planning policies for Strategic Sea Areas?

Overarching planning policies that apply to the whole sea area - if robust, detailed and explicit in the setting out of environmental obligations and requirements - would be sufficient to achieve sustainable management of Scotland's seas, including key marine areas.

There is, however, a requirement for the Plan to identify key nodes where specific and wide ranging marine activities and pressures require additional or focused consideration. We suggest that the Plan identifies these areas and makes it a requirement that 'issues reports' or equivalent are prepared by relevant Marine Planning Partnerships. This would achieve the appropriate level of focus to MPPs and help address the specific requirements of those marine areas in question, thus supporting integration between partnerships and authorities.

Q5. Are the objectives and policies in the NMP appropriate to ensure they further the achievement of sustainable development, including protection and, where appropriate, enhancement of the health of the sea?

No, we do not consider the objectives and policies in the draft Plan are appropriate to ensure they achieve sustainable development. As written, they give an unbalanced interpretation of sustainable development and do not deliver on the general duties of the Marine Act, or on the requirements of the MSFD and WFD.

Overall, the key objectives are founded upon existing international and national policy and legislation as set out in Chapter 3. We strongly support the translation of these objectives into the Plan as this would ensure consistency from primary policy and legislation through to national and regional policy. However, the relevant text within the Plan could still be refined and clarified to provide succinctness.

Throughout the text there is reference to the aims of achieving sustainable economic growth in addition to the internationally recognised term of achieving the principles of sustainable development. This has led to convoluted and superfluous references throughout the Plan that offer little in terms of clear guidance or interpretation. The draft Plan attempts to support the two terms as separate entities, whilst at the same time interchanging their use, suggesting the terms are considered to have the same meaning. This underlying contradiction of the plan is strong, causing an unbalanced interpretation of sustainable development with the result being apparent support for increasing all activities of each sector. This is a fundamental issue that undermines the opportunity for marine planning and this Plan to actively contribute to the aims of the Marine Strategy Framework Directive and Water Framework Directive or support the general duty of the Marine Act. At present, we cannot accept that the draft Plan is appropriate in supporting the achievement of its own vision and objectives for reaching good ecological or environmental status of the marine environment.

RSPB Scotland strongly rejects the use of the term 'sustainable economic growth' as it (i) has no recognised definition; (ii) undermines the term 'sustainable development', which requires the respect of all five guiding principles including achieving a sustainable economy, promoting good governance and using sound science responsibly within the context of living within environmental limits and ensuring a strong healthy and just society; and (iii) we believe a more sustainable economy would be aided by the development of new measures of social and economic wellbeing to complement the traditional, but limited, measure of GDP. In this regard we agree with the recommendation from the Carnegie report⁸ that there should be a shift in emphasis from measuring economic production to measuring people's wellbeing.

Page 19 of the draft Plan sets out a definition of sustainable development. This

⁸ <http://www.carnegieuktrust.org.uk/getattachment/edc70373-49a0-48bb-84a3-5b0a253a5a6f/More-Than-GDP--Measuring-What-Matters.aspx>

paragraph and subsequent bullet points must also reflect the five guiding principles of sustainable development as presented in the UK's shared framework for sustainable development and which guide the High Level Marine Objectives and referred to on page 14 of the Plan. The Government's draft Scottish Planning Policy document provides appropriate wording in this respect, see SPP paragraphs 24 and 25, Page 8.

Our Comments provided under Question 6 are also of relevance to this answer.

Q6. Chapter 3 sets out strategic objectives for the National Marine Plan and Chapters 6 – 16 sets out sector specific marine objectives. Is this the best approach to setting economic, social and marine ecosystem objectives and objectives relating to the mitigation of and, adaptation to climate change?

The final Plan must be much clearer in setting out marine ecosystem and climate change objectives, and the importance of these in making planning decisions. During his evidence to the Scottish Parliament's RACCE Committee, Cabinet Secretary for Rural Affairs and the Environment said:

“the purpose of the Marine (Scotland) Act 2010 is to protect our marine environment, so the outcome has to be that we find a way in which we can allow economic activity at sea while protecting the marine environment, which has to be the number one priority.” (RACCE hearing on 8th May 2013).

The Plan must be clear in its objective to achieve this 'number one priority', and to achieving its objectives relating to ecosystem management and climate change.

1. Ecosystem Management. With regard to the overall approach of the Plan, Scottish Government must place greater emphasis on the importance and value of Scotland's marine natural heritage and resource. The natural marine environment, and the ecosystem services that it provides, underpin the success of many of the sectors referred to within the Plan. Recognition of these services and the Plan's vision for *clean, healthy, safe, productive and biologically diverse oceans and seas, managed to meet the long term needs of nature and people*, there is a fundamental requirement to ensure the inherent value of the marine environment is integrated and reflected throughout the Plan. This is fundamental to ensuring the Plan supports the achievement of sustainable development within Scotland's marine area, which is a key duty of the Marine (Scotland) Act 2010; the objectives of the Marine Strategy Framework Directive; and a commitment under the UK's shared framework for sustainable development⁹.

⁹ Department for Environment, Food and Rural Affairs. 2005. UK's shared framework for sustainable development – One future – different paths.

The Plan should strive to contribute positively and constructively towards application of the ecosystem approach by taking this opportunity to secure the long term sustainability of Scotland's marine environment. To achieve this, it is recommended that the Plan includes within the 'Approach to Policies' section:

- A statement on the important and valuable asset that is Scotland's marine natural resource and biodiversity;
- A statement on the importance of marine ecosystem services in underpinning the success of key sectors referred to within the Plan and indeed wider positive benefits that a healthy, biodiverse marine environment provides. In this regard the 'ecosystem approach'¹⁰ should be defined here as the common thread that integrates all elements of the Plan.
- Principles of the MPA network and the role this will play as one of the three pillars for the protection of the Scottish marine environment as set out in the Government's Strategy for Marine Nature Conservation in Scotland's Sea¹¹. Furthermore, a coherent MPA network is a key climate change mitigation and adaptation measure that will increase the integrity of the marine environment making it more resilient to future changes in climate.
- A contextual paragraph explaining the global importance and value of Scotland's natural marine and coastal assets (e.g. seabirds, cetaceans, fish and habitats). This should then be put in context using a summary of the assessment of Scotland's Marine Atlas (Box A, Page 21 of the Plan), which sets out the main pressures facing the marine environment.

2. Climate Change – RSPB recognises that climate change is a major challenge for Scotland's natural heritage and community. While the draft NMP considers climate change, it does not offer sufficient planning guidance to meet the duty under the Marine (Scotland) Act to "...act in the way best calculated to mitigate, and adapt to, climate change...". It does not adequately address objectives, strategies and risks throughout the document in relation to the potential influence of climate change on the marine environment, on the sustainability of the various sectors or their mitigation responsibilities.

We note an attempt has been made to embed climate change policies in the sector chapters, however, consistent detail of how each sector will act to mitigate or adapt to climate change is lacking for various sectors.

Q7. Do you have any other comments on Chapters 1 – 3?

The Plan makes reference to 'The Future' (page 19) stating how marine planning will be improved by greater understanding. However, no reference is made to the efforts being taken by Marine Scotland and other statutory agencies in facilitating

¹⁰ HM Government. 2011. The UK Marine Policy Statement

¹¹ A Strategy for Marine Nature Conservation in Scotland's Seas

monitoring and research of Scotland's marine environment. This work is crucial to informing marine spatial planning and decision making. The Plan must make reference to these programmes/ strategies, giving examples of how this information feeds into and informs the planning process. A commitment from Government to support and facilitate environmental monitoring and research is required.

General Planning Policies

Q8. Are the general policies in Chapter 4 appropriate to ensure an approach of sustainable development and use of the marine area? Are there alternative policies that you think should be included? Are the policies on integration with other planning systems appropriate? A draft circular on the integration with terrestrial planning has also been published - would further guidance be useful?

This section must be more explicit in stating that **all** text is planning policy. Policy text within the boxes will automatically be considered the more prevalent text and thus potentially misguide users of the Plan.

Policies GEN 1,2 &3

We fully support the inclusion and commitments made within the Plan to the principles of sustainable development. However, the first three general policies, GEN1-3, and supporting text must be reviewed and amended to reflect the five guiding principles of sustainable development as set out in the UK's shared framework for sustainable development¹². The Plan currently suggests support for activities which achieve economic and social objectives over environmental objectives. It also omits reference to respecting the limits of the natural marine environment and any effort to work within environmental capacities. As a consequence, the current approach is contrary to achieving sustainable development and thus contravenes the duty of the Marine Act.

We recommend reference is made to the current draft Scottish Planning Policy document as it presents appropriate wording that could be used in this General Policy section (see paragraphs 24 and 25, Page 8 of the SPP). Furthermore, there isn't parity between those policies that make provision for and actively support developments and activities that offer social and economic benefits (GEN 2 & 3) and those that merely seek assurance that environmental protection law will not be broken, such as that set out in GEN12. Marine natural resources are vital to our existence and the existence of those sectors in the Plan. We must therefore work within the limits of the environment otherwise we jeopardise its quality and the environmental services it provides.

¹² Department for Environment, Food and Rural Affairs. 2005. UK's shared framework for sustainable development – One future – different paths.

For a proposal to be sustainable, it must respect all five principles, specifically (i) living within environmental limits; (ii) ensuring a strong, healthy and just society; (iii) achieving a sustainable economy; (iv) promoting good governance; and (v) using sound science responsibly. For the Plan to be compliant with the duty of the Marine Act and support European legislation we recommend inclusion of an additional policy that fully respects the need to live within environmental limits and actively supports the protection and most importantly, where appropriate, the enhancement of the marine environment.

We suggest the following wording for this additional policy:

Policy GEN X – Marine planning and decision making authorities, so far as is consistent with the proper exercise of their function, should protect and, where appropriate, enhance, the ecological health and further the conservation of biodiversity of the area to which the plan applies when progressing development plans, development and use of the marine environment.

Policy GEN 4

This is not a policy and should be deleted or rewritten.

Policy GEN 5

This policy should include consideration of development proposals within designated natural heritage sites. Co-location may be particularly relevant to marine renewables and fisheries and areas established for nature conservation (MPAs, SACs, SPAs) and is important in ensuring compatible projects and activities are sited in the least sensitive areas. Establishing clear guidance on which activities may be compatible with which designation will offer greater clarity and environmental protection. Guidance at the Plan level will help inform the preparation of Regional Marine Plans.

Policy GEN 6

We support the efforts to integrate marine and terrestrial planning, however this policy must include an additional criteria that explicitly makes a requirement for consideration of environmental impacts when facilitating appropriate access to the shore and sea.

The policy must include criteria for handling 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

Policy GEN 7

We strongly support this policy. However the example of River Basin Management Plans seems misplaced, particularly given the policies for water quality and resource in GEN 18. Strategic Development Plans and Local Development Plans would be more appropriate documents to cite as examples.

Policy GEN 8

This is more a statement of intent than a policy. The text of GEN 8 and following paragraph would be better placed under Approach to Policies on Page 18 within the first paragraph.

Policy GEN 9

We strongly support this policy.

Policy GEN 10

This policy should better reflect the precautionary principle so that it is clear what is required within the decision making process. The precautionary principle is set out well within the draft SPP paragraph 133. This states that authorities should apply the precautionary principle where the impacts of a proposed development on nationally or internationally significant landscape or natural heritage resources are uncertain. If there is any likelihood that damage could occur, modifications to the proposal which would eliminate the risk should be considered.

As mentioned previously, there is no reference here to the efforts being taken by Marine Scotland and other statutory agencies in facilitating monitoring and research of Scotland's marine environment. This work is crucial to informing marine spatial planning and decision making and the Plan must make reference to their programmes/ strategies, giving examples of how this information feeds into and informs the planning process. A commitment from Government to support and facilitate environmental data collation, monitoring and research is required. In addition, government must better facilitate the dissemination of information to stakeholders.

Policy GEN 11

We strongly support this policy.

Policy GEN 12

Given the ministerial duty within the Marine (Scotland) Act 2010 to protect and, where appropriate, enhance the health of the marine environment, this policy must be rewritten to provide more clarity and robustness over the requirements of environmental nature conservation legislation and policy. Reference to these requirements will provide a greater steer to marine planning practitioners and will also provide certainty to developers and users of the marine environment, thus reducing risks.

Again, the draft Scottish Planning Policy provides suitable description of the various designations and protected species which must be considered as part of any proposed activity. This includes the Natura network and the need for appropriate assessment of proposals, including regional plans and marine activities, where they are likely to have a significant effect on the network and are not directly connected with or necessary to their conservation management (see paragraphs 136-151 of the draft SPP for a good reference). Newly designated MPAs under the Marine (Scotland) Act shall be included in this hierarchy of nature

conservation designations and protection for the marine area.

It must be noted that the network of MPAs is not yet complete and contextual information is required to inform and guide planning practitioners. In this context, Natura sites for protection of marine foraging areas for seabirds at sea are forthcoming and further MPA designations are needed for protection of nationally important aggregations of seabirds. The fact that the network will be expanding should be referred to within this section.

Reference is made to the national status of ‘other habitats or population of species of conservation concern’ (which we presume refers to Priority Marine Features) and the need to take these into account when preparing regional plans and appraising proposals. However, the Marine Scotland guidance on safeguarding these features is not yet available. This paragraph should be strengthened to give a better steer, outlining examples of what measures or considerations will be required at the plan preparation and project appraisal stages. Clarity is also required over which features this relates to and whether “other Priority Marine Features” refers to features already included in MPA, SAC and SPA designations.

The potential for cumulative environmental impacts from proposed development and use of the marine area must be stipulated as requiring consideration at the regional marine plan and project levels. It remains unclear how the Plan will ensure that existing and future developments are within the carrying capacity of the environment

The Scottish Government’s duty to enhance the marine area (Part 2 Section 3) is not addressed by this policy. The policy states that planners should ensure development “does not result in a significant adverse effect on the national conservation status” of species and habitats. This neglects the legislative duty to enhance Scotland’s seas where the Marine Atlas indicates this is necessary. Refer to point 1 above.

Policy GEN 13 – We support.

Policy GEN 14 - We support.

Policy GEN 15 - We support.

Policy GEN 16

Generally we support the inclusion of a policy that supports a sustainable approach to the impacts of noise from marine activities. However, this policy must:

- i. include a requirement to consider the potential cumulative environmental impacts of noise;
- ii. include the fact that whilst soft start mitigation method is a suitable common sense measure for seismic or other sound sources that can be ‘ramped up’ with an appropriate increase in sound over an appropriate timescale, the measure has not yet been proven as effective for any industry source;

- iii. include the word effective in front of the sentence that reads with EFFECTIVE mitigation measures being adopted.
- iv. An acknowledgement that monitoring can only provide protection where the data and results are fed into an adaptive management system.

Policy GEN 17 - We support.

Policy GEN 18 - We strongly support this policy.

Policy GEN 19

The Marine Atlas cites human activity contributing to climate change as one of two greatest impacts on Scotland's seas¹³. This section and policy should provide support and guidance to planners, decision makers and those responsible for Regional Marine Plan preparation on a topic that is one of the major challenges facing marine and terrestrial planning at Scottish and international levels. A robust and tangible framework must be established with examples or suggestions made to provide real support to the Marine Planning Partnerships. The Plan can act as a driver for concerted effort on this topic to ensure future management of the marine area is undertaken in a way that is robust to the challenges posed by climate change. This could include:

- i. Preparation of near, medium and long-term climate and oceanographic projections that define the implications of longer-term coastal and marine change. Planners can use this reference point when establishing measures and policies to mitigate and adapt to climate change.
- ii. Creation of vulnerability maps and mapping of transitional habitats or places that may act as refuges for marine flora and fauna. RSPB has prior experience with this for terrestrial birds and is using the results in its current work (Huntley, 2008¹⁴).
- iii. Scenario mapping or modelling changes to account for changes in habitat and species ranges.

In preparing the Plan, Scottish Government has a duty to act in a way best calculated to mitigate and adapt to, climate change. Policy GEN 19 should be explicit not just about mitigation but also about the measures for adaptation, specifically referring to the importance and role of designating and effectively managing a network of MPAs, which will be a fundamental climate change adaptation measure that will see increased environmental resilience of the marine environment to future climatic changes. This is acknowledged by the document on page 49; "a healthy benthic community may be able to support the recovery of impacted habitats in other areas of the sea and ecosystem resilience will be an important asset in the face of climate change" but does not feature in policies or objectives.

¹³ Baxter, J.m., Boyd, I.L., Donald, A.E., Malcolm, S.J., Miles, H., Miller, B., Moffat, C.F. 2011. Scotland's Marine Atlas, Information for the National Marine Plan. Marine Scotland, Edinburgh

¹⁴ B. Huntley, Y.C. Collingham, S. G. Willis & R.E. Green (2008). Potential impacts of climatic change on European breeding birds. PLoS ONE 3(1): e1439.

Draft Circular

The Draft Circular is a useful document, bringing together the necessary information required to better understand and guide marine and terrestrial planners. However, the Circular does not go far enough in providing a steer to marine and terrestrial planners. It is not adequate and will not help these two systems to achieve the sustainable management of the marine environment. Further, more detailed guidance that gives explicit examples of best practice and methodologies/ approaches to planning and decision making must be given.

At present the suggestions are vague, unspecific and in some regards unlikely to be achievable (i.e. syncing the timing of terrestrial and marine plans). The links between the strategic policy and objectives of the National Marine Plan and the National Planning Framework/ Scottish Planning Policy must be a fundamental element of the guidance within this planning circular to help ensure consistency across the planning regimes and also consistency in decision making.

With regard to our comments on the draft National Marine Plan the marine planning system as currently drafted, with the draft Circular, is left without a clear steer as to government's priorities. As such there is a risk that there will be little change from the status-quo as Regional Marine Planners will not be provided with the necessary overarching policy framework that will help them achieve sustainable management of the marine environment.

Q9. Is the marine planning policy for landscape and seascape an appropriate approach?

No comment.

Q10. Are there alternative general policies that you think should be included in Chapter 4?

The general policies section must include a description of the priorities both of nature conservation legislation, the hierarchy of protection and the mechanisms for delivering conservation of biodiversity within the marine area.

The draft Scottish Planning Policy provides the right framework and general content that is required in the Plan (see Natural Resources section of the draft SPP). This information would provide explicit guidance for Marine Planning Partnerships in the preparation and delivery of Regional Marine Plans.

There must be an additional stand alone general policy that ensures the potential cumulative environmental impacts of plans, programmes and activities are

considered.

Guide to Sector Chapters

Q11. Do you have any comments on Chapter 5? Are there other sectors which you think should be covered by the National Marine Plan?

The Plan can be progressive and be at the forefront of high quality, sustainable, marine spatial planning. To this end, we recommend the inclusion of an additional section that fully accounts for and actively seeks growth of the natural capital of Scotland's marine area. Capitalising on the virtues of the ecosystem approach and recognising the ecosystem goods and services that support our marine activities, this new section would mainstream the importance and value of strengthening Scotland's natural capital. Parallels can be drawn from the National Planning Framework, which recognises the importance of a high quality natural environment and actively encourages its protection and enhancement to build on nature's capital and support future sustainable development. Indeed, the Framework's Central Scotland Green Network national development is a prime example of the practical measures that can be implemented to support this concept. This new section would directly support the key duties of the Marine Act and be a clear message of Government's intent for future management of Scotland's seas.

The Plan must include an additional section on transmissions sector and cable laying, other than telecoms and other infrastructure projects. Large infrastructure projects such as these must be supported by appropriate government policy.

Sea Fisheries

Q12. Do you have any comments on Sea Fisheries, Chapter 6?

Overall

As currently drafted, this chapter does not appropriately guide management of sea fisheries in Scotland's seas. This chapter must be redrafted to give clear guidance on the hierarchy of Scotland's fisheries policy (from the Marine Strategy Framework Directive and Birds and Habitats Directives down to the Common Fisheries Policy and Scotland's own objectives for sustainable fisheries) and how the Plan can help deliver the objectives of these overarching policies.

The Plan must also explain the different spatial boundaries which govern fisheries in Scottish waters: the 6 mile fishing limit (much of which is covered by that Inshore Fisheries Groups' Management Plans), inshore fisheries within the 12 nautical mile territorial water limits (which allows access for some other Member States' vessels based on historic fishing activity), and offshore waters from 12nm to 200nm (shared with other EU Member States)

Working within this existing framework, we believe the Plan, and the subsequent Regional Plans, can help steer decision making to deliver sustainable development of Scotland's fishing industry.

Objectives

Many of the draft objectives - for example the objectives relating to tackling discards, ensuring harvest rates are consistent with MSY, and managing removals through Fully Documented Fisheries - are outwith the remit of the Plan. The objectives must be rewritten to clarify those which can actually be delivered by the Plan. RSPB Scotland would welcome the following rewritten objectives for the Plan:

- Support Scotland's fisheries with fleet capacity aligned with fishing opportunities, and offering priority access to vessels meeting set social and environmental criteria, including Marine Stewardship Council certification.
- Support achievement of Scotland's fish stocks fished at or below maximum sustainable yield.
- Support Scotland's sea fishery industry to optimise (rather than maximise) fishing opportunities, sustainable harvesting, and value of its products along the supply chain.
- Help manage local fisheries on a regional level (based on Inshore Fishing Group areas), using the principles of ecosystem-based management: regional, participative management setting opportunities based on scientific advice, using highly selective methods and multiannual plans, to rebuild and maintain stocks at sustainable levels, while eliminating discards and preventing damage to marine ecosystems, to help meet Scotland's various legal environmental obligations.

We strongly support the objectives to help sustain coastal communities, ensure management is based on sound science, and managing fisheries in line with international and national environmental priorities.

Living within environmental limits

This section must make clear that Scotland's Marine Atlas has identified that fishing is one of two significant pressures on the Scottish marine area which are widespread (the other being climate change) with significant impacts on the seabed and both target fish species and non-target species, including seabirds, sharks and cetaceans¹⁵.

There must also be explicit reference to, and maps showing, Scotland's emerging network of Marine Protected Areas (both international and national designations) and the legal requirements to ensure that fisheries do not have an adverse effect on designated species or habitats.

As currently presented, maps 7, 8 and 9 showing fisheries closed areas are

¹⁵ <http://www.scotland.gov.uk/Publications/2011/03/16182005/0>

illegible to the point of being meaningless. These must be significantly improved.

Climate Change

We support the content of this paragraph on climate change (page 53). Focus is provided as to the measures that can be taken to adapt and mitigate, including additional specific research and reduction of emissions. However, it must be made clear that technical and fuel efficiency improvements to vessels can increase fishing effort which, without appropriate safeguards, can have a negative effect on climate change mitigation and adaptation.

Policies

These policies must be rewritten based on what can be practically delivered by the NMP, rather than, for example, the CFP.

RSPB Scotland would welcome policies in this chapter to:

- i. Support the development of regional marine plans with spatial management measures which deliver sustainable inshore fisheries by:
 - Ensuring that fleet capacity – both the *size* and the *nature* of the fleet – matches available fishing resources and opportunities.
 - Protecting vulnerable stocks in particular juvenile and spawning stocks;
 - Protecting MPA features from impacts of fishing gears;
 - Halting by-catch of non-target fish and other marine wildlife including seabirds;
 - Improving compliance with and enforcement of fisheries regulation;
 - Helping deliver Scotland’s many international commitments including MSFD and EU environmental directives and sustainable development.
- ii. The Plan must also ensure participative management including environmental and wider community stakeholders, not just fishing interests.
- iii. Inshore Fisheries Groups, with the support from their Advisory Groups, should have a central role in taking forward fisheries planning within the regional plans.

Fisheries 1

This policy is meaningless in the context of the Plan and should be replaced by:

Support the development of regional marine plans with spatial management measures which deliver sustainable inshore fisheries by:

- *Ensuring that fleet capacity – both the size and the nature of the fleet – matches available fishing resources and opportunities.*
- *Protecting vulnerable stocks in particular juvenile and spawning stocks;*
- *Protecting MPA features from impacts of fishing gears;*
- *Halting by-catch of non-target fish and other marine wildlife including seabirds;*
- *Improving compliance with and enforcement of fisheries regulation;*

- *Helping deliver Scotland's many international commitments including MSFD and EU environmental directives and sustainable development.*

Fisheries 2

This policy specifically relates to consideration of the fishing sector, however any proposal will be required to consider all other existing activities and the potential interactions or impacts it may have. We recommend that this policy is removed from the fisheries chapter as such consideration of relevant stakeholders is already provided within policy GEN9. The Plan must also ensure participative management including environmental and wider community stakeholders, not just fishing interests.

Fisheries 3

We strongly support this policy but there should be specific reference to managing fisheries within Scotland's emerging network of MPAs and to mitigate *and remove* impacts of fishing where appropriate.

Fisheries 4

We support this policy, but it should be rewritten to account for Scotland's commitments in the UK Framework for Sustainable Development, and the duty of the Marine Scotland Act to further the achievement of sustainable development within the marine environment, including the protection and, where appropriate, enhancement of the health of that area.

Fisheries 5

The first bullet point states assessment is required in both socio-economic and sustainability terms. Sustainable development encompasses socio-economic and environmental objectives, therefore the bullet can simply refer to a Sustainability Assessment.

The second bullet point is misleading and inappropriate as there are many different reasons why a fishermen would not be able to catch their fish quota.

Fisheries 6

We support, but it must make clear that 'stakeholders' includes environmental and wider community stakeholders, not just fishing interests.

Fisheries 7

We support, but it must make clear that 'users' includes environmental and wider community stakeholders, not just marine industry and activity.

Fisheries 8.

This policy is too location-, time- and project- specific to be meaningful within the National Marine Plan and should instead be part of the regional plan for the Clyde area.

The Future

As currently drafted, this section is of little practical assistance to planners and other decision makers. In addition to laying out the general principles of fisheries management, this section should list and explain tools for fisheries management which Inshore Fishing Groups and planning practitioners have at their disposal. This section should also specifically reference potential changes to inshore fisheries management as a result of the current Government review of Scottish scallop fisheries, and the management of fishing activity with Scotland's emerging network of MPAs. This should also include reference to the new assessment of fishing within European Marine Sites (and this should extend to national MPAs) happening in England and which will have to be replicated in Scottish waters in order for the Scottish Government to be compliant with the Birds and Habitats Directive. Research requirements to help the Plan deliver sustainable fisheries should be considered in this section.

Q13. Are there alternative planning policies that you think should be included in this Chapter?

No comment

Aquaculture

Q14. Does Chapter 7 appropriately set out the relationship between terrestrial and marine planning for Aquaculture? Are there any planning changes which might be included to optimise the future sustainable development of aquaculture?

The Plan does not appropriately set out the relationship between terrestrial and marine planning for aquaculture. There is no indication, for example, that aquaculture is currently regulated under the terrestrial planning system. This must be addressed in the final Plan.

Integrating aquaculture into marine planning processes would enable the activity to be encompassed entirely within the remit of Marine Scotland. This would facilitate greater clarity and continuity between all marine activities, rather than the current situation where aquaculture remains integrated into the terrestrial planning system, even though this was believed to be a temporary stop-gap before coherent integration with the marine system.

Q15. Do you have any comments on Aquaculture, Chapter 7?

Objectives

We strongly oppose the specific growth objectives set out on page 58. The

potential environmental impacts of the industry meeting these objectives are not subject to any environmental assessment. It remains to be understood whether these objectives can feasibly be achieved in Scottish waters, not least in a manner which supports the principles of sustainable development. Indeed, in Part 4 of Chapter 7, it is stated that Marine Scotland Science is yet to undertake a project to identify areas of opportunity and constraint for both finfish and shellfish sectors. Setting specific targets for growth without sufficient understanding of their deliverability increases environmental risks and may frustrate industry investment and progress as proposals identify unforeseen conflicts at the project level.

Living within environmental limits

- a) The locational guidance for finfish production provides little justification for the support of future aquaculture developments to the west coast of Scotland. Whilst we support the presumption against further marine finfish farm developments on the north and east coasts (referred to in Map 10), it is unclear why migratory species such as Atlantic salmon and sea trout with origins in the rivers of the west coast or the western and northern isles are not afforded the same protection from potentially harmful marine finfish farms. Furthermore, this locational guidance makes no provision for other existing and future marine activities nor for the proposed MPAs and MPA search locations or existing and potential future Special Protection Areas or Special Areas of Conservation. These designations may be sensitive to aquaculture development.
- b) The locational guidance must be reviewed in light of the above noted omissions and consideration must be given to all potential receptors and impact pathways (not just nutrient enhancement and benthic habitat presented in the current guidance). The locational guidance and the objectives for growth of this industry will require assessment under statutory environmental assessment legislation, including Environmental Assessment (Scotland) Act 2005 and Conservation (Natural Habitats & c) Regulations 1994 (as amended).
- c) We welcome the acknowledgement that growth is contingent on the sustainability of other species including fish used to produce feed. However, it is unclear how planners will use this acknowledgement – is it an objective that will presume against the development of aquaculture that cannot prove it will use sustainably sourced feeds? If so, we would support this.

Climate Change

This section provides no indication or guidance on what measures can be taken now, or explored in the future, to mitigate against climate change. Consideration to mitigation should be made as a requirement of the Marine Act.

Policies

There is an omission in this chapter focusing on consideration of the 'interactions with other users.' We request inclusion of this in the revised Plan.

This chapter also refers to seaweed cultivation and harvesting, however it is not clear what the perceived future progression of the industry is. Given the current consultation document for government's policy on this subject, there must be information available to better reflect the current situation and government's aims for this sector in the future, which should be included in the Plan.

Aquaculture 1

Compared to the specific objectives for aquaculture growth, this policy is more appropriately worded.

Aquaculture 2

We support this policy, however it must make specific reference to the project MSS are undertaking to identify opportunities and constraints. The Plan should offer guidance in this respect, not simply state that planners identify suitable sites in isolation. Also integration and partnership is key, so reference to terrestrial development plans and RMPs working in partnership to identify suitable areas for aquaculture and sensitive areas to avoid is recommended.

Aquaculture 3

This locational guidance requires further justification and reference to supporting scientific evidence as to the suitability of this approach. Please refer to comments in points 1 & 2 above.

Aquaculture 4

The Map 10 guidance document only considers nutrient enhancement and benthic habitats as stated. However, consideration must also be made to other potential activities, users and marine conservation designations. Notwithstanding the comments above, a statement to this effect should be included in this policy.

Aquaculture 5

This is supported only if the designated areas for expansion are subject to the necessary statutory environmental assessments, to ensure any potential environmental impacts lie within acceptable limits.

Aquaculture 6 - No comment.

Aquaculture 7 - No comment.

Aquaculture 8 – We support.

Aquaculture 9

This policy requires strengthening to *require* emergency response plans for aquaculture developments.

Aquaculture 10

The purpose of consultation is not to seek and garner support, it is to inform and help identify and address the concerns of stakeholders. This policy should be reworded to that effect and avoid reference to aquaculture developers actively seeking community support for their projects.

Aquaculture 11 – We support.

Aquaculture 12

This policy is too vague and should be rewritten to provide clarity. Some biological controls may pose a risk to the environment, particularly if the controls involve non-native species or a change in the balance of the ecosystem in which the fish farm is situated. The term biological control must make explicit reference to what would be acceptable.

Aquaculture 13

This policy is too vague and should be rewritten to provide clarity and to elaborate on what criteria are required.

Q16. Are there alternative planning policies that you think should be included in this Chapter?

No comment.

Wild Salmon and Migratory Fish

Q17. Do you have any comments on Wild Salmon and Migratory Fish, Chapter 8?

Objectives

The first objective lacks detail and does not suggest what an appropriate management and regulatory framework should comprise of. Further detail is needed here to explain what is required to meet the objective.

Background & Context

This section needs to provide background to the declines that have been experienced in wild salmon and migratory fish populations, clearly indicating what has caused this and the relevance to future planning decisions. In particular the historic damage caused by the expansion of aquaculture needs to be indicated and needs to feed into the following policy section.

Climate Change

This section should explicitly state the measures that can be taken to 'building and supporting healthy, robust marine, coastal and terrestrial ecosystems' for these

species and make reference to the fact that they are Priority Marine Features and protected through other legislation and therefore are afforded protection and consideration by development proposals.

Policy

We do not support it the 'predator control' section as it is misguided and inaccurate. Predators have not driven the declines in wild salmon and migratory fish populations. Culling can only be considered when all possible alternatives have been exhausted. Predator control should not be considered until water quality has been improved, fishing pressures have been removed, and pressures derived from aquaculture have been removed.

The Future

We would support further research that will enable achievement of sustainable development.

Q18. Are there alternative planning policies that you think should be included in this Chapter?

No Comment

Oil & Gas

Q19. Do you have any comments on Oil and Gas, Chapter 9?

Objectives

1. The objective to 'maximise the recovery of oil and gas reserves' significantly contradicts Scottish Government ambition to create a low carbon economy. There must be recognition in this objective that maximising extraction of oil and gas is incompatible with the need to bring down global carbon emissions, and therefore there is a need for a transition to a low carbon economy. This is not covered through the use of the term 'minimum environmental cost' which is more likely to be understood as referring to direct environmental impacts. It is not satisfactory to only mention the need to move to a low carbon economy in the background section.

This is a missed opportunity to move towards a framework where decision makers are better able to balance social, environmental and economic considerations to make positive planning decisions. Instead it simply ignores that the conflict exists and pulls decision makers in opposite directions.

Scottish Ministers must agree a mechanism to limit oil and gas extraction levels, guided by scientific evidence on what fossil fuel reserves are 'un-burnable' in order to keep within safe environmental limits, avoiding dangerous levels of climate

change, at the same time as robustly pursuing measures to decarbonise the economy. Oil and gas reserves are only a positive economic resource if extracted within those limits. If we extract resources beyond that limit, they represent an economic liability. This is a challenging but inevitable task that government must face up to.

These limitations will only increase over time as understanding of levels of unburnable fossil fuels increases. Planning authorities and decision makers need to receive guidance to give strong preference to low carbon activities.

2. We support the objective to ensure that decommissioning is an agreed process involving all relevant stakeholders, and 'relevant' must include environmental groups.

3. The 'not exceeding excessive cost' element of BATNEEC is no longer relevant within the terms of sustainable development obligations. These principles should simply refer to the use of Best Available Technique (BAT) to prevent and minimise emissions of substances and protection of human health as set out in the Pollution Prevention and Control (Scotland) Regulations 2012, in addition to the principles of Best Environmental Practice (BAP).

4. We support this objective to work with emerging sectors to reduce their environmental impact. This objective should also clearly recognise that the need to transfer skills from the fossil fuel industries is driven by the need to transition employment and economic benefits away from the fossil fuel industries into a lower carbon economy.

Background & Context

This section, whilst recognising the tension that exists between maximising oil and gas extraction and moving away from fossil fuel based energy consumption, provides an unconvincing rationale for essentially dismissing the issue. The argument that oil and gas reserves are needed in an interim period whilst Scotland moves to a low carbon society is not an argument for maximising extraction. In fact, it is an argument for limiting extraction. As it stands, the planning framework provided essentially chooses to ignore the issue of what are safe environmental limits of fossil fuel extraction. This is further demonstrated as climate change is not mentioned in the 'Living within environmental limits' or 'climate change' sections that follow.

Key Issues for Marine Planning

There is a need to recognise the potential environmental risks posed by exploitation of 'hard-to-reach' oil from the North Sea and the need for a suitably precautionary approach to be taken.

Living within Environmental Limits

Noise

This section must include reference to the potential cumulative environmental impacts of noise from this sector.

Chemical Pollution

There exists significant localised contamination risks associated with existing oil and gas extraction facilities in the North Sea. These are presenting issues at the decommissioning phases, where total removal of infrastructure could be hampered by re-suspension of chemical pollutants. Furthermore, a lack of evidence is not sufficient justification suggesting there is no effect on the food chain.

Climate Change

This section is inadequate in addressing the implications of further oil and gas extraction, as it mentions only the potential impacts of climate change on oil and gas extraction, not the impacts of oil and gas extraction on climate change. This section should either be expanded to include description of the impacts of oil and gas extraction on climate change, or this should be added to the 'Living Within Environmental Limits' Section and the climate change section should be re-titled e.g. to 'Future-Proofing for Climate Change' to clarify its scope. It is noted that the scope of this section is not consistent with other sectoral areas, for example CCS, which describe expected impacts of the technology on climate change.

Policy

Oil & Gas 1

See our comments on BATNEEC principles and on maximising oil and gas exploration noted above.

This policy should be strengthened to stipulate which legislative requirements must be met in considering key environmental risks, including environmental impact assessment, Strategic Environmental Assessment and Habitats Regulations Appraisal.

Oil & Gas 2

We support. However, this policy could specify which legislation is relevant for consideration during decommissioning to provide a steer to planning practitioners.

Oil & Gas 3 - No comment.

Oil & Gas 4 - No comment

Oil & Gas 5 – We support, within context of our position on new oil and gas exploration and extraction.

Oil & Gas 6 – We support.

The Future - No comment.

Q20. Are there alternative planning policies that you think should be included in this Chapter?

No comment.

Carbon Capture & Storage (CCS)

Q21. Do you have any comments on Carbon Capture and Storage, Chapter 10?

Objectives

The first objective should include the words 'sustainable' or 'environmentally sensitive' deployment of CCS, alongside safe, cost effective and timely.

The second objective should also include the word sustainable in front of development.

The fifth objective does not specify who shall initiate an environmental assessment of CCS, nor does it provide an indicative timeframe. Further detail is required here to provide adequate steer. The objective should be to initiate and complete a robust environmental assessment in advance of commercial deployment.

Background and Context

Scottish Government policy is that a minimum of 2.5 GW baseload capacity is required to meet our energy needs. We are not convinced this is the case, however if there is to be this continued significant role for fossil fuels, it is crucial that CCS is rolled out quickly, in an environmentally sensitive way, in order to meet emissions reduction targets. However, under no circumstances should CCS demonstration be used to justify new coal power stations, or power stations that are only 'CCS ready', which would risk 'lock-in' to high emissions infrastructure, and perpetuate other environmental impacts associated with fossil fuel extraction.

Key Issues for Marine Planning

A strong regulatory framework is needed to ensure that transport and storage of CO₂ is safe, environmentally benign, and does not lead to additional emissions through the use of CO₂ in Enhanced Oil Recovery (EOR), where captured carbon dioxide is used to assist in the extraction of oil from wells that otherwise be uneconomic. This should be subject to strong independent scrutiny by an appropriate body.

Key elements of a regulatory framework must include robust storage site monitoring and aftercare, and mechanisms to manage liability for CO₂ leakage. A clear understanding is needed of how the development of CCS in Scotland might be linked to EOR. RSPB Scotland would be very concerned if CCS development was linked to increased fossil fuel extraction which would drive further climate

change - a highly perverse policy outcome. It is not credible to pursue CCS as a climate mitigation measure at the same time as pursuing opportunities for EOR to maximise fossil fuel extraction, without transparent information being available about the full life cycle emissions of CCS combined with EOR.

The ambition for rapid CCS deployment should not undermine a robust planning process which ensures adverse impacts on wildlife are avoided. We note that the current Grangemouth proposal has the potential to result in adverse effects on a European protected wildlife site, and Longannet and Cockerzie are also in close proximity to European wildlife sites. Any potential effects of CCS deployment on wildlife need to be fully assessed.

We do agree that failure must be planned for in the most stringent manner, including risk of leakage of CO₂ into the marine environment from pipelines and storage facilities. We also agree that use of existing infrastructure should be prioritised where this is the most environmentally sensitive option.

Climate Change

The assumption that CCS will reduce emissions overall is overly simplistic. Whilst CCS, successfully deployed, would reduce emissions at an individual project level, disregarding how the captured CO₂ is used, the assertion that 'CCS will reduce the levels of CO₂ release into the atmosphere and is therefore a mitigation measure to address climate change' is only true at a national level if:

- a. Availability of CCS technology is not used to justify prolonged use of fossil fuels through lock-in to fossil fuel infrastructure, given it is not certain or proven that 100% capture can be delivered at a commercial scale
- b. CCS is not used in combination with Enhanced Oil Recovery to extract additional oil from wells that would otherwise be uneconomic, resulting in a higher overall emissions scenario.

This section is also inconsistent with the equivalent climate change section on oil and gas, as it considers both the impacts of deployed CCS on climate change and the potential impacts of climate change on CCS deployment. The oil and gas section on climate change only discusses the latter. It is not credible to only describe the climate impacts of development if they are considered to be positive.

Q22. Are there alternative planning policies that you think should be included in this Chapter?

CCS1 should read, "CCS demonstration projects or developments should be supported where they can be delivered environmentally sensitively and deliver genuine emissions reductions". The point about re-use of existing infrastructure is

already covered in CCS2.

Offshore Renewable Energy

Q23. Should the NMP incorporate spatial information for Sectoral Marine Plans?

Reference to the sectoral marine plans will help maintain consistency of policy and in due course there is merit in considering the incorporation of sectoral plans within the NMP. Not least the need to ensure the system is Plan led. Had the Plan been in place earlier, then it would have been logical to include the offshore renewable sites within it.

Q24. Do you have any comments on Offshore Renewable Energy, Chapter 11?

Objectives

First objective - We support.

We do not support the second objective. Sustainable economic growth does not have an internationally recognised meaning and places economic growth above social and environmental objectives and aspirations, thus acting to counteract the first objective. Furthermore, this objective increases the environment risks unnecessarily. This objective should be removed.

The third objective provides little to no guidance to marine or terrestrial planners. It should be strengthened to better guide the achievement of *'joined up marine planning and efficient licensing processes to facilitate sustainable offshore energy.'*

Fourth objective - We support.

Fifth objective - We support.

Sixth objective - We support.

We support the seventh objective, but it should be strengthened, firstly by placing the word 'sustainable' ahead of development and by stipulating that test and demo projects will be facilitated where they meet the requirements of the general policies of the plan (i.e. the appropriate environmental assessments are undertaken and unacceptable impacts are avoided).

Key Issues for Marine Planning – Grid Provision

Increased interconnection capacity could result in more applications for

development in important areas for wildlife in Scotland, including sites with nationally and internationally important populations of birds protected by European law. If offshore grid projects, particularly those increasing interconnection capacity with the Western and North Isles, result in increased proposals in those areas (or expansions to existing developments), it will be crucial that the planning system responds appropriately. Increased interconnection capacity should not create undue pressure to consent damaging developments, or inappropriate expansions to existing sites. There will be a need to carefully assess proposals, including smaller scale proposals and their cumulative impacts, to ensure they do not harm the environment.

Living within Environmental Limits

The requirement of planning authorities and developers to undertake robust and statutory environmental assessment of their proposals must be made explicit in this section, in order to ensure unacceptable harm to the natural environment is avoided.

Potential cumulative environmental risks posed by future offshore renewable development must be referenced here as a fundamental consideration of any new proposed activity. Furthermore, there should be guidance to help prioritise activity, including consideration of how to achieve the greatest electricity capacity for the least environmental impact.

Collision Risk

In addition to collision risk, effects of displacement/ barrier effects to marine species should be referenced.

Climate Change

Reference should be made here of the necessity to deploy offshore renewables in as sustainable manner as possible. Whilst offshore energy generation can contribute towards emissions reductions, it should be progressed with due regard to the potential environmental impacts. This includes the potential cumulative impacts on local, regional, national and international marine habitats and wildlife. Again, the principle of achieving maximum energy capacity for least environmental impacts must be clearly stated.

Policies

Renewables 1

This policy for presumption in favour of adopted Plan Options must be supported by the following criteria: proposals must be consistent with the policies within the Plan and where they meet the requirements of nature conservation legislation including MPA designations.

Renewables 2

There exists the potential for significant adverse cumulative effects of offshore renewables on mobile marine species and habitats within the PFOW region. This policy must explicitly refer to the support for development being provided only to

those projects that fully take account of and address their potential impacts, including cumulative impacts, to the high quality natural marine environment of the PFOWs.

Renewables 3

Same comment as for Ren 2 above. Also, further explanation must be given as to the relevance or otherwise of the Saltire Prize. Should it be taken forward and included in the most SEA of the sectoral marine plans. See comments to Q 40.

Renewables 4 – We support.

Renewables 5

This policy should clarify which species and habitats are most likely to require consideration in terms of effects and impacts. Requirements to meet relevant nature conservation legislation (EIA & Habitats and Birds Directives) including cumulative impacts must also be specifically referred to here as key considerations, with an explicit reference to *avoiding and preventing* impacts, rather than simply mitigating.

Renewables 6 – We support.

Renewables 7 – We are unsure of the justification for this presumption and would request clarification.

Renewables 8

This policy needs to be reworded to make it explicit as to the legal requirements of EIA and HRA. The purpose of these documents is to identify and address potential environmental impacts so that appropriate measures can be put in place to avoid, prevent and mitigate impacts to acceptable levels.

Renewables 9

This policy refers to existing users, however the word 'stakeholders' would be more appropriate as some stakeholders, who are not 'users', but still have a vested interest in proposed marine activities and how these will impact our marine environment. This is particularly relevant to public communities and representatives of civil society, such as RSPB.

Renewables 10 – We support.

Renewable 11

This policy should be supported by additional text that ensures the principles of sustainable development are adhered to. We support the expansion of offshore renewable energy that achieves greatest electrical output for least environmental impact. We therefore must avoid deployment that poses unacceptable impacts to the natural environment or that limits the recovery of Scotland's seas.

Part 4: The Future

This section makes assumptions that all renewables within Round 3 and STW sites will be delivered. This is not appropriate as the applications will be determined on their own merit. This text should be omitted.

Q25. Are there alternative planning policies that you think should be included in this Chapter?

There is a recognition that coordinated national, regional and project specific environmental monitoring is required to better inform marine spatial planning and decision making. An additional objective encouraging industry wide monitoring packages that integrate and coordinate government, industry and project level programmes would provide a driver and focus to prioritise and deliver much needed monitoring.

This monitoring data will ultimately contribute to the sustainable development of the offshore renewables industry by informing decision makers, increasing certainty and reducing risk.

Recreation and Tourism

Q26. Do you have any comments on Recreation and Tourism, Chapter 12?

Objectives

The third objective should include the word 'sustainably', so that the second sentence reads '*sustainably improve existing, and develop....*'

Policy

Rec & Tourism 1

This policy should include, in the fourth bullet point, a reference to recognised *and effective* mitigation measures. Furthermore, the reference to achieving these mitigation measures at 'no significant cost' is not considered appropriate as this may lead to decisions that see development consented, without the need for the costly environmental mitigation that is necessary to avoid or minimise the impacts.

Rec & Tourism 2

The word sustainable should be inserted before the second sentence, 'proposals supporting tourism...'

Rec & Tourism 4 – We support.

Q27. Are there alternative planning policies that you think should be included in this Chapter?

No comment

Transport (Shipping, Ports, Harbours & Ferries)

Q28. Should the NMP specifically designate national significant ports/harbours as described in Chapter 13: Marine Planning Policy Transport 2?

The Plan should concur with the designations identified in the National Planning Framework, particularly as ports and harbours fall within terrestrial planning. This issue highlights the need for better integration of terrestrial and marine planning that works in both directions.

Q29. Do you have any comments on Transport, Chapter 13?

Objectives

The second and third objectives should include the word 'sustainable', so that *sustainable* growth and development are supported.

We strongly support the climate change objective.

Key Issues - renewable energy

This section should include consideration of environmental sensitivities including designated sites and protected species, when identifying suitable port and harbour sites under NRIP.

Living within Environmental Limits

Disturbance to mobile marine species including birds and marine mammals should be considered in this section. Potential significant impacts exist with regard increasing ship movements across Scotland's ports and harbours to support marine activities. Furthermore, the potential cumulative impacts of this increased activity should also be a consideration for any proposal for port or harbour extension or alteration.

Policies

Transport 4

The word 'sustainable' should be included at the beginning of this policy.

Q30. Are there alternative planning policies that you think should be included in this Chapter?

No comment

Telecommunication Cables

Q31. Do you have any comments on telecommunications, Chapter 14?

No comment

Q32. Are there alternative planning policies that you think should be included in this Chapter?

No comment

Defence

Q33. Do you have any comments on Defence, Chapter 15?

No comment.

Q34. Are there alternative planning policies that you think should be included in this Chapter?

No comment

Aggregates

Q35. Do you have any comments on Aggregates, Chapter 16?

No comment.

Q36. Are there alternative planning policies that you think should be included in this Chapter?

No comment.

Business and Regulatory

Q37. Please tell us about any potential economic or regulatory impacts, either positive or negative, that you think any or all of the proposals in this consultation may have.

No comment.

Equality

Q38. Do you believe that the creation of a Scottish National Marine Plan discriminates disproportionately between persons defined by age, disability, sexual orientation, gender, race and religion and belief?

Yes No

Q39. If you answered yes to question 23 in what way do you believe that the creation of a Scottish National Marine Plan is discriminatory?

No comment

Sustainability Appraisal

Q40. Do have any views/comments on the Sustainability Appraisal carried out for the NMP?

The general duties of the Marine (Scotland) Act 2010 require the achievement of sustainable development, including the protection and, where appropriate, enhancement of the health of that area. In this context the SEA fails to adequately identify, acknowledge and, where necessary, address the enhancement element of this duty, when assessing the NMP. SEA must 'identify, describe and evaluate the likely significant effects on the environment of implementing the plan' (Section 14 (2)a of the Environmental Assessment (Scotland) Act 2005) account for the significant effects of a plan or programme, which includes both positive and adverse effects. We recommend that the significant positive impacts of the enhancement duty as set out in the Draft NMP and addressed in the revised NMP are addressed in the SA/ SEA. In doing so, this would effectively provide adequate justification for the changes we have requested to GEN 12 and inclusion of additional policies as set out in answers to question 8.

The SA does not consider the environmentally relevant requirements of the Marine Act that relate to the mitigation and adaptation to climate change. Particularly relevant is the wholesale contradiction of the objectives and policies set out within the Oil and Gas chapter, that support maximum recovery of oil and gas reserves in the North Sea and west of Scotland, which are set alongside the duties of the Marine Act and the requirements to reduce emissions as set out in the Climate Change (Scotland) Act 2009 Scotland. Climate change is a major cause of environmental pressure as stated in the Marine Atlas and in this regard the absurdity of this contradiction is stark. We recommend this is addressed both within the NMP as stated above and in the SEA/SA.

Habitats Regulations Appraisal

RSPB Scotland in partnership with Scottish Environment LINK, has sought clarity on the HRA process of the draft National Marine Plan. However, the circulation of a Habitats Regulations Appraisal Record has not occurred within the timescales of the consultation. To this effect we are concerned as to the robustness of the HRA and wish to raise the fact that Marine Scotland has not followed best practise as presented in guidance¹⁶. There are policies or objectives within the plan that could

¹⁶ David Ty Idesley & Associates (2012) Habitats Regulations Appraisal of Plans, Guidance for Plan-making bodies in Scotland. Version 2.0, Scottish Natural Heritage

have adverse effects on the integrity of the Natura network. For instance the targets for aquaculture expansion are not fully assessed under SEA nor HRA. Until such time as these assessments are undertaken and that suitable mitigation measures and a mitigation strategy are set within the Plan and supporting documentation, then we consider that Government is not fulfilling its duties and is effectively risking the achievement of sustainable development and the protection/enhancement of the marine environment.

An HRA record was produced for the National Planning Framework consultation document and we request that such a document is prepared and circulated in support of the NMP. Appropriate measures, obligations and guidance as to what may be required in the future, both by Marine Planning Partnerships and individual marine and coastal projects/ activities should be included in this report to ensure compliance with the regulations. At the very least, best practice guidance should be followed and the record should set out:

- i. Whether or not the plan is directly connected with or necessary to the management of a European site (regulations 48(1)(b) or 85B(1)(b));
- ii. The European site(s) and qualifying interests which were considered in the screening and, where applicable, the appropriate assessment stages, which would be likely to be significantly affected. Also the conservation objectives used to assess the implications of the plan for the site (regulations 48(1) or 85B(1));
- iii. A summary record of the screening stage, in particular listing the policies and proposals in the plan that were screened out of the need for appropriate assessment, either alone or in combination with other plans or projects, brief reasons why and any mitigation measures relied upon in the screening process;
- iv. As applicable, a list of the other plans or projects with which the plan that is being considered was combined in any in-combination assessment, and the outcome of that assessment;
- v. As applicable, whether the plan would or would not be likely to have a significant effect on a specified European site, either alone or in combination with other plans or projects (regulations 48(1)(a) or 85B(1)(a));



CONSULTATION QUESTIONS

Please identify the main area of interest you identify with :

- | | |
|-------------------------------|-------------------------------------|
| Nature Conservation | <input checked="" type="checkbox"/> |
| Fisheries | <input checked="" type="checkbox"/> |
| Industry/Transport | <input checked="" type="checkbox"/> |
| Energy | <input checked="" type="checkbox"/> |
| Aquaculture | <input checked="" type="checkbox"/> |
| Recreation/tourism | <input checked="" type="checkbox"/> |
| Academic/scientific | <input checked="" type="checkbox"/> |
| Local authority | <input checked="" type="checkbox"/> |
| Community group | <input checked="" type="checkbox"/> |
| Public sector/Regulatory body | <input checked="" type="checkbox"/> |
| Local Coastal Partnership | <input checked="" type="checkbox"/> |