

Scottish Marine Bill Partial Regulatory Impact Assessment

Title of Proposed Regulations:

1. This Regulatory Impact Assessment relates to The Marine (Scotland) Bill.

Purpose and intended effect of measure

Objective

2. The Scottish Government is committed to delivering a Scottish Marine Bill which will put in place mechanisms to improve stewardship of the seas around Scotland. In addition to simplifying existing marine legislation, the proposed Marine Bill aims to enhance the long-term viability and growth of the various marine industries with greater stewardship of Scotland's special marine environment.

3. In a statement to Parliament on 3 September 2008, First Minister Alex Salmond laid out the Scottish Government's legislative programme for the coming year, including a Marine Bill for Scotland. The Bill proposes a new legislative and management framework for the delivery of sustainable economic growth in the marine environment, with proposals relating to delivering a new system of marine planning, reducing the regulatory burden, nature conservation and improving our understanding of the seas with delivery through a Scottish marine management organisation - Marine Scotland. It is anticipated that the Bill will be introduced to Parliament in April 2009, with Royal Assent in December 2009.

Background:

4. Scotland's seas are rich and biologically productive, a dynamic, robust and yet delicately balanced resource, and having an immense economic and iconic value to Scotland. They generate annually at least £2.2 billion of marine industry - excluding oil and gas - and support approximately 50,000 jobs. Scotland's seas are also home to 40,000 marine species, including 6,500 animal and plant species.

5. There are many competing demands on Scotland's marine and coastal environment - demands from the energy sector, shipping, fisheries, tourism and conservation. In recent years there has been a growing consensus in Scotland that change is needed to balance resource use and resource protection. In addition, a series of legislative changes are also occurring at UK, European and international level that support the need for change.

6. The seas around Scotland are subject to a complicated mix of reserved and devolved regulatory activity. Further details are contained in "Sustainable Seas for All – a consultation on Scotland's first marine bill."

7. At the UK level, the UK Government issued a Draft Marine Bill in April 2008. The Draft Bill sets out legislative proposals with a focus on marine planning and marine conservation. Other measures include the creation of a Marine Management Organisation; reforms to the licensing system; reforms to the management of marine fisheries (including a

system for administrative penalties), inland and migratory fisheries; and access to coastal land. Consultation on the draft closed on 26 June 2008; the UK Government published the results on 25 September 2008.

8. Scottish Ministers are seeking additional devolution of marine planning and nature conservation matters in the offshore area around Scotland, between 12nm and 200nm, as this would provide the most effective and practical way of improving the management of the seas around Scotland and delivering UK and EU priorities. This view is supported by the Scottish Parliament. Scottish Ministers believe that further devolution would simplify the management of the seas, reducing the number of internal UK management boundaries from three to two. Scottish Ministers acknowledge the necessity to deliver a joined-up system of marine planning in the UK and would seek to agree mechanisms with the other administrations in the UK which respect constitutional difference but deliver an effective management system.

9. At European level, the Marine Strategy Framework Directive (MSFD), adopted in June 2008, proposes a framework whereby European Marine Regions will be established on the basis of geographical and environmental criteria. Marine strategies will have to be developed by the different Member States in the marine region setting out a programme of cost-effective measures to achieve “good environmental status” by 2020. Marine spatial planning will be a key area of development under the Directive.

10. Finally, at international level, the Oslo and Paris Convention (OSPAR) obliges signatory countries to develop an ecologically coherent network of well managed marine protected areas by 2010. The Scottish Government has agreed that it should have the responsibility for delivery of marine nature conservation, including the network of marine protected areas, to meet such international obligations.

11. In addition to simplifying existing marine legislation, the proposed Scottish Marine Bill aims to balance the long-term viability and growth of all these industries with enhanced protection of our special marine environment. The case for change has notably been presented in two reports published in 2007, a report of the previous Parliament's Environment and Rural Development Committee (ERDC) and the report of the Advisory Group on Marine and Coastal Strategy (AGMACS).

12. The ERDC report focused on how to manage effectively the pressures on the marine environment from the inter-connected impacts of different uses, conflict between competing uses, and natural processes. Recommendations called for a new statutory system of marine spatial planning in Scotland, and the need for steps towards a less complex, single integrated regulatory system for all marine activities. They also considered marine protected areas to be a significant objective of legislative reform and separately noted the need for further developments on marine data and research, objectives and indicators. In relation to delivery arrangements, they considered it essential that a marine management organisation for Scotland must simplify governance and not add another layer to existing regulation, and that any new management system must be properly accountable to the Parliament.

13. The Advisory Group on Marine and Coastal Strategy (AGMACS) also recommended changes to the legislative framework for the marine environment, calling for statutory marine spatial planning and a three pillar approach to nature conservation, with

specific measures for species conservation, policy, and site protection. They additionally called for a Scottish marine management organisation (Marine Scotland), which would also have responsibility for national coordination of integrated coastal zone management and marine spatial planning delivery with national and local dimensions. They also recommended that consideration should be given to a Scottish marine management organisation having responsibility for marine nature conservation and fisheries out to 200 nautical miles (nm).

14. Building on this work more recently, in January 2008 the Cabinet Secretary for Rural Affairs and the Environment convened the Sustainable Seas Task Force (SSTF), a 25 member stakeholder group with the remit to input into the development of the Scottish Government's proposals for a Scottish Marine Bill, building on and taking forward the work of ERDC and AGMACS. The SSTF developed more detailed proposals and these were presented in the consultation paper.

Rationale for Government Intervention

15. The Scottish Government's key purpose is to focus on creating a more successful country with opportunities for all of Scotland to flourish through increasing sustainable economic growth. The Scottish Marine Bill will support this overall purpose, managing Scotland's coasts and seas in a way that balances the interests of resource use and resource protection, to create a more stable environment making it more attractive for long-term investment. Change to produce higher sustainable economic growth is needed in the management of Scotland's marine environment. Successive inquiries have identified a number of changes:

- to clarify overall objectives for the marine environment and seek to meet them more effectively and affordably;
- to manage growing, often competing demands for use of marine space, including balancing environmental and socio-economic considerations. This includes a need to provide greater certainty for those proposing developments in marine areas;
- to meet existing and new marine obligations and aspirations. We need to develop and implement ecosystem-based approaches to marine management and make improvements to marine nature conservation;
- to improve integration and reduce complexity of marine management and regulation, in line with wider Scottish Government and EU policy aims;
- to give local communities a stronger voice in marine matters and to ensure accountability at the local and Scottish levels on marine decision making;
- to ensure a strong and coherent Scottish voice and play an effective role in the wider management of UK seas; and
- to lead the way in Scotland on how the seas in North West Europe can be managed to strike the right balance between economic, social and environmental priorities.

16. If there is no government intervention then there would be little or no integrated planning of activities, there would be continued conflicts between different users of the marine and coastal areas, a less efficient use of marine space and the deterioration of the marine environment.

17. No change in the current licensing system arrangements would mean that the licensing regime would remain complex and resource intensive, with multiple licences often required from a range of licensing bodies with different process and consultation requirements.

18. In relation to nature conservation, Scotland would continue to meet its conservation objectives and legal commitments through existing legislation. However the “do nothing” approach would mean there would be no new species conservation or site protection measures, gaps in the current nature conservation regime would remain, there would be no long term benefits and there would be a lack of support in achieving existing national and international commitments which could lead to deterioration of the marine environment. Overall, there would be no long term benefits.

19. Not setting up a new integrated body (Marine Scotland) with responsibility for policy, marine planning, science and regulation and licensing would mean that existing activities would continue to be carried out by organisations that are currently responsible for them, and they would take on any new requirements such as marine planning. There would be no long term benefits and the risk of failure to deliver the objective of streamlined decision-making, the potential for inconsistency in decision making and uncertainty amongst stakeholders about responsibilities for the marine environment.

Consultation

Within Government

20. The following government agencies and departments have been consulted on the measures contained within the proposed Bill: relevant colleagues within Environment, Education, Economy and Justice Directorates within the Scottish Government; Fisheries Research Services (FRS); Historic Scotland (HS) and the Scottish Fisheries Protection Agency (SFPA).

Public Consultation

21. On 14 July 2008 the Scottish Government published *Sustainable Seas for All – a consultation on Scotland’s first Marine Bill* seeking views on proposals for the sustainable management of Scotland’s seas and coast.

22. The Scottish Government has been assisted by the Advisory Group on Marine and Coastal Strategy (AGMACS) and the Sustainable Seas Task Force (SSTF) in developing the proposals under the consultation document. AGMACS and the SSTF included representatives of a wide range of interests in the marine environment.

23. Consultation documents were issued to 1012 stakeholders, and a number of consultation documents have been issued since the launch in July 2008. Stakeholders that have been involved in the consultation process include the Food Standards Agency (Scotland), Rural Affairs and Environment Committee of the Scottish Parliament, Scottish Environment Protection Agency (SEPA), Scottish Natural Heritage (SNH), the Forestry Commission Scotland and the Crofters’ Commission. The consultation has also been made

available on the Scottish Government website and members of the Scottish Government Marine Directorate have been holding public meetings around Scotland over the consultation period to provide an opportunity for members of the public, relevant organisations, businesses and other interested parties to discuss the proposals.

24. The consultation ran until 6 October 2008. A Final Regulatory Impact Assessment will be produced, building on this partial RIA, and in the light of the consultation and further information and analysis.

25. Risk and Policy Analysts Ltd. and ABP Marine Environmental Research Ltd. have been commissioned to undertake a Regulatory Impact Assessment for the Scottish Marine Bill on behalf of the Scottish Government. In preparing their report, they have also consulted with a number of organisations in order to obtain baseline information and to determine the potential impacts of the options.

Options

MARINE PLANNING

26. A new statutory marine planning system is proposed to ensure sustainable economic growth in the seas around Scotland. This will allow decisions to be made in agreement with a variety of stakeholders working together to produce a suite of Marine Plans for different geographic or administrative areas. The Scottish marine planning system would cover all activities, constraints and obligations in the marine environment around Scotland to the extent that they are within devolved competence. Scotland currently has the power to legislate for marine planning out to 12nm. Agreement of the UK Government is needed if Scotland were to apply marine planning provisions to reserved matters out to 12 nm. The Scottish Government is seeking additional devolution of marine planning matters in the offshore area around Scotland between 12nm and 200nm in order to support a framework that enables the development of effective and holistic marine policies to address the distinctive marine environment of the seas around Scotland. Marine Planning will enable us to ensure that the resource needs for marine space of different sectors are properly taken into account and managed. Marine Planning should be based on a 3 tier system: Scotland level (with a national marine policy statement and objectives and a Scottish Marine Plan); international level beyond Scotland (to deal with planning matters that are external to Scotland, setting Scottish waters within the wider UK, EU, North Atlantic and global frameworks); and regional level within Scotland (to deal with local planning and management possibly requiring 9-13 local plans within Scottish Marine Regions).

SECTORS AND GROUPS AFFECTED

27. A planning system affects all activities and interests in the marine environment around Scotland. Key industry sectors affected include: marine renewable energy; fisheries (finfish and shellfish); ports and harbours; shipping; aquaculture; oil and gas extraction and related pipelines; telecommunication and power cables installation and operation; sand and gravel extraction; recreational and tourism, and other activities covered by regimes such as marine licensing and environmental consents. Other groups affected include recreational

users of the marine environment, non-governmental organisations with interests in the marine environment and the general public.

28. Affected public sector organisations include those that are responsible for managing and licensing the activities listed above, not all of which are devolved to the Scottish Government. They include not just Scottish Government but also local authorities and regulators.

OPTIONS and COSTS/BENEFITS

29. There are two main options in relation to marine planning. These are:

Option 1: do nothing

Option 2: implement a statutory planning system.

30. Under **Option 1**, there would be no or little integrated planning of activities. Although high-level marine objectives might exist, stemming from national and international initiatives, there would be no system to deliver objectives at lower levels in an integrated way. There would be the risk of continuation of the current situation, where conflicts between different uses of the marine environment could result in costly delays, less efficient use of marine space and deterioration of the marine environment.

31. This option may provide the short-term benefit in that policy-makers, businesses and marine users will not have to change their behaviour. However, it is likely in the longer term that pressures on the marine environment will ultimately require alternative solutions and consequent modifications in activity.

32. Under **Option 2** Marine Planning would be based on a 3 tier system: Scotland level, international level beyond Scotland, and regional level. Not all areas would need plans; they are only necessary where there are, or are likely to be, activities to plan and potential conflicts.

33. International planning requirements such as consultation, interacting with other planning authorities and delivering international commitments to e.g. the MSFD would still need to be carried out, with associated costs for the Scottish Government, regardless of the implementation of a marine planning system.

34. There are potential benefits from marine planning for the full range of stakeholders. The scale of the benefits will depend on the way in which planning operates in practice, and the specific features of each plan. Marine planning could significantly reduce the costs of conflicts, delays and compensatory measures associated with the current system, which can cost from several hundred thousand pounds to millions of pounds per development. Marine related goods and services are estimated to contribute over £2 billion annually to the Scottish economy. A 1% increase in gross added value from the marine economy could generate benefits of £294 million over 20 years (discounted). Marine Planning would also create a more stable marine environment in the long-term, making it more attractive for businesses to

invest in Scotland. More rapid approval of marine energy projects could bring benefits of £5.5 million over 20 years (discounted), and would help ensure Scotland leads the way in the development, testing and accreditation of marine energy generation and delivery systems.

35. The total cost to Government of the Scottish National Plan is estimated to total £7.3 million over 20 years (discounted), an average cost of £498,000 per year. This cost includes plan preparation and consultation, implementation and review. Local plans could cost an average of £2.6 million to £4.7 million a year for 9 to 13 plans, which amounts to an additional £38.3 million to £69.4 million over 20 years (discounted).

36. A further potential option, of implementing a non-statutory planning system would still involve the setting of marine objectives and priorities, but there would be no statutory requirements for decision-making authorities to act in accordance with them. The main risk with a non-statutory system of planning would be that plans, once produced, might not be adhered to. The process and costs involved are largely the same as for a statutory planning system but with fewer benefits.

LICENSING AND ENFORCEMENT

37. The current licensing regime in Scotland comprises a variety of licences, seeking either to protect features of the marine and coastal area from the impact of marine development, or to mitigate the impact of developments. The key aim of changing the current system is to deliver an effective, streamlined and modernised licensing system and this will be a key delivery mechanism for marine planning and nature conservation measures and aims.

SECTORS AND GROUPS AFFECTED

38. A number of different groups will be affected, under the following categories:

Regulatory authorities: Fisheries Research Services (for administration of licences under FEPA); Scottish Government Transport Directorate (for administration of licences/consents under the Coast Protection Act and the Harbours Act); Scottish Environment Protection Agency (the regulating authority for the Water Environment (Controlled Activities) (Scotland) Regulations 2005; Scottish Natural Heritage; Scottish Government Planning Division; Local Authorities; Scottish Government Energy Consents Unit

Industry: the aquaculture industry; marine renewables; marine construction; and ports and harbours.

Other stakeholders: there are a number of other stakeholders and organisations that have interests that may be affected and/or are regularly consulted on consent procedures.

OPTIONS and COSTS/BENEFITS

39. There are four main options for streamlining the system of licensing and enforcement.

Option 1: no change to current arrangements;

Option 2: amalgamate FEPA Part 2, CPA Part 2 and CAR licences for marine activities into a single licence;

Option 3: amalgamate CPA Part 2, FEPA Part 2, CAR licences for marine activities, wildlife, aggregates and any other activity licences into a single licence; and

Option 4: create an activity-based licensing system.

40. There are also two sub-options, which could be combined with the main options:

Sub-option A: controls for capital and maintenance dredging. This sub-option can be combined with Options 1, 2 and 3;

Sub-option B: following a CAR-type approach for small projects – involving a graduated regulatory regime based on the level of risk posed by a development or activity. This sub-option could be combined with any of the options.

41. **Option 1** would maintain the current situation, with 16 types of consent administered by more than ten organisations/departments, at an estimated annual cost of £1.4 million to £3.1 million per year. The advantages of this option are that no new legislation would be required; all stakeholders are familiar with the current situation and there would be no costs or job losses associated with streamlining the current licensing regime. The main disadvantages are that the objectives of the Scottish Marine Bill would not be met, and the licensing regime would remain complex and resource intensive.

42. **Option 2** would reduce the number of licence applications required, thus simplifying the licensing application and processing system; and would provide better integrated licensing, ensuring that a range of environmental/ecological and navigational issues are considered together. The benefit of this option would be that it could assist in the delivery of both existing obligations and objectives and new ones (e.g. in marine planning and nature conservation). This could generate annual savings to regulatory authorities of £150,000 to £168,000 and around £170,000 annually to industry. However, it would require the introduction of new legislation, incurring costs for Government and stakeholders and potentially causing (temporary) disruption to the licensing system. Staff would also need to be re-trained both within the industry and the regulators.

43. **Option 3** is similar to Option 2, but would go further. This Option would have similar costs and benefits to Option 2 for authorities, but would have the added benefit of providing greater integration with regard to regulating the ecological impacts of marine developments. This could result in additional annual cost savings to industry of around £177,000 to £197,000, and to regulatory authorities of £159,000 to £204,000.

44. **Option 4** involves developing integrated licences for particular activities, such as a renewable energy licence, a port and harbour licence and an aquaculture licence. Further types of licence would be required to cover any other activities. This could generate cost savings for government of £342,000 to £515,000 per year and for industry of £512,000 to £672,000 per year. The key risk with using only activity-based licences is in defining the activities to be licensed and that the impacts caused by other activities might not be managed. However, a large number of different activity licences would risk repeating the complexities of the current system. Combining activity-based licences for some activities, with general licences for other activities, would also add to the complexity of the system and fail to achieve the objective of streamlining.

45. **Sub-option A** can be combined with Options 1, 2 and 3, or it could be a standalone option. There is currently no single act which regulates dredging operations in Scotland. Newer methods of dredging such as low-cost hydrodynamic dredging techniques are exempt from FEPA licensing, as the sediments are not raised from the surface of the water and therefore no disposal takes place. The main potential risk associated with this option relates to the potential impact on hydrodynamic dredging. The total costs of introducing licensing for hydrodynamic dredging will depend on the number of occurrences, and the possible introduction of multi-year licences. The total cost to regulating authorities of 11-27 occurrences per year would be £71,500 to £175,000 and it is expected that this cost would be recovered from industry in the form of licence fees. This estimate is based on an annual licence and would be reduced by the introduction of a multi-year licence. Water injection dredging could have ecological and economic effects on the area of sea bed, therefore regulators and/or consultees may be more likely to seek an Environmental Impact Assessment (EIA). For 11-27 occurrences, of which one requires an EIA, the cost to industry of providing reports for a licence application may be in the region of £415,000- £1 million. In addition to this, the licensing authority would be expected to charge licence fees so the total cost to industry of introducing licensing for hydrodynamic techniques may be between £487,000 and £1.2 million per year, depending on the number of occurrences, the quantity of material moved, the fees charged and the requirement for environmental sampling, modelling, monitoring and reporting. Any increase in the costs may result in a decline in use of the techniques, thereby reducing the environmental benefits. The benefit of the option would be to ensure full evaluation of the chemical and physical impacts associated with the use of hydrodynamic dredging.

46. **Sub-option B** could also be introduced along with Options 2, 3 or 4, or as a standalone option. This would introduce a simpler system of registration for small, uncontroversial projects. The costs of this option cannot be quantified but they relate to the potential difficulties associated with distinguishing between different levels of activities and their associated impacts. The benefit of this sub-option is that it may reduce the administrative burden and associated costs for both industry and the regulators. It may result in some savings; however these are assumed to be limited to small projects requiring FEPA and CPA licences. The main risk associated with this Option is that it may cause further confusion, as stakeholders will have to distinguish between three different levels of activity in determining whether a licence is necessary for their activities.

MARINE NATURE CONSERVATION

47. The proposals in the Bill intend to maximise sustainable economic growth for the marine environment by improving the system of marine nature conservation using planning and management tools that deliver practical nature conservation at the ecosystem level and through focused improvements to protection of key locations and species. The Scottish Government is seeking to secure further devolution to Scotland for marine conservation out to the 200nm limit in order to safeguard our seas.

SECTORS AND GROUPS AFFECTED

48. Key business sectors that may be affected by measures for marine nature conservation include: marine renewable energy; fisheries (finfish and shellfish); ports and harbours; shipping; aquaculture; oil and gas extraction and related pipelines; telecommunication and power cables; sand and gravel extraction; recreational and tourism companies, and other activities covered by regimes such as marine licensing and environmental consents.

49. Social and environmental groups affected include non-governmental organisations, individual members of society and society as a whole through the educational value, cultural heritage and other non-use values such as bequest and existence values of the marine environment. The ecosystem services that marine biodiversity delivers to society also underpin economic activity and social well-being.

50. Government sectors affected include those responsible for designing, implementing and enforcing measures, responsibilities that may or may not be devolved to the Scottish Government. They include not only the Scottish Government but also local authorities and regulators.

OPTIONS and COSTS/BENEFITS

51. The three main options in relation to nature conservation are:

Option 1: no change;

Option 2: make better use of existing measures, e.g. voluntary reserves, marine nature reserves legislation;

Option 3: implement new measures and policies.

52. Under **Option 1** Scotland would be reliant on existing legislation to meet its conservation objectives and legal commitments including more recent agreements to develop networks of Marine Protected Areas (MPAs). There would be no changes to marine nature conservation policy and no new species conservation or site protection measures. This option would not incur additional costs for Government or other stakeholders, other than the necessary costs expected to implement measures we are committed to e.g. under the Marine Strategy Framework Directive. The Scottish Parliament has endorsed Ministers' commitment to deliver an Ecologically Coherent Network of Marine Protected Areas

(ECMPAs). This ongoing commitment stems from the OSPAR World Summit on Sustainable Development and is now reflected in the MSFD, where it envisages MPAs as an important contribution to the measures needed to achieve good environmental status (GES). Relying on existing legislation would provide no long-term benefits; gaps in the current nature conservation regime would remain, it would not support achievement of existing national and international commitments and could lead to deterioration of the marine environment. If such deterioration resulted in a 1% reduction in the economic value of marine environment-related sectors, this could result in losses of £14 million over 20 years (discounted).

53. **Option 2** should lead to an improvement in the marine environment, with resultant economic, social and environmental benefits. The benefit of making better use of existing measures under this option is that systems are already in place and understood by stakeholders; therefore no costs would be incurred by Scottish Government and regulators in designing new measures, consulting on them and implementing them. Option 2 might fail to deliver the Government's commitment to establish a network of marine protected areas, as sites could only be identified for those habitats and species protected by the EC Birds and Habitats Directives, although it might prove possible to protect some important sites through existing marine nature reserve provisions. Gaps in species management and protection might be partly addressed by increased expenditure on voluntary measures such as Biodiversity Action Plans and strengthening the way in which the Biodiversity Duty operates to deliver greater protection of key species; however, this is essentially a non-statutory measure and may not secure the level of compliance necessary to result in measurable improvements.

54. Costs to government under this option will depend upon the number of biodiversity action plans set up (these cost between £23,000 and £500,000 per plan, with surveillance and enforcement costs of around £198,000 per plan) and the number of marine nature reserves. No marine nature reserves have been designated in Scotland but comparative data from existing reserves in England, Wales and Northern Ireland suggests that that each may cost around £24,000 to £33,000 to set up and £14,000 to £22,000 per year for surveillance and monitoring. The costs to industry would depend upon the specific controls that were introduced as a result of the option.

55. **Option 3** involves the development of a new system of marine spatial planning, supported by marine objectives (ecosystem and socio-economic) and zoning initiatives where relevant. This would include identifying marine objectives, new powers to identify, designate or recognise particular locations of biodiversity importance and delivery of site and species protection measures within a marine planning framework. Marine objectives (including marine ecosystem objectives) will also need to reflect Scotland's international commitments such as those within OSPAR and the requirements of the MSFD. There will therefore be inevitable costs for the Scottish Government associated with this, regardless of the implementation of Option 3. The benefits under Option 3 would be similar to those under Option 2 where an improvement in the state of the marine environment compared to the current situation will give rise to economic, social and environmental benefits. The extent of these benefits will be greater than those under Option 2 and will depend on the degree of improvement of the state of the environment.

56. The total economic value of marine-related sectors to the Scottish economy (in 2004) is over £2 billion. Sectors such as fishing relate directly to the quality of the marine environment and account for a significant proportion of this. The value of sectors directly

related to the quality of the marine environment total over £970 million per year. Nature conservation measures which enhance the sustainability of these sectors could therefore ensure that these significant economic benefits are retained. Social benefits such as leisure and recreation, cultural heritage and identity, and food provision could be at least equal to the economic benefits of marine biodiversity. As Scotland accounts for over 55% of the UK marine area out to 6nm, where the majority of benefits occur, this could imply potential social and environmental benefits from marine biodiversity (based on estimates in the UK Marine Bill RIA) of around £7 billion/year (although values are subject to significant uncertainty).

57. Developing zoning mechanisms within the marine planning system could cost around £485,000; this is part of the cost of marine planning. The main risk is that this could prove to be ineffective in protecting nature conservation features or that the information required to support formal site protection is not readily available, leading to delays in identification and protection of a marine protected area network.

58. There would be costs to Scottish Government in developing, implementing and monitoring marine ecosystem objectives and designating marine protected areas. Setting up nine new marine protected areas could cost £6.6 million over 20 years (discounted at 3.5% assuming an average of £462,000 per year) and extending protection to existing marine SACs could cost £4.4 million, discounted at 3.5% over 20 years (an average of £310,000 per year). The costs to industry would depend upon the management measures of each site and how restrictive the level of protection introduced in each site. A high level of restriction in marine protected areas could cost several million pounds if the site was of high value for oil and gas or shellfisheries, for example. However, if the measures resulted in improvements in marine nature conservation management, the benefits could be significant.

SCIENCE AND DATA

59. Scotland's seas are generally regarded as clean and safe, in good health and are certainly productive. However, there is no certainty that they will remain in the current state even if current activities do not expand. To realise our aims for delivering a sustainable marine environment, and to meet our obligations e.g. MSFD that we need to deliver on, we need decisions to be backed by robust and informative science and research. We have already published the report on the State of Scotland's Seas: Towards Understanding Their State in 2008, and we are working towards producing a comprehensive State of Scotland's Seas report in 2010. A considerable amount of work on marine science and data has already been carried out, and this work will have to continue in order for us to achieve good environmental status as required under the MSFD.

60. FRS is the Scottish Government Agency for the provision of expert scientific and technical advice on marine and freshwater fisheries, aquaculture and the protection of the aquatic environment. Data and information on the seas are collected by a range of bodies, most notably fishermen and oil and gas industries.

61. Scientific insight and the available data determine our understanding of the many natural processes in the marine and coastal areas and are central to our efforts to provide greater stewardship of the seas. There is a need for more science and a mechanism to agree

its interpretation. There is also a need for greater co-ordination between the academic community and the wider stakeholders and policy makers.

62. More information is needed to establish a comprehensive socio-economic picture of a particular activity or geographical area of our seas, and we need to develop our understanding of the likely impact of a change of economic activity in a small area and the consequent social effects. Similarly, we need to improve our understanding of climate change and the likely impacts of this on the seas around Scotland. We also need more information on Scotland's deeper offshore waters to assess their health and cleanliness.

63. The control and organisation of data flows will be key to delivering sustainable development in Scotland's seas. The need for control suggests that some form of geographic information (GIS) system is unavoidable.

OPTIONS and COSTS/BENEFITS

64. All of the above would suggest there is a need for a marine science strategy. This could provide a mechanism for directing scientific effort into areas of importance, focusing research effort, and allowing stakeholder input into the scale and direction of marine science in Scotland. It could also co-ordinate science and industry involvement with a view to providing more coherent data capture and storage. A science and data strategy could also have a significant role to play in developing objectives to determine both our use and the limits on our use of the seas, all within the context of delivering sustainability. There are a range of possible bodies that might have the responsibility for the marine science strategy, most notably Marine Scotland.

65. If we are to monitor and assess Scotland's seas consistently and to rigorous standards then responsibility for these activities must lie with a single body. It is proposed that Marine Scotland carry out this duty with the assistance of a group of scientific advisors for science and data. The costs involved for robust and informative science and research are difficult to quantify at this stage given that decisions on the focus of scientific effort have not yet been made.

66. Scottish Ministers believe that FRS' marine science capabilities and resources would best be integrated into Marine Scotland. It is unclear what legislation can contribute to take forward the data gathering and information flow agenda, and it is proposed that the Marine Bill allows for the development of secondary legislation as deemed necessary e.g. for setting data collection and storage standards.

67. It is proposed that Marine Scotland should also take forward the development of GIS. The costs involved in this are unclear at this stage. Information taken from the UK Marine Bill Impact Assessment estimates capital costs of a GIS for the UK MMO at £4.3 million, with annual running costs of £86,900 per year for hardware and software maintenance and data management. The total set-up and running costs for a GIS for marine data system over the next 20 years were estimated at around £5.6 million. A similar order of magnitude would be anticipated for a Scottish system, however further work and analysis on the costs will be necessary and consideration given as to whether Scotland does this in isolation or jointly with other UK Departments.

68. The implementation of sustainable development in the marine area will provide a series of challenges from a data and science perspective. Where relevant, a key aim of the Scottish Marine Bill will be to create the right conditions and framework to foster the development of scientific capacity and expand scientific understanding of our seas.

MARINE MANAGEMENT ARRANGEMENTS

69. The proposals are for a new organisation – Marine Scotland - to be set up to champion Scotland’s seas. It would have responsibility for collection of and collaboration on marine data, marine planning, better integrated marine consents, marine management, compliance monitoring and nature conservation, and the co-ordination of aquaculture, marine renewable consents and management of marine coastal areas.

SECTORS AND GROUPS AFFECTED

70. The stakeholders affected by the options on marine management arrangements are all of those carrying out activities, or having other interests, in the marine environment.

71. Industry sectors include: marine renewable energy; fisheries (finfish and shellfish); ports and harbours; shipping; aquaculture; oil and gas extraction and related pipelines; telecommunication and power cables installation and operation; sand and gravel extraction; recreation and tourism, and other activities covered by regimes such as marine licensing and environmental consents. Other groups affected include recreational users of the marine environment. In the public sector key stakeholders are the Scottish Government and its agencies; Non Departmental Public Bodies (NDPBs); local authorities; existing research communities. Other interested groups and the general public may also be affected.

OPTIONS and COST/BENEFITS

72. A range of options have been identified in relation to marine management arrangements; the two extremes of this range are:

Option 1: no change;

Option 2: set up Marine Scotland as an integrated body with responsibility for policy, marine planning, science, regulation and licensing and compliance monitoring and enforcement.

73. There are a number of potential variations within the 2 options. For example, Marine Scotland could take on only some of the potential roles under Option 2, or it could act as a ‘virtual’ integrated body, providing a single interface for stakeholders. The impacts of such variations will lie between those of Options 1 and 2.

74. Under **Option 1**, no new marine management organisation would be set up. Instead, existing activities would continue to be carried out by organisations (including relevant parts of Scottish Government) that are currently responsible for them. These existing organisations could take on any new requirements, such as marine planning and the associated costs. Option 1 would incur no costs for the setting up or running of a new organisation, but it

would have no long-term benefits. Current inefficiencies in marine management would continue, and would be likely to grow as pressure on marine space and resources increases. Current duplication of corporate and support service provision across separate organisations, with associated costs, would continue. It risks marine planning and strategy development becoming an additional tier of regulation, rather than an integral element of marine management. It would also pose a risk of failure to deliver the objective of streamlined decision-making, with continuing potential for inconsistency in decision-making and uncertainty amongst stakeholders about responsibilities for the marine environment.

75. Option 1 would fail to deliver efficiency benefits in terms of reduced costs for both Scottish Government and industry – e.g. from integrated and streamlined consenting processes and better co-ordinated and integrated compliance monitoring arrangements (including better use of expensive sea-going assets). Without a single organisation co-ordinating research, there is also the risk of inefficient collection and use of data which could result in additional costs and less informed decision making by regulatory bodies and industry on marine management and development issues. This could potentially be mitigated by introducing requirements (potentially on a statutory basis) for the various organisations to take account of marine planning and to co-operate in achieving its aims. If existing organisations are required through statutory provision to co-ordinate, integrate and streamline management and regulatory activity, systems and processes, there could be benefit of addressing some of the costs of lack of co-ordination, and potential delays in processes.

76. Under **Option 2**, a new organisation - Marine Scotland - would be set up, integrating new and expanded roles and responsibilities with existing marine management functions of a number of currently separate organisations. Its responsibilities would include lead responsibility for marine planning and for underpinning science and data; at least the current responsibilities of Scottish Government, Fisheries Research Service and the SFPA for marine and freshwater fisheries and aquaculture management; lead responsibility on marine nature conservation and responsibility for administering a better integrated and streamlined system of marine consents. Marine Scotland would also ensure regulatory compliance (in liaison with others) and have over-arching responsibility to ensure sustainable marine management.

77. Option 2 could generate significant benefits in co-ordinating the actions needed to meet the Scottish Government's marine objectives and to achieve its overarching aim of sustainable economic growth. This would particularly be the case if new obligations such as marine planning and/or integrated licences are introduced.

78. The key risk associated with Option 2 is that changing existing arrangements could, in the short term, be complex, disruptive and costly. It could disrupt existing linkages across policy areas and across the marine/terrestrial divide. The risk could be mitigated by managing the timing and phasing of the set up of Marine Scotland and putting in place arrangements for it to cooperate and coordinate with other organisations on these issues. New relationships would also need to be developed between Marine Scotland and the various sectoral interests, based on a more holistic view of the marine environment and its management.

79. There seem clear benefits in creating Marine Scotland as a body with integrated marine management functions, otherwise we risk failing to deliver key benefits set out throughout this document. There are options as to its status - an NDPB, an Agency or part of Scottish Government. A decision on the most appropriate approach will depend on a number

of factors, including its final agreed role and remit, which is subject to the outcome of the consultation process and Ministerial views. Key considerations include: the need to deliver integrated and aligned (policy and delivery) functions effectively and efficiently; costs (and time) involved; a need for accountability and transparency; and the need to attract and retain key skills and experience.

80. There will be different costs and benefits associated with each of these options. These are difficult to quantify accurately pending decisions on the role and other key elements of the organisation. However, establishing Marine Scotland as part of Scottish Government would seem to offer most benefits in terms of the potential to integrate policy and delivery functions (subject to the availability of appropriate flexibilities and business support arrangements to ensure effective operations): and greatest scope for efficiencies (notably in shared service provision). It would also mean Ministers would be directly accountable for its operations and performance. Arrangements would need to be devised, however, to ensure appropriate independence and robustness of certain functions (related to science, appeals and enforcement activity).

81. Establishing Marine Scotland as an agency would mean it would operate at one remove from Ministers. This would not rule out either policy and delivery integration (where precedents exist) or the possibility of efficiencies through use of shared services. There would be some additional set-up requirements, for example in preparing policy and financial framework documents for the new body. Slightly different considerations would apply in relation to science, appeals and enforcement issues. Overall, the establishment and running costs of Marine Scotland as an agency might be expected to be slightly higher than if it were part of Scottish Government. Overall, running costs associated with Marine Scotland if it is established either as an agency or part of Scottish Government are not expected to change significantly from the costs under Option 1, other than costs arising from additional requirements introduced under planning, licensing and enforcement, and nature conservation (accounted for in previous sections of this document).

82. The NDPB option represents the most independent/furthest from Ministers option for Marine Scotland. That would raise issues about (though would not entirely rule out) the scope for integrated policy and delivery functions; the employment of staff on existing terms and conditions (thereby avoiding implications in terms of costs and/or loss of skills and expertise); and shared services arrangements. The establishment and running cost implications of an NDPB – including requirements for legislative provision, a Board, related sponsorship and support arrangements etc – would be anticipated to be potentially substantially higher than for Marine Scotland as part of Scottish Government or an agency.

83. Initial estimates suggest basic, unavoidable costs of setting up Marine Scotland could be in the region of £0.4 million. Other, additional costs could accrue, depending on choices to be made about the new organisation and the impact of change on individuals. Further work is underway to explore in more detail, but the most substantive of these are anticipated to relate to IT system integration/development; and any harmonisation, relocation or other costs which might arise as a consequence of integration and restructuring (though a major co-location/relocation of staff is not envisaged and Ministers have made clear their commitment to no compulsory redundancies). Transition and set-up costs will be offset by efficiency savings – the extent of which are subject to decisions and further analysis.

84. In addition to its central operation, it is likely that Marine Scotland would need a local presence, in order to carry out its enforcement role and to facilitate stakeholder involvement in marine planning. This could be delivered either through existing regional offices of the organisation that would make up Marine Scotland or through the creation of new offices, potentially in partnership with existing bodies such as local authorities.

85. The necessary resources for Marine Scotland to fulfil its responsibilities would be provided through a mix of transferring existing funding provision alongside responsibilities and functions from current organisations, some new funding provision and savings from efficiencies (e.g. from combining services and integrating and streamlining currently separate processes). This could be largely provided through the transfer of existing resources from organisations with current responsibilities for marine management, including: most or all of the resources of the Scottish Government Marine Directorate, FRS and SFPA. Resources could also be incorporated from SNH and/or SEPA if and when it were decided appropriate to integrate their marine responsibilities into Marine Scotland.

86. In terms of wider considerations, establishing Marine Scotland as an agency would provide a degree of separation from Scottish Government and offer financial and other flexibilities necessary for front-line delivery operations. It would be possible to integrate policy with delivery responsibilities (along the lines, for example, of the Historic Scotland model). On the other hand, it would also be possible to create Marine Scotland as part of Scottish Government, with financial etc flexibilities appropriate to its needs; and which would allow the direct line to Ministers on policy responsibilities to be retained. Considerations and comparative advantages of Marine Scotland as an agency (with integrated policy responsibilities) or part of Scottish Government (with appropriate operational flexibilities) seem finely balanced.

87. Marine Scotland would be able to intervene where devolved activities threaten to damage fishing grounds or the wider ecosystem, giving rise to additional environmental benefits. These benefits are difficult to quantify as they will depend on the number of damaging activities halted, the speed with which this can be achieved and the level at which marine objectives are set.

88. Under Option 2 there may be some initial costs to other stakeholders in becoming familiar with the new arrangements. These should be minimised as Marine Scotland will be made up of existing organisations with limited staff changes. Any short-term costs of disruption as the organisation is set up should be minimised if the switch of functions is carefully managed.

Small/Micro Firms Impact Test

89. Many small businesses and firms are represented under various groups with an interest in the marine environment and those groups have contributed to the development of the consultation document. Small firms have been consulted on the proposed Marine Bill for Scotland and a Small/Micro Firms Impact Test will be completed at the end of the consultation period after all the responses have been analysed.

MARINE PLANNING

90. Almost all of the industry sectors identified include some small and micro-sized firms. As one of the aims of a system of marine planning is to provide better guidance to local regulators and industry, small firms are likely to benefit from the proposals. A well-designed planning system should address the needs of all users of the marine environment, including small-scale activities, in resolving resource conflicts. This may lead to better representation of small firms that tend to be overlooked in such negotiations, particularly if they are not members of a relevant industry body or association.

91. However, a planning system may impose restrictions over currently unregulated activities, such as algal harvesting and tourism. Many of these activities will be dominated by small businesses. Therefore, there is the potential for greater restrictions to be imposed on such activities resulting in further costs for small businesses. This can be addressed, however, by ensuring that small businesses are engaged in the planning process, so that such costs can be identified and mitigated as far as possible.

LICENSING AND ENFORCEMENT

92. Many of the industry sectors identified include some small and micro-sized firms. However, the impact on small firms will be limited, as it is generally larger companies which undertake significant developments requiring more than one licence. The exception to this may be in the aquaculture industry where multiple licences are regularly required. However, small firms are likely to benefit equally from the proposed options and should not incur disproportionate costs.

93. As one of the aims of a reforming the licensing system is to simplify and streamline the approach, small firms are likely to benefit from the proposals.

MARINE NATURE CONSERVATION

94. If proposals for improved marine nature conservation result in improvements to marine resources, this could result in benefits for small fisheries and tourism operators that rely on those resources for business as well as a stronger ecosystem to underpin the long term economic use of the sea by other industry sectors. However, there are likely to be complicated trade offs. For example, increases in seal population numbers might benefit tourism but could have adverse impacts on small salmon fisheries.

95. The increased restrictions and measures associated with nature conservation proposals are expected to result in further costs for small firms. However, many of these measures are more likely to result in modifications to activities, rather than preventing them from taking place.

MARINE MANAGEMENT ARRANGEMENTS

96. Almost all of the industry sectors identified include some small and micro-sized firms. No change in the marine management arrangements will not pose additional costs for

small firms; however, the current costs arising from uncertainties and delays could continue and, indeed, increase as demand for marine space increases.

97. The creation of Marine Scotland could benefit small firms, as the improved efficiency and effectiveness of better integrated marine management could reduce delays and uncertainty, which could be particularly significant for small firms. Having a single contact point for all aspects of marine management, rather than needing to contact a number of different bodies, could also particularly benefit small firms.

Legal Aid Impact Test

98. It is not expected that the Marine (Scotland) Bill will have any impact on the current level of use that an individual makes to access to justice through legal aid or on the possible expenditure from the legal aid fund.

“Test Run” of business forms

99. No forms are necessary for the introduction of this piece of legislation.

Competition Assessment

MARINE PLANNING

100. The benefits of a system of marine spatial planning include:

- Increased transparency from clear policies
- Reducing the uncertainty to developers in the marine area,
- Allowing the needs of all users to be considered, and
- Equal access to information and data on the marine area.

All of these benefits are likely to have a positive impact on competition, by producing a more equitable situation both across and within different industry sectors.

LICENSING AND ENFORCEMENT

101. The benefits of a streamlined and modernised licensing system are:

- improved efficiency and cost-effectiveness;
- equal treatment of all marine activities; and
- reduced complexity of marine management.

All of these benefits are likely to have a positive impact on competition, by producing a more equitable situation both across and within different industry sectors.

MARINE NATURE CONSERVATION

102. New measures for nature conservation are not expected to have a significant impact on the number or range of suppliers, to limit the ability of suppliers to compete or to reduce

suppliers' incentives to compete vigorously. Measures would be applied equitably across the various sectors.

MARINE MANAGEMENT ARRANGEMENTS

103. Neither the “do nothing” option nor the creation of a management organisation is likely to have any adverse impact on competition.

Enforcement, Sanctions and Monitoring

MARINE PLANNING

104. Responsibility for compliance, monitoring and enforcement of plans would be carried out by the plan-making body, which could be Marine Scotland. Reserved issues would continue to be addressed by the respective departments within the UK Government. The plan would be delivered through the licensing system and measures for nature conservation.

LICENSING AND ENFORCEMENT

105. Responsibility for compliance, monitoring and enforcement of the revised licensing arrangements would be carried out by the relevant regulating authorities as at present, with some improvements in efficiency. Alternatively, this could fall under the remit of Marine Scotland. Reserved issues would continue to be addressed by the respective departments within the UK Government

MARINE NATURE CONSERVATION

106. Responsibility for compliance, monitoring and enforcement of nature conservation measures would lie with the Scottish Government. These responsibilities could be taken on by Marine Scotland. Reserved issues would continue to be addressed by the respective departments within the UK Government. Certain of the measures would be delivered through the licensing system.

MARINE MANAGEMENT ARRANGEMENTS

107. No change in the current arrangements would mean responsibility for compliance monitoring and enforcement of marine management measures would remain with the organisations currently responsible. Creating a marine management organisation would mean these responsibilities could be taken on and better integrated by Marine Scotland. Reserved issues would continue to be addressed by the respective departments within the UK Government in consultation and collaboration, hopefully, with Marine Scotland.

[Sections 11-14 will be completed after consultation and included in the full RIA]

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Marine Strategy Division

November 2008

ISBN 978 0 7559 1910 9 (Web only publication)