

Our ref: OIA 1035

Marine Scotland
By e-mail only to:
marineplanning@scotland.gsi.gov.uk

13 November 2013

Dear Sir/Madam

Planning Scotland's Seas: Scotland's National Marine Plan Consultation Draft

The Joint Nature Conservation Committee (JNCC) welcomes the Planning Scotland's Seas consultation and the opportunity to provide marine nature conservation advice to Scottish Government in relation to marine planning.

JNCC is the statutory adviser to Government on UK and international nature conservation, and also has responsibility for the provision of nature conservation advice in the offshore area. In this role JNCC has been significantly involved in the identification of possible nature conservation Marine Protected Areas (MPAs); as such, we are not providing any comments in this response on the MPA aspect of the consultation. Our advice on the Sectoral Marine Plans for Offshore Wind, Wave and Tidal Energy in Scottish Waters will be provided in a separate response.

A clearer framework for planning and managing activities and developments in the marine environment is needed. Scotland's National Marine Plan and the Sectoral Marine Plans for Offshore Wind, Wave and Tidal Energy in Scottish Waters make a significant step towards encouraging better planning and management of the marine environment, which JNCC encourages and supports.

Our advice and comments on the consultation are included in the following annex.

Yours sincerely



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Annex: JNCC advice on Scotland's National Marine Plan Consultation Draft

Introduction

1. As a statutory advisor to Scottish Government, JNCC has supported the development of the National Marine Plan by Marine Scotland. We are encouraged that a framework for better planning and management of the marine environment has been produced. Our advice and comments below are intended to ensure that the Plan is aligned with and supports other marine nature conservation policies and legislation.

Overarching comments

2. It is appreciated that a strategic plan of this nature will contain very high-level policies and it will be plans below the national level, such as the Regional Marine Plans, which provide more specific and technical policies and guidance. However, within the offshore area there is currently no intention to produce plans at the regional or local level. Consequently, JNCC is concerned that there will not be a sufficiently detailed framework for planning and managing activities and development in offshore waters (12 - 200 nautical miles) from the National Marine Plan alone.
3. Our concern regarding insufficient detail in the plan for offshore waters is heightened by the lack of an environment-specific sector chapter. We recognise the pros and cons of including a dedicated environment chapter versus integrating environmental issues fully into the other chapters. As currently drafted, we do not think that environmental issues are adequately integrated. JNCC would strongly recommend that the environment is treated as a sector in the plan. This would help ensure that the plan is encouraging complete sustainable development not just sustainable economic growth.
4. An environment sector chapter would also be the logical place for the inclusion of a policy on cumulative assessment of developments, including co-located activities. The plan alludes to the need to assess cumulative impacts from multiple sectors, but this could be more clearly set out. JNCC would be keen for the plan to be strengthened in support of cumulative assessment.
5. Another benefit of an environment sector chapter would be the opportunity to clearly identify links to other policies and legislation that are also contributing to the planning framework and guiding decision-making on marine activities and developments, such as the EU Habitats and Birds Directives. Although the plan makes reference to Special Areas of Conservation (from EU Habitats Directive) and Special Protection Areas (from the EU Birds Directive) greater clarity could be provided on the implications these necessarily place on development.
6. There is no mention within the **Habitat Changes** section of oil and gas or renewables chapters of the potential impacts on marine protected areas from potential co-location within these sites. This issue could be addressed within an environment sector chapter so that an appropriate policy and supporting text could be applicable to all relevant industry sectors.

7. We are aware that Sectoral Marine Plans for Offshore Wind, Wave and Tidal Energy in Scottish waters have been drafted and are part of the Planning Scotland's Seas consultation. However, it is not clear in the early, general chapters of the National Marine Plan if there is any link to these sectoral plans (or future additional sectoral plans) and whether they may form part of a more detailed planning framework for offshore waters.
8. The word 'sustainable' is used in many instances throughout the plan, including sustainable development, sustainable developments and sustainable economic growth. We would recommend that the differences between the contexts are clearly explained at the beginning so that the plan is supporting sustainable development (i.e. balancing environmental, social and economic needs), not just sustainable economic growth.
9. In the **Approach to Policies** section of chapter 3 a reference is made to having '*greater understanding of whether there are 'tipping' points within degraded ecosystems beyond which they cannot recover and continue to provide services*' in the future (page 19 **The future**). JNCC would suggest that this would seem to be pushing ecosystems to their limit rather than achieving sustainable development. We would therefore recommend that the plan should say that we need to build our understanding of an acceptable level of impact on ecosystems whereby they continue to provide services to people and support biodiversity and the wider environment. This approach would also be supportive of policies GEN 10, GEN 11 and GEN 12.
10. Marine Scotland may wish to highlight (page 20 **Informing decision making and National Marine Plan Interactive**) that the evidence provided by Scotland's Marine Atlas for the plan was a snapshot at the time. Information, such as the distribution of Priority Marine Features (PMFs), has already been updated and will continue to be updated through National Marine Plan Interactive.
11. In the introduction to the general policies it is stated that they apply to all sectors. However, in the sector chapters there is no equivalent reminder to refer back to the general policies.

General policy comments

12. In relation to policies **GEN 1**, **GEN 2** and **GEN 3** please note the suggestion made in paragraph 7 above with regard to clarifying definitions and uses of the word 'sustainable'.
13. Policy **GEN 6** relates to the integration of terrestrial and marine plans, however we wonder if equivalent consideration should be given to the integration of plans for territorial and offshore waters, as regional marine plans will only be produced for inshore waters. As highlighted in paragraph 2 above, we are concerned that the planning framework is not sufficient for offshore waters.
14. JNCC supports the intent of **GEN 9** in encouraging early stakeholder engagement. We welcome pre-application engagement from developers in offshore waters so that relevant marine nature conservation issues may be identified and thoroughly assessed.
15. We are pleased that in **GEN 10** the use of a risk based approach has been recommended when there are evidence gaps. However, we advise that the precautionary principle should always be applied when there are evidence gaps (rather than 'may' only be applied).

16. In policy **GEN 12** the term '*national conservation status*' is used, which is a term that JNCC is unfamiliar with. Typically, favourable conservation status would be the term used to describe Annex I habitats at a national (UK) scale, or favourable condition for habitat features within a European Marine Site.
17. On page 29 (third paragraph) Special Conservation Areas are referred to as being '*proposed*', but they should be possible Special Conservation Areas.
18. Priority Marine Features are highlighted as a consideration for decision-making on development (paragraph 4, page 29). JNCC is wondering if the plan could provide a mechanism for registering areas of priority marine features and monitoring whether areas continue to contribute to feature protection. If so, this could be included within policy GEN12 (or associated text).

Sector chapter comments

19. **Spatial management measures in place** (page 49) says that the Wee Bankie is closed to fishing. We would like to highlight that it is only closed to fishing for sandeels, as a prey species for birds. JNCC would recommend providing more detail on fishing closures in Maps 7-9 to prevent any misinterpretation by planners or industry.
20. Under **Part 4: The Future** JNCC would like to see a reflection of the UK Marine Policy Statement included in this part by making reference to there being co-existence between fishing, users and activities, and a healthy environment.

Oil & Gas

21. The removal of oil and gas infrastructure is raised in the context of decommissioning (page 72), and this may be a policy or legal requirement of any particular programme. However, JNCC would like to highlight that the removal of infrastructure may have equivalent impacts on marine nature conservation to its installation and these effects should be considered within the environmental impact assessment for any decommissioning programme.
22. In **Habitat Changes** (page 75) it is stated that '*infrastructure can also provide substrate for colonisation and shelter for fish*'. JNCC is concerned that this statement makes it sound as though the introduction of hard substrate is always positive when in reality it can significantly alter the existing habitat and consequently the associated biodiversity, which may be detrimental. We would therefore advise that both the positive and negative effects of hard substrate introduction are highlighted in the plan.
23. It is also stated in the **Habitat Changes** section that '*all offshore oil and gas exploration and development is subject to a requirement for an environmental impact assessment*'. This implies that a full environmental impact assessment and environmental statement is produced for all activities, which is not the case. Only activities above certain thresholds require a full environmental impact assessment and the production of an environmental statement. Smaller scale and lower impact activities (below the legal thresholds) undertake a less rigorous assessment of their environmental effects and only produce a short report as part of their permit application.
24. There is no acknowledgement of the contribution from the oil and gas industry to CO₂ emissions in either the **Climate Change** section (page 75) or the sector chapter as a whole, whereas in the CCS sector chapter it states that the energy production sector is responsible for CO₂ emissions. We would recommend that this inconsistency is addressed in the final plan.

CCS

25. JNCC welcomes the early consideration of environmental issues with regard to deployment of CCS through the initiation of an environmental assessment. We would urge for this to be a strategic environmental assessment in the first instance before project level environmental impact assessment is undertaken.

Renewables

26. There is not a **Habitat Changes** section under **Living Within Environmental Limits** which JNCC finds surprising given the potential impacts from renewables infrastructure, such as direct habitat loss and potential changes in biodiversity from the introduction of hard substrate materials.
27. Although **Grid Provision** (page 87) has clear links to the renewables sector we would recommend that it is included in a general cables chapter (encompassing telecommunications cables as well). We would suggest that the issues and therefore the policies are very similar, if not the same, for all types of cables.
28. Under **Part 3: Planning Policies** (page 90) there is an explanation of the role of the National Marine Plan in relation to the Sectoral Marine Plans. It would be helpful to have this description in an early introductory or general chapter so that the complete marine planning framework is clearly outlined before reaching the policy element of the plan.
29. **Renewables 7** states that '*There is a presumption that cables will be buried or rock dumped*', which suggests that other methods may not be acceptable. There are potential impacts to marine nature conservation from both burial and rock dumping, which should be fully considered through the environmental impact assessment. Other methods of cable protection may be preferable in some circumstances and should also be considered.
30. **Renewables 8** suggests that single EIA and HRA documents should be produced for offshore and onshore elements of renewables projects. This is not a key issue for us. What is more important is that all project assessment reports are based on a consistent, realistic project description.

Telecom Cables

31. As outlined in paragraph 27 above, JNCC would recommend that this chapter covers all types of cables, electricity (including grid connections) as well as telecoms.
32. Cables in the offshore area do not currently require a licence; therefore JNCC does not necessarily get consulted on these projects. We would suggest that a policy enhancement that could be made through the marine plan is for developers to undertake a voluntary environmental impact assessment for offshore cable projects. This may help to protect marine nature conservation features should there be a rapid expansion in cable development.

Defence

33. To provide further background on the defence sector and environmental management, Marine Scotland may wish to explain that MOD has developed an electronic charting system in partnership with the UK Statutory Nature Conservation Bodies. The system is used in order to minimise the environmental impact of all MOD activities in accordance with environmental legislation.

Sustainability Appraisal Report

34. Unfortunately, we have not been able to review this associated document in as much detail as we would have liked. However, we do have the following comments.
35. We think that under the **Assessment of Alternatives** (pages 80-82) the reason for not using the environmentally focused plan option could be more fully justified. Particularly, because in the longer term a healthy environment delivers greater economic benefits. Also it is noted that the economically focused plan option is driven by short term economic gains. Consequently, we would suggest that the both the economically and environmentally focused plan options should be working in tandem rather than in opposition. As detailed in paragraph 3 of this response, this would ensure that the plan is encouraging complete sustainable development not just sustainable economic growth.
36. The **cumulative effects assessment** (page 83-84) of the National Marine Plan has been limited to other plans in the same policy context only (Scottish Planning Policy). We would suggest that as the plan addresses a range of sectors (e.g. oil and gas, renewables, etc) for which there will also be strategic level plans (e.g. Oil and Gas Strategy 2012-2021) these should have also been cumulatively assessed.

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