

Planning Scotland's Seas

2013 SCOTLAND'S NATIONAL MARINE PLAN

RESPONSE COVER

This page covers the response of the Scottish Fishermen's Federation to the above Consultation which was issued by Marine Scotland on behalf of the Scottish Government on 25th July 2013.

The SFF has engaged with Marine Scotland in this project from its inception. Unfortunately a number of very important questions concerning fishing and its protection were never seriously addressed. These included clarification of the perception that marine planning would bring added layers of control to fisheries. Those controls appeared principally to relate to fishing effort, gear conflict and perhaps most seriously marine nature conservation.

Fishing is already subject to substantial controls which are enforced by Marine Scotland and emanate from the Common Fisheries Policy or National fisheries policy. It will be subject to further controls as a result of the implementation of MPA protection and the consequences of the Marine Strategy Framework Directive and Stage II of the introduction of the Water Framework Directive. The SFF can see no additional management advantages coming to fishing or the management of activities in Scotland's waters as a result of the introduction of a Marine Plan and in particular regional plans.

Sea fishing, which has a tradition almost as long as the existence of the Nation, deserves protection in the planning process in the same way as protection in the terrestrial planning process is granted to agriculture. Unfortunately the opposite is the case when it comes to be assessed against 'sustainable' development. The additional twist of the screw is that, fishermen will not receive any form of compensation for the loss of their livelihoods and the inevitable depression that that will bring to families and communities.

Planning Scotland's Seas

2013 SCOTLAND'S NATIONAL MARINE PLAN

RESPONSE OF THE SCOTTISH FISHERMEN'S FEDERATION

1. INTRODUCTION

- 1.1. The Scottish Fishermen's Federation (SFF) is pleased to be able to respond to this important consultation on the draft National Marine Plan (NMP) as it has been involved in the development of proposals.
- 1.2. In the preamble to its response to the pre-consultation draft National Marine Plan, the SFF said, *"The SFF gave its support to the principle of a Marine Plan for Scotland and continues to do so. It has contributed to discussions, which both preceded and followed the publication of the pre-consultation draft. It hopes to continue to make constructive comments both in relation to marine planning generally and the effect of a marine plan upon fishing activity in Scottish waters."* While it has not departed from that position, it must, at the outset, express its deep disappointment that Marine Scotland did not consult with it further on the intention, which is deduced from the Plan, to place fishing on a lower category of importance than that accorded to those activities which fall within the definition of "sustainable development"..
- 1.3. Notwithstanding this policy approach, and the effect it will have on the very communities, for which the current Government expresses, elsewhere, its admiration and support, the SFF will respond constructively in the hope that a compromise can be negotiated.

2. STAKEHOLDER ENGAGEMENT.

- 2.1. In the response to the pre-consultation draft, the SFF also noted as follows: – *"It has been a disappointment that the recommended engagement between stakeholder groups has not taken place. Marine Scotland has an important part to play in making that happen. Long before any idea of formalising marine planning occurred, marine users and developers understood the importance of early engagement. That led, in the vast majority of cases, to an accommodation being reached between and amongst interested parties."*

- 2.2. Notwithstanding this expression of disappointment, Marine Scotland did not seek to bring together interested parties to discuss how marine planning might lead to coexistence rather than confrontation.
- 2.3. This failure will have consequences. The SFF is certain that those consequences will not be happy, particularly as they have been brought about by those who have little or no experience of planning in the marine environment.

3. DEVELOPMENT.

- 3.1. To understand an essential of the NMP it is important to understand the meaning of the word “development” as used in the document.
- 3.2. The Oxford English Dictionary contains a number of definitions of the noun. It is suggested that the closest to that which is intended in the NMP is “the process of converting land to a new purpose by constructing buildings or making use of its resources: land suitable for development”. This aligns closely with the definition of “development” contained in the Town & Country Planning (Scotland) Act 1947.
- 3.3. 10 (2)In this Act, except where the context otherwise requires, the expression "development " means the carrying out of building, engineering, mining or other operations in, on, over or under land, or the making of any material change in the use of any buildings or other land:
- 3.4. Provided that the following operations or uses of land shall not be deemed for the purposes of this Act to involve development of the land, that is to say—

(e)the use of any land for the purposes of agriculture or forestry (including afforestation) and the use for any of those purposes of any building occupied together with land so used;
- 3.5. It is thus the view, reasonably come to, of the SFF that in the absence of any other definition, fishing, in the marine environment, is not development, as agriculture is not, in the terrestrial environment.
- 3.6. Bearing that in mind where does that leave fishing in the context of the NMP and competition for space in Scottish Waters?
- 3.7. If fishing is not development, what is it? Probably it is best regarded as an “economic activity”.

4. PRESUMPTIONS

- 4.1. The NMP contains no presumption in favour of existing economic activity against development. Indeed quite the opposite

4.2. This is evidenced by the first policy (GEN 1) of the NMP. It will be seen that sustainable development has a presumption in its favour, presumably against anything including existing economic activity. It is only thereafter in the next two policies that marine activities which provide economic and social benefits are encouraged, presumably in those areas which are not being occupied by preferred sustainable developments.

Subject Policy	Number	Policy Text
General	GEN 1	There is a presumption in favour of sustainable development and use of the marine environment when consistent with the policies and objectives of this Plan.
General	GEN 2	Sustainable developments and marine activities which provide economic benefit to Scottish communities are encouraged when consistent with the objectives and policies of the Plan.
General	GEN 3	Sustainable developments and marine activities which provide social benefits are encouraged when consistent with the objectives and policies of the Plan.

4.3. This outcome of the NMP is unacceptable to the Scottish fishing industry and the SFF in particular. While the NMP nods in the direction of fishing and its contribution to Scotland’s society, as we understand it, it proposes nothing concrete to protect it against new development. The fishing industry would be more cooperative in relation to the introduction of new sustainable development, if the NMP were to provide a fair balance. Regrettably, short term gain is allowed, once again, to conquer cultural heritage.

4.4. The SFF argues that the presumption awarded in the NMP in favour of sustainable development breaches, in whole or in part or runs against the spirit of a number of the U.K.’s High Level Marine Objectives as follows: –

4.4.1. HLMO 3 *“Marine businesses are taking long-term strategic decisions and managing risks effectively. They are competitive and operating efficiently.”* Quite apart from the ever-changing control regulations, it is impossible to take long-term decisions in respect of fishing activity if one’s fishing grounds are at threat from sustainable development initiatives.

- 4.4.2. HLMO 6 *“The use of the marine environment is benefiting society as a whole, contributing to resilient and cohesive communities...”* This may or may not be the result for coastal communities depending on fishing but there is nothing to protect those communities against the risk of negative effects arising from sustainable development.
- 4.4.3. HLMO 9. *“There is equitable access for those who want to use and enjoy the... Seas and their wide range of resources and assets and recognition that for some island and peripheral communities the sea plays a significant role in their community.”* NMP carries no such recognition and indeed proposes possibility of exclusion of those operating from island and peripheral communities in traditional fishing areas.
- 4.4.4. HLMO 14. *“All those who have a stake in the Marine environment have an input into associated decision-making.”* It does not appear from the NMP or the sectoral plan on renewable energy that any views, which are contrary to the imposed presumptions, will be taken into account let alone the objections of those holding contrary views being given any weight in associated decision-making.
- 4.4.5. HLMO 17. *“Marine businesses are subject to clear, timely, proportionate and, where appropriate, plan-led regulation.”* It is enough to say he that the elimination of a marine business has the result of the giving of consent to a development is not proportionate. It is however difficult to understand this HLMO unless there were intended to be a comma between ‘led’ and ‘regulation’. Even then its meaning is far from clear!
- 4.4.6. HLMO 18. *“The use of the marine environment is spatially planned where appropriate... and recognises the protection and management needs of marine cultural heritage according to its significance.”* Fishing is part of Scotland’s rich marine cultural heritage. The NMP affords no protection for fishing against development. It only requires that planners take the fact that fishing occurs into account.
- 4.5. The Marine Policy Statement (MPS) deals with the matter of presumptions by avoiding it.
- 4.6. The MPS states: – *“It (MPS) identifies those activities to which a degree of priority is expected to be given in marine planning, but does not state, and is not intended to imply, which activities should be prioritised over any others. Relative priorities will be most appropriately determined through the marine planning process...”*
- 4.7. The NMP of course does give a priority, or preference, to development, as long as it is sustainable against existing economic activity, but it fails, convincingly, to make an argument to justify its position.
- 4.8. Could it be that the authors considered the position of development in competition with an existing activity? Probably not, because in considering the activity of fishing in relation to, for example, the activity of renewable

energy exploitation, no assumption is made that fishing activity will survive against the installation of renewable energy equipment which will receive consent, all other considerations being equal.

5. AGRICULTURE

- 5.1. It has already been established in this response that the closest terrestrial activity to marine fishing is agriculture.
- 5.2. It is instructive therefore to understand the planning approach to agriculture in Scotland.
- 5.3. The National Plan states: – *“Prime quality agricultural land is a finite national resource. Development on prime agricultural land should not be permitted unless it is an essential component of the settlement strategy or is necessary to meet an established need, for example for major infrastructure development, where no other suitable site is available. Small scale development directly linked to rural businesses, including housing, may also be permitted. Renewable energy generation development or minerals extraction may be acceptable where restoration proposals will return the land to its former status.”*
- 5.4. Not only does the Plan recognise the importance of agriculture as an activity but also the land upon which agriculture is undertaken. No such recognition for fishing grounds is given in the NMP, far less a protective role as set out above. It should be specifically noted that there is certainly no preference given to sustainable development, which renewable energy generation development is assumed to be, even if full restoration is possible. No discussion of restoration, nor ensuring that funds exist for the purpose of restoration, is undertaken in either the NMP or the relevant draft sectoral marine Plan.

6. PLANNING AND MANAGEMENT

- 6.1. Keeping to the agricultural analogy, it is worth examining how agriculture is organised in Scotland. There is no doubt that agriculture is controlled under the auspices of the Common Agricultural Policy and other legislation. Quotas are imposed and effort, to some extent, is managed.
- 6.2. There is also control for non-agricultural reasons. These include waste control and nature conservation protection.
- 6.3. Most of the controls are exercised over agricultural enterprises, centrally. The agencies include the Scottish Government and SEPA. Very few, planning being an example, are exercised locally.
- 6.4. Management of, and planning for, the enterprise is left to the agriculturalist or farmer.

- 6.5. And so it is with fishing. While agencies, such as MCA control aspects of fishing activity, it is the Scottish Government, through Marine Scotland which exercises by far and away the biggest control (which can also be called, confusingly, 'fisheries management') on activity. Much of the legislation involved flows from the Common Fisheries Policy. However national control can be exercised under such statutes as the Inshore Fishing (Scotland) Act 1984.
- 6.6. As with agriculture management of, and planning for, the enterprise falls, strategically to the owners and tactically to the skipper, of the vessel. The owner and the skipper may, of course, be one and the same person.
- 6.7. In an agricultural enterprise the management and the planning can only be executed upon the land which is included in that enterprise. The position at sea is entirely different. The planning can extend to any area in which the method permitted to the relevant vessel can be exercised. That area is defined by controls imposed by authority whether national or supra national.
- 6.8. It is understood that Marine Scotland does not intend to surrender its duty to control the Scottish fishing industry to marine planners, whether based in Edinburgh or regionally.
- 6.9. The fishing industry intends to retain its right to plan its activities in the best interests of each of its enterprises.
- 6.10. Although it seems inevitable that the spatial extent in which fishing can be conducted in Scottish waters will be restricted by decisions of planners, given that fishing activity is dynamic and is conducted on a national scale, it is only correct that those decisions are taken centrally by those who are responsible to the Scottish Ministers and through them to the Scottish Parliament.
- 6.11. The SFF is content in its understanding that Regional Marine Planners and the bodies which employ them will not be responsible to any third party, for any planning decisions which they take.
- 6.12. The Sustainability Appraisal for the NMP gives an interpretation of part of Policy 3, relating to fishing, of the NMP. Policy 3 at its second bullet point says "... effective marine planning should help to ensure: improve protection of the seabed through effective identification of high-risk areas and management measures to mitigate the impacts of fishing where appropriate."
- 6.13. That interpretation is: – "*Policy 3 identifies the need for protection of the seabed and the mitigation of impacts of fishing. We have therefore assumed that the term "sustainable" encompasses sustainable fishing gear issues and anticipate that the regional marine plans (with input from Inshore Fisheries Groups) will identify suitable regional/local policy regarding gear, using the national policies as a starting point.*"

- 6.14. In the relevant part of Policy 3 the word “sustainable” does not appear. Notwithstanding this local planners are enjoined to develop local policies with regard to gear and management measures to mitigate the impacts of fishing where appropriate.
- 6.15. It is worth taking a little time to examine the consequences of this.
- 6.16. The assumption made, given that the word “sustainable” does not appear, is without foundation. In any event the question of seafloor integrity is a matter for MSFD implementation and thus implementable at the UK level.
- 6.16.1. There is no suggestion in the NMP, itself, that the requirements of Policy 3 should be devolved to regional planners. It is not acceptable that this policy is not consulted upon in the draft Plan, but surfaces, without warning, in the Sustainability Appraisal.
- 6.16.2. It is not revealed how planners will obtain the knowledge, of fishing and fishing gear, to enable them to take the decisions required of them. The members of an IFG have no locus in contributing to such decisions.
- 6.17. It may be appropriate, at this stage, to nail the canard of seafloor damage. It is not denied that bottom fishing or dredging does have the capacity, in varying degrees, to alter the seabed. It may also be that damage is caused to the benthos. However it is ignored by those who campaign against bottom fishing that that is exactly what ploughing does to an arable field. There are controls, in certain cases to prevent fishing activity affecting margins but there is absolutely no policy, let alone legislation, which prevents the turning over of a field, the consequence of which is that the surface is altered and the benthos equivalent is destroyed.
- 6.18. As an aside, it is amusing to note that unlike an agricultural field, no part of the benthos is categorised as a weed. It turns out that species such as maerl and kelp which are seaweeds should be protected as opposed to dockens and nettles which should be extirpated, as part of good husbandry! Most agricultural leases contain an obligation on the tenant to destroy weeds.
- 6.19. Returning to our theme, it is incomprehensible that it be proposed that the task of marine environment protection which, in terms of the Marine (Scotland) Act 2010, and earlier legislation, is firmly imposed on Ministers should be devolved to regional planners.
- 6.20. Any suggestion, therefore, that Regional Marine Planners should have any duty or ability to amend fishing activity must be eradicated from the Plan, and thus the Sustainability Assessment.

7. SUSTAINABILITY APPRAISAL

- 7.1. The NMP, as will be seen from above is somewhat coy about how Plan Proposals are interpreted and might be implemented. It is worth therefore

understanding the interpretation of the SA in relation to the major impacts intended for the Plan upon fishing. The following paragraphs are extracted from the SA.

The NMP recognises its role in setting policy for the sea fisheries sector, within the context of the Common Fisheries Policy and the powers of the Scottish Government to put domestic management measures in place. Both objectives and policies recognise the pressures on biodiversity resulting from fishing and fishing practices:

- The objectives aspire to sustainable harvesting using maximum sustainable yield. They are also directed to changing specific fishing practices, including maximising annual quota opportunities, monitoring total removals from the sea (rather than landings) and tackling the issue of discards. They recognise the need to manage fisheries in line with international and national environmental priorities.*
- The policies focus on managing fishing to ensure sustainability of fish stocks. They also identify the desired outcomes for sea fisheries of marine planning, e.g. protection of vulnerable stocks, improved protection of the seabed, and the need for other sectors (when planning their activities) to take into account the need to protect fish and shellfish stocks and sustain healthy fisheries. There is also an overall requirement for other sectors to consider the environmental impact on fishing generally.*

Most of the policies are focused on the sustainability of the sea fisheries sector but, in doing so; they have positive implications for the sustainability of fish stocks as well.

The aspiration to maximise annual quota opportunities (Objective 2) should be viewed in the light of the aspiration to fish at maximum sustainable yield: the two should work together in the long-term to achieve sustainable fish stocks. In addition the cross-cutting general policies will assist both Scottish Government and regional marine plans in reducing the effect of fisheries on biodiversity in the long term.

It is anticipated that, in the long term, these policies and objectives (taken together with the cross-cutting general policies) will have positive implications for biodiversity.

- 7.2. These proposals come as no surprise to the SFF. They are well known as a result of involvement with MSFD, CFP and Government Policies. Why they should appear in the Scottish Marine Plan is not explained.
- 7.3. In previous comments the SFF has indicated where control of the industry lies. It understands that for the instruction of third parties it is important for the SMP to relate the legislative restrictions applicable to fishing activity, including effort, to be set out, demonstrating that control has exercised outside the boundaries of the NMP. However, to insinuate that somehow these legislative requirements should also be part of the SMP is improper.
- 7.4. The SMP may, and probably should, carry a description of the legislative framework but policies to implement the legislation must be left outside the

Plan. To put it another way, is it anticipated that the SMP will require to be altered every time an amendment to the Cod Recovery Plan appears from Brussels?

- 7.5. The Sustainability Appraisal contains a Table (3) which sets out the objectives of the NMP. The first four are of considerable interest. The SFF responses appear below each question

Will the draft Plan: –

1 Support the development of a sustainable marine economy?

The draft Plan supports the development of the marine economy. However it is not clear that the development will be sustainable. Marine Scotland has adopted, where it requires, for each activity, a different definition of 'sustainable'. To the cynical it would appear that justification for development can be obtained if the definition of 'sustainable' is amended to suit the intended outcome. This is, to say the least, disappointing when the future of our marine environment depends on intelligent and consistent drafting.

2 Contribute to the growth of any marine industry without detriment to another?

The answer to that question would have been in the affirmative if the NMP had striven to achieve that. However it is clear from the NMP and much clearer from the Renewable Energy sectoral marine plan that such contribution is not intended.

3 Safeguard and/or create jobs that support new or existing communities?

Again looking to the Renewable Energy sectoral Marine plan it is clear that safeguarding existing jobs is not considered of any consequence when the adverse effect of the introduction of a new, yet untried, activity, upon existing jobs is regarded as minimal. It is unclear what the attitude to those jobs would have been had the effect not been contrived to appear minimal but had been higher.

4 Remove or avoid barriers to new marine enterprise opportunities?

New marine enterprise opportunities, if they can be classed within the definition of sustainable development have barriers to their approval removed by the presumption given. It is incidental the effect that that may have on existing activity which is important to fragile and remote coastal communities.

8. POLICY COMPETITION

- 8.1. There is no doubt that the Scottish Government regards the activity of commercial sea fishing as important at both local and national levels. It is a fact that fishing is a great deal more important, in economic and social terms, to Scotland than it is to the rest of the United Kingdom. What is not clear is where its ranks, in the estimation of the Government, in Scotland, in comparison with other maritime economic activities.
- 8.2. In its manifesto, before the last election in Scotland, the SNP said *“We will develop a national strategy for Fisheries Dependent Areas to support economic development and encourage local authorities, along with our fishing communities, to develop regional action plans to strengthen local fishing-related economies around our shores. In partnership with the industry we will look to restore the identity and status of fishing as an occupation of choice and continue to support research in fishing to help map out the most profitable future for the industry.”*
- 8.3. While some of these promises may not have resurfaced, the intention is clear. One might even be tempted to think that this suggests that fishing as employment should be preferred above employment in offshore renewables. The question is whether the SMP supports that supposition or not?
- 8.4. The answer is very resounding NO. If we examine the SMP and in particular policy Renewables 1, we find: – *“There is a presumption in favour of adopted Plan Options identified through the Sectoral Marine Plan process. The inclusion of these adopted Plan Options in the National Marine Plan does not imply that licences or consents will be granted, but preference will be given to proposals within these areas.”*
- 8.5. Policy Renewables 3 contains another preference. *“There is a presumption in favour of renewable energy developments in areas identified to support the Saltire Prize.”*
- 8.6. In a Plan which has no zoning, zoning which requires justification, how can this occur? It occurs when planning is used to further the interests of the State without any balance which takes into account the interests of its citizens. This is not the first example of this approach to planning to appear in history.

9. BALANCE

- 9.1. If the NMP is to be believed, every effort has been made to achieve balance. The Sustainability Appraisal suggests, apparently seriously and sincerely: –
- Avoidance or reduction of adverse effects has been built into the draft NMP, through inclusion of the cross-cutting policies. These set an overarching framework that applies to all planning and decision-making activities in the marine environment. The wide-ranging nature of these cross-cutting policies (sustainable economic growth, sustainable development, factors for consideration in decision-making – social, community, economic, environmental – as well as requirements for early engagement) means that they will act as balancing measures across the whole policy framework. Thus policies focused on development will be balanced by policies about communities or environment. Development proposals, for example, will need to be progressed and assessed in the context of this balanced policy framework.*
- 9.2. That has to be compared with “*There is a presumption in favour of adopted Plan Options identified through the Sectoral Marine Plan process.*” In any common understanding of any process, let alone the planning process, balance occurs when activities of equal merit, weight or importance are compared against each other. How can balance occur when, in the context of planning, one activity is preferred against another?
- 9.3. It goes further. As if a presumption in favour were not enough, definitions are amended in order to favour activities which already have that preference. One short example relates to renewable energy and the definition of ‘sustainable’ in relation to it. This is the wording “*For the purposes of this assessment, we have assumed that “sustainable” therefore includes avoidance of unacceptable adverse effects on biodiversity (e.g. obstacles to migration; noise disturbance during construction and operation; collision risk for birds, fish and cetaceans; benthic effects of anchoring; etc.). Taken together with the general cross-cutting policies, we therefore anticipate that adverse effects of biodiversity will be avoided.*”
- 9.4. What is “unacceptable”? In the SMP reference to scallop dredging and bottom trawling any effect on the seabed is “unacceptable”. Not so with renewable energy. “Unacceptable” will be what the Scottish Government says it is. But then can it really mean this when it suggests that noise and disturbance during construction and operation are examples of “unacceptable”? As these effects are bound to occur, does the Scottish Government seriously suggest that planning considerations will see an end of the proposal? However the clause goes on to suggest that the general cross-cutting policies will ensure that the adverse effects of biodiversity will be avoided. What is an adverse effect of biodiversity? One possibility is that it means “adverse effects on biodiversity”. How on earth will any of

those general cross-cutting policies avoid noise and disturbance during construction and, therefore adverse effects on biodiversity?

- 9.5. The Sustainability Appraisal goes on to suggest that *“The objectives and policies together are working towards sustainable fishing practices and management, to ensure the sustainability of fish stocks (e.g. Policy 1). The potential for conflict between fisheries and other marine sectors is recognised, particularly in terms of competition for space, and the policies require that fisheries interests are taken into account in planning and decision-making, including engagement with fishers at the local level. This is likely to involve trade-offs between the sectors, which will be negative for some and positive for others. The key here is that these trade-offs would result from considered discussion and review, rather than through imposition.”*
- 9.6. Here we find another anomaly. A presumption in favour suggests an imposition. The requirement that planners resolve conflict with the planning system implies an imposition. Essentially there are important proposals in the NMP which leave the situation more confused than before it was deemed necessary for the State to use marine planning to rescue maritime activity from anarchy.
- 9.7. The SFF has consistently brought to the attention of Marine Scotland that marine planning has been effectively arranged between competing interests, yet no recognition of this appears in the NMP.
- 9.8. On a practical level, it appears that national or regional marine planners will have the authority to interfere with and re-arrange the national agreement between the UK Fishing Industry and the Ministry of Defence in relation to dived submarine activity. The Code of Practice is a marine plan entered into between the relevant protagonists. What expertise do Scottish Government planners have to improve upon it?
- 9.9. If they claim that they have this expertise, then they should expand upon it in the NMP. If they do not then they should make it clear that sectoral plans agreed between amongst the relevant parties should be endorsed as part of the NMP.

10. A NON-PARTISAN APPROACH TO MARINE PLANNING

- 10.1. The Marine Management Organisation, in England, has exposed to the public its first draft plan on Marine Planning.
- 10.2. That draft plan recognises the importance of sustainable maritime development. However it is prepared to balance that importance against existing economic activity. For fishing it suggests the following as a policy.

- 10.3. *Within areas of fishing activity, proposals should demonstrate in order of preference:*
- *that they will not prevent fishing activities on, or access to, fishing grounds*
 - *how, if there are impacts on the ability to undertake fishing activities and access to fishing grounds, they will minimise or mitigate these*
 - *the case for proceeding with their proposal if it is not possible to minimise or mitigate the impacts*
- 10.4. Subject to the requirement for a displacement/impact assessment,, leading to appropriate solutions, the SFF would support the above as a policy in the SMP.

11. THE QUESTION OF RIGHTS AND THEIR EXPROPRIATION

- 11.1. It is assumed to be beyond argument that Scottish fishing vessels operating in Scottish waters are exercising the public right of fishing.
- 11.2. That public right extends to the vessels of other nations. It will be remembered that the UK Government in negotiating a 12 mile band around the coasts of the UK at the time of Common Market entry did not confiscate the rights of other nations to continue to fish in the 6-12 mile band.
- 11.3. Those rights were translated from custom into law. Scottish fishermen, however, have the benefit of Law to underpin their right. It is contained in the Fisheries Act 1705 passed by the Scottish Parliament.

PARLIAMENT AT EDINBURGH, 28TH JUNE 1705.

CAP. 48.

[1705, *cap.* 2.]

ACT for advancing and establishing the Fishing Trade in and about this Kingdom

OUR Sovereign Lady and the Estates of Parliament taking to consideration the great and many advantages that may arise to this Nation by encouraging the Salmond White and Herring fishings they being not only a natural and certain fund to advance the trade and increase the wealth thereof but also a true and ready way to breed seamen and set many poor and idle people to work And albeit there be several good acts already made to encourage and carry on that trade yet they are either in dissuetude defective or do not answer the present circumstances Therefore that so great and general a concern may take effect in time coming Her Majesty with advice and consent of the Estates of Parliament Authorizes and Impowers all her good subjects of this Kingdom to take buy and cure herring and white fish in all and sundry seas channells bays firths lochs rivers &c. of this her Majesties ancient Kingdom and Islands thereto belonging wheresoever herring or white fish are or may be taken And for their greater conveniency to have the free use of all ports harbours shoars fore-lands and others for bringing in pickeling drying unloading and loading the same upon payment of the ordinary dues where harbours are built that is such as are paid for ships boats and other goods and Discharges all other exactions as a nights fishing in the week commonly called Saturday's fishing top money stallage and the like

- 11.4. While it is not being suggested that Parliament does not have the authority to delegate a power to revoke the public right of fishing, it is surprising that a government which campaigns to have, once gain, a sovereign Parliament in Scotland, should pay such little attention to history. The spirit of the 1705 Act is as valid today as it was 300 years ago.
- 11.5. Even if there is a valid national policy reason for riding roughshod over an industry which, even the Government itself recognises, is a crucial part of Scotland's cultural heritage and an important and, in some cases, vital part of Scotland's rural economy, no attempt is made in the NMP to suggest that, either the Developer or the State, or both of them, should compensate Scottish fishermen for the loss of their right.
- 11.6. The principle of compensation, whether by non-compulsory or compulsory purchase in respect of landholdings is an essential right and part of the Law of Scotland. Why then does the Government not propose such an equitable approach for those of the Scottish people who either are in the livelihood in the marine environment or depend on those who do?

12. CONCLUSIONS

- 1. The public right to fish in the waters surrounding Scotland must be defended by the Scottish Government and places in which that right can be exercised should only be restricted if no other solution, in the public interest, can be found.**
- 2. The protection of fishing in the planning process be arranged on the same principles as proposed by the Marine Management Organisation for the English East region.**
- 3. The presumption in favour of sustainable development over and against existing economic activity be removed.**
- 4. If the public right to fish is to be expropriated as the result of a planning decision licensing consent, appropriate compensation must be paid.**

5. **The legal controls applicable to fishing must be imposed and administered centrally by Marine Scotland.**
6. **No part of fisheries control or management must be delegated to regional planners.**
7. **The draft plan and associated documents must be reviewed to ensure that policy proposals appear only in the former and not the latter.**

FOOTNOTE

The Marine (Scotland) Act 2010 contains the following provision affecting the Marine Plan and Regional Marine Plans

Independent investigation

11 (1) *Where the Scottish Ministers have published a consultation draft in accordance with paragraph 9, they must consider appointing an independent person to investigate the proposals contained in the draft and to report on them.*

(2) *In deciding whether to appoint such a person, the Scottish Ministers must have regard to—*

(a) *any representations received about the matters to be included in the proposed national marine plan or (as the case may be) the proposed regional marine plan in response to the invitation issued in pursuance of paragraph 4(3),*

(b) *any representations received about the proposals published in the consultation draft,*

(c) *such other matters as Scottish Ministers consider relevant.*

The Scottish Fishermen's Federation accordingly petitions the Scottish Ministers to order such an investigation by an independent person to consider the representations which have resulted in Conclusions 2, 3, 5 and 6 above.

NEXT PAGE: CONSULTATION QUESTIONS

CONSULTATION QUESTIONS

Please identify the main area of interest with which you identify.

FISHERIES

Comments

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

NO. It does not attempt to do so, and neither should it, as management is not a function of a plan

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

NO. Further work on this is required to ensure that "planning" applications are treated as a *unum quid*.

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

Comments. What ever may be the position for sectors other than fishing, the management (aka. control) of fisheries must be carried out at a national level. Such management needs to be objective and not, as we have seen all too often, on a local basis, subjective. In any event fisheries in Scotland is a dynamic activity and thus can only be controlled at the broader scale.

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

Should the NMP set out specific marine planning policies for Strategic Sea Areas?

Comments. The difficulty in responding to this question is that the planning intentions for Strategic Sea areas are not set out in the draft NMP. This question therefore cannot be answered here.

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

Comments. NO. Please see the text above.

Q6. Chapter 3 sets out strategic objectives for the National Marine Plan and Chapters 6 – 16 sets out sector specific marine objectives.

Is this the best approach to setting economic, social and marine ecosystem objectives and objectives relating to the mitigation of and, adaptation to climate change?

Comments.. The strategic objectives repeat various national and European requirements which cannot be avoided.

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

Comments

General Planning Policies

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

Comments

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

Comments. Although not of direct interest to the SFF, there is a concern that the worthy proposals do not reflect what in fact will happen if certain proposed preferred areas for offshore renewable energy are developed.

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

Comments

Guide to Sector Chapters

Q1 1. Do you have any comments on Chapter 5?

Are there other sectors which you think should be covered by the National Marine Plan?

Comments

Sea Fisheries

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

Comments. Please see the text above

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

Comments. Please see the text in section 11

Aquaculture

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

Comments

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

Comments

Q1 6. Are there alternative planning policies that you think should be included in this chapter?

Comments

Wild Salmon and Migratory Fish

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

Comments

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

Comments

Oil & Gas

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

Comments

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

Comments

Carbon Capture & Storage (CCS)

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

Comments

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

Comments

Offshore Renewable Energy

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

Comments

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

Comments

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

Comments

Recreation and Tourism

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

Comments

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

Comments

Transport (Shipping, Ports, Harbours & Ferries)

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

Comments

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

Comments

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

Comments

Telecommunication Cables

Q31. Do you have any comments on Telecommunications Chapter 14?

Comments

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

Comments

Defence

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

Comments

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

Comments

Aggregates

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

Comments

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

Comments

Business and Regulatory

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

Comments. The preference established in favour of 'sustainable development' over an hour against the existing economic activity which is fishing is indefensible and bass be deleted.

Equality

Q39. Do you believe that the creation of a Scottish National Marine Plan discriminates disproportionately between persons defined by age, disability, sexual orientation, gender, race and religion and belief?

No

Q38. If you answered yes to question 38 in what way do you believe that the creation of a Scottish National Marine Plan is discriminatory?

Comments

Sustainability Appraisal

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

Comments. Please see the text above