

# Pilot Pentland Firth and Orkney Waters Marine Spatial Plan

## Consultation Draft

## Partial Business and Regulatory Impact Assessment

### June 2015

**Title of Proposal**

Pilot Pentland Firth and Orkney Waters Marine Spatial Plan  
*Consultation draft*

**Purpose and intended effect****Background**

In 2009 the Marine and Coastal Access Act was published containing provisions aimed at the effective management of the UK marine environment. The Act sets in place the foundation for the adoption by the UK Government of both a marine planning system and a Marine Policy Statement covering UK territorial waters. As a result the UK Marine Policy Statement (UK MPS) was published and adopted by all UK administrations in 2011. The UK MPS is a high-level policy framework that aims to guide the preparation and implementation of marine plans in the UK. The UK MPS contains provision for the adoption of a system of marine planning that includes National Marine Plans and the preparation of sub-national, Regional Marine Plans. Alongside the Marine and Coastal Access Act (2009) and the UK MPS the Marine (Scotland) Act 2010 also sets in place a framework for the implementation of a network of Regional Marine Plans. The provisions contained in the Marine (Scotland) Act 2010 include the requirement for Scottish ministers to prepare and adopt a National Marine Plan covering Scottish waters whilst a Marine Policy Statement is in place. Scotland's National Marine Plan (NMP) was published in March 2015. All Regional Marine Plans produced under the Marine (Scotland) Act 2010 must comply with the aims and policies contained within the adopted National Marine Plan and the UK MPS.

The published Scottish National Marine Plan contains policy guidance and provides a framework for the production of Regional Marine Plans. Marine Planning Partnerships, including local authorities and stakeholders (amongst other parties), will be responsible for the production of future Regional Marine Plans. In light of the future production of regional marine planning the pilot Pentland Firth and Orkney Waters Marine Spatial Plan has been produced to pilot the process of regional marine planning. The Plan aims to trial the approach that future Marine Planning Partnerships may take in the preparation of suitable policies (including interpreting the policy framework of the NMP within a local context) and the approach that may be taken to governance of Marine Planning Partnerships (including local authority and stakeholder involvement). The pilot Pentland Firth and Orkney Waters Marine Spatial Plan is therefore a non-statutory precursor to the Regional Marine Plans. Whilst the pilot Plan does not form part of the statutory marine planning system, it is hoped that it will be used as a material consideration in the existing marine management, planning and consenting processes.

The pilot Pentland Firth and Orkney Waters Marine Spatial Plan includes two of the Scottish Marine Regions designated through the Scottish Marine Regions Order 2015 (Orkney and the North Coast). The Scottish Marine Regions covered by the pilot Plan area are similar to regions identified in Scotland's Third National Planning Framework (NPF3) as areas of key significance in delivering the Scottish Government's Low Carbon Strategy (Orkney, Pentland Firth and North Caithness). It

is hoped that this pilot Plan will be a key mechanism in delivering the development of the renewable energy generation sector in the area, both directly (as a consideration in current processes) and indirectly as a precursor to the statutory Regional Marine Plans.

With this background in mind the pilot PFOW MSP has been developed in accordance with the National Marine Plan and all preceding legislation with a bearing on marine planning. The pilot PFOW MSP also sits within the international framework for marine planning that includes and the United Nations Convention on the Law of the Sea, the European Union Maritime Spatial Planning Directive and various other European Union directives (such as the Marine Strategy Framework Directive).

### **Objective**

The pilot Pentland Firth and Orkney Waters Marine Spatial Plan aims to put in place a non-statutory planning and policy framework in advance of statutory regional marine planning. It is hoped that the development of this Plan will be useful in establishing the basis for two separate Regional Marine Plans for Orkney and the North Coast Scottish Marine Regions. The pilot marine spatial planning process will provide many lessons learnt that will be helpful in informing the preparation of future regional marine plans and the governance arrangements that may underpin future Marine Planning Partnerships.

In meeting these aims the pilot Plan will be meeting the Scottish Government purpose as outlined in the Government Economic Strategy; to create a more successful country with opportunities for all of Scotland to flourish through increasing sustainable economic growth. It will also contribute to the following national outcomes:

- we live in a well-designed, sustainable place where we are able to access the amenities and services we need
- we value and enjoy our built and natural environment and protect it and enhance it for future generations
- we live in a Scotland that is the most attractive place for doing business in Europe
- we reduce the local and global environmental impact of our consumption and production.
- we realise our full economic potential with more and better employment opportunities for our people

The pilot Pentland Firth and Orkney Waters Marine Spatial Plan will help meet the Scottish Government's aim to have clean, healthy, safe, productive and biologically diverse oceans and seas. The Plan will also help to meet the Scottish Government goal to have seas that are managed to meet the long term needs of nature and people.

## **Rationale for Government intervention**

The Pentland Firth and Orkney Waters are used by a wide range of marine users and for a variety of activities. A vast majority of the Plan area is used for multiple activities and so there is potential for competition and conflict. Whilst the Plan area has been highlighted as a key area for the development of the offshore renewable energy generation industry in Scotland, the Pentland Firth and Orkney Waters also contain a variety of important and rare species as well as a range of internationally important historic sites. The variety of potentially competing uses of the area creates the risk that the marine environment may be mismanaged and damaged with consequences for both the goods and services it provides and the natural and historic heritage of the area. Poor management of the area could result in costs and uncertainty for developers and marine users which could have a negative impact on progress towards fulfilling Scottish Government national outcomes in the area. The National Marine Plan (and the policy framework it sits within) has provided for a system of statutory Regional Marine Plans to aid in the management of the marine environment. This non-statutory pilot Plan precedes the statutory Regional Marine Plans.

The pilot Plan has been developed to pilot the process of creating the statutory Plans and to inform the Marine Planning Partnerships which will be formed to produce them. In this way the production of this document will contribute to the effective preparation of the Regional Marine Plans. In addition to this, the pilot Plan will be used as a material consideration in the existing planning and consenting process, directly improving the clarity and guidance given to developers and regulators in the Pentland Firth and Orkney Waters.

## **Consultation with Businesses**

Face-to-face consultation with a range of businesses will take place during the consultation period in June-September 2015. However, representatives from relevant sectors have frequently been involved in the development of their respective policies throughout the development of the Plan.

## **Options**

### **Option 1 – Do nothing**

Under this option, the pilot Pentland Firth and Orkney Waters Marine Spatial Plan would not be adopted. The existing policy framework governing Scottish waters would remain, including the Marine Policy Statement and European Directives (e.g. the Marine Strategy Framework Directive, Water Framework Directive and Habitats Directive). In addition to this the National Marine Plan will remain in place, including its requirement for statutory regional marine planning. As many of the Policies in the Plan are reiterations of existing planning and policy requirements, some of the policies contained in the Plan will continue to be implemented in the absence of the Plan.

As the pilot Plan aims to pilot the regional marine planning process and inform the Marine Planning Partnerships, the absence of this Plan could significantly reduce the effectiveness of the future Regional Marine Plans. In this way the absence of this Plan will increase the difficulty of implementing the requirement for Regional Marine Plans in the National Marine Plan. The guidance and consolidation the Plan will likely bring to the existing consenting and planning process (through its intended use as a material consideration) would also be absent if this Option was adopted.

In line with the vision of the UK Marine Policy Statement, the provision for regional marine planning set out in the Marine (Scotland) Act 2010, and the aims and requirements of the National Marine Plan this is not seen as a viable option.

### **Option 2 – Development and adoption of a pilot Pentland Firth and Orkney Waters Marine Spatial Plan.**

Under this option the pilot Pentland Firth and Orkney Waters Marine Spatial Plan would be adopted. The pilot Pentland Firth and Orkney Waters Marine Spatial Plan consolidates the requirements of the National Marine Plan, the Marine Policy Statement and existing European Directives. The Plan also pilots the regional marine planning process. The experience gained from this process will help to guide and inform the preparation of future Regional Marine Plans and the work of the Marine Planning Partnerships that will be formed to deliver these.

The pilot Pentland Firth and Orkney Waters Marine Spatial Plan also sets out some new and additional policies and conditions for development in the Pentland Firth and Orkney Waters area.

### **Sectors and groups affected**

A number of sectors may be affected by the adoption of the pilot Pentland Firth and Orkney Waters Marine Spatial Plan:

- developers of licensed activities in the Pentland Firth and Orkney Waters area (including oil and gas, renewable energy, ports & harbours, aquaculture and all other licensable activities. These activities could be Scottish-owned, Rest of UK-owned or foreign-owned)
- activities in the Pentland Firth and Orkney Waters marine area that do not require a licence or that require licences without a spatial component to them (i.e. those not linked to specific geographical location, e.g. fishing, shipping, tourism, leisure and recreational activities). Those affected may be Scottish, Rest of UK, or foreign.
- coastal communities
- the Scottish Government (through Marine Scotland's Planning and Licensing Operations)
- the Orkney Islands Council and the Highland Council
- regional Marine Planning Partnerships (including local authorities)

## **Costs**

### Option 1

It is not envisaged that this option will create any additional costs for developers. As many of the policies within the Plan are reiterations of existing policies, these requirements would remain in place. However, under this option the Plan would not consolidate policies in an accessible manner, or aid in the application of existing policies in a local context. Developers could suffer from ongoing uncertainty surrounding planning and licensing which could, in turn, result in higher costs, undermining sustainable economic growth and the protection of Scotland's marine environment.

This option would potentially undermine the feasibility and effectiveness of future Regional Marine Plans as the process would not have been piloted.

### Option 2

The pilot Pentland Firth and Orkney Waters Marine Spatial Plan reiterates many existing policies (For policies considered 'baseline' see annex A). However, it also sets out a variety of new policies (annex B) that aim to provide guidance in the development of the Pentland Firth and Orkney Waters area. Some of the policies included in the plan are general and apply to all activities and uses of the marine environment. Others however, are specifically applicable to particular sectors such as renewable energy generation, aquaculture, oil and gas or commercial fishing etc.

Although this Plan is non-statutory the new policies are likely to be material considerations in the existing planning and consenting processes. New policies may also inform or be carried into the future statutory Regional Marine Plans. Therefore it is likely that this Plan will have some implications for the sectors and groups specified above, though it is not certain that all requirements contained within the Plan will be applied due to its non-statutory nature. The policies can influence:

- The preparation of, and consultation upon, Regional Marine Plans by future Marine Planning Partnerships
- The preparation of applications by developers and the assessment of applications by licensing authorities
- The choice of location of marine developments and activities
- The requirements placed on the construction, operation and expansion of marine developments

The pilot Pentland Firth and Orkney Waters Marine Spatial Plan will be presented to Scottish ministers for adoption in 2016. As such it's conditions would only apply to developments and applications after it has been approved.

This BRIA has not quantified additional costs incurred as a result of the adoption of this option and the policies contained within the Plan. At this stage it is not possible to estimate and quantify the additional costs to developers with any accuracy therefore, a qualitative approach has been taken to assessing the additional costs of new policies within this BRIA.

**Table 1** sets out the potential impacts and costs associated with new policies (Annex B).

**Table 1: Potential Impacts of New and Additional Policies (Annex B) Contained in the pilot Pentland Firth and Orkney Waters Marine Spatial Plan Policies**

<b>Policy</b>	<b>Costs</b>
<p>General Policy 1B: Supporting Sustainable Social and Economic Benefits</p>	<p><b>Potential Additional Costs for Developers</b></p> <p>Requirement to maximise local supply chain opportunities may lead to suppliers choosing more expensive supply option to comply with this guidance.</p> <p>Requirements on developers to consult, and cooperate may be additional to current requirements and this may result in developers changing or adding to their existing processes, incurring additional costs.</p>
<p>General Policy 1C: Safeguarding the Marine Ecosystem</p>	<p><b>Limited/ No Additional Costs to Developers</b></p> <p>Requirement to minimise and mitigate damage to the natural environment is already required by the licensing and consenting process. It is likely that no additional actions are required to comply with this policy and so there are likely to be no/limited additional costs.</p>
<p>General Policy 2: The Well-Being Quality of Life and Amenity of Coastal Communities</p>	<p><b>Potential Additional Costs for Developers</b></p> <p>Requirement on developers to consult, engage, and cooperate with other marine users may alter developer behaviour and create additional tasks, resulting in increased costs.</p> <p>Requirement to mitigate damage will result in additional actions and so incur additional costs.</p>
<p>General Policy 4C: Wider Biodiversity</p>	<p><b>Limited/ No Additional Cost to Developers</b></p> <p>Developers must already take into account the effect of development on Priority Marine Features; both effectively demonstrating the absence of an effect or putting in place mitigation for the effect. There is therefore unlikely to be any additional costs for developers.</p>

<p>General Policy 5A: Water Environment</p>	<p><b>Potential Additional Costs for Developers</b></p> <p>Requirement to gather information about potential adverse effects will likely result in additional actions which may incur additional costs on developers.</p> <p>Requirement to co-operate with existing activities with an effect on the water environment may result in additional actions for developers.</p>
<p>General Policy 7: Integrated Coastal and Marine Development</p>	<p><b>Limited/ No Additional Costs to Developers</b></p> <p>The requirement to produce a single Environmental Impact Assessment (EIA) where this is appropriate is already encouraged within the licensing and consenting process. This requirement is therefore unlikely to result in any additional actions for developers and there is not likely to be any increased costs.</p> <p>The requirement in this policy for developers to produce a single EIA (where appropriate) may cause developers to consider producing a single EIA where they would not have otherwise done so. In this scenario costs for developers would decrease as fewer EIAs have to be completed.</p>
<p>General Policy 9: Invasive Non-Native Species</p>	<p><b>Potential Additional Costs to Developers</b></p> <p>Requirement for developers to put in place biosecurity plans will result in additional actions and so incur additional costs for developers.</p> <p>Requirement for developers to produce contingency and mitigation plans will result in additional tasks and activities which will produce increased costs for developers.</p> <p>Activities resulting from mitigation and contingency plans produced to meet the requirements of this policy will result in developers changing or adding to their existing processes. This has potential to result in additional tasks. This may incur increased costs for the developer.</p>
<p>Sectoral Policy 1: Commercial Fisheries</p>	<p><b>Potential Additional Costs to Developers</b></p> <p>Requirement of Port and Harbour operators to engage with local fishers could result in additional activities and result in altered behaviour, potentially increasing</p>



	costs for the developers.
Sectoral Policy 4: Renewable Energy Generation	<b>Limited/ No Additional Costs to Developers</b>  Requirement to take account of Regional Locational Guidance (RLG). The RLG published alongside the pilot Pentland Firth and Orkney Waters Marine Spatial Plan does not differ significantly to the RLG published alongside the draft Sectoral Marine Plans and so is unlikely to incur additional costs for developers.
Sectoral Policy 5: Recreation, Leisure and Tourism	<b>Potential Additional Costs for Developers</b>  Requirements on developers to consult, and cooperate may be additional and alter behaviour, resulting in additional costs.  The requirement to mitigate damage to recreation, leisure and tourism may result in additional actions and activities, incurring additional costs for the developer.
Sectoral Policy 9: Marine Aggregates	<b>Potential Additional Costs for Developers</b>  The requirement for developers to cause no significant adverse impact on other marine activities may incur additional costs through information gathering and engagement activities. As a result developments may also be required to be sited away from the optimal area.

It is envisaged that adoption of the pilot Pentland Firth and Orkney Waters Marine Spatial Plan will incur some additional costs for businesses. However, as the Plan is non-statutory, it is not guaranteed that all of the new policies will come into effect. Costs have not been quantified due to uncertainty about the potential costs.

## **Benefits**

### Option 1

No additional benefits are expected to arise from this option.

### Option 2

Implementing the pilot Pentland Firth and Orkney Waters Marine Spatial Plan should help deliver the benefits of a marine planning system set out in the Final Regulatory Impact Assessment for the Marine (Scotland) Act 2010. These benefits include:

- reducing planning risk and uncertainty
- a more informed site selection process
- benefits for the economy including an efficient use of Scotland's marine

resources, reduced conflict between marine users and a greater confidence and certainty for developers whilst negotiating the planning and consenting system

- policies involving stakeholder engagement would have social benefits, involving local communities in the use of the marine area
- environmental benefits include the protection of internationally, nationally, and locally important nature conservation and biodiversity sites and interests. This option helps environmental issues to be incorporated into the planning and management process

Additional benefits may include consideration of the Pentland Firth and Orkney Water's historic environment and its protection in planning and development decisions in the area.

The pilot Pentland Firth and Orkney Waters Marine Spatial Plan will provide future Marine Planning Partnerships with a clear approach to the preparation of future Regional Marine Plans. This will likely lead to more effective Regional Marine Plans that will help planning and licensing authorities to manage the marine environment and the region's marine resources more effectively than if the Plan had not been adopted.

### **Scottish Firms Impact Test**

This section will be informed by evidence gathered during the consultation phase and completed in the final BRIA. In addition to the written consultation process there will be meetings with a number of businesses affected by the proposal across a range of sectors.

Some of the sectors that will be impacted by the Plan will include small firms. Much of the pilot Pentland Firth and Orkney Waters Marine Spatial Plan reiterates and consolidates existing policy, these elements of the Plan are unlikely to impose additional costs on small businesses. The Plan does include some new policy elements which may have impacts on the developers of licensable activities and may impose additional costs on small businesses.

Small and micro businesses are likely to benefit from the reduced risk and uncertainty that this Plan will provide. Activities that do not currently require a licence with a spatial element will benefit from their interests being considered as part of proposals for development.

### **Competition Assessment**

New and additional policies within the pilot Pentland Firth and Orkney Waters Marine Spatial Plan may affect a variety of marine activities. Particular effects may be seen in marine activities for which developers require a spatial licence to carry out new or amended operations. Such activities include renewable energy generation, aquaculture and ports and harbours.

### Competition Filter Questions

Will the proposal directly limit the number or range of suppliers? (Will it award exclusive rights to a supplier or create closed procurement or licensing programmes?)

**No.** It is not likely that the number or range of suppliers will be directly limited by the adoption of the pilot Pentland Firth and Orkney Waters Marine Spatial Plan.

Will the proposal indirectly limit the number or range of suppliers? (Will it raise costs to smaller entrants relative to larger existing suppliers?)

**Limited/ No Impact.** As the policies which affect the preparation of applications, location of marine developments and activities, or requirements for marine developers would apply equally to all developers, irrespective of business size, there is unlikely to be any impact on this. The new and additional policies within the Plan have the potential to incur additional costs for developers submitting new licence applications. However, the policies will apply to both new entrants and existing developers seeking to expand or change their operations.

Will the proposal limit the ability of suppliers to compete? (Will it reduce the channels suppliers can use or geographic area they can operate in?)

**No.** The policies contained within the pilot Pentland Firth and Orkney Waters Marine Spatial Plan will not directly affect firms' route to market or the geographical markets they can sell into.

Will the proposal reduce suppliers' incentives to compete vigorously? (Will it encourage or enable the exchange of information on prices, costs, sales or outputs between suppliers)

**No.** Although policies that support co-existence of developments may encourage some aspects of cost-information sharing, these companies are likely to be undertaking different activities and so would not be in competition with one another.

### Test run of business forms

It is not envisaged that the pilot Pentland Firth and Orkney Waters Marine Spatial Plan will result in the creation of new forms for businesses to deal with, or result in amendments of existing forms.

### Legal Aid Impact Test

It is not expected that the pilot Pentland Firth and Orkney Waters Marine Spatial Plan will have any impact on the current levels of access to justice through legal aid or on the possible expenditure from the Legal aid fund.

The Scottish Legal Aid Board have agreed that there is not expected to be any impact of this Plan on Legal Aid expenditure.

## **Enforcement, sanctions and monitoring**

As the pilot Pentland Firth and Orkney Waters Marine Spatial is non-statutory there is no requirement for enforcement, sanctions and monitoring. The Plan is to be used as a material consideration in the existing licensing process of Marine Scotland and in the planning system of local authorities.

## **Summary and Recommendation**

It is recommended that Option 2 (the adoption of the pilot Pentland Firth and Orkney Waters Marine Spatial Plan) is adopted. This would help the implementation of the National Marine Plan, and inform the production of future Regional Marine Plans.

## **Summary Costs and Benefits Table**

<b>Option</b>	<b>Summary of Costs</b>	<b>Summary of Benefits</b>
<b>1: Do Nothing</b>	No additional costs envisaged.  Lack of guidance to inform the preparation of policies in the Regional Marine Plans and the governance of Marine Planning Partnerships.  Continued lack of certainty and clarity for developers and planning authorities.	No additional benefits envisaged.
<b>2: Adopt the pilot Pentland Firth and Orkney Waters Marine Spatial Plan</b>	Potential for additional costs for developers of licenced activities to be incurred. See Table 1 for details.	Guidance for the preparation of future statutory Regional Marine Plans.  Clarity and guidance for the existing planning and consenting process.

## Declaration and publication

I have read the Business and Regulatory Impact Assessment and I am satisfied that, given the available evidence, it represents a reasonable view of the likely costs, benefits and impact of the leading options. I am satisfied that business impact will be assessed with the support of businesses in Scotland.

**Signed:**



**Date:**

1<sup>st</sup> June 2015

**Minister's name** Richard Lochhead

**Minister's title** Cabinet Secretary for Rural Affairs, Food and the Environment

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## Annex A: Baseline Policies in the pilot Pentland Firth and Orkney Waters Marine Spatial Plan

Policy Title	Policy Text
<b>General Policy 1A: Sustainable Development</b>	<p>Development and/or activities will be supported by this Plan when it can be demonstrated that:</p> <ul style="list-style-type: none"> <li>• It will not have significant adverse direct or cumulative social, environmental or economic effects</li> <li>• It will maintain, and where possible enhance, existing built, natural and culture heritage resources</li> <li>• It will make efficient use of marine space, maximise opportunities for coexistence between marine users, and where appropriate, support the multiple use of marine space</li> <li>• It will not create an unacceptable burden on existing infrastructure and services that cannot be resolved</li> </ul> <p>Public authorities should adhere to the following sustainable development principles in the determination of any authorisation or enforcement decision:</p> <ul style="list-style-type: none"> <li>• Maximise opportunities for lasting social, environmental and economic benefits balancing these considerations through the consenting process;</li> <li>• Maximise the efficient use of existing infrastructure and services (e.g. port and harbour infrastructure)</li> <li>• Support the efficient use of marine space and coexistence between marine users</li> </ul>
<b>General Policy 3: Climate Change</b>	<p>The Plan will support development proposals that demonstrate:</p> <ul style="list-style-type: none"> <li>• the mitigation measures taken to adapt to effects of climate change.</li> <li>• how they may impact upon climate change adaptation measures elsewhere.</li> <li>• how resilience had been built into the project over its lifetime.</li> </ul> <p>All proposals for development must minimise as far as practicable emissions of greenhouse gases and clearly demonstrate mitigation measures taken.</p>
<b>General Policy 4A: Nature Conservation Designations</b>	<p>The Plan will support development and activities where due regard is given to the importance of international, national and locally designated nature conservation sites:</p> <p><i>Internationally designated sites</i></p> <p>Development likely to have a significant effect on a site designated or proposed to be designated as a SPA, SAC (collectively known as Natura 2000 sites) or a Ramsar site, alone or in combination and not directly connected with, or necessary to the conservation management of that site must be subject to an Appropriate Assessment in order to assess</p>

	<p>the implications for the site's conservation objectives.</p> <p>The development will only be permitted in circumstances where the assessment ascertains that:</p> <ul style="list-style-type: none"> <li>• it would not adversely affect the objectives of the designation or the integrity of the site; or</li> <li>• there is no alternative solution; and,</li> <li>• there are imperative reasons of over-riding public interest, including those of a social or economic nature.</li> </ul> <p><i>Nationally designated sites</i></p> <p>Development that affects a Nature Conservation Marine Protected Area (NC MPA) will only be permitted where it can be demonstrated to the satisfaction of the relevant public authority that the proposal will not significantly hinder the achievement of the conservation objectives of the NC MPA. Where there is no alternative that would have a lesser impact on the conservation objectives of the NC MPA and the public benefit outweighs the environmental impact, the applicant will arrange for measures of equivalent environmental benefit to offset the anticipated damage.</p> <p>Development that affects a SSSI or GCR site will only be permitted where (for SSSIs) the objectives of designation and overall integrity of the area, or (for GCR sites) the reasons for selection, will not be compromised, or where significant adverse effects on the qualities for which the area has been designated/ selected are clearly outweighed by social, environmental or economic benefits of national importance.</p>
<p><b>General Policy 4B: Protected Species</b></p>	<p>The Plan will not support development or activities that would likely have an adverse effect on a European Protected Species unless the relevant consenting or planning authority is satisfied:</p> <ul style="list-style-type: none"> <li>• there is no satisfactory alternative.</li> <li>• the development is required for preserving public health or public safety or</li> <li>• there are other imperative reasons of overriding public interest.</li> <li>• the development would not be detrimental to the maintenance of the population of a European Protected Species concerned at a favourable conservation status in its natural range.</li> </ul> <p>Where the impacts of a development or activities on an internationally or nationally protected species are uncertain, but there are good scientific grounds that significant irreversible damage could occur, the precautionary principle will apply.</p> <p>Development and activities will only be permitted where they comply with any licence granted by the appropriate authority required for the purpose of species protection.</p> <p>Development likely to have an adverse effect on other species protected under current wildlife legislation, individually and/or</p>

	cumulatively will only be permitted if those effects can be mitigated to the satisfaction of the relevant consenting or planning authority, or if they are satisfied that legislative requirements to proceed can be met.
<b>General Policy 4D: Landscape and seascape</b>	<p>The siting and design of any proposed development should demonstrate how the proposal takes into account visual impact and existing character and quality of landscape and seascape.</p> <p>Development and activities that affect National Scenic Areas (NSAs), Wild Land Areas (WLAs), National Parks, World Heritage Sites and Special Landscape Areas (SLAs) should only be permitted where:</p> <ul style="list-style-type: none"> <li>• they will not adversely affect the integrity of the area or its special qualities for which it has been designated, or</li> <li>• any significant adverse effects are clearly outweighed by social, environmental or economic benefits of national importance for NSAs and local importance for SLAs.</li> </ul> <p>Where a development could impact on qualities of coastal wildness, largely undeveloped coast, areas subject to significant constraints or largely unspoiled and isolated areas of coast, Scottish Planning Policy should be considered when planning for and decision making.</p>
<b>General Policy 4E: Geodiversity</b>	<p>Development and activities may only be supported by this Plan where they:</p> <ul style="list-style-type: none"> <li>• do not have a significant adverse effect on geodiversity interests of international, national and regional/local importance</li> <li>• provide mitigation to minimise any adverse effects on such features</li> </ul>
<b>General Policy 5B: Coastal processes and flooding</b>	<p>The Plan will support proposals for development and activities, including any linked shore-base requirements, that demonstrate, potentially by way of a flood risk assessment, that:</p> <ul style="list-style-type: none"> <li>• they will not exacerbate present or future risks of flooding or erosion.</li> <li>• that sensitive uses, such as accommodation, will not be located in areas shown to be at risk of flooding.</li> <li>• how resilience and adaptation strategies have been incorporated within proposed developments over their lifetime to adapt to the effects of climate change, coastal erosion and coastal flooding.</li> </ul> <p>Any development must not compromise the objectives of the Flood Risk Management Act.</p>
<b>General Policy 6: Historic Environment</b>	<p>Development which has the potential to have an adverse effect on the archaeological, architectural, artistic or historic significance of heritage assets, including their settings, will be expected to demonstrate that all reasonable measures will be taken to mitigate any loss of significance, and that any lost significance which cannot be mitigated is outweighed by the social, economic or environmental benefits of the development. Preservation <i>in situ</i> will always be the preferred form of mitigation. The results of any mitigation measures must be published in an agreed format, and all supplementary material</p>



	<p>lodged with an agreed publicly accessible archive.</p> <p>Heritage assets of very high significance should be protected from all but minor adverse effects to their significance unless there are overwhelming social, economic or environmental benefits from the development. For these sites the highest levels of mitigation will be required. This includes all sites where there is a substantial likelihood of the survival of human remains, and all sites protected under the following Acts: Protection of Military Remains Act 1986 (as amended); Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997 (as amended); Ancient Monuments and Archaeological Areas Act 1979 (as amended); Marine (Scotland) Act 2010.</p> <p>For those sites which are designated, licences or consents are likely to be required from the relevant authority before the commencement of development. Receiving these consents may be a condition of marine licence approval. Proposals for development and use that may affect the historic environment should provide information on the significance of known heritage assets and the potential for new discoveries to arise. They should demonstrate how any adverse impacts will be avoided, or if not possible minimised and mitigated. Where it is not possible to minimise or mitigate impacts, the benefits of proceeding with the proposal should be clearly set out.</p> <p>Whilst requirements of navigation and safety take precedence over the conservation of the historic environment, they do not remove the need for development proposals to comply with this policy so far as is reasonable.</p>
<p><b>General Policy 8A: Noise</b></p>	<p>This Plan will support developments in the marine environment where:</p> <ul style="list-style-type: none"> <li>• Developers have avoided significant adverse effects <ul style="list-style-type: none"> <li>○ of man-made underwater noise and vibration on species sensitive to such effects,</li> <li>○ of man-made noise, vibration and/or disturbance on the amenity of local communities and marine users</li> </ul> </li> <li>• Applications for marine development that are likely to have significant noise impacts (on sensitive species and/or people) have submitted a noise impact assessment or supporting information to describe the duration, type and level of noise expected to be generated at all stages of the development (construction, operation, decommissioning).</li> <li>• Mitigation measures are in place to minimise the adverse impacts associated with the duration and level of significant noise activity.</li> <li>• The cumulative effects of noise in the marine environment and on local communities have been assessed.</li> <li>• Developers have considered whether the level of surface or underwater noise has the potential to affect a European Protected Species (EPS) and should note that any development which has the potential to disturb an EPS (otters, cetaceans) will be required to apply for an EPS licence.</li> <li>• Developers have consulted with the local planning authority, Marine</li> <li>• Scotland and Scottish Natural Heritage in relation to potential noise impacts as early as possible in the design and development of any marine-related project.</li> </ul>

<p><b>General Policy 8B: Waste Management and Marine Litter</b></p>	<ul style="list-style-type: none"> <li>• All marine developments and activities should seek to minimise waste and discard all litter responsibly, recycling where possible.</li> <li>• Proposals for new development or modifications to existing activities shall ensure that waste is reduced to a minimum and they do not add to marine litter.</li> <li>• Large developments may require a waste management plan, which shall be adhered to as a condition of the development, where appropriate. Where this is the case, a draft plan should be included in the application.</li> <li>• Where unavoidable litter is created, e.g. due to storms, a means of recovery, where reasonably practical, should be deployed.</li> </ul> <p>Where appropriate, a decommissioning plan should be provided to ensure removal of redundant infrastructure.</p>
<p><b>Sectoral Policy 2: Aquaculture</b></p>	<p>Aquaculture developments may be supported in principle by the Plan where they are in compliance with:</p> <ul style="list-style-type: none"> <li>• Local Development Plans for Orkney Islands Council or Highland Council.</li> <li>• Aquaculture Supplementary Guidance for Orkney Islands Council or any subsequent aquaculture Supplementary Guidance for Highland Council.</li> </ul>
<p><b>Sectoral Policy 3: Oil and gas</b></p>	<p>Exploration and production of oil and gas will be supported by this Plan, working with DECC and, when established, the new Oil and Gas Authority and Competent Authority when:</p> <ul style="list-style-type: none"> <li>• Oil and gas exploration and production are conducted in accordance with regulations.</li> <li>• There is an approved Oil Pollution Emergency Plan in place that has the agreement with the appropriate authorities to respond to any accidental release of oil or gas and related hazardous substances.</li> <li>• All oil and gas platforms will have in place 9 nautical mile consultation zones in line with Civil Aviation guidance.</li> <li>• Connections to shore base and associated infrastructure take into account environmental and socio-economic constraints.</li> <li>• Appropriate monitoring programmes and detailed restoration and maintenance proposals based on standard best practice are in place.</li> <li>• Re-use of oil and gas infrastructure is considered and, where not practicable, decommissioning must take place in line with standard practice, and as allowed by international obligations.</li> </ul>
<p><b>Sectoral Policy 6: Marine Transport</b></p>	<p>Development proposals should consider potential impacts on existing or planned shipping routes, navigational safety and access to ports and harbours.</p> <p>Development proposals which would have an adverse impact on efficient and safe movement of shipping between ports, harbours and other anchorages should be refused.</p>

	<p>Development should not proceed where key shipping routes would be unduly compromised.</p> <p>Existing ferry routes should be safeguarded taking account of ferry movements in all weather conditions.</p>
<p><b>Sectoral Policy 7: Ports and Harbours</b></p>	<p>The sustainable growth of the ports and harbours within the PFOW area, particularly within existing facilities, will be supported by the Plan were:</p> <ul style="list-style-type: none"> <li>• access to ports and harbours is not restricted.</li> <li>• safety considerations are primary.</li> <li>• navigational routes are not compromised.</li> </ul>

## Annex B: New Policies in the pilot Pentland Firth and Orkney Waters Marine Spatial Plan

Policy Title	Policy Text
<b>General Policy 1B: Supporting Sustainable Social and Economic Benefits</b>	<p>Development and/or activities will be supported by this Plan when the proposal can demonstrate:</p> <ul style="list-style-type: none"> <li>• sustainable employment benefits</li> <li>• that opportunities to support local supply chains and create skilled employment in local communities have been maximised</li> <li>• that any adverse social, economic and operational effects on existing activities have been avoided, where avoidance is not possible, adverse effects have been appropriately mitigated</li> <li>• that opportunities to support synergistic benefits between development and activities have been maximised</li> </ul> <p>Developers should undertake early engagement with the local authority, and any other relevant bodies, if there are likely to be significant impacts on local infrastructure or services.</p>
<b>General Policy 1C: Safeguarding the marine ecosystem</b>	<p>The integrity of coastal and marine ecosystems should be safeguarded. The Plan will support proposed development and activities when they:</p> <ul style="list-style-type: none"> <li>• contribute towards the MSFD objectives to promote enhancement or improvement of the environmental status of the marine environment</li> <li>• demonstrate how any significant disturbance and degradation of coastal and marine ecosystems has been avoided or appropriately mitigated</li> </ul>
<b>General Policy 2: The Well-Being, Quality of Life and Amenity of Coastal Communities</b>	<p>Development and/or activities will be supported by this Plan when it can be demonstrated that:</p> <p>Significant adverse effects on the well-being, quality of life and amenity of local communities has been avoided, and where appropriate, mitigation measures to address any adverse effects have been incorporated as part of the development and activity proposals and agreed with the consenting authority.</p> <p>Local stakeholders, relevant Community Councils and interested community groups have been engaged at an early stage in the development process when assessing any potential impacts on the well-being, quality of life and amenity of local communities.</p>
<b>General Policy 4C: Wider biodiversity</b>	<p>The Plan will not support development and activities that result in a significant adverse effect on the status of Priority Marine Features.</p>

	<p>Where development or activities are likely to have an adverse impact on species of regional or local importance to biodiversity, proposals should demonstrate:</p> <ul style="list-style-type: none"> <li>• the public benefits at a local level clearly outweigh the value of the habitat for biodiversity conservation.</li> <li>• the development or activity will be sited and designed to minimise adverse impacts on environmental quality, ecological status or viability.</li> <li>• any impact will be suitably mitigated.</li> </ul>
<p><b>General Policy 5A: Water environment</b></p>	<p>The Plan will support development in the marine environment when the proposal:</p> <ul style="list-style-type: none"> <li>• Does not cause any water body to deteriorate in status nor prevent the achievement of established objectives set out in the River Basin Management Plan for the Scotland river basin district.</li> <li>• Contributes, where possible, towards objectives to improve the ecological status of coastal water bodies and the environmental status of marine waters.</li> <li>• Does not cause deterioration in the standard of waters designated under European Commission Directives such as Bathing Beaches, Shellfish Water Protected Areas or Shellfish Harvesting Waters.</li> <li>• Is accompanied by sufficient information to enable a full assessment of the likely effects, including cumulative effects, on the water environment.</li> <li>• Has taken into account existing activities in the proposed location for development and undertaken early consultation to ensure that activities that may not be compatible (e.g. development of an incompatible activity near an established legitimate activity, such as a licensed discharge) are not located together.</li> </ul>
<p><b>General Policy 7: Integrated coastal and marine development</b></p>	<p>For developments that require multiple licences, permissions and/or consents, applicants should undertake early pre-application engagement with the consenting authorities and relevant stakeholders.</p> <p>For developments that require an Environmental Impact Assessment and multiple licences, permissions and/or consents, applicants should produce a Consultation Strategy at the scoping stage.</p> <p>Where appropriate, a single EIA should be carried out for marine and terrestrial components of a development project that are inextricably linked to the main works.</p> <p>Proposals for construction projects should be supported by a construction environmental management plan which covers both the terrestrial and marine environment.</p> <p>MS-LOT and other relevant consenting authority should consult one another at an early stage to improve the efficiency of the consenting process and, where appropriate, coordinate and streamline the various consenting requirements.</p>

<p><b>Policy GEN 9: Invasive Non-Native Species</b></p>	<p>All developers and users of the marine environment should take into account the risk of introducing and spreading non-native species and put in place biosecurity and management measures to minimise this risk. These measures will be most effective when a co-ordinated and collaborative approach is taken by developers and users of the marine environment.</p> <p>Existing Codes of Practice, species control agreements and orders (under the WANE Act) and international guidelines should be used to develop these measures where relevant to the marine environment.</p> <p>Where non-native species are known to be present, mitigation measures (e.g. an eradication plan) or a contingency plan should be put in place to minimise the risk of spreading the species.</p>
<p><b>Sectoral Policy 1: Commercial Fisheries</b></p>	<p>The Plan will support proposals for developments where it can be demonstrated that:</p> <ul style="list-style-type: none"> <li>• existing fishing opportunities and activities will be safeguarded wherever possible</li> <li>• an ecosystem based approach to the management of fishing which ensures the sustainability of fish stocks and avoids damage to fragile habitats has been implemented</li> <li>• protection for vulnerable commercial stocks (in particular for juvenile and spawning stocks through continuation of sea area closures, where appropriate)</li> <li>• other sectors take into account the need to protect fish stocks and sustain healthy fisheries for both economic and conservation reasons</li> <li>• consultation regarding the proposal has been undertaken with local fishers and representatives of local and national fisheries organisations and Inshore Fisheries Groups (or equivalent)</li> </ul> <p>The following key factors should be taken into account when deciding on uses of the marine environment and the potential impact on fishing:</p> <ul style="list-style-type: none"> <li>• the cultural and economic importance of fishing, in particular to vulnerable coastal and island communities</li> <li>• the potential impact (positive and negative) of marine developments on the sustainability of fish and shellfish stocks and resultant fishing opportunities in the PFOW area</li> <li>• the environmental impact on fishing grounds (such as nursery, spawning areas), commercially-fished species, habitats and species more generally</li> <li>• the potential effect of displacement on: fish stocks, the wider environment; use of fuel; socio-economic costs to fishers and their communities and other marine users</li> <li>• port and harbour operators should seek to engage with fishing and other relevant stakeholders at an early stage to discuss any changes in infrastructure, including commercial policy, that may affect them</li> <li>• any port or harbour developments should take account of the needs of the dependent fishing fleet with a view to avoiding commercial and environmental harm where possible</li> </ul>

	<ul style="list-style-type: none"> <li>• Inshore Fisheries Groups, or the local equivalent, should work to agree joint fisheries management measures within inshore waters</li> <li>• where existing fishing opportunities or activity cannot be safeguarded, a Fisheries Management and Mitigation Strategy should be prepared as outlined in the National Marine Plan. All efforts should be made to agree the Strategy with local fisheries interests who should also undertake to provide transparent and accurate information and data to help complete the Strategy. The Strategy should be drawn up as part of the discharge of conditions of permissions granted</li> </ul>
<p><b>Sectoral Policy 4: Renewable energy</b></p>	<p>All proposals for offshore wind and marine renewable energy development are subject to licensing and consenting processes.</p> <p>The Plan will support proposals when:</p> <ul style="list-style-type: none"> <li>• Proposals for commercial scale developments are sited in the Plan Option areas identified through the Sectoral Marine Plan process. These are considered the preferred location for the sustainable development of offshore wind and marine renewables.</li> <li>• The potential for coexistence in, and multiple use of, Plan Option areas and Agreement for Lease areas by other marine users has been discussed with stakeholders and given due consideration.</li> <li>• Due regard has been paid to relevant factors in Regional Locational Guidance.</li> <li>• Connections to shore and National Grid connections have been considered against the appropriate policies in the relevant Local Development Plan(s).</li> <li>• Early and effective communication and consultation with all affected stakeholders has been established to avoid or minimise adverse impacts.</li> <li>• Any adverse impacts are satisfactorily mitigated.</li> </ul>
<p><b>Sectoral Policy 5: Recreation, sport, leisure and tourism</b></p>	<p>The Plan will support the sustainable development of marine recreation, sport, leisure and tourism.</p> <p>The Plan will support proposals for development of this sector where:</p> <ul style="list-style-type: none"> <li>• They do not adversely affect the natural environment which is the resource that recreation, sport, leisure and tourism rely on.</li> <li>• Codes of best practice and guidance such as those for biosecurity planning, non-native species and Marine Wildlife Watching are complied with.</li> </ul> <p>The Plan will support proposals for the development of other sectors where:</p> <ul style="list-style-type: none"> <li>• During planning and construction they minimise or mitigate any disruption and/or disturbance to recreation, sport, leisure and tourism activities, including the natural environment as a resource that these activities rely upon.</li> </ul>

	<ul style="list-style-type: none"> <li>• The impact the development has on access, navigational routes and navigational safety in relation to recreation, sport, leisure and tourism activities has been minimised or mitigated.</li> <li>• Consultation and engagement with all relevant users of the marine environment has been undertaken to ensure the measures used to minimise or mitigate disruption or disturbance are appropriate.</li> <li>• Consideration has been given to the facility requirements of marine recreation, sport, leisure and tourism users and the potential for co-operation and sharing infrastructure and/or facilities taken into account.</li> </ul>
<p><b>Sectoral Policy 8: Electricity and Telecommunications Infrastructure</b></p>	<p><i>Safeguarding existing pipelines, electricity and telecommunications cables</i></p> <p>Activities that could potentially damage cables or pipelines should comply with relevant industry requirements with regard to any proposed works and safety considerations. Information sources such as KIS-ORCA can be used to ensure the location of cables are known and taken account of when carrying out such activities.</p> <p><i>Electricity and telecommunications infrastructure</i></p> <p>When laying or replacing electricity and telecommunications infrastructure the following considerations should be taken into account on a case-by-case basis:</p> <p>Developers should ensure that they have engaged with other developers and decision makers at an early planning stage and taken a joined-up approach to minimise impacts on the marine historic and natural environment, the assets, infrastructures and other marine users. Appropriate and proportionate environmental consideration and risk assessments should be provided which may include cable protection measures and mitigation plans.</p> <p>Any deposit, removal or dredging carried out for the purpose of executing emergency inspection or repair works to any cable is exempt from the marine licensing regime with approval by Scottish Ministers. However, cable replacement requires a marine licence and is subject to the marine licensing process. Marine Licensing Guidance should be followed with considering any cable development and activity.</p> <p>Cables should be suitably routed to provide sufficient requirements for installation and cable protection. New cables should implement methods to minimise impacts on the marine historic and natural environment, the assets, infrastructures and other marine users where operationally possible and in accordance with relevant industry practice.</p> <p>Cables should be buried to maximise protection where there are safety or seabed stability risks and to reduce conflict with other marine users and to protect the assets and infrastructure. However, it should be noted that not all cables will, or can, be buried depending on project requirements and circumstances.</p>



	<p>Where burial is demonstrated not to be feasible, cables may be suitably protected through recognised and approved measures (such as rock or mattress placement or cable armouring) where practicable and cost-effective and as risk assessment direct.</p> <p>The need to reinstate the seabed, undertake post-lay surveys and monitoring and carry out remedial action where required.</p> <p>The proposed land fall of power and telecommunications equipment and cabling will be considered against the appropriate policies in the relevant Local Development Plan(s).</p> <p>A risk-based approach should be applied by network owners and decision-makers to the removal of redundant cables, with consideration given to cables being left in situ where this would minimise impacts on the marine historic and natural environment and other marine users.</p>
<p><b>Sectoral Policy 9: Marine Aggregates</b></p>	<p>Proposals for new marine aggregate extraction sites should ensure they do not compromise existing activities.</p> <p>Decision makers should ensure marine environmental issues are considered and appropriately safeguarded.</p> <p>Any marine development should consider any impacts on existing or potential marine aggregate resources.</p>



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Any enquiries regarding this publication should be sent to us at  
The Scottish Government  
St Andrew's House  
Edinburgh  
EH1 3DG

ISBN: 978-1-78544-414-2 (web only)

Published by The Scottish Government, June 2015

Produced for The Scottish Government by APS Group Scotland, 21 Tennant Street, Edinburgh EH6 5NA  
PPDA551013 (06/15)

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