

**MARINE PLANNING PARTNERSHIPS**

**STRUCTURE AND GOVERNANCE**

**REPORT FOR THE SCOTTISH COASTAL FORUM**

**SEPTEMBER 2011**

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**Abbreviations used in this report:**

<b>AAG</b>	Area Advisory Group
<b>CPP</b>	Community Planning Partnership
<b>ICZM</b>	Integrated Coastal Zone Management
<b>IFG</b>	Inshore Fisheries Group
<b>LCP</b>	Local Coastal Partnership
<b>mSAC</b>	Marine Special Area of Conservation
<b>MPP</b>	Marine Planning Partnership
<b>MPS</b>	Marine Policy Statement
<b>NMP</b>	National Marine Plan
<b>NPA</b>	National Park Authority
<b>RBMP</b>	River Basin Management Plan
<b>RMP</b>	Regional Marine Plan
<b>RTP</b>	Regional Transport Partnership
<b>SCF</b>	Scottish Coastal Forum
<b>SDP</b>	Strategic Development Plan
<b>SDPA</b>	Strategic Development Plan Authority
<b>SMR</b>	Scottish Marine Region

## Summary of Recommendations:

1. Regional marine planning should involve a tiered structure with (i) a decision-making body as the legal delegate to whom the statutory functions are delegated (ii) a technical group with key agencies and other stakeholders and (iii) advisory / consultative groups. The respective roles of the various elements must be clearly defined.
2. The delegate should be established as a new entity rather than seeking to adapt an existing marine organisation to the role. Membership of the delegate should be limited to promote efficient decision-making, while allowing delegate to draw of the experience and expertise of other bodies.
3. In principle the delegate should comprise a group of persons, but delegation to a public authority and a nominee of the Scottish Ministers remains an option.
4. The number of members of a delegate should reflect the particular Scottish Marine Region, but the experience of other plan-making bodies is that membership should be maintained at a manageable level. The optimal size of the delegate is unlikely to exceed a membership of 10 – 15 persons.
5. Membership of the delegate should be determined on the basis of what any particular nominee will bring to the delegate in terms of relevant expertise, skills and knowledge of marine planning and the relevant SMR. It should not be based on an attempt to include every significant public authority, commercial, recreational or environmental interest within the Scottish Marine Region. Membership of the technical group should reflect bodies with an interest, and particularly a statutory responsibility, in the whole or a significant part of the SMR. The report recommends criteria for identifying members of the delegate and technical group.
6. The delegate to whom regional plan-making functions are delegated should be distinguished from the wider group of stakeholders involved in the plan-making process. Most stakeholders should be involved in the plan-making process through effective engagement mechanisms, due consideration of representations, and the appropriate use of advisory and consultative groups.
7. The Scottish Ministers' direction should require the establishment of general, topic or geographically based advisory or consultative groups to assist in preparation of the Regional Marine Plan. The number, remit and administrative arrangements of such groups should be decided by the delegate.

8. Consideration may be given to incorporating the delegate as a legal entity distinct from its members. This may be a significant issue for prospective members.
9. While there should be a preference for decision-making by consensus where this is not possible the delegate should take decisions by a simple majority.
10. The delegate, subject to compliance with the Scottish Ministers' direction, must address a range of governance issues notably the responsibilities of different parties, decision-making arrangements, conflict of interests, delegation of responsibility, renewal and replacement of members, reporting of performance, financial management and conduct of members.
11. The Scottish Government should prepare guidance on (i) the form and content of RMPs and the regional plan-making process and (ii) appropriate governance arrangements.

## 1. INTRODUCTION

- 1.1 On 16 March 2011 the Scottish Coastal Forum (the **SCF**) commissioned this study into "The Structure and Governance of Marine Planning Partnerships". The terms of reference can be found at Appendix A.
- 1.2 The Marine (Scotland) Act 2010 (the **Act**) introduces a new statutory system of marine planning and management. The plan-led system will be central to future authorisation and enforcement decisions concerning the development, protection and enhancement of Scotland's seas<sup>1</sup>.
- 1.3 The Act provides for delegation by the Scottish Ministers of specified functions in relation to regional marine planning. The Scottish Ministers intend to delegate these functions to bodies commonly described as Marine Planning Partnerships<sup>2</sup>. The term Marine Planning Partnership (**MPP**) is not used in the Act, which refers simply to functions being delegated to a "delegate"<sup>3</sup>. The legal form and governance arrangements of the delegate are not specified in the Act. MPP has become the term invariably used to describe the body to be entrusted with the preparation of a regional marine plan<sup>4</sup>. This study uses the term MPP but it should be noted that "partnership" is used in its non-legal sense of a group of persons working together to achieve a common objective. Indeed a partnership in the legal sense would not be an option for a MPP<sup>5</sup>. Where necessary this study distinguishes between the legal "delegate" to which functions are delegated and the wider "partnership" that may be involved in plan preparation.
- 1.4 The objectives of the study are:
- (1) to investigate the structure of existing stakeholder partnerships and determine the strengths and weaknesses of different options for MPPs;
  - (2) to identify the key governance issues to be addressed in establishing MPPs;
  - (3) to investigate legal constraints on the delegation of statutory powers and issues of democratic accountability to be considered in establishing MPPs;
  - (4) to recommend protocols for identifying members of MPPs;

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<sup>1</sup> See Chapter 2 for the geographical scope of marine plans

<sup>2</sup> Although there is no legal requirement to delegate any functions

<sup>3</sup> Marine (Scotland) Act, section 12(1)(b)

<sup>4</sup> For example in the Policy Memorandum accompanying the Marine (Scotland) Bill

<sup>5</sup> In terms of section 1 of the Partnership Act 1890 a partnership must be "persons carrying on a business with a view of profit"

- (5) to recommend an appropriate structure for decision-making within MPPs;
- (6) to recommend appropriate measures to ensure financial and administrative control within MPPs; and
- (7) so far as possible to recommend generic documentation to assist in the establishment of a MPP.

1.5 The SCF will use this report to inform its understanding of issues to be addressed by the Scottish Ministers in delegating marine planning functions. However the views expressed in this study are those of the authors and do not necessarily represent those of the SCF or its individual members.

### **Report preparation**

1.7 The report was prepared following:

- (1) discussion with the SCF Project Steering Group (the **Steering Group**). An inception meeting was held on 22 March 2011, with further meetings on 6 April, 7 July, 3 August and 30 August 2011. Membership of the Steering Group is listed in Appendix B;
- (2) a review of legislation and policy documents relating to marine planning and MPPs;
- (3) a review of existing stakeholder partnerships in Scotland; and
- (4) telephone discussion with selected stakeholder organisations to elicit their views on the issues noted at paragraph 1.4 above. A list of the participants is provided in Appendix C.

### **Report structure**

1.8 The report is structured as follows:

**Chapter 2** provides an overview of the new statutory marine planning system;

**Chapter 3** reviews the legal framework for MPPs, including the functions that may be delegated and the potential legal form and membership of the delegate;

**Chapter 4** further considers the purpose of MPPs and how this may potentially influence their legal form, membership and governance arrangements;

**Chapter 5** provides a broad overview of existing stakeholder partnerships, their legal form and governance arrangements;

**Chapter 6** reports the views of stakeholder organisations; and

**Chapter 7** presents conclusions and recommendations.



## 2. OVERVIEW OF THE MARINE PLANNING SYSTEM

### Introduction

- 2.1 This chapter provides an overview of the new statutory marine planning system within which MPPs will function.
- 2.2 The marine planning system is established by primary legislation of both the Scottish and UK Parliaments:
- (1) the Marine (Scotland) Act 2010 (the **Act**), which received Royal Assent on 10 March 2010; and
  - (2) the Marine and Coastal Access Act 2009 (the **2009 Act**), which received Royal Assent on 12 November 2009.
- 2.3 For the purposes of this report the following terms are used:
- (1) **Scottish Marine Area** means the marine area from the Mean High Water Spring tide to the 12 nautical mile territorial limit;
  - (2) **Scottish Offshore Area** means the marine area from 12 nautical miles to 200 nautical miles; and
  - (3) **Scottish Waters** means the marine area from the Mean High Water Spring tide to 200 nautical miles. This comprises both the Scottish Marine Area and the Scottish Offshore Area.
- 2.4 The Scottish Parliament may only legislate within the Scottish Marine Area and Part 3 of the Act introduces a statutory planning system for the Scottish Marine Area. The Scottish Offshore Area lies within the legislative competence of the UK Parliament. Responsibility for marine planning in the Scottish Offshore Area has been devolved to the Scottish Ministers through the 2009 Act<sup>6</sup>. This allows the Scottish Ministers to prepare and adopt a single National Marine Plan (**NMP**) for Scottish Waters (under provisions of the Act as regards the Scottish Marine Area and the 2009 Act as regards the Scottish Offshore Area). The pre-consultation draft NMP published in March 2011 covers Scottish Waters.

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<sup>6</sup> Marine and Coastal Access Act 2009, section 50(2)(c)

### **Purpose of the marine planning system**

- 2.5 A “plan-led” system will be central to authorisation and enforcement decisions concerning the future development, protection and enhancement of Scottish Waters. The legislation establishes a duty on public authorities to take decisions in accordance with the NMP and any Regional Marine Plan (**RMP**) which is in force, unless relevant considerations indicate otherwise<sup>7</sup>. Where a decision is contrary to the relevant marine plan(s) the relevant public authority must state reasons for this<sup>8</sup>. Public authorities must have regard to relevant marine plans in making any decision relating to the exercise of any function capable of affecting the whole or part of the Scottish Marine Area<sup>9</sup>.
- 2.6 As noted in paragraph 2.4 above, the NMP as it applies to the Scottish Offshore Area is authorised by the 2009 Act. The 2009 Act also establishes a duty on public authorities to take decisions in accordance with a NMP and Marine Policy Statement (see below) which are in force, unless relevant considerations indicate otherwise<sup>10</sup>. Where a decision is contrary to the relevant marine policy documents a public authority must state reasons for this<sup>11</sup>.
- 2.7 Marine plans will therefore provide a spatial and policy framework to guide future development, manage competing demands on the marine environment, and protect and enhance Scotland's marine environment. Marine plans will have to identify, prioritise and manage diverse and sometimes conflicting interests in the marine environment. They will also provide a mechanism through which international obligations can be met, including the attainment of Good Environmental Status as required under the Marine Strategy Framework Directive<sup>12</sup>. Marine plans will be of primary importance to all interests, commercial, recreational, environmental and others, who utilise and value the marine environment.

### **UK Marine Policy Statement**

- 2.8 The marine planning system will be tiered, reflecting UK, Scottish and regional objectives and policies. Legislation and policy statements seek to promote a level of consistency in marine planning across UK and Scottish Waters, with the Scottish Ministers adopting the UK Marine Policy Statement (**MPS**) and the requirement that Scotland's marine plans conform to the MPS.

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<sup>7</sup> Marine (Scotland) Act 2010, section 15(1)

<sup>8</sup> Marine (Scotland) Act 2010, section 15(2)

<sup>9</sup> Marine (Scotland) Act 2010, section 15(3)

<sup>10</sup> Marine and Coastal Access Act 2009, section 58(1) and section 59

<sup>11</sup> Marine and Coastal Access Act 2009, section 58(2)

<sup>12</sup> Directive 2008/56/EC establishing a framework for community action in the field of marine environmental policy transposed into UK law in The Marine Strategy Regulations 2010

2.9 The MPS was jointly adopted by the UK Administrations, including the Scottish Government, on 18 March 2011<sup>13</sup>. The MPS was prepared and adopted under the 2009 Act and is applicable to the UK marine area (0-200 nautical miles) including Scottish Waters.

2.10 The MPS therefore provides a policy context within which the NMP and RMPs will be developed. It articulates a vision for the UK marine environment as providing “clean, healthy, safe, productive, and biologically diverse oceans and seas”<sup>14</sup>. The MPS sets out agreed high level objectives and a series of policy objectives for key marine activities. Marine plans are regarded as a key mechanism through which these objectives will be attained:

“Marine Plans will set out how marine resources can best be managed in order to achieve the plan outcomes, policies and objectives. Marine Plans will provide a clear, spatial and locally-relevant expression of policy, implementation and delivery. They will ensure that different and potentially competing activities are managed in such a way that they contribute to the achievement of sustainable development. A key principle will be to promote compatibility and reduce conflict.”<sup>15</sup>

2.11 Public authorities must take any authorisation or enforcement decision in accordance with the MPS, unless relevant considerations indicate otherwise<sup>16</sup>. Marine plans, where prepared, must be in conformity with the MPS, unless relevant considerations indicate otherwise<sup>17</sup>.

### **National Marine Plan**

2.12 The Act provides that the Scottish Ministers must prepare and adopt a NMP for the Scottish Marine Area<sup>18</sup>. As noted in paragraph 2.4, the executive devolution of responsibility for marine planning in the Scottish Offshore Area permits the NMP to cover all Scottish Waters in a single document.

2.13 The NMP will establish national strategic objectives and policies for Scottish Waters. The NMP must state the Scottish Ministers’ policies for sustainable development and for nature conservation marine protected areas and other conservation areas. In preparing a NMP the Scottish Ministers must establish economic, social and ecosystem objectives, and objectives relating to the mitigation of, and adaptation to, climate change<sup>19</sup>. The Scottish Ministers must

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<sup>13</sup> UK Marine Policy Statement, March 2011  
<sup>14</sup> UK Marine Policy Statement, paragraph 2.1  
<sup>15</sup> UK Marine Policy Statement, paragraph 2.2  
<sup>16</sup> Marine and Coastal Access Act 2009, section 58  
<sup>17</sup> Marine (Scotland) Act 2010, section 6(1)  
<sup>18</sup> Marine (Scotland) Act 2010, section 5(1)  
<sup>19</sup> Marine (Scotland) Act 2010, section 5(3)-(4)

also prepare an assessment of the condition of the Scottish Marine Area and a summary of significant pressures and the impact of human activity<sup>20</sup>.

- 2.14 The Scottish Ministers are currently preparing the NMP. A Pre-Consultation Draft was published on 21 March 2011<sup>21</sup> and feedback is currently under consideration. The current published timetable envisages a draft NMP being published for consultation in late 2011 and the NMP being adopted in the spring or summer of 2012. The preparation and adoption of RMPs for all or parts of the Scottish Marine Area will follow adoption of the NMP.

### **Regional Marine Plans**

- 2.15 The Act allows for, but does not require, a further tier of regional marine planning through the preparation and adoption of RMPs covering designated Scottish Marine Regions (**SMRs**) within the Scottish Marine Area<sup>22</sup>.
- 2.16 The statutory requirements as to the content of the NMP are applicable to a RMP as regards its SMR.<sup>23</sup>
- 2.17 There is no statutory restriction on the range of topics to be covered by either the NMP or a RMP. The sector reports of the NMP Pre-Consultation Draft identify nine separate sectors (with sub sectors): food (including fishing), energy, tourism and recreation, marine transport (including ports), telecommunication and cables, military activities, marine environment, coastal/water, and aggregates and disposal<sup>24</sup>.
- 2.18 As with local plans (or local development plans) under the terrestrial planning regime RMPs may address the same topics as the NMP but in greater spatial and policy detail, especially with regard to the site/area boundaries where policies apply, policy detail, and detailed project planning and dispute resolution; or they may deal with different issues. The statutory requirement for a RMP to conform to the NMP<sup>25</sup>, and good practice, indicate that the principle of subsidiarity will apply ensuring that any issue is dealt with at the appropriate spatial scale. It is understood that the Scottish Government intends to produce guidance on the scope and content of RMPs.
- 2.19 The scope of RMPs will therefore depend on regional or local circumstances and the relationship with the NMP. It should be noted that RMPs are prepared at the discretion of the

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<sup>20</sup> Marine (Scotland) Act 2010, section 5(4)

<sup>21</sup> Scotland's National Marine Plan, Pre-Consultation Draft, March 2011

<sup>22</sup> Marine (Scotland) Act 2010, section 5(2)

<sup>23</sup> Marine (Scotland) Act 2010, section 5(4)

<sup>24</sup> Scotland's National Marine Plan, Pre-Consultation Draft, Chapter 12

<sup>25</sup> Marine (Scotland) Act 2010, section 6(2)

Scottish Ministers and it is currently envisaged that RMPs will be prepared and adopted on a phased basis over a period of years. For certain parts of the Scottish Marine Area a RMP may not exist for some years after adoption of the NMP and the NMP will remain the only applicable marine plan. The 2009 Act contains no provision for regional marine planning in the Scottish Offshore Area. Only the NMP will apply, although detailed levels of spatial policy prescription are less likely to be required in Scottish Offshore Area.

- 2.20 It is proposed that certain key marine sites will be designated as Strategic Sea Areas (Pentland Firth, the Minches and the mouth of the Clyde) and the NMP will provide a means of integrated management of these areas until such point as RMPs can provide sufficient spatial detail for these areas.

#### Summary

- **RMPs where adopted will form part of the statutory system of marine planning.**
- **Public authorities must take authorisation, enforcement and other relevant decisions in accordance with the NMP and any RMP which is in force, unless relevant considerations indicate otherwise.**
- **The content of RMPs must conform to the MPS and the NMP, unless material considerations indicate otherwise. Further guidance on the scope and content of RMPs may be provided by the Scottish Government.**
- **RMPs may be expected to provide a level of spatial and policy detail not seen in the NMP.**
- **RMPs will have to identify, prioritise and reconcile diverse and sometimes conflicting interests in the marine environment.**

### 3. THE LEGAL FRAMEWORK FOR MARINE PLANNING PARTNERSHIPS

#### Introduction

3.1 This chapter provides an overview of the legal framework regulating MPPs:

- (1) the first section reviews the designation of Scottish marine regions;
- (2) the second section considers the functions that may be delegated to a MPP;
- (3) the third section discusses statutory provision on the legal form and membership of MPPs; and
- (4) the fourth section briefly considers what additional functions, not specified in the Act, may be exercised by a MPP.

These will influence the permissible and appropriate legal form and governance arrangements of MPPs.

#### Scottish marine regions

3.2 The Act provides that the Scottish Ministers may, by order, designate any part of the Scottish Marine Area as a Scottish marine region (**SMR**) and, if so, must identify the boundaries of that SMR<sup>26</sup>. The Scottish Ministers are not required to designate any SMRs and it is open to the Scottish Ministers to designate only parts of the Scottish Marine Area. In non-designated areas only the NMP will apply.

3.3 Designation of SMRs is however a pre-requisite to the preparation and adoption of RMPs. The Scottish Ministers may only prepare and adopt a RMP for a designated SMR<sup>27</sup>. Again the designation of a SMR does not require that a RMP is then prepared and adopted, or that plan preparation immediately follows designation. We understand that the Scottish Ministers intend to phase development of RMPs through the phased establishment and delegation of functions to MPPs. In November 2010 the Scottish Government stated that “[the Scottish] Ministers believe it will take time to create a MPP for every region and to bring all the regions up to full functionality. A five year time period to get a complete and functioning set of regions and

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<sup>26</sup> Marine (Scotland) Act 2010, section 5(4)

<sup>27</sup> Marine (Scotland) Act 2010, section 5(2)

Marine Planning Partnerships is not unreasonable.”<sup>28</sup> This objective is reiterated in the Pre-Consultation Draft NMP<sup>29</sup>.

3.4 A consultation on defining the boundaries of SMRs closed on 18 February 2011<sup>30</sup> and responses are currently being analysed. The consultation presented three options based on:

- (1) physical characteristics;
- (2) existing administrative models; and
- (3) physical characteristics with the west coast of Scotland divided into two marine regions and the east coast boundaries varied.

3.5 The consultation emphasises the diversity of the Scottish Marine Area and that different marine areas are subject to different pressures. There is considerable variation across Scotland with regard to geographical characteristics and current stakeholder involvement. Variation within any designated SMR should also be noted. Regardless of the boundary option selected a SMR will cover a large geographical area. Within any SMR development pressure and potential conflict may be concentrated in particular areas such as the immediate coastal zone or a firth or sea loch.

3.6 This diversity has implications for the MPP constituted for any SMR. A MPP appropriate to one SMR may not be appropriate elsewhere. In some regions there may be an existing lead partner or a more obvious membership. In other areas this may not be the case. It also raises the question of what is meant by “local” stakeholder involvement in the plan-making process. Certain stakeholders may have an interest across the whole of a SMR or in multiple parts. Other stakeholders may have a much more focussed interest in a particular part of the SMR.

3.7 A further significant issue is cross-border arrangements, particularly in the Solway Firth but also on the Berwickshire / Northumberland border. In the Solway Firth existing non-statutory arrangements have sought to secure an effective cross border partnership of stakeholders. Amendments were made to the Marine and Coastal Access Bill to allow for greater cross border cooperation, but the limitations of the statutory arrangements means that formal integration of plans and policies for both sides of the Solway Firth must be based on the parallel management of two separate statutory marine planning exercises. This has to be considered in the context of the significantly different arrangements for regional plans in England, where delegation of functions from the government agency responsible, the Marine

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<sup>28</sup> Scottish Marine Regions: Defining their boundaries – a consultation, Marine Scotland, November 2010, pages 4-5  
<sup>29</sup> Scotland’s National Marine Plan, Pre-Consultation Draft, paragraph 1.3  
<sup>30</sup> Scottish Marine Regions: Defining their boundaries – a consultation, Marine Scotland, November 2010

Management Organisation, is not available and the relevant region for the Solway Firth includes the entire northwest coast of England. Finding a structure capable of accommodating cross border planning will be a particular challenge.

### **Delegable functions**

- 3.8 The Act provides that the Scottish Ministers may designate any of the “delegable functions in relation to a RMP”<sup>31</sup> and direct that the designated functions are exercised by a specified delegate acting on behalf of the Scottish Ministers<sup>32</sup>. Delegation is by means of a direction issued by the Scottish Ministers. While the direction remains in effect the delegated functions are exercisable only by the delegate and not by the Scottish Ministers (subject to contrary provision in the direction)<sup>33</sup>. The delegate must comply with directions and is to be taken as having all necessary powers to do so<sup>34</sup>.
- 3.9 The Scottish Ministers enjoy considerable discretion as to the terms of a direction. Directions may include such terms or conditions, such obligations or requirements, and such financial provisions as the Scottish Ministers determine<sup>35</sup>. Different provision may be made for different cases, areas or delegates<sup>36</sup>. The Scottish Ministers may, subject to prior consultation with the relevant delegate, give further directions regarding the performance of delegated functions<sup>37</sup>.
- 3.10 The effect is twofold. First, this introduces considerable flexibility into the regional planning system, allowing any delegate to be tailored to the particular requirements of its SMR. As noted in paragraph 3.6 above a delegate appropriate to one SMR may not be appropriate elsewhere. Secondly, the Scottish Ministers through their powers of direction (and other controls such as the excepted functions of approving Statements of Public Participation and publishing consultative draft RMPs and RMPs<sup>38</sup>) retain very significant control over the performance of delegates and the plan-making process.
- 3.11 The statutory functions delegable to a delegate are essentially the preparation, monitoring and amendment of a RMP<sup>39</sup>. These functions can be broken down into numerous duties and tasks, many of which will require considerable preparatory work. In practice many of these tasks may be undertaken by a team of professionals supporting the delegate. We are not aware of the Scottish Government’s final intentions as to the funding or staffing of MPPs, although the consultation on SMR boundaries states that “[w]here Scottish Ministers agree to

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<sup>31</sup> Marine (Scotland) Act 2010, section 12(1)(a)

<sup>32</sup> Marine (Scotland) Act 2010, section 12(1)(b)

<sup>33</sup> Marine (Scotland) Act 2010, section 13(2)

<sup>34</sup> Marine (Scotland) Act 2010, section 12 (6)

<sup>35</sup> Marine (Scotland) Act 2010, section 13(4)

<sup>36</sup> Marine (Scotland) Act 2010, section 13(5)

<sup>37</sup> Marine (Scotland) Act 2010, section 14(2)

<sup>38</sup> Marine (Scotland) Act 2010, section 12(8) lists the excepted functions, retained by Scottish Ministers

<sup>39</sup> Marine (Scotland) Act 2010, section 12(7)



delegate regional marine planning responsibilities to the [MPP], Marine Scotland officers will support the work of the [MPPs] by providing the necessary technical capacity either through funding or by using Marine Scotland's planning resources."<sup>40</sup> Table 1 lists the functions and duties that may be delegated. Table 2 lists those functions in relation to plan preparation that cannot be delegated by the Scottish Ministers.

**Table 1**  
**Functions that may be delegated to a MPP**

<b>Functions under section 5 of the Act – Preparing the plan</b>		
<b>Function / duties</b>	<b>Reference</b>	<b>Comment</b>
Giving notice of intention to prepare a RMP to planning authorities adjoining the Scottish marine region and, where relevant, other UK Administrations.	Schedule 1, paragraph 1(2)	
Ensuring that the RMP conforms to the MPS, unless relevant considerations indicate otherwise.	Section 6(1) and Schedule 1, paragraph 8(3)(a)	
Ensuring that the RMP conforms to the NMP, unless relevant considerations indicate otherwise.	Section 6(2) and Schedule 1, paragraph 8(3)(b)	
Taking all reasonable steps to ensure that the RMP is compatible with the RMP of any adjoining Scottish marine region.	Schedule 1, paragraph 3(1)	
Taking all reasonable steps to ensure that the RMP is compatible with the development plan for any areas adjoining the Scottish marine region.	Schedule 1, paragraph 3(2)	
Preparing an assessment of the condition of the Scottish marine region at the time of the RMP's preparation.	Section 5(4)(b)	
Preparing a summary of significant pressures and the impact of human activity on the Scottish marine region.	Section 5(4)(c)	
Setting economic, social and marine ecosystem objectives.	Section 5(4)(a)(i)	
Setting objectives relating to the mitigation of, and adaptation to, climate change.	Section 5(4)(a)(ii)	
Formulating policies for and in connection with the	Section	

<sup>40</sup>

Scottish Marine Regions: Defining their boundaries – a consultation, Marine Scotland, November 2010, page 4

sustainable development of the area to which the plan applies.	5(3)(a)	
Formulating policies on the contribution of Nature Conservation MPAs and other relevant conservation sites to the protection and enhancement of the Scottish marine region.	Section 5(3)(b)	
Preparing statements or information relating to policies contained in the plan.	Section 5(6)	
Preparing a Statement of Public Participation: when consultation is to take place, with whom, its form and steps to involve the general public.	Schedule 1, paragraphs 4(1) and 5	Only the Scottish Ministers can decide whether to prepare a SPP, but the MPP is not excluded from preparing the SPP.
Inviting representations as to matters to be included in the proposed plan and making arrangements to receive and consider such representations.	Schedule 1, paragraph 4(3)	
Publication of Statement of Public Participation.	Schedule 1, paragraph 4(4)	Only the Scottish Ministers can decide whether to publish the SPP, but the MPP can then publish the approved SPP.
Taking all reasonable steps to comply with the Statement of Public Participation.	Schedule 1, paragraph 4(5)	
Keeping the Statement of Public Participation under review.	Schedule 1, paragraph 6(1)	
Revising a Statement of Public Participation and publishing the revised SPP.	Schedule 1, paragraph 6	Only the Scottish Ministers can decide whether to revise a SPP, but the MPP is not excluded from then revising the SPP as is decided.
Consideration of all representations received.	Schedule 1, paragraphs 8(3)(f) and 10(3)	
Seeking advice or assistance in connection with the preparation of the RMP, or of any proposals for such RMP and considering such advice.	Schedule 1, paragraph 7(1)	
Convening groups to facilitate involvement in development of proposals for the RMP or consultation in connection with such proposals.	Schedule 1, paragraphs 7(2) and 8(3)(g)	

In preparing a RMP having regard to the matters specified in Schedule 1, paragraph 8(3) and any other matters considered relevant.	Schedule 1, paragraph 8(3)	
Publication of a consultative draft containing proposals for inclusion in the RMP.	Schedule 1, paragraph 9(1)	Only the Scottish Ministers can decide whether to publish a consultative draft, but the MPP is not excluded from then publishing such draft as is approved.
Consideration of the recommendations of any independent investigation of a proposed RMP.	Schedule 1, paragraph 12(1)	
Finalising the text of a RMP and submission to Scottish Ministers.	Schedule 1, paragraph 12	
Compliance with terms and conditions of a Section 12 direction or any Section 14 direction as to performance of functions.	Sections 12(6)(a), 13(4) and 14(2)	
<b>Functions under section 8 of the Act – Amending the plan</b>		
Preparing any amendment to the RMP in accordance with Schedule 1.	Section 8	Only the Scottish Ministers can adopt an amended plan, but the MPP can prepare the amended plan in accordance with all the requirements of Schedule 1.
<b>Functions under section 11 of the Act – Reviewing the Plan</b>		
<p>Keeping relevant matters under review, including:</p> <p>(i) the physical, environmental, social, cultural and economic characteristics of the Scottish marine region to which the plan applies and of the living resources which the region supports,</p> <p>(ii) the purposes for which any part of the region is used,</p> <p>(iii) the communications, energy and transport systems of the region,</p> <p>(iv) any other considerations which may be expected to affect those matters, and</p> <p>(v) any changes which could reasonably be expected to occur in relation to any of these matters and the effect that any such changes may have in relation to the sustainable development of the Scottish marine</p>	Section 11	

region to which the plan applies, its natural resources, or the living resources dependent on the region.		
<b>Functions under section 16 of the Act – Monitoring the Plan</b>		
<p>Keeping under review in relation to a RMP:</p> <p>(i) the effects of the policies in the plan,</p> <p>(ii) the effectiveness of the policies in securing that the objectives for which the plan was prepared and adopted are met,</p> <p>(iii) the progress being made towards securing the objectives, and</p> <p>(iv) the progress being made towards securing that the objectives in the RMP secure the objectives in the NMP.</p>	Section 16(1)	
Periodic preparation and publication of a report on the matters kept under review.	Section 16(3), (5)-(6)	
Considering and deciding whether to amend or replace the RMP.	Section 16(4)	

**Table 2**

**Functions that cannot be delegated to a MPP**

<b>Function</b>	<b>Reference</b>	<b>Comment</b>
Deciding whether to prepare and publish a Statement of Public Participation.	Section 12(8)(a) and Schedule 1, paragraph 4	The excluded functions refer to the decision whether to prepare, publish or revise a document. This does not prohibit the MPP from undertaking these duties once the Scottish Ministers take the decision.
Deciding whether to revise a Statement of Public Participation.	Section 12(8)(b) and Schedule 1, paragraph 6	As above
Deciding whether to publish a consultation draft.	Section 12(8)(c) and Schedule 1, paragraph 9	As above
Deciding whether to publish a RMP or any amendment of such a plan.	Section 12(8)(d) and Schedule 1, paragraph 14	As above

- 3.12 The preparation, monitoring, review and amendment of RMPs will be an ongoing process. The key consideration is that a delegate, however constituted and governed, must be capable of making the decisions necessary to deliver these statutory functions, as well as having access to sufficient resources to do so.
- 3.13 The legal form, membership and governance of MPPs must be considered within this context. It may be neither feasible nor desirable that every stakeholder is directly involved in plan or policy preparation through membership of the delegate. Extensive opportunity for participation may be afforded through some more advisory or consultative role, and will be provided through the extensive consultation required as part of plan preparation. Some stakeholders may prefer such a role.

### **Legal form and membership**

#### **(i) Not a statutory body corporate**

- 3.14 The delegate will not be a statutory body corporate. The Act neither establishes a MPP as a distinct legal entity nor expressly permits the Scottish Ministers to do so by order. The Act states that Scottish Ministers may direct that delegated functions are “to be exercisable by such delegate acting on behalf of the Scottish Ministers as is designated in the direction.”<sup>41</sup> The Act requires that a MPP be constituted on a non-statutory basis and in accordance with the membership requirements of the Act, with the Scottish Ministers then designating the body as the delegate for a particular SMR and delegating functions to it.
- 3.15 This approach contrasts with previous legislation conferring plan making powers (see chapter 5). For example, the Transport (Scotland) Act 2005 provides that the Scottish Ministers shall, by order, establish a body corporate, to be known as a regional transport partnership, for each region and make provision as to the constitution and membership of the partnership<sup>42</sup>.

#### **(ii) No specified legal form**

- 3.16 The Act does not specify any legal form for the delegate, or that the delegate must have a legal personality distinct from that of its members. In terms of the Act the delegate could be an unincorporated association. The Act does not require that a MPP is an entirely new entity, although given the statutory membership requirements it appears, certainly with delegation to a group of persons, that an existing body may have to re-constitute itself before it could become a MPP.

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<sup>41</sup> Marine (Scotland) Act 2010, section 12(1)(b)

<sup>42</sup> Transport (Scotland) Act 2005, section 1

**(iii) Membership**

3.17 Statutory provision as to the membership of the delegate is shown in Table 3. Section 12 of the Act was subject to several amendments at stage 3 of the parliamentary process. In our view these amendments, taken together, have resulted in a statutory provision that is not entirely coherent as regards the permissible and required membership of MPPs. This section provides our interpretation of the statutory requirements.

**Table 3**

**Statutory control of the membership of a MPP**

<b>Section 12(2) - (5) – Delegation of functions relating to RMPs</b>	
(2)	The delegate so designated must comprise of - <ul style="list-style-type: none"><li>(a) a person nominated by the Scottish Ministers, and</li><li>(b) one or more of the following -<ul style="list-style-type: none"><li>(i) a public authority,</li><li>(ii) a person nominated by a public authority with an interest in the Scottish marine region to which the RMP applies as the Scottish Ministers consider appropriate.</li></ul></li></ul>
(3)	Where the Scottish Ministers designate delegable functions under subsection (1) to a group of persons, they must ensure that the group comprises - <ul style="list-style-type: none"><li>(a) so far as reasonably practicable, representatives of persons with an interest in—<ul style="list-style-type: none"><li>(i) the protection and enhancement of the Scottish marine region to which the RMP applies,</li><li>(ii) the use of that region for recreational purposes,</li><li>(iii) the use of that region for commercial purposes, and</li></ul></li><li>(b) any other persons that the Scottish Ministers consider appropriate.</li></ul>
(4)	The Scottish Ministers may give a direction under this section only with the consent of any public authority referred to in subsection (2).
(5)	Where the Scottish Ministers designate delegable functions under subsection (1) to a public authority, the direction must include - <ul style="list-style-type: none"><li>(a) a statement of reasons setting out the grounds for designating the authority in preference to a group of persons,</li><li>(b) a requirement for that authority to consult on the exercise of its functions in relation to the Scottish marine region to which the RMP applies with—<ul style="list-style-type: none"><li>(i) representatives of persons with an interest in -</li></ul></li></ul>

- (A) the protection and enhancement of that region,
  - (B) the use of that region for recreational purposes,
  - (C) the use of that region for commercial purposes, and
- (ii) any other persons that the Scottish Ministers consider appropriate,
- (c) a requirement for that authority to have regard to any representations made under paragraph (b).

3.18 The potential membership is regulated by a mixture of prescriptive and permissive provisions. The Act requires that a delegate to whom functions are delegated “must comprise of”:

- (a) a person nominated by the Scottish Ministers, and
- (b) one or more of the following -
  - (i) a public authority,
  - (ii) a person nominated by a public authority with an interest in the Scottish marine region to which the RMP applies as the Scottish Ministers consider appropriate.

3.19 The Act does not state that the delegate “must include” these persons. In our view this is prescriptive of the membership of the delegate. It is not permissible for membership to include persons beyond those stated in sub-section 12(2).

3.20 It follows that the membership of a delegate is not to be determined by individuals or organisations independently “joining” the delegate. Membership must come through:

- (i) nomination by the Scottish Ministers; or
- (ii) being a public authority; or
- (iii) being nominated by a public authority.

This appears to be a continuing requirement.

3.21 However within these parameters the Act is permissive. The Act does not prescribe:

- (1) how many persons can be nominated by the Scottish Ministers. The Act refers to “a person nominated by the Scottish Ministers”. However, the rule of interpretation

applicable to Acts of the Scottish Parliament is that, unless the contrary intention appears, words in the singular include the plural. In this case we consider that it is open to the Scottish Ministers to nominate more than one person.

- (2) how many (if any) public authorities are to be represented. There is no upper limit on the number of public authorities that may be represented.
- (3) which (if any) public authorities are to be represented. The Act does not prescribe any criteria for selecting the public authorities to be represented.
- (4) how many persons are to be nominated by public authorities, or by any one public authority. Indeed the Act does not require that a nominating public authority should itself be a member of the delegate. The Act does not prescribe criteria for selecting a nominee other than the nominee must have an interest in the Scottish marine region to which the RMP applies.

Note that “person” as used in section 12 is not further defined and therefore includes both natural persons (i.e. individuals) and legal persons, both incorporated and unincorporated.

- (5) whether any particular organisation could be a member of the delegate in its own right, but also as a member of another organisation which is itself a member of the delegate.

3.22 Sub-section 12(5) of the Act requires the Scottish Ministers to make provision for a statement of reasons and for the relevant public authority to consult and have regard to representations if delegation is to a public authority in preference to a group of persons. Strictly interpreted this provision appears inconsistent with the permissible composition of a delegate required by sub-section 12(2). A delegate must comprise a minimum of the Scottish Ministers’ nominee and a public authority. It is not apparent that delegation can be solely to a public authority or, put another way, how delegation can be to anything but a group. However, we consider that sub-section 12(5) would be engaged should delegation be, for example, to a local authority together with a nominee of the Scottish Ministers. That appears to be the underlying intent of the provision.

3.23 We note that the Marine (Scotland) Bill as introduced to the Scottish Parliament provided for delegation of functions to either a public authority or a group of persons nominated by public authorities and / or the Scottish Ministers. Plan-making functions could have been delegated to, for example, a single local authority. At the stage 3 debate on 4 February 2010 an amendment was passed which inserted the requirement for a person nominated by the



Scottish Ministers to be a member of a delegate (as was enacted sub-section 12(2)(a)). The amendment reflected a concern that Marine Scotland should be represented on MPPs. At the same stage a separate amendment inserted the requirements of the enacted sub-section 12(5). This amendment reflected a concern that MPPs should be inclusive bodies and should comprise a group of people rather than a single public authority. It appears that these late amendments together created the inconsistent position of removing the possibility of delegation solely to a public authority but at the same time stipulating what is required in the Scottish Ministers' direction should this be done.

3.24 In our view and as a legal minimum membership of a delegate must comprise:

- a person nominated by the Scottish Ministers and a public authority; **or**
- a person nominated by the Scottish Ministers and a person nominated by a public authority.

3.25 Strictly this will constitute “a group” and engage sub-section 12(3). This requires the Scottish Ministers to ensure that the group comprises:

- (a) so far as reasonably practicable, representatives of persons with an interest in—
- (i) the protection and enhancement of the Scottish marine region to which the RMP applies,
  - (ii) the use of that region for recreational purposes,
  - (iii) the use of that region for commercial purposes, and
- (b) any other persons that the Scottish Ministers consider appropriate.

3.26 The argument for a restricted group would be that the public authority or less plausibly the nominated person satisfies the sectoral requirements of sub-section 12(3)(a). The most obvious example is a local authority which, it can be argued, has an interest in protection and enhancement, recreational use, and commercial development of the marine region.

3.27 However, the Act requires “so far as reasonably practicable” the Scottish Ministers to ensure that the MPP includes “representatives of persons” (in the plural) with an interest in these sectors, and indeed other persons considered appropriate. This indicates a duty on the Scottish Ministers to at least consider a larger group where the sectoral interests are individually represented. A larger group is also indicated by the stated purpose of MPPs discussed in chapter 4 below. It remains the Scottish Government's policy that MPPs should reflect the range of stakeholder interests within a SMR.

3.28 In reality the inconsistency noted at paragraph 3.23 above may not be a significant practical issue. If delegation is to a group then sub-section 12(3) applies and sectoral interests must be represented. If delegation is to a public authority and a nominee of the Scottish Ministers, a less strict interpretation would not see this as "a group" but would require consultation with wider interests.

3.29 The Scottish Ministers can give a section 12 direction only with the consent of any public authority which is represented on and / or nominating a person to the delegate.

### **Other functions**

3.30 In terms of RMPs the preparation, monitoring and amendment of the plan are the functions delegable. The Act does not identify any other functions. However, delegates will potentially have other functions and the exercise of these functions may also have implications for the legal form, membership and governance of the delegate.

#### **(i) Statutory consultee**

3.31 The Scottish Ministers may specify persons to be consulted in making a licensing determination under Part 4 of the Act. The Marine Licensing (Consultees) (Scotland) Order 2011 provides that a delegate under section 12 of the Act is to be a statutory consultee in relation to any application for a marine licence for an activity which is to be carried out wholly or partly in their SMR<sup>43</sup>. The Order came into force on 6 April 2011, but a delegate does not become a statutory consultee unless and until functions have been delegated under section 12 of the Act.

3.32 Delegates, once functions are delegated, will therefore also have a significant consultation role in marine licensing. This raises particular issues:

- (1) how should consultee responses be decided within the delegate when different members could potentially have divergent views as to the merits of a particular application?
- (2) what happens if the delegate supports or opposes an application but certain of its members, acting in a different capacity, strongly disagree with this position?
- (3) are there any risks if the delegate supports or opposes an application made by one of its members or indeed a commercial rival to one of its members?

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<sup>43</sup> The Marine Licensing (Consultees) (Scotland) Order 2011

(4) how should such potential conflicts be dealt with?

**(ii) Integrated coastal zone management**

3.33 Integrated Coastal Zone Management (**ICZM**) is a long established and internationally recognised approach to the challenges of coastal and inshore management, the limitations of which highlighted the need for a formal planning system for the marine environment. In 2002 the EU adopted a recommendation for member states with regard to a common approach to ICZM<sup>44</sup>. Stakeholder partnerships are a common feature of ICZM. In Scotland seven partnership areas currently exist with strategies prepared by stakeholder partnerships (see chapter 5).

3.34 ICZM strategies already inform terrestrial planning activity under the Town and Country Planning regime. Partnerships may act as useful consultees for government departments operating marine regulatory functions. The benefits of locally based ICZM strategies can be seen in the coordination of activities and in conflict resolution within the inshore area. However, the lack of authoritative territorial plans and of duly recognised and accountable decision making capacity restricts the scope of traditional ICZM partnership bodies in the area of statutory regulation.

3.35 ICZM is not expressly provided for in the Act, but Scottish Government policy, in a succession of marine strategy documents culminating in the 2008 “Sustainable Seas for All” consultation on a Scottish marine bill<sup>45</sup>, has been to support ICZM as the locally based strategy framework for integrating planning and development activity for the coastal and inshore areas. The policy memorandum for the Marine (Scotland) Bill stated that the Scottish Ministers remain committed to ICZM as a strategic management process<sup>46</sup>. The recent consultation document on defining the boundaries of the marine regions stated:

“Integrated Coastal Zone Management (ICZM) will also be a large part of the planning partnership role, recognising the potential interaction of coastal activities with both terrestrial and marine environments, and will require the integration of coastal and terrestrial planning and conflict resolution.”<sup>47</sup>

3.36 The official recognition of ICZM and the partnership approach referred to above, does not clearly scope the range of ICZM activity beyond the preparation of strategies to integrate marine and terrestrial planning. The Act appears to regard ICZM as being an aspect of marine planning and the requirement to take all reasonable steps to ensure that a RMP is compatible

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<sup>44</sup> Recommendation of the European Parliament and of the Council of 30 May 2002 concerning the implementation of Integrated Coastal Zone Management in Europe (2002/413/EC)

<sup>45</sup> Sustainable Seas for All – a consultation on Scotland’s first marine bill, Scottish Government, July 2008

<sup>46</sup> Marine (Scotland) Bill Policy Memorandum, April 2009, paragraph 28

<sup>47</sup> Scottish Marine Regions: Defining their boundaries – a consultation, page 4

with the terrestrial development plan(s) for the area adjoining the SMR<sup>48</sup>. A survey of the actual activities of the SCF members would reveal that there is much more involved in the areas of project generation, management plans and the positive implementation of strategies and not just in plan and policy development to advise the regulatory role of statutory bodies. It is not yet apparent whether, and to what extent, the Scottish Ministers envisage MPPs engaging in ICZM activities beyond those associated with preparation of RMPs and their integration with terrestrial development plans, or how the creation of MPPs is likely to impact on the activities of existing organisations with ICZM interests such as a local coastal partnerships.

**(iii) Encouraging participation in marine and coastal management**

3.37 Delegates could potentially have a wider role in encouraging public participation in marine and coastal management and raising awareness of marine issues. This also raises the issue of how MPPs will interact with and impact upon existing bodies such as local coastal partnerships.

**Summary**

- **Designation of SMR boundaries may have a significant effect on the appropriate structure and governance of different delegates. It is possible that one model will not fit all marine regions.**
- **The Solway Firth raises a particular cross-border issue.**
- **Significant statutory planning functions will be delegated and this requires decision-making arrangements capable of delivery.**
- **Direct stakeholder participation in the plan-making process must add value to the process.**
- **Scottish Government policy appears to support an inclusive membership.**
- **The delegate will not be a statutory body corporate and no legal form is specified in the Act.**
- **Membership of the delegate is confined to public authorities and nominees of the Scottish Ministers or public authorities.**
- **Delegates will, or may, have functions beyond preparation of a RMP and will have ongoing functions.**

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<sup>48</sup> Marine (Scotland) Act 2010, Schedule 1, paragraph 3

## 4. THE PURPOSE OF MARINE PLANNING PARTNERSHIPS

4.1 Chapter 3 reviewed the functions which may be delegated to a delegate and the statutory provision as to its membership. To reiterate, the Act does not require the Scottish Ministers (i) to introduce the regional tier of marine planning or (ii) to delegate any functions. Therefore it is necessary to consider the wider purpose of regional marine planning and of MPPs, asking what is the purpose of a MPP? As both the Scottish Ministers and a MPP will have to adhere to the statutory plan-making process and consultation requirements, what is a MPP seen as adding to the quality of a RMP? By extension, what implications does this have for the membership of a MPP?

### **Stakeholder involvement**

4.2 Marine strategy documents have consistently referred to MPPs as involving a diverse range of stakeholders in the plan-making process. The recent consultation on SMR boundaries states that:

- (1) “Marine Planning Partnerships will comprise representatives from a wide range of stakeholder interests, including public authorities and representatives that reflect the commercial, recreational and conservation interests of that region, for example, renewable energy, oil and gas, sea fisheries, aquaculture, conservation, recreation and tourism, ports, harbours and shipping.”<sup>49</sup>
- (2) “The SMRs are being devised for a specific reason, i.e. marine planning at the regional level, and there would need to be a diverse range of stakeholders within the Marine Planning Partnerships to ensure that all interests are taken into account in the planning process.”<sup>50</sup>

4.3 The implication of this Scottish Government document is that, notwithstanding the minimum membership permitted under the Act, MPPs should have an inclusive approach to membership. The involvement of stakeholders within the MPP is regarded as benefiting the RMP. The “added value” in plan delivery is that the MPP can bring together local, or at least regional, stakeholders and through this the RMP will better reflect local / regional circumstances, priorities and policies within the overall objectives established by the MPS and NMP.

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<sup>49</sup>

Scottish Marine Regions: Defining their boundaries – a consultation, page 4

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Scottish Marine Regions: Defining their boundaries – a consultation, page 30

4.4 However, such an approach has potential implications:

- does an inclusive membership counter the need for efficient decision-making? In this regard it is important to remember that the delegate is to be charged with efficient delivery of statutory functions.
- how are different interests to be represented, “balanced” and “weighted” within a MPP? For example, in certain areas, such as the Firths of Forth or Clyde, there are many local authorities with a coastline and that may potentially be represented within a MPP. In other MPPs there may be only one relevant local authority. But within a wider group should the members have an equal role in decision-making?
- should some members have a formal role in decision-making and others a more consultative or advisory role?
- by what criteria should members be selected? For example, is it appropriate for an organisation with an interest in particular recreational activity or a small geographical area to be represented?

### **Inclusiveness**

4.5 These issues are further considered in Chapters 6 and 7. However, in this regard it is also important to consider what is meant by an “inclusive approach”:

- (1) although policy documents have consistently referred to the MPP as the delegate for regional planning purposes the term MPP is not used in the Act. There is no requirement that the delegate, as defined in sub-section 12(2), and some wider advisory or consultative partnership should be one and the same. Given the flexibility of the Scottish Ministers' direction powers it is possible to delegate planning functions to a relatively small group of persons (the statutory delegate in terms of sub-section 12(2)) but also direct that the delegate engage with a wider group of stakeholders (who could indeed be called a MPP). If the result is sufficiently inclusive and effective it is arguably much less important whether any particular interest is actually part of the delegate. Indeed many interests may not wish to be part of a formal decision-making body with the attendant statutory responsibilities and necessary commitment to a prolonged plan-making process.

- (2) the statutory plan-making process<sup>51</sup> requires that the delegate, however constituted, adopts an inclusive approach. It is important to remember that a RMP is not drafted by the delegate without the involvement of external stakeholders and the wider community. There are various mechanisms requiring such involvement and allowing for relevant parties to be closely involved in particular topics and in formulating policies and proposals. In particular:
- (i) a Statement of Public Participation must be prepared and (when approved by the Scottish Ministers) complied with. It must detail when consultation is to take place, with whom, its form and the steps to be taken to involve the general public. Representations must be invited as to matters to be included in the proposed RMP and such representations must be considered by the delegate<sup>52</sup>.
  - (ii) a consultation draft RMP must be published, representations invited and any representations considered by the delegate<sup>53</sup>.
  - (iii) there is provision for the delegate to seek advice or assistance from any body or person with particular expertise<sup>54</sup>.
  - (iv) there is provision for the delegate to convene groups, in such manner as is considered appropriate, to facilitate the involvement of interested parties in developing proposals or consulting on proposals<sup>55</sup>.

## Summary

- **Delegation, and the delegate, must add value to the regional marine planning process and the RMP.**
- **Scottish Government documents have consistently advocated an inclusive approach to membership of the delegate.**
- **A wider membership has potential implications for decision-making.**
- **It may not be feasible or desirable for all relevant stakeholders to have a direct role in decision-making as members of the delegate, and participation is provided for through other mechanisms.**
- **In preparing a RMP the Act requires or permits considerable engagement with stakeholders.**

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<sup>51</sup> Marine (Scotland) Act 2010, section 5(2) and Schedule 1  
<sup>52</sup> Marine (Scotland) Act 2010, schedule 1, paragraphs 4 and 5  
<sup>53</sup> Marine (Scotland) Act 2010, schedule 1, paragraphs 9 and 10  
<sup>54</sup> Marine (Scotland) Act 2010, schedule 1, paragraph 7(1)  
<sup>55</sup> Marine (Scotland) Act 2010, schedule 1, paragraph 7(2)

## 5. EXISTING STAKEHOLDER PARTNERSHIP ARRANGEMENTS

### Introduction

- 5.1 This chapter provides a high level overview of a range of existing stakeholder partnership arrangements in Scotland. The term "stakeholder partnership" is used in a very broad and non-legal sense. The common characteristic of these bodies is that membership is drawn from a variety of sources but through the "partnership" seeks to work together to achieve a common objective.
- 5.2 The diversity of these stakeholder partnerships, their legal form, functions and governance arrangements must be emphasised. It is not suggested that any of these partnerships can provide an exact model for the delegate.
- 5.3 The following issues are summarised:
- **Legal basis:** the legal basis for the partnership, for example formed under statute or a voluntary association.
  - **Legal form:** the legal form of the partnership, for example a statutory body corporate, a company limited by guarantee, or an unincorporated association.
  - **Functions:** the functions of the partnership, for example delivery of a statutory plan-making function or an advisory function.
  - **Membership:** how the membership is chosen, for example through selection, nomination or being open to any person with an interest in the partnership.
  - **Constitutional arrangements:** how the constitutional arrangements of the partnership are ordered, for example through primary or secondary legislation or a constitution adopted by the partnership and how may these arrangements be varied.
  - **Governance and decision-making:** how the partnership takes decisions, for example through voting or reaching a consensus; whether decisions are taken by the entire membership or by particular decision-making groups; whether other mechanisms are used to inform decision-making, for example use of advisory groups to facilitate wider stakeholder involvement.



## (1) Partnerships with statutory planning functions

### 5.4 Strategic Development Plan Authorities

**Legal basis:** The terrestrial planning system in Scotland is emerging from a period of significant legislative reform. As regards development planning, structure plans are being phased out and are to be replaced, for Scotland's four city-regions, with strategic development plans (**SDPs**). By virtue of direction powers in the Town and Country Planning (Scotland) Act 1997 (as amended by the Planning etc (Scotland) Act 2006) the Scottish Ministers have designated strategic development plan areas and the groups of local authorities that are to form a Strategic Development Plan Authority (**SDPA**) for each area.

**Form:** One option for a SDPA is to create a joint committee under section 56 of the Local Government (Scotland) Act 1973.

**Functions:** The core function is preparation, monitoring and review of strategic development plans.

**Membership:** The local authorities comprising a SDPA are designated by a Designation Order from Scottish Ministers. Legislation does not specify the SDPA membership but statutory guidance states that SDPAs should form a joint committee of elected councillors. The guidance recommends that two councillors from each constituent local authority are represented to ensure that meetings are manageable, nomination of members being for the respective local authorities. Non-voting members, for example from key statutory agencies, may be co-opted to provide specialist expertise.

**Constitutional arrangements:** The Act leaves this largely to the constituent local authorities. A minute of agreement among member local authorities may regulate constitutional matters. Should the SDPA fail to make effective management arrangements the Scottish Ministers have default powers to direct one local authority to manage the plan preparation process.

**Decision-making:** The level of decision making delegated to SDPAs is for the constituent local authorities to determine. Statutory guidance states that the Scottish Government "envisages major decisions, for instance about the content of the SDP, will be ratified by the individual planning authorities"<sup>56</sup>. It further states an expectation that most decisions will be reached by consensus. The Act provides a mechanism whereby if constituent local authorities

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<sup>56</sup> Planning Circular 2/08: Statutory Guidance on Strategic Development Planning Authorities, The Scottish Government, April 2008

are unable to agree on the content of a SDP one or more members can submit alternative proposals to the Scottish Ministers together with a statement of reasons.

SDPAs are supported by teams of planning and technical specialists, hosted by one of the member local authorities.

## 5.5 **National Park Authority**

**Legal basis:** National Park Authorities (**NPA**s) are constituted under the National Parks (Scotland) Act 2000. The Act provides for the designation of national parks and of a NPA to exercise functions under the Act. To date two national parks have been designated: the Cairngorms National Park and the Loch Lomond and the Trossachs National Park.

**Form:** A NPA is a statutory body corporate. Each NPA is a free-standing non-departmental public body deriving its legal personality and powers from the Act.

**Functions:** The Act specifies the general purpose of a NPA as being to ensure that the national park aims (as defined in the Act) are collectively achieved in a coordinated way. The Act sets out certain functions of the NPA and provides that planning functions and additional functions may be conferred in the Designation Order.

Both NPAs have been allocated local plan making powers through their Designation Orders. However, different development management powers have been designated, those of the Loch Lomond and the Trossachs NPA being more extensive.

**Membership:** NPA size and composition is detailed in the Act and the Designation Order. The Act provides that the NPA may not exceed 25 members and that at least one fifth of members must be directly elected by residents of the national park. The remaining members are to be appointed by the Scottish Ministers, with half of these nominated by local authorities covering the national park. The Designation Order provides for the number of members to be nominated by each local authority.

**Constitutional arrangement:** Detailed governance provision is made in the Act and Designation Order, including membership, removal of members, election of a convener, appointment of officers and member's interests.

**Decision-making:** Decision-making responsibility is conferred on the NPA. Decisions may be delegated to committees (which must have a majority of NPA members), members or employees. Delegates must comply with directions given by the NPA. A NPA is to determine its own procedures.

Each national park must have of one or more National Park Advisory Groups with the function of advising the NPA on any matter relating to the NPA's functions, the membership and procedure of such group to be determined by the NPA. This provides a mechanism for wider stakeholder involvement.

## 5.6 **Regional Transport Partnership**

**Legal basis:** Regional Transport Partnerships (**RTPs**) are constituted under the Transport (Scotland) Act 2005. There are seven RTPs covering every part of Scotland.

**Form:** A RTP is a statutory body corporate.

**Functions:** The primary function of RTPs is to produce a regional transport strategy for their designated region. Strathclyde Partnership for Transport is also responsible for delivery of their regional transport strategy.

**Membership:** The legislation specifies the number of elected councillors to be appointed from each constituent local authority and the relative weighting of their votes. It also provides a range of how many other members (non-councillors) can be members of the RTP. These members are appointed by the RTP subject to the approval of the Scottish Ministers. Elected councillors must form the majority of any RTP. Advisors may also be appointed and could include transport operators or experts.

**Constitutional arrangement:** Detailed governance provision is made in the Act and Designation Order.

**Decision-making:** Decision-making powers and responsibility are conferred on the RTP.

## 5.7 **Community Planning Partnership**

**Legal basis:** Community Planning Partnerships (**CPPs**) are established under The Local Government in Scotland Act 2003. The Act requires local authorities to initiate and maintain a community planning process in their administrative area.

**Form:** CPPs are unincorporated associations. The Act permits the Scottish Ministers by Order and on the application of the local authority together with another participant in the community planning process to designate the CPP as a body corporate with specified functions. It is our understanding that no applications for corporate status have been made.

**Functions:** CPPs provide a forum to bring together local authorities, other public authorities, and other organisations and community groups to promote integrated planning and provision of better public services and to engage effectively with the local community. This may involve, among other initiatives, preparation of a Community Plan. A CPP is dependent on member organisations to implement agreed outcomes.

**Membership:** The Act requires the local authority to invite public bodies and such community bodies as it thinks fit to participate in community planning. Specified public bodies have a duty to participate in community planning and to assist the local authority in discharging its community planning function. Otherwise guidance states that the CPP should invite membership from all relevant public, private, voluntary and community bodies. Community planning as a process should be open to any body or individual wishing to participate.

**Constitutional arrangement:** The Act does not specify any constitutional arrangements although regard must be had to the Scottish Ministers' guidance. A CPP may establish its own procedures and protocols.

**Decision-making:** Typically there may be a CPP core group or board charged with strategic decision-making. Scottish Ministers Advice Note 2 on partnership models and structures highlights key considerations:

- "The balance between maintaining a stable core membership whilst allowing sufficient flexibility for others to make their views known."
- "Managing the potential tension between adopting an inclusive approach, which could require a large number of partners to be formally involved and the need for efficient decision making structures."
- "The particular focus of bodies and potential contribution they can make"
- "The skills and competencies to operate at this level. Where new partners are brought in at the strategic partnership level there may be a need for initial induction and training."<sup>57</sup>

## (2) Marine partnerships

### 5.8 Local Coastal Partnerships

**Legal basis:** Local Coastal Partnerships (**LCPs**) are non-statutory bodies. There are currently seven LCPs in Scotland: Solway Firth Partnership, Firth of Clyde Forum, CoastHebrides, Moray Firth Partnership, East Grampian Coastal Partnership, Tay Estuary Forum and Forth Estuary Forum.

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<sup>57</sup> The Local Government in Scotland Act 2003, Community Planning: Advice Note 2, Scottish Executive, 2004, page 25

**Form:** LCPs are formed as unincorporated associations or companies limited by guarantee and with charitable status. Where LCPs have incorporated as a company limited by guarantee this is seen as providing a form independent of public agencies and providing legal protection for directors and staff.

**Functions:** LCPs were initially established in the early 1990s in recognition of the importance of ICZM. LCPs promote sustainable development and management of coastal areas, provide a forum for stakeholder and community engagement and conflict resolution, and raise awareness of coastal issues. LCPs lead or participate in various marine management initiatives but do not have any statutory functions or powers.

**Membership:** LCP membership is open to any body or individual with an interest in their coastal area.

**Constitutional arrangements:** Incorporated LCPs are governed through a memorandum and articles of association. The articles will govern matters such as membership, general meetings, voting rights, and the composition of and election to a board of trustees.

**Decision-making:** A board of trustees, established under the articles or otherwise, is the strategic decision-making group. The LCP structure may typically include a management or steering group of key stakeholders, including funding partners, to take operational decisions, and wider advisory or issue based groups.

## 5.9 **Inshore Fisheries Groups**

**Legal basis:** Inshore Fisheries Groups (IFGs) are non-statutory bodies. Six pilot IFGs have been established: Clyde, Moray Firth, North West, Outer Hebrides, Small Isles and Mull and South East. Other IFG areas have been designated but do not have an established IFG.

**Form:** IFGs are formed as unincorporated associations. Scottish Government guidance leaves it open to an IFG to incorporate as a limited company.

**Functions:** The core function of an IFG is to develop an Inshore Fisheries Management Plan reflecting key regional objectives in fisheries management. IFGs do not have any statutory functions or powers.

**Membership:** IFG membership is restricted to fishermen's associations, individual fishermen, and others with a sufficient commercial fisheries interest, and who operate within the particular IFG area.

**Constitutional arrangements:** The Scottish Government has published a model IFG constitution.

**Decision-making:** Decisions are taken by an Executive Group comprising a representative of each fisherman's association in the IFG and a representative elected by individual fishermen. Scottish Government guidance recommends an advisory group to assist in the development of the Inshore Fisheries Management Plan.

#### 5.10 **Marine SAC Management Scheme Groups**

**Legal basis:** The EU Habitats Directive was implemented into Scottish law as the Conservation (Natural Habitats, etc.) Regulations 1994 and contains provisions relating to the management of marine Special Areas of Conservation (**mSACs**). The Regulations provide that management schemes may be established when necessary. Although the schemes have this statutory basis they operate on a system of voluntary management measures with co-operation between interested parties.

**Form:** The management groups are unincorporated associations.

**Functions:** The groups establish a management framework in conjunction with the relevant authorities who have responsibilities for the mSAC, the management framework being voluntarily implemented by the relevant authorities as a means of complying with their obligations under the Regulations.

**Membership:** Membership comprises the relevant authorities for the marine area and representatives of organisations which have an interest in the marine environment in and around the mSAC.

**Constitutional arrangements:** We understand that the management group is governed by arrangements and protocols agreed voluntarily among its members.

**Decision-making:** Arrangements for decision-making are made by the group. In the case of Moray Firth mSAC group representatives of the relevant authorities are full members with LCP representatives taking the on the role of Secretariat. The group also includes non-members who are special advisors to the mSAC Management Scheme.

#### 5.11 **SEPA River Basin Planning Area Advisory Groups (AAGs)**

**Legal basis:** The EU Water Framework Directive was implemented into Scottish law through the Water Environment and Water Services (Scotland) Act 2003. The objective is to prevent deterioration of the water environment and to restore surface waters and groundwater to “good status” by 2015. The development of river basin management planning is led by SEPA. The area covered by the river basin planning process is inland waters and coastal waters to three miles. Most of Scotland is covered by a Scotland River Basin Management Plan (**RBMP**). The Solway Tweed river basin is covered by a separate RBMP jointly managed by SEPA and the Environment Agency. River Basin Planning Area Advisory Groups (**AAGs**) assist in the process of river basin management planning for their regions.

**Form:** AAGs are unincorporated associations.

**Functions:** AAGs advise in the preparation, delivery and implementation of their Area Management Plan.

**Membership:** AAG membership is open to representatives from key authorities with responsibility for river basin management planning in the area, the “deliverers” of water management measures, and representatives of organisations and activities which impact on the resources of the water environment. AAGs can also have a forum which has open membership.

**Constitutional arrangements:** Every AAG is made up of a core group of full members. However, membership is flexible and it is possible to co-opt additional members for a specified time to assist with particular aspects of planning. The co-opted members do not hold full membership status and consequently do not impact on quorum or voting arrangements.

**Decision-making:** The full members of the AAG are entitled to vote on decisions taken within the group. Each AAG is coordinated by a SEPA area representative.

## 6. STAKEHOLDER VIEWS

### Structured discussions

- 6.1 A sample of stakeholder views was elicited through a series of telephone discussions structured around the issues / questions below. This chapter presents an overview of the stakeholders' views with our comments on the views expressed.
- 6.2 The stakeholder organisations were selected in discussion with the Steering Group and are listed in Appendix C. It should be recognised that this was not a formal or comprehensive consultation exercise and many other stakeholder organisations will have relevant expertise and views on the subject of regional planning and MPPs. However within the resources available we attempted to speak with a range of stakeholders with experience of marine issues and partnership working.
- 6.3 The exercise involved a telephone discussion with an identified member of the stakeholder organisation rather than a formal response from the stakeholder organisation<sup>58</sup>. In the case of a formal consultation exercise many of the stakeholder organisations would require confirmation, by a committee or board, of the consultation response. Therefore we have not attributed any comment to a particular organisation.

### Stakeholder views

#### **Issue 1 – Does any existing partnership model provide an appropriate model for the effective exercise of the functions to be delegated under the Act?**

#### 6.4 **Stakeholder views:**

- No one existing model is appropriate for MPPs, although aspects of different existing partnerships (SDPAs, NPAs, and RTPs) might be appropriate to MPPs.

This view was expressed by several stakeholders.

- Experience of a SDPA is that it uses a core team of planners to draft the plan but with the ongoing support and engagement of a larger group of key stakeholders, local authority representatives and elected members as well as public engagement. This allows involvement with the key stakeholders throughout plan preparation. The plan team needs

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<sup>58</sup> Several stakeholders provided written responses



to be distinct but has encouraged a more inclusive ownership from stakeholders and this has worked well.

- SDPAs demonstrate that non-statutory partnerships can effectively work together to prepare a statutory plan.
- LCPs provide an appropriate model and LCPs should develop into MPPs. LCPs already have a history of bringing local authorities, industry and other interests together. LCPs have developed to have a core of directors concerned with management decisions and a wider group of stakeholders. However it is recognised that LCPs do not have experience of producing a statutory plan and as currently constituted are better equipped for non-conflict situations.
- No single model is appropriate, but a combination might be, such as a form of LCP but with the membership of other interested parties. The experience of LCPs must be maintained while creating something new and fit for purpose.
- Experience of stakeholder partnerships in England has highlighted problems such as stakeholder self-interest and difficulty in reaching decisions. It is essential to have a good chairman enjoying the confidence of different parties.
- LCPs provide an excellent model, especially if ICZM is one of the plan objectives. Changes to legal form and constitution would be required to accommodate the requirements of the Act and enhance the rigour of governance arrangements. However LCPs bring together groups with differing needs and interests and produce coherent, valuable and relevant outputs.
- The SDPA model has merit, but the relative strength of different organisations in a similarly constituted MPP would need careful management.
- It is difficult to identify a comparable model with the same statutory make up as MPPs. Marine Scotland should initially have a key role as chair of the MPP and provide technical support and resources, similar to the role SEPA plays within AAGs. Democratic accountability is seen in local authority development planning, and NPAs have a mix of appointed and elected members. However elections are not necessarily desirable. LCPs are too large a grouping, unless management boards are nominated.
- The MPP must be inclusive, but if too many parties are involved it will not be manageable. It is necessary to have a small group to take decisions and steer the MPP, possibly with a

wider advisory group. In a terrestrial planning situation a core group will be involved in decision-making.

- No existing partnership models are particularly good for the proposed MPPs. MPPs should operate on a consultative basis but should be more than advisory. However they should not be decision-making bodies.
- No particular model is appropriate. It is vital to recognise the functions of some existing organisations, such as AAGs and LCPs, are advisory or networking. This is different to a statutory policy-making body. LCPs have been unable to respond to consultations due to the need to work through consensus.

**Summary:**

6.5 The most prevalent view was that no single existing partnership model is appropriate for MPPs, although elements of different models are instructive. Stakeholders noted that MPPs must discharge a statutory planning and policy making function in contrast to some existing advisory or networking organisations. However the inclusive nature of organisations such as LCPs was seen as facilitating “buy in” to the plan-making process. Some stakeholders did support the delegation of plan-making functions to a modified LCP.

**Issue 2 – Are there any other partnership models which should be considered?**

6.6 **Stakeholder views:**

- If time and resources allow then possibly investigate regional marine planning structures in other nations such as Canada and Norway.

This view was expressed by three stakeholders.

- Consider the model of AAG river planning.
- Consider the experience of SSMEI projects. There are lessons to be learned in setting up these groups and identifying criteria for inclusion of members. Stakeholders had different experiences of attending meetings and some found the discussion of policy wording difficult. It is important to involve stakeholders, but not necessarily in the detail of policy drafting.
- Moray Firth SAC management group, which involves only the relevant statutory bodies, is workman-like in its approach, tries to achieve its ends by consensus, and can draw on a

wider coastal partnership for support, administrative help, and publicity.

**Summary:**

- 6.7 The majority of stakeholders felt that relevant existing partnership models had been identified. As regards a review of regional marine planning structures in other countries it is accepted that this could be instructive. However, such a review would require a level of resourcing not available to this study.

**Issue 3 – Can an open or wide membership (particularly in terms of decision-making powers) provide an appropriate basis for the discharge of statutory plan-making functions?**

6.8 **Stakeholder views:**

- A trade-off is required between ensuring that the size of the group is manageable but everyone is represented. So the ideal would be a small core group with statutory functions, but it should still be inclusive and hear input from wider interest groups.
- Experience from the SSMEI pilot projects has shown that it is difficult to draft effective planning policies “by committee”. Where a large group of stakeholders is involved in agreeing the wording of policies these can become vague, long-winded and difficult to implement. It seems likely that a tight (non-sectoral) group with experience of planning work would be best placed to lead on policy drafting and plan preparation. The wider group of stakeholders would need to provide advice and be consulted at appropriate stages as the plan is developed. A related sectoral issue arising from the SSMEI experience is need for clarity of roles and responsibilities between stakeholders (and particularly the Chair) of a MPP and the professional planners/specialists that may be employed, possibly by one organisational member of the MPP or Marine Scotland, to do the day to day work of plan production.
- Yes, a wide membership can make effective plans. It is important that all interests are represented.
- All stakeholders will want a say in the process but there are so many that it will be difficult to give them all much genuine influence. Often stakeholders will look only to self-interest.
- The Firth of Clyde forum pilot project worked well with a wide membership in the core group. It is an example of goodwill partnership working and a core group of 20-22 worked well. There may be difficulties in getting all parties to sign off on the plan. A lesson learnt

is that you cannot expect members to draft the plan. This will require a small group to draft the plan with support from government, local authorities and constituent bodies with expertise.

- No, there are too many different agendas out there. A three-tier structure is likely to be most appropriate: (a) a lead organisation to drive the marine planning work on a day-to-day basis, to co-ordinate the input of the different players, and to take the tough decisions when the players disagree, (b) a core group of representatives of the relevant statutory bodies which help the lead body to produce and implement a well-informed, useful, joined-up plan (these, together with the lead body should form the actual MPP) and (c) a wider advisory group comprised of other interested bodies and persons (e.g. representatives of the relevant industries and commercial interests, local communities, non-governmental organisations, marine research institutes).
- It would be a retrograde step to draw away from existing groups with a wide membership and would damage current goodwill towards marine planning.
- Current LCPs are inappropriate for exercising statutory plan powers. Large numbers are not feasible, but 8-15 members with a good mix of representatives is reasonable. The issue of ministerial appointment will limit openness. It is important to remember that a MPP will have legal responsibility to discharge its statutory functions. It is possible to have working groups underneath the core group.
- LCPs already perform this function admirably. An “executive group” who deal with management (a constant) and supported by “working groups” (project specific, industry specific, and created and disbanded as required) would improve this approach. This makes it easier to include a variety of organisations to produce meaningful RMPs. A wide membership partnership is possible and a wide input is required for a plan.
- It is vital to remember the distinction between a decision-making body exercising a statutory plan-making function and a networking organisation. An organisation suited to networking is not suited to decision-making. Commercial organisations have particular concerns over the involvement of single issue groups who do not understand the role of plan-making and its interaction with economic development and existing statutory responsibilities in the marine area.
- Inclusiveness is very important but there may be an optimum size (15 or so) for management of the MPP. Other parties may have a more limited role.

- It is better to have wide forums with a consultative function. It is important to clarify the role of consultation and ensure parties understand that representations will be considered but may not be implemented.
- Stakeholder involvement is important. A wider group might lead on issues such as ICZM. It is important to remember that different scales are involved in plan-preparation, from the local community to the regional level.
- A wide membership could cause problems. Statutory plan-making should be driven by Marine Scotland and should utilise objective data and technical expertise.

**Summary:**

6.9 As anticipated, very different views were expressed on this issue. Some stakeholders considered that the MPP, and certainly the function of decision-making within the MPP, must be restricted to a relatively small group. This was considered to provide more effective decision-making. Others felt that the MPP should be as inclusive as possible, that a larger membership is not inconsistent with effective decision-making, and that restricting plan-making to a small group may be regarded by some as a retrograde step. The majority of stakeholders supported a distinction between a core decision-making group and a wider stakeholder group who should be consulted and involved where this benefited plan-preparation. The discussions highlighted several other issues: (i) that inclusion of a wider group of stakeholders may be achieved other than by direct membership, or membership of the decision-making group (ii) that a MPP must allow for the inclusion of necessary technical and policy-drafting skills and (iii) that the primary plan-making function of a MPP may indicate a different approach to membership than other potential functions, such as a role in ICZM.

**Issue 4 – Should the planning functions be delegated to a restricted group comprising the MPP, with (or without) provision for a separate advisory forum without the delegated functions?**

6.10 **Stakeholder views:**

- It would be uncomfortable if organisations on the core group of current LCPs simply have an advisory role in MPPs. MPPs need a reasonably wide group to discuss and agree policy for the plan. A three tier system may be used: policy drafters with planning expertise; a bigger core group to agree on policy (more than advisory role); and a smaller group and staff to oversee licensing functions.

- Yes, the MPP should operate with advisory/working groups and a core group making decisions and running the MPP. The smaller restricted group bears responsibility, should have a good cross section of stakeholders and engage with wider stakeholders. Working groups looking at different themes can advise those with delegated powers.
- One option is that the MPP (with delegated functions) is the tight core group, with wider stakeholder input through an advisory forum. Another option might be that the MPP is the wider group and has a statutory role in the planning process, but that a core planning team is selected by the wider group to lead the planning functions. Or could Marine Scotland decide not to delegate the core plan preparation tasks at all (at least initially) and merely engage with regional stakeholders to prepare the plan.

There are many examples of plans where the input of several partners has been difficult to coordinate, even where total numbers of stakeholders are not that great (e.g. Spey Catchment Management Plan). Clyde SSMEI experience strongly suggests that there needs to be a small group tasked with plan production which is required to consult more widely but who ultimately have authority to draft the plan.

Based on experience in the Clyde, colleagues suggest that the RMP needs to be prepared by a small group of people (termed “delegate” in the Act) with planning and marine experience and delegated authority. This delegate needs to be independent, accountable and able to make decisions within a certain timescale. They should consult a wider group of stakeholders (could be termed MPP “members” or “consultees”) for sectoral input, however, if the delegate needs to make development and licensing decisions, they also need to be able to operate independently of a wide group of stakeholders. The delegate could then be established with the appropriate legal form. This also enables all SMRs to have a similar structure with flexibility of operation through how the delegate interacts with MPP members and who they are.

- Yes, the planning functions should be delegated to a restricted group, with provision for a separate advisory forum.
- This is a possibility. In principle decisions on planning should be made by a small group advised by a wider forum.
- There should be a small steering group answerable for its decisions and with a wider advisory group. A steering group of 8-12 people is appropriate, with representatives of government, conservation and business.

- Yes, the planning functions should be delegated to a restricted group - a core group of relevant statutory bodies. And yes, there should be a separate advisory group without the delegated functions. Experience of the Sound of Mull project, where representatives of certain commercial interests were included on the core working group which decided the content of the plan, rather than on the advisory group, showed that you can be too inclusive. Certain non-governmental organisations which wanted to be members of the working group were, on the other hand, not invited to join it. Under the circumstances it was right that their request was declined but it also served to highlight the anomaly of including commercial interests in the plan-making group. Organisations on the plan-making group should all have statutory roles and a responsibility to the wider public.
- More discussion is required on the detail but this is on the right track in terms of managing the balance between keeping the group manageable yet inclusive. Who will make up the advisory group must be decided.
- It is important not to lose inclusiveness.
- Yes, the MPP should be restricted to core agencies, local authorities and representatives of commercial, recreational and environmental interests. Single issue groups should have an input but not be represented as they will anyway have an opportunity to comment on the plan.
- Such groups are an essential part of the RMP development process though their number and composition need not be uniform across MPPs. There is a danger that the findings of sub-groups without delegated functions could be ignored or watered-down by the main group, so the governance model adopted should find some way of holding the main group to account if this should occur.
- The only workable approach is to have a restricted core group with advisory groups.

**Summary:**

- 6.11 There was broad, although by no means total, support for some form of delegation of the statutory functions to a smaller core group, but with an obligation to involve wider stakeholder interests through an advisory forum or particular topic or geographically-based groups. It was emphasised that the views of any wider advisory forum(s) should be treated as important by the core group.

**Issue 5 – If so, how can effective engagement with a wider group of stakeholders be provided for and do any existing partnerships provide a model for such engagement?**

**6.12 Stakeholder views:**

- A wider core group provides better and more effective engagement with stakeholders. This is not necessarily time efficient, in that the plan may be developed quicker with a smaller core group, but more stakeholders would improve ownership of the plan and decrease disgruntlement. This would allow for more inclusive debate and pave the way for more effective implementation, although it does not fit well with budgetary constraints.
- Many of the existing LCPs are structured with a core / management group which takes decisions (albeit not planning decisions) and a wider forum membership of stakeholders who meet at annual conferences and are consulted on strategies etc. There is also often a series of topic or working groups that report to the management group and can work on specific themes or time-limited projects. This could work well for sectoral issue reports to feed into RMPs. However, it must be recognised that the key challenges for planning are in integrating these sectoral issues and getting sectoral interests to work together to resolve any conflicts, as well as having appropriate authority to make decisions where any conflicts need to be addressed within the plan.
- SSMEI Advisory Groups work well - established from a previously existing group. 18 members was the right number, with a wider forum of 50 receiving email updates and minutes.
- Experience and clear criteria are needed to set up a core group. Membership decisions must be fair and transparent. Many parties may want to be considered for a MPP and criteria for inclusion must therefore be established. There may be concern about a bias to industry representation.
- Advisory groups are a good way of getting a wide range of views. There might be problems if a particular industry only has one representative on a MPP, who might be self-interested, so this would have to be worked out.
- This depends on who sits on the advisory group - everybody would want a say and it is difficult to hold any given stakeholder's views as more important than another's. Also an individual stakeholder's view may not be representative of his industry, and different structures may be needed to take account of different views. The crucial factor is that no views can be excluded, and stakeholders need to be able to communicate their views to the advisory group, or even the decision-making group.



- Advisory groups can become a forum for self interest. There is a need to be careful of over-representation of any sector.
- Experience of some advisory groups is that government agencies come with an official line and stakeholders felt like decisions were already made. Therefore engagement was not as effective as it could be. The Chair is key to effective engagement. Local stakeholders are important as they feel ownership for the area and are more likely to accept the plan.
- There should also be a consultative forum, and local forums, which should have a right of appeal to Ministers if they feel their views are not being considered.
- Effective engagement with a wider group of stakeholders can be achieved by:
  - (i) identifying them as the community liaison group for the project (a sounding board in effect);
  - (ii) keeping them up to date with progress on the marine planning work by means of a newsletter and meetings at appropriate junctures in the planning cycle which are designed to engage or sustain their interest;
  - (iii) giving key stakeholders the opportunity to make presentations to the core group (the MPP) from time to time (just as the SCF sometimes invites LCPs or commercial interests to make presentations to its plenary meetings); and
  - (iv) ensuring that the marine plan is:
    - (a) relevant to, and informed by, the wider group of stakeholders;
    - (b) seen as progressive and a force for good, not just holding the ring between competing interests; and
    - (c) well written and presented, user-friendly, and succinct.

**Summary:**

6.13 Various existing mechanisms were identified, emphasising effective communication by a core group. Several stakeholders highlighted that effective engagement is primarily determined by a decision-making group providing opportunities for stakeholder input (by whatever appropriate means) and demonstrating its willingness to listen and explain. One stakeholder reiterated that the most effective engagement would be through a wider membership of the decision-making group.

**Issue 6 – Is a single model for the form and governance of MPPs appropriate across all Scottish marine regions? What regional variations might affect the appropriate composition and constitution of MPPs?**

**6.14 Stakeholder views:**

- There must be regional variations with regard to processes and construction of the body e.g. different marine regions will have varying numbers of local authorities. Therefore MPPs cannot have the same structure. Some areas will have increased management requirements dependent on pressures of activity use, range of stakeholder interest and community interests.
- One size will not fit all.
- The degree of involvement of local authorities will vary considerably from a SMR for Firth of Forth or Clyde (7 or 8 local authorities), to one for Shetland, Orkney, Western Isles, Highland or Argyll & Bute (potentially a single local authority). The local authority might be expected to have a greater lead role in the latter case. The Solway Firth (and Berwickshire coast) raises particular issues due to cross-border planning requirements, although these will largely be restricted to good liaison to link with adjacent MMO plans.

Engagement of local communities may vary depending on the scale of the SMR. It seems likely that there would be more “ownership” from communities and local users within a discrete firth or island group than in a large SMR with a complex mainland coastline. For example a SMR potentially covering the west coast from Cape Wrath to Ardnamurchan could present logistical challenges for arranging meetings and encouraging engagement without allowing for more local engagement or sub-plans. This might also apply to a potential SMR covering the Tay and the Forth, where the different firths could require distinct approaches.

It would be helpful to clarify whether the Act allows for the preparation of more than one plan for any SMR, so that if within a large SMR there is a particular sub-area that would benefit from a more detailed plan, this could be produced as well as the main RMP. If this is possible this might have a bearing on the make-up and working of MPPs.

However these issues relate more to the make-up of any wider stakeholder advisory forum and approaches to developing the plan, rather than the composition and constitution of MPPs themselves.

- The model should be similar across the regions to provide continuity, but given the diversity of the Scottish coastal regions one size will not fit all and there must be room for variation. Overall, there should be one template while not ruling out potential variation.
- The structure suggested above should be appropriate in most circumstances. For the more heavily populated estuaries like the Clyde and Forth, where there is a relatively large number of local authorities, the core MPP is likely to be large unless some of the local authorities are prepared to appoint joint representatives.

In marine areas where the adjacent coast is predominantly rural and falls largely within the territory of a single local authority (e.g. the marine areas around the island archipelagoes, the inshore waters of the Highland west coast and Argyll & Bute) the local authority should be the lead body for the MPP.

For marine areas where there is a major marine research institution nearby, that institution may merit a special advisory role with respect to the MPP. For example, Argyll & Bute Council's ICZM plan for Loch Etive benefited from the proximity to, and involvement of, SAMS at Dunstaffnage.

For marine areas with an extensive coastline and rugged coastal topography, communities are likely to be well scattered and their interests will be more difficult to represent directly at meetings. In such instances, the representative role of the local authority and an effective communications strategy throughout the planning cycle will be particularly important.

- Yes, there should be a single model - good for one, good for all. While there are differences between regions it is important to have a single model and consistency.
- No, as Scotland's regions are very diverse. This applies particularly to the economy of the West coast which is often based around small communities where stakeholders are very important - very different from the East coast. It must be recognised that what suits the East coast will not necessarily suit the West or the Islands.
- MPPs will probably differ in size and composition to respond to regional circumstances but a single constitutional model and governance standard for all MPPs should be aspired to. The "executive group/working groups" model accommodates this, and allows for the required regional variations. The constitutional model and governance standard should avoid being too specific about member organisations. It could focus on the types of organisation that should be represented instead, giving MPPs the chance to respond more effectively to regional pressures and issues by selecting appropriate members.

There must be an equal playing field between MPPs in terms of their requirement to have regard to the representations of relevant interests.

- MPPs should have the same basic structure, a small group with delegated functions and working groups (thematic, dependent on the region). There must be a degree of consistency. There are clear regional differences, but this is more in the membership than structure of MPPs.
- A consistent approach is essential across the marine regions; otherwise it will be difficult to engage with marine industries.

**Summary:**

- 6.15 A widespread view was that the basic structure and governance of MPPs should be the same or similar across marine regions. Where the need for regional variation was identified this was predominantly in terms of the appropriate membership of particular MPPs, with key stakeholders potentially being different in different SMRs.

**Issue 7 – What do you consider to be the key governance issues to be addressed in establishing MPPs?**

6.16 **Stakeholder views:**

- (i) Accountability - how and to whom? This can be difficult with a wide group. MPPs have statutory functions (with ministerial sign off) and there must be democratic accountability;
- (ii) Decision making – effective and with strict rules of engagement i.e. voting rules as a last resort with possible weighting rules. This issue was never really addressed in LCPs as they did not have statutory functions;
- (iii) The licensing issue - how to deal with the MPP as a statutory consultee; and
- (iv) Conflict of interests – rules are needed if members have conflicting sectoral interests. Also rules regarding commercial interests. Strict control is needed as when making a licence application a stakeholder cannot have say as statutory consultee and it is important that members are not representing a sectoral interest if on the MPP – they can have regard to it but the priority is the plan and marine region.

- (i) Ensuring the MPP is competently structured to carry out marine planning (and associated roles such as a statutory consultee in marine licensing);
  - (ii) Dealing effectively with issues of democratic accountability and potential conflicts of interest;
  - (iii) Ensuring that the MPP is appropriately structured to deal with any challenge to the RMP. Is the MPP expected to defend any objections to the plan via an Examination? If so this has a bearing on the expertise, resources and public accountability in decision-making that it should have;
  - (iv) Enabling professionals/specialists engaged by MPPs to fulfil their remit while also ensuring appropriate and adequate consultation and engagement with key stakeholders - ownership of the planning process needs to be clear from the outset and should be underpinned by written guidance from Marine Scotland. The respective roles and responsibilities of those officers actually drafting documents, and any Steering, Advisory or other formal Stakeholder Groups need to be clearly defined and understood at the outset;
  - (v) When considering governance structures, the focus should be on delivery, as well as on preparation, of RMPs;
  - (vi) Clarify who has “ownership” of the RMP once produced. Is it “owned” by the MPP or by Scottish Ministers or Marine Scotland?;
  - (vii) Allowing for effective engagement with key sectoral groups such as IFGs;
  - (viii) Ensuring that any regional diversity in structure / governance arrangements does not lead to inconsistency in delivery of marine planning (e.g. confusion for national stakeholders engaging in several MPPs or inconsistently at SMR boundaries); and
  - (ix) Would the MPP become a relevant or competent authority (e.g. under the Habitats & Birds Directives)? If so then they will have to take decisions relating to potential impacts on Natura interests.
- Considering the coverage of interests it is essential to have a strong leader (main officer) to make final decisions when consensus cannot be reached.
  - The biggest issue is ensuring that the MPPs represent proper legal bodies and there needs to be a local buy in to work as a group. The number of representatives per industry

also needs to be defined - just one might lead to a personal view being represented as that of the whole industry.

- Accountable, open, transparent, and with a record of meetings, minutes, etc.
  
- (i) Which body should be the lead agency "on the ground" for each RMP, coordinating the work, managing the project officers/staff which will be required, and maintaining the GIS system which will underpin the plan? The Scottish Government will have overarching power of approval for RMPs but in each marine region a lead agency will be required to drive the planning function/service on a day-to-day basis and that means the *whole* planning cycle, not just plan preparation. Problems tend to occur in coastal and marine planning partnerships when, in the interests of inclusivity, people believe (or try to pretend) that all the players have an equal say or equal responsibilities, or expect everything to be done by consensus. Some bodies have bigger/wider responsibilities than others and this will need to be recognised in the constitution of the MPPs and their "rules of engagement" - the tail should not wag the dog;
  
- (ii) Which bodies should be involved in the MPP and at what level? The process of preparing and implementing RMPs will be quicker and less fraught if the planning functions are delegated only to a fairly tight group of the relevant bodies with a statutory planning/regulatory role. This should be Marine Scotland, the Crown Estate, SEPA, SNH, the relevant local authority(ies) and the relevant enterprise agency. The Maritime & Coastguard Agency, industry representatives, non-governmental organisations, voluntary groups, and community representatives should *not* be on this core group but should instead be invited to contribute as part of the wider advisory group. The smaller local harbour authorities should generally be on the advisory group for their marine region, though large port authorities, such as Forth Ports, may usefully have a role on the core group for their area. The task of plan preparation could be contracted out by the core group of statutory bodies to an existing local coastal partnership, if appropriate, and project managed by the core group and lead agency accordingly. However, the core group of statutory bodies would have to reserve the right to amend the plan thus produced, in any way they see fit, prior to submitting it to the Scottish Government for approval;
  
- (iii) How many representatives for each organisation should be allowed (a) to attend, and (b) to vote at meetings of the MPP?;
  
- (iv) What procedures should be used to deal with differences of opinion within the MPP about what the marine plan should contain, or how it should be implemented?;

- (v) Where and how often should the MPP meet? Where and how often should meetings of the wider advisory group and public meetings be held? This will have a bearing on the general level of public interest and engagement in the marine plans; and
  - (vi) What should be the scope of the RMPs? What level of spatial detail and what level of prescription should they aim for? This is important because the RMPs will have to be seen to add value and complement the NMP and local coastal plans.
- (i) The approach to the appointment of a chair should be consistent across all MPPs. This person should, at the very least, be appointed by the Scottish Ministers and should be independent of any MPP member organisation;
  - (ii) The method by which MPP members are selected and the terms of their membership should also be consistent across all MPPs. A system of advertisement, application, interview and nomination for appointment overseen by the appointed chair, would be appropriate;
  - (iii) The governance model must be able to accommodate conflict of interests. It is not difficult to imagine circumstances where a MPP member is a developer affected by the RMP;
  - (iv) Many MPP members will have statutory duties, as will organisations that may not be members. The various functions of the MPP must be performed in a way that does not conflict with or impede the discharge of such duties – and has regard to the conflicts of opinion and interest that may be caused by them;
  - (v) It is necessary to consider how the governance model will manage conflict resolution in detail, how it will approach the credence of consultation responses (particularly where these are vexatious) and what they will require in terms of empirical data to support member's interests/representations. Regarding these, it is worth noting that LCPs have proven adept at managing many of these processes because of their independent nature; and
  - (vi) There may be a need for system of dispute resolution, appeals or “ombudsman” style oversight within the governance process.

**Summary:**

- 6.17 Stakeholders highlighted a range of governance issues. Prominent was the question of effective decision-making, this often being regarded as part of a wider issue of which organisations should be members of a MPP and in what proportions. Potential conflict of interests was recognised, in relation to both plan-preparation and a MPP's role as a statutory consultee in marine licensing. Stakeholders stated that MPPs should be transparent and accountable in their work.

**Issue 8 – What do you consider to be the most appropriate option(s) for the legal form of MPPs? What particular issues or risks do you consider most relevant to the choice of legal form?**

6.18 **Stakeholder views:**

- The legal form must be appropriate for the role of developing a statutory plan. It must also ensure that risks (and liabilities) to those preparing the plan are appropriately addressed. It should be clarified how legal challenges to the plan can be pursued (e.g. does the MPP need to defend any objections to the plan via an Examination). There is also an issue around MPPs being a statutory consultee for licence applications – how would this work in practice across a disparate range of interests?
- Legal form does not need to be identical for each SMR but legal status should be the same.
- Whatever legal form is chosen must provide legal accountability.
- It is easier not to have distinct legal status. The plan should be signed off by the relevant authority. MPPs should not have formal legal status.
- The legal form must ensure that individual members of the MPP (individual persons or organisations) are not potentially liable for the decisions of the MPP. The MPP must also be capable of employing staff and contracting as necessary.

6.19 **Summary:**

Many stakeholders did not have a view on any particular legal form. However, several stakeholders stated a concern that the members of a MPP must not be exposed to any personal liability for the actions of the MPP and that a MPP must have a legal form permitting it to contract and directly employ staff as necessary.



**Issue 9 – Should the potential option to delegate to a single public body in association with the Scottish Ministers’ nominee be exercised in any potential SMR? Do you consider that certain parties, beyond the statutory minimum, should be represented within every MPP?**

6.20 **Stakeholder views:**

- (i) It depends. If the region has no experience of partnership working then it would be a possible way to get plan development going. If a region has had a partnership, this pared down approach is not ideal. It sets wrong tone and is not in the spirit of the intention of the Scottish Government. The arrangement should be reviewed if and when financial stringencies lift;
  - (ii) A local authority representative or representatives are always essential - officers with planning expertise are probably preferable, but there is a need to have regard to accountability;
  - (iii) It is presumed that SEPA and SNH would be in each MPP;
  - (iv) Other members will depend on the circumstances but a prescriptive list is not a good idea; and
  - (v) Time and money will cause problems.
- 
- It seems unlikely that this *de minimis* option would be appropriate. However, the second point depends on issues raised in question 4 above. If the MPP is a small group of people selected for their planning / broad marine expertise (rather than sectoral representatives) then it would not be appropriate to pre-determine this list of bodies. If the MPP is a larger group then it would be possible to provide a list of the key bodies that should be represented in each MPP (e.g. Marine Scotland, local authorities, SNH, SEPA, Historic Scotland, port/harbour authorities, IFG representative and other key sectoral representatives). However, it is clear that this wider group will rapidly become too large for effective plan-making.
  - Yes – for example Shetland Council delegated responsibility to NAFC Marine Centre. By "statutory minimum" it is assumed statutory consultees are meant (SNH, Historic Scotland, and SEPA). If so, a community council representative should be statutory and possibly the RSPB and other representatives specific to the area (industry, non-governmental organisations etc).

- There is a need for consistency of approach to membership.
- It would be wise to have on the core group a certain level of interest representing economic activity in the area. Exactly who has to be on the core will depend largely on precisely what powers the core has and whether they will be entitled to ignore the advisory group.
- If only public bodies and government agencies are members of the MPP this takes away the influence of local stakeholders. Yes to certain parties being on each MPP – an environmental non-governmental organisation on every MPP e.g. LINK member (RSPB, NTS etc). The health of the marine environment is a statutory duty under the Act. It was the intention of the Act to have relatively wide group and amendments to the Bill did not have impact intended. The intention behind the Act was to have local authority, commercial, environmental and recreational interests. Marine Scotland, SNH and SEPA representatives could also be key parties.
- Local authority membership is needed as MPPs need the buy in of terrestrial planning authorities. Local authority staff and local representatives are also democratically accountable. SNH, SEPA and harbour authorities should also be represented.
- MPPs would be significantly weakened by the designation of a single public body to this role. Such an approach would be contrary to the aspirational aims of the Act: broad sectoral involvement, planning partnerships, ecosystem-based approaches to management, ICZM, etc. However, given the varying scale of SMRs and the diverse nature of activities in each region the “breadth” of some MPPs membership need not be very wide.
- Any organisation performing statutory duties within a SMR must be directly represented on the relevant MPP.

#### 6.21 **Summary:**

Several points were raised by stakeholders. Most stakeholders felt that membership of a MPP should extend beyond the statutory minimum, several commenting that this supports a genuine partnership approach to marine planning. However, one stakeholder felt delegation to a public authority and Scottish Ministers nominee may be appropriate for an initial period if the SMR did not have previous experience of partnership working. Various bodies were proposed as being members of MPPs: local authorities, Scottish Government agencies, and other bodies with statutory marine responsibilities were commonly cited, with stakeholders

also noting the Act's provisions on involvement of commercial, recreational and environmental interests.

**Issue 10 – Which of the potential marine planning functions should be delegated and what, if any, regional variations might be appropriate?**

**6.22 Stakeholder views:**

- No problem with regard to delegating all functions in the list and if you delegate to one region you should delegate to all regions. Plans must conform to NMP and policy and therefore there is a limit to independence.
- Suggest that Marine Scotland should consider retaining the duty of ensuring that the RMP conforms to the MPS.
- Cannot think of anything that should not be delegated.

This was the view of several stakeholders.

- From feedback, there is a strong feeling that marine licensing should be kept within Marine Scotland, who know the whole picture for the marine environment, and not delegated. This should be the case throughout the regions. The MPP can comment and consult.
- Question re delegation of s.16(4). Does this mean the function of removing a plan is delegable before another plan is in place? Will there ever be an issue of it not being replaced by the MPP. Otherwise the delegated functions to the MPP provide a good balance. There is always possibility of the Scottish Ministers intervention with directions.
- (i) The task of plan preparation could be delegated to an existing LCP where appropriate. However, the core group of statutory bodies would have to guide its production and reserve the right to amend the plan thus produced, in any way they see fit, prior to submitting it to the Scottish Government for approval;
- (ii) Overall responsibility for the task of plan preparation should rest with the lead body and the other statutory bodies in the core MPP group. Whether some of that work should be contracted out (e.g. to a LCP or to a consultancy) or whether it should all be done in-house with dedicated staff should be left up to the lead body to decide, in consultation with the other statutory bodies and Marine Scotland; and

- (iii) Whilst contracting out the plan preparation work, e.g. to a competent consultant or the staff of an existing LCP, has some attractions, it also has significant drawbacks. As yet there is relatively little expertise in this country in preparing marine spatial plans. Some of the best-qualified and most experienced people are working in coastal planning teams in local authorities, e.g. Highland, Argyll & Bute, Shetland. In such areas, the local authority could be a viable lead agency for preparing the marine plan, and suitably resourced it could do the work in-house. This may be more cost-effective in the long-term than contracting the plan-preparation work out because it builds on previous practical experience and provides continuity. It means the content of the plan will be better integrated with day-to-day development management needs (e.g. for aquaculture, renewables, coastal development and infrastructure) and it will be better integrated *on an ongoing basis* with other relevant strategic and local plans. The local authorities can also provide continuity of GIS/information support which will "give the plan a home" and aid in its monitoring and review. This is the system which is used for preparing coastal plans in Norway and most of those plans are already in their second or third generation.

#### 6.23 **Summary:**

There was widespread support for delegation of all the delegable functions.

#### **Issue 11 – Should the delegation of functions be phased?**

#### 6.24 **Stakeholder views:**

- Delegate all at once and if too onerous reconsider at later stage.
- Do not see any particular advantage to phasing the delegation of functions. Most of these are core tasks related to marine planning and it makes sense to delegate them together (this was the view of several stakeholders).
- This depends how quickly the structure is put in place. Very often delegating right from the start could cause difficulties - it will depend on resources, quality of personnel etc. So ideally delegation would be immediate, but realistically a more measured approach will be required in the early stages to avoid major errors which will cause difficulties later.
- Plan development is to be done on a rolling basis, and delegation should happen as and when plan development takes place in the region. Some will not be fully formed when others are being developed. Delegation should be in terms of the timeline for RMP development.

- It is not clear what is meant by this question. Does it mean sequential phasing of tasks within a marine region area or prioritisation of certain geographic areas over others for plan preparation? The aim should be to produce plans for all the marine regions in Scotland at roughly the same time so that there is a level playing field for operators and prospective developers in the marine industries. The Scottish Government should take care to avoid undue emphasis on the estuaries just because they have existing coastal partnerships which are looking for an enhanced role. Most of Scotland's coast and inshore waters are not estuarine.
- As much power as possible as soon as possible should be delegated, this facilitated by Marine Scotland. This may depend on support / finances / how often the MPP meets. If MPPs have licensing functions they may have to meet more often. If the MPP is chaired by Marine Scotland there is no reason not to delegate all powers at the start.
- This approach is very sensible. It could allow one or two MPP models to be 'field-tested' to give useful experience and knowledge for the development of subsequent ones.

#### 6.25 **Summary:**

There was widespread support for delegating all delegable functions rather than a phased delegation. Note that the question of phased delegation of functions is distinct from the phased preparation of RMPs for different SMRs.

#### **Issue 12 – How should necessary support services (finance, administration etc) to a MPP be provided?**

#### 6.26 **Stakeholder views:**

- A core part of the Scottish Ministers remit is to deliver marine spatial planning. They are proposing delegation therefore they should fund it. This does not mean that constituent bodies cannot assist (e.g. commercial bodies). MPPs should not exclude core-funding from partner bodies.
- Given the difficulties of funding and staffing LCPs through ad-hoc partnership funding over many years it seems clear that regional marine planning is a core function of Marine Scotland and would need to be fully funded and supported from their budget. Two existing LCPs are still hosted (and staff employed) by SNH but it does not seem appropriate for this arrangement to continue if these LCPs become statutory MPPs.

- Marine planning teams should be housed by agencies and at locations which minimise the danger of perceived bias and which facilitate coverage and engagement of stakeholders across the whole SMR. Local authorities might be suitable (especially in areas where a single authority covers the whole SMR) as they could provide planning support and strong links to local communities. However there are caveats that the existing elected member system may not translate effectively to accountability for marine “community of interest”, that there must be recognition that marine planning will be very different from terrestrial planning, and that local authority resources are already very stretched.
- This depends on the extent to which the Scottish Government wants to get involved at local level. Either way, preparation of RMPs is a new function which will require the careful integration of the range of different marine and coastal interests, and so should be backed up by new resources from the Scottish Government to make it happen. Support by the Scottish Government for the lead agency at regional level could perhaps follow along similar lines to the support it gave to the bodies which employed and line-managed the SSMEI project officers.
- To be effective the system will need to be properly resourced and financed. There may be different demands from different regions, but resources must be appropriate in each area, or the work will not be carried out properly.
- Through Marine Scotland, so that all MPPs will have access to the same level of resources (this was the view of most stakeholders).
- Funding only from the Scottish Government is essential as this is a neutral source.
- MPPs should, as far as possible, stand apart from bodies with their own interests and duties. However, there is no reason why MPPs should not be able to share a central source of “back-office” support to reduce costs and drive efficiencies. Accordingly such support is best provided by the Scottish Government (possibly through Marine Scotland).
- Marine Scotland should provide the necessary support services. However, the configuration of resources needs to be resolved.

#### 6.27 **Summary:**

There was widespread support for MPPs to be funded directly by the Scottish Government. While one stakeholder felt that funding from partnership bodies should not be excluded, other

stakeholders felt this would be inappropriate as the plan-making function must be seen as independent of the interests of constituent organisations.

### **Issue 13 – How should the staff resources for the delegated work be provided?**

#### **6.28 Stakeholder views:**

- The level of funding from the Scottish Government to the MPP needs to allow for employment of staff together with staff support from Marine Scotland when necessary. Also the possibility of local authority staff assistance with drafting? The MPP needs a measure of independence even if the Scottish Government is providing core-funding. The MPP should be independent and be seen to be independent.
- It might make sense for the staffing for each MPP to be organised centrally from Marine Scotland (i.e. they would recruit and employ any marine planning support staff even if the staff are posted locally). That could create efficiencies and provide a consistent support network for training, etc. There should be national co-ordination of marine data collection, formats and management. Marine Scotland should consider housing a specialist marine data and GIS team to support regional marine planning teams.
- Through provision of a staffing budget, with one officer for each region and a small team of people to oversee officers.
- Staffing should ideally be provided from within Marine Scotland, giving them the additional support that Marine Scotland offers. However, there is no real problem with resources being provided for outside hires, just a preference for Marine Scotland.
- Government funded staff positions as with the MMO in England.
- Marine Scotland ideally is the best organisation to provide technical staff. Local authority terrestrial planners could assist. There must be staffing with technical experience in planning.
- There will a clear requirement for at least one full time “officer” to manage MPP issues from day-to-day. MPPs could “share” this person/people, who will essentially administer and manage the routine functions of the MPP. This is the logical evolution of the SCF’s current role and is similar to the way in which SEPA manages AAGs.
- There is a need to think about the long term, not just preparation of the first suite of plans. In the short term, for each marine region, there will need to be a host agency (or

agencies) to accommodate and line-manage any new staff recruited to help prepare the RMP. Further down the road however, there will be a need to implement, monitor, review and update/revise the plans. This will probably fall to the core staff of the agencies involved, particularly the lead agency. Financial support from the Scottish Government should reflect any additional responsibilities which are placed upon the statutory authorities in respect of marine planning.

#### 6.29 **Summary:**

Different views were expressed. Most stakeholders felt that MPPs should draw on Marine Scotland staff. It was also proposed that staff from local authorities and other agencies could be utilised, subject to funding for any additional responsibilities. However, other stakeholders considered that a MPP should be able to directly employ staff where required. It was highlighted that a MPP will have ongoing functions, beyond preparation of the first RMP and continuing resources will be required.

#### **Issue 14 – What are the implications for an ongoing role in marine planning once a RMP has been adopted?**

#### 6.30 **Stakeholder views:**

- During delivery of the plan the wider core group should work together. It is not possible for a couple of people to carry out this function. The group who produce the plan should remain to forge links, agree priorities and act as the driving force to deliver the plan's action points. Monitoring of the plan would be a major role for the group as would the revisions of the initial and subsequent plans to respond to changing circumstances.
- There is an ongoing role to liaise with adjacent planners as neighbouring marine and terrestrial plans are being prepared. Also to monitor and review the plan, engage in discussions with prospective developers, act as a statutory consultee in marine licensing, and engage in associated management and planning processes such as inshore fisheries planning, river basin planning, MPA management planning, etc. The preparation of any more detailed sub-plans could also be included in this list. Planning is an ongoing process rather than a one-off activity carried out every few years.
- It is essential to provide an ongoing advisory role, facilitating the RMP's use, and ensuring implementation by all.
- Marine planning, like its terrestrial equivalent, will have to be an ongoing process if it is to be effective. If the plan for a marine region is worth its salt it will be referred to often in the



context of development proposals, e.g. for aquaculture, marine and coastal renewable energy, and coastal access and communications infrastructure. The plan will also be used to take forward area-based initiatives in fisheries management and marine nature conservation. A good RMP is also likely to identify priority areas for more detailed planning, policy, and survey work at local level, and will have a good level of community buy-in. Following through with such commitments and keeping the plans up to date and relevant will be a task for a dedicated workforce which has good knowledge of the area and maintains close contact with the range of marine industries and coastal communities involved. Local authorities whose territories have long stretches of coastline are likely to be particularly important in this respect. Where they have coastal planning teams in place already they should be bolstered accordingly, and where they have not, the local authorities should be encouraged to dedicate staff to that role.

- Irrespective of whether or not it actually prepares the RMP, an existing coastal partnership could take on the role of monitoring the plan's performance and some of the implementation tasks. However, it could not collectively perform the licensing role because the necessary statutory powers are vested in individual organisations.
- The process is evolving, and problems will not be resolved right away. The involvement of MPPs will need to be ongoing, and no cut-off stage is anticipated.
- There should be regular reviewing of RMPs to ensure they are being implemented as intended.
- MPPs will have a range of everyday functions once an RMP is adopted, including monitoring the plan's application and responding to statutory consultations. The latter is a function for which the time and human resources are probably underestimated (especially if ICZM approaches are adopted).
- There will be a need to review and replace RMPs and there will also be a monitoring role in the implementation of plans – the expertise and involvement of MPP members should be maintained.

### 6.31 **Summary:**

Stakeholders recognised that marine planning is an ongoing process and will involve monitoring and amendment of the original RMP, together with a consultee role in marine licensing. Some stakeholders also saw a role for the MPP in associated management and planning processes, such as river basin planning, and in proactively promoting implementation of RMP policies and providing advice on the RMP's policies.

## **Issue 15 – Can, and should, the statutory marine planning functions be combined with Integrated Coastal Zone Management activities?**

### **6.32 Stakeholder views:**

- The principle of ICZM is that it should be delivered at both national and regional level. ICZM should be embedded in good regional marine planning. Otherwise it would take away the ability of marine plans to interact effectively with terrestrial plan/plans. Implementation of the plan requires effective ICZM. Having said that, there is an issue about which types of activities are the most effective in achieving integration and cooperation (ICZM). It does not mean, by definition, that the body responsible for regional spatial planning should itself be frequently involved in time-consuming and expensive projects, but it does mean that there is capability to galvanise, coordinate and communicate with relevant stakeholders on an ongoing basis. This is at the heart of good management of the coast, an area which has both marine and terrestrial elements.
- Yes. We assume the links between marine and terrestrial planning are a core part of the planning process but beyond this there will be an ongoing role to coordinate marine and coastal management and promote good dialogue between regulators, industry and communities, etc. There may also be a role for some project activity where no other bodies can take this on, including education and awareness raising, access work, etc. However, this would be heavily dependent on resources (staff and funds) as there is no guarantee that LCPs will receive funds other than any Marine Scotland may offer for marine planning functions.
- With the increasing links between marine and terrestrial planning, it would be helpful to aim to dovetail with / use the existing mechanisms as much as possible to help with consistency, efficient resource use and to reduce confusion.
- The intention was that ICZM should be delivered at regional level. ICZM should be embedded in a good marine spatial plan. Otherwise it would take away ability of the marine plan to interact with terrestrial plans. During delivery of the plan it is essential to have ICZM - although this will involve money and staff time.
- Still see a place for the “softer” role. Small scale initiatives and getting the message out there.
- This depends on the personnel and expertise involved. It is easy to say it should, but this should only be done if the relevant personnel can effectively do the work. This is unlikely to be achievable in the early stages.

- ICZM should not be made statutory.
- Yes. Links between marine and terrestrial planning are a core part of the planning process and there is an ongoing role to coordinate marine and coastal management and promote good dialogue between regulators, industry and communities, etc. Also a role for some project activity where no other bodies can take this on, e.g. education.
- Do not see how MPP cannot think about ICZM. LCPs are good at these activities - they are not functions you want to lose.
- Yes, this was a clear aspiration during the Act's early development.
- The way the marine planning legislation has been framed has made ICZM something of the "poor relation" in comparison with terrestrial planning and marine planning. It seems to be classed as a worthy cause but one which has received little specific provision other than exhortations for the RMPs to "have due regard" to the terrestrial plans and vice versa. Yet ICZM is arguably more important than planning for the more distant offshore realm because nearshore waters, particularly sheltered ones, are used and appreciated by many more people and see more competition for space and conflicts of interest. For this reason, nearshore waters often require a more detailed, localised planning approach than that which planning at the level of marine regions can deliver. There is merit in combining the statutory marine planning functions with ICZM but only if there is a strong element of local accountability and control for the latter. This points to the local authorities having a pivotal role since they already operate the terrestrial planning system and are directly accountable to local communities.

### 6.33 **Summary:**

Stakeholders all supported a role for MPPs in ICZM. Most stakeholders recognised that the Act approaches ICZM from the perspective of requiring regard to be had to terrestrial development plans. However, several stakeholders felt that MPPs should have a wider ICZM role, including promoting dialogue and project-based activities.

## 7. CONCLUSIONS AND RECOMMENDATIONS

### Introduction

7.1 The terms of reference for the study are set out in Appendix A and are in summary:

- (1) To investigate the structure of existing stakeholder partnerships and determine the strengths and weaknesses of different options for MPPs;
- (2) To identify the key governance issues to be addressed in establishing MPPs;
- (3) To investigate legal constraints on the delegation of statutory powers and issues of democratic accountability to be considered in establishing MPPs;
- (4) To recommend protocols for identifying members of MPPs;
- (5) To recommend an appropriate structure for decision-making within MPPs;
- (6) To recommend appropriate measures to ensure financial and administrative control within MPPs; and
- (7) as far as possible to recommend generic documentation to assist in the establishment of a MPP.

7.2 This chapter details the recommendations of the study:

7.2.1 The first section provides a summary of the conclusions drawn from previous chapters;

7.2.2 The second section identifies several issues where further consideration is required prior to the delegation of functions. The recommendations in the third section should be understood within this context; and

7.2.3 The third section provides recommendations.

(1) Summary

7.3 **Chapter 2** provided an overview of the statutory marine planning system within which MPPs will operate. RMPs may be expected to provide a level of spatial and policy detail beyond that of the NMP. Development of a RMP will require input from a wide range of stakeholders with

an understanding of the particular SMR. MPPs must identify, prioritise and reconcile diverse and sometimes competing interests in the marine environment.

7.4 **Chapter 3** reviewed the legal framework for MPPs, including the provisions on delegation of functions, legal form and membership. The legislative requirements are considered further in section 3 below, but several points are highlighted. First, a MPP is to be delegated important statutory functions to be exercised on behalf of the Scottish Ministers and must be capable of effective delivery. Secondly, a MPP will have ongoing functions in monitoring and amending the RMP and as a statutory consultee in marine licensing. Thirdly, the legislative approach taken in establishing MPPs as a vehicle for plan-delivery differs from that adopted for previous statutory plan-making bodies. In particular the Act does not create the MPP as a statutory body corporate. Fourthly, within the parameters laid down in the Act, the legal framework is broadly permissive as to legal form, governance and membership. Scottish Government statements during the legislative process indicated an open mind on these issues.

7.5 **Chapter 4** further considered the purpose of MPPs as a vehicle for delivering regional marine planning. It was noted that Scottish Government documents have consistently advocated an inclusive approach to MPP membership, this being regarded as adding value to the plan-making process. It was further observed that inclusion in the plan-making process may be distinguished from direct membership of a decision-making body and can be facilitated by various mechanisms other than membership.

7.6 **Chapter 5** provided an overview of a range of existing stakeholder “partnerships”, including those with a statutory plan-making function.

7.7 **Chapter 6** reported on discussions with a range of stakeholder organisations and their views on various aspects of regional marine planning. On many issues there was broad agreement, but the discussions revealed some significant differences as to, among other matters, the appropriate membership of MPPs.

(2) **Issues requiring further consideration**

7.8 This section identifies several issues where further consideration is required prior to the establishment of MPPs. The resolution of these issues may have a significant impact on the most appropriate structure and governance of MPPs.

## Stakeholder views and policy choices

- 7.9 It is important to reiterate two points. First, the stakeholder discussions reported in Chapter 6 did not constitute a formal or comprehensive consultation exercise. The views of other stakeholders may well differ from those expressed in Chapter 6 or the recommendations below. For example, we understand that some local authorities feel strongly that regional marine planning should be local authority led and that this should be reflected in the decision-making structure of MPPs. Delegation to one or more local authorities, together with a nominee of the Scottish Ministers, is clearly an option under the Act. Secondly, even from a limited stakeholder survey it is apparent that there are divergent opinions on various aspects of regional marine planning. To highlight one example, certain stakeholders consider that membership of the statutory delegate should largely (or exclusively) comprise organisations with statutory responsibilities, with other stakeholders having a consultative or advisory role. Other stakeholders feel strongly that membership should encompass a significantly wider range of organisations, this being regarded as facilitating a participatory and partnership approach to marine planning.
- 7.10 Secondly, it is necessary to recognise that the primary legislation permits the delegate to be established with a wide or narrow membership, or to design a decision-making structure giving the final say to a particular authority or group. Cogent arguments can be made in support of these different approaches, as was seen in the evidence presented by stakeholders during the Scottish Parliamentary process. In establishing a MPP and making directions as to performance of delegated functions the Scottish Ministers must make choices. At the most basic level it must be understood that delegation is not required by the Act, and the primary choice (and assuming that RMPs are prepared) remains:
- (1) for the Scottish Ministers to prepare RMPs without delegation, but with consultation within the relevant SMR;
  - (2) delegation to one or more public authority, together with a person (or persons) nominated by the Scottish Ministers. This could permit, for example, delegation to one or more local authorities together with the Scottish Ministers' nominee; or
  - (3) delegation to a group of persons nominated by public authorities and the Scottish Ministers.

## **Range of functions**

- 7.11 It is apparent from the Act that the primary functions of a MPP will be preparation, monitoring and amendment of a RMP. A MPP will also (with the delegation of functions under section 12 of the Act) become a statutory consultee in marine licensing processes.
- 7.12 However, some uncertainty remains as to what other functions, if any, a delegate may exercise. In particular further clarification may be required as to the role of MPPs in ongoing ICZM processes. The Act itself approaches ICZM as an element of marine planning, requiring that all reasonable steps are taken to ensure that a RMP is compatible with terrestrial development plans for areas adjoining the SMR. However, as noted in paragraphs 3.33 – 3.36 it is unclear whether, and to what extent, the Scottish Ministers envisage MPPs engaging in ICZM activities such as project generation, marine management plans or the positive implementation of strategies. In part this will also depend on the future activities of existing organisations with ICZM interests.

## **Resources**

- 7.13 The preparation of RMPs will follow adoption of the NMP and remains some way ahead. It is likely that preparation and adoption of RMPs for different SMRs will be phased over a period of years. It is therefore unsurprising that the resourcing and staffing of MPPs is yet to be determined. However issues such as funding, use of staff from Marine Scotland or other public authorities in support of a MPP, and the capability of a MPP to employ its own staff will inevitably influence the plan-making process and ongoing operation of a MPP.
- 7.14 The stakeholder discussions raised several important issues around resourcing of MPPs:
- (1) Preparation of RMPs will require staff resources to meet various functions. Stakeholders considered that a significant lesson from previous marine planning initiatives was the need for a dedicated professional planning resource, particularly in drafting policies in the marine plan but also in the ongoing interpretation and implementation of a plan once adopted. Stakeholders held a range of views on where staffing resources should come from, reflecting the various possibilities:
    - (i) direct employment by the delegate;
    - (ii) use of a central pool of Marine Scotland staff employed centrally but posted out to individual delegates to provide a resource for plan preparation and implementation;

- (iii) use of staff from local authorities or other public authorities; and/or
  - (iv) some combination of the above.
- (2) We are not aware of the resources that will be available to support regional marine planning, but it is noted that these options will each have advantages and disadvantages:
- (i) direct employment of a dedicated staff resource may be seen as promoting the independence of the delegate from Marine Scotland and other public authorities, allowing for the development of local knowledge, and recognising an ongoing role in monitoring, interpreting and implementing the RMP and as a statutory consultee. Direct employment of staff will require that the delegate assumes the legal responsibilities of an employer;
  - (ii) use of a central resource such as Marine Scotland staff may be more cost efficient and encourage a level of consistency in the development of RMPs and the opportunity to learn from previous plan-making processes;
  - (iii) a central pool of staff may facilitate allocation of staff resources in response to more or less intensive periods in the plan-making processes. Particularly in the current economic climate it is necessary to make efficient use of available resources; and
  - (iv) the allocation of staff resources will have to recognise the available pool of marine planning expertise and experience in Scotland. Technical expertise in marine spatial planning, together with the marine data necessary to prepare RMPs, is currently concentrated within particular organisations such as Marine Scotland and certain local authorities.
- (3) Staff resources will be required to manage the plan-making process and to support the ongoing functions of the delegate beyond preparation of the first RMP.

### **Stakeholder participation**

7.15 It is widely presumed by stakeholders that particular Scottish Government agencies, such as SEPA or SNH, will be integral to the plan-making process. It appears inconceivable that this would not be the case given the statutory responsibilities, technical capabilities and experience of such agencies. However, some stakeholders equate a key role in the plan-making process with membership of the legal delegate to whom functions are delegated



under the Act. We consider that the key question in relation to every stakeholder is where participation in the plan-making process is most appropriate. In this regard we observe that Scottish Government agencies may see their role as being involved in plan-preparation but without being members of the legal delegate which takes the final decisions on plan content. This would broadly reflect the position in terrestrial planning, where key agencies have a significant role in plan-development but are not part of the decision-making body and can make representations on, or object to, the content of the proposed plan.

(3) **Conclusions and recommendations**

7.16 This section addresses the terms of reference and details conclusions and recommendations.

**Distinction between the legal “delegate” and “the MPP”**

7.17 First, we consider that there is a key distinction between the “delegate” as defined in section 12 of the Act and the broader group of stakeholders who will be involved in the plan-making process. The term MPP has become widely used by stakeholders and in Scottish Government publications. The term has been used throughout this report. It clearly indicates an inclusive and participatory approach to regional marine planning, an approach that attracts widespread support. However MPP is not taken from the Act and there is no requirement that the legal delegate and some wider participatory partnership should be one and the same. The Scottish Ministers' direction powers make it possible to delegate planning functions to a public authority and / or group of nominated persons but also to direct that this delegate engage with a wider group of stakeholders. This wider group may, if considered appropriate, even be termed the MPP. If the result of such engagement is sufficiently inclusive and effective we consider it to be less important whether many particular interests are actually members of the legal delegate. “MPP” and “delegate” have often been used interchangeably, but the recommendations below reflect this distinction between the legal delegate to whom statutory functions and decision-making powers are delegated (**the delegate**) and a wider “partnership” which the delegate leads and draws upon in preparing the RMP (**the MPP**).

**Recommendation:**

1. **That it is recognised that the Act permits delegation of statutory functions and powers to a “delegate” and this delegate may be distinguished from a wider group of stakeholders involved in the plan-making process.**

## Inclusivity

- 7.18 Inclusion of a diverse range of stakeholder interests in the plan-making process is widely regarded as adding value to the resultant RMP and promoting a RMP reflecting the needs of the particular SMR. The Scottish Government has advocated an inclusive approach to regional marine planning and this was endorsed in the stakeholder discussions reported in Chapter 6. We consider that an inclusive approach should be provided for in establishing the system of regional marine planning.
- 7.19 However, we consider that from an early stage the issue of inclusion has become unnecessarily equated with membership of the delegate. It is notable that a significant part of the evidence presented during the Scottish Parliamentary process concentrated on the question of membership. While this is undoubtedly an important issue (see paragraphs 7.30 - 7.41 below) it is necessary to appreciate the distinction noted above. The effective inclusion of a wide range of stakeholders, interests and views in *the plan-making process* does not require that every such stakeholder or interest is represented in *membership of the delegate*. The more important question, in relation to any particular stakeholder, is identifying the most appropriate role for that stakeholder in order to deliver the best possible RMP.
- 7.20 The Act provides mechanisms to encourage and facilitate widespread engagement in the plan-making process, including the preparation and approval of a Statement of Public Participation, subsequent implementation of this strategy, and the inviting and consideration of representations on the draft RMP. There is provision to convene groups to facilitate the involvement of interested parties in developing or consulting on proposals for inclusion in the RMP. The Scottish Ministers' direction may require that delegated functions are performed in a specified manner. This may include the requirement to consult generally or with specified parties.
- 7.21 Membership of the delegate should therefore not be regarded as the primary mechanism through which most stakeholders, local interests or the wider public are involved in the plan-making process. Rather inclusion should be through:
- (1) formulating and implementing an effective engagement strategy. It should be noted that terrestrial planning authorities and other public authorities have considerable experience in effective engagement as part of the terrestrial development plan and other plan-making processes; and
  - (2) appropriate use of advisory or consultative groups to advise and inform the delegate in preparing the RMP and developing specific proposals and policies. Such groups may be established:

- (i) on a general advisory basis. Such a group could be established to inform the plan-making process, with the delegate reporting on plan progress and seeking advice from the group. Such a group may also potentially provide a forum for ongoing activities such as awareness-raising and ICZM activities;
- (ii) on a topic basis, in relation to particular issues or policies and drawing together stakeholders with a particular interest or expertise. One issue that was raised during the study was how any one representative of, for example, a particular commercial sector could be nominated to represent the interests of all (potentially competing) participants in that sector. We consider that in this situation a topic group may provide a more effective mechanism to include the variety of interests and views that may be expressed and to inform the decision of the delegate; and
- (iii) on a geographical basis, bringing together relevant stakeholders within a defined geographical area within the SME. SMRs will cover very large geographical areas and development pressures or potential conflicts may be concentrated in particular and geographically disparate areas.

In relation to options (ii) and (iii) we consider that the effective use of topic or geographically focussed groups would be a mechanism to ensure meaningful input to the plan-making process and to include stakeholders who may not have been considered, or wish to have been considered, for membership of the MPP. This approach also mitigates the obvious pressure to engage in sectoral or geographical “balancing”: if a nominee from one body or geographical area is a member of the delegate then there is pressure to include other bodies or areas.

7.22 The appropriate use of advisory or consultative groups should be required in the Scottish Ministers’ direction delegating functions and powers, while leaving it to the delegate to determine the number and remit of the groups. Administrative arrangements for establishing, managing and reporting to the groups should also be determined by the delegate.

**Recommendations:**

1. **Most stakeholders should be involved in the plan-making process through effective engagement mechanisms, due consideration of representations, and the appropriate use of advisory and consultative groups.**
2. **The Scottish Ministers’ direction should require the establishment of general, topic or**

**geographically based advisory or consultative groups to assist in preparation of the RMP.**

- 3. The number, remit and administrative arrangements of such groups should be decided by the delegate.**

### **MPPs and existing stakeholder partnerships**

7.23 The delegate must be capable of effectively delivering the delegated statutory functions. We consider that the delegate must be distinguished from existing stakeholder partnerships whose primary purposes are advisory, networking or awareness-raising. The delegate must be capable where necessary of making difficult decisions and deciding among competing claims on the marine area. In this regard the plan-making functions of the delegate are analogous to those of bodies such as SDPAs or RTPs.

7.24 Further to the overview of various organisations in Chapter 5 the following principles may be drawn from plan-making bodies:

- (1) bodies such as RTPs have a legal form distinct from their constituent members;
- (2) membership is limited in number in the interests of efficient decision-making;
- (3) rigorous governance arrangements are required;
- (4) decision-making power is conferred on a defined group, with the ability to draw on expertise from non-voting experts and advisors;
- (5) there is an expectation that decisions will be taken on a consensual basis, but a recognition that this will not always be possible and default voting arrangements are specified; and
- (6) arrangements exist to ensure that the views of wider interests and stakeholders are fed into the plan-making process, but decision-making power is conferred on the plan-making body.

7.25 We consider that these principles should also apply to the delegate responsible for regional marine planning. Subject to the option of delegation to a public body and nominee of the Scottish Ministers we do not consider that the Scottish Government should delegate the delegable functions to existing organisations. We recognise that there is strong support among some stakeholders for delegating plan-making functions to LCPs, a particular strength

of LCPs being seen as their experience in bringing different regional stakeholders together. However, the current governance arrangements, open membership and consensual decision-making of LCPs are inappropriate for a plan-making function. We consider that the delegate should be established as a new entity, separate from although capable of drawing where appropriate on, existing organisations with an interest in the marine area.

**Recommendations:**

- 1. The delegate should be established as a new entity rather than seeking to adapt an existing marine organisation to the role.**
- 2. The above principles should be applied to the delegate as a plan-making body.**

**Structure of regional planning**

7.26 Prior to a more detailed consideration of membership, governance and decision-making within the delegate it is necessary to consider the various elements of a MPP and the particular functions of each element. We consider that broadly the structure of a MPP should be:

(1) **The delegate as the statutory decision-making body.** This would be the legal delegate entrusted with and performing the delegated functions on behalf of the Scottish Ministers. It is this body that would have legal responsibility for the plan-making process and would:

- develop and ensure implementation of the RMP strategy, including such matters as effective engagement with stakeholders and the public;
- ensure that the plan-making process is properly conducted and all statutory requirements as to the content of the RMP and the plan-making process are satisfied;
- make decisions on the format, structure, content and policies of the RMP;
- oversee the work of the technical group and staff and consider advice and recommendations from the technical group and staff;
- be responsible for the proper and efficient expenditure of public resources and reporting on the discharge of delegated functions to the Scottish Ministers;
- be the statutory consultee in marine licensing; and
- lead implementation of the RMP.

(2) **A technical group.** This would not be part of the legal delegate but would have a central role in plan preparation and monitoring. It is anticipated that this group,

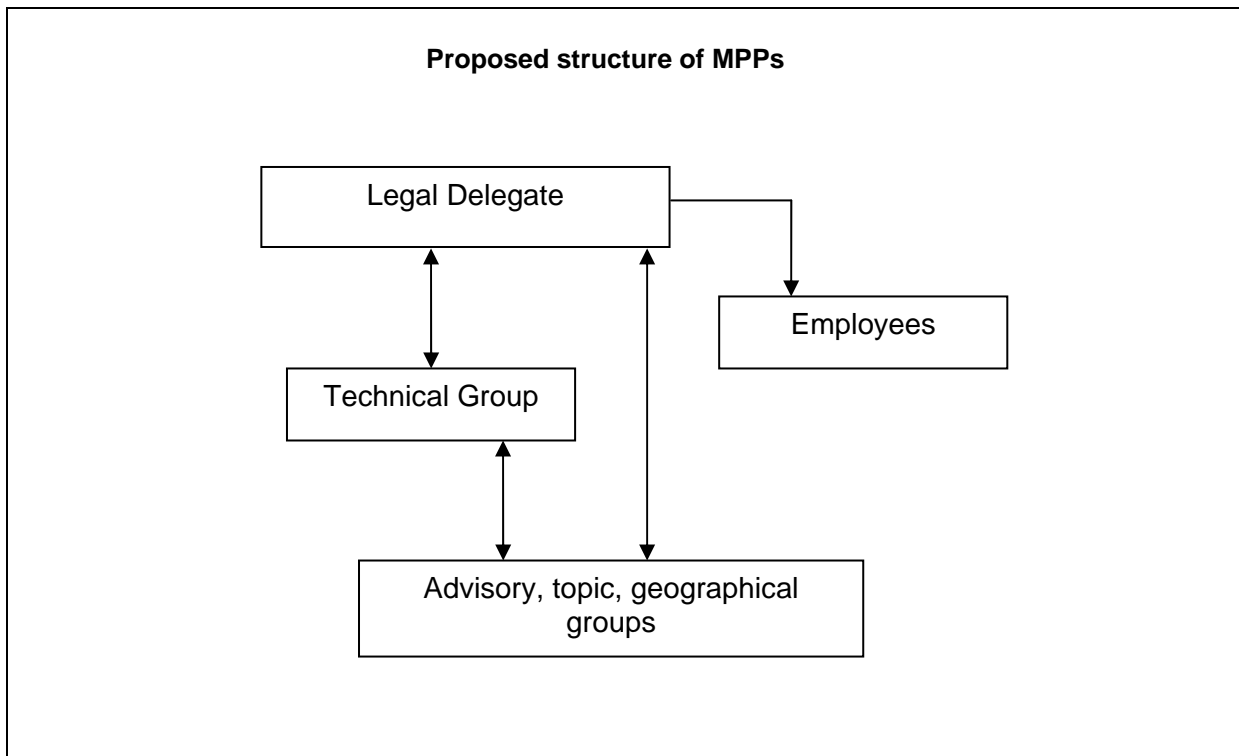
together with relevant employees of the delegate, would (subject to the possibility of tasks being contracted out to other parties):

- provide the technical and scientific information and advice necessary for plan-preparation;
- carry out research necessary for plan preparation;
- provide advice and information from key agencies and regional stakeholders;
- provide professional planning and drafting skills;
- chair sub-groups or advisory / consultative groups feeding into the plan-making process;
- report to and make recommendations to the decision-making body on the plan preparation process and options for inclusion in the plan; and
- in the case of the Solway Firth and Berwickshire areas could include expertise drawn from relevant English public authorities and agencies to facilitate cross-border coordination of marine plans.

(3) **Advisory and consultative groups.** As discussed at paragraph 7.21 above these groups could be established on a general advisory, topic or geographical basis. We would also anticipate that the delegate would involve existing groups such as IFGs and River Basin AAGs although these may have a role to play on the technical group. In addition to benefiting from the experience and expertise of existing groups it will be important to avoid duplication of effort and stakeholder fatigue.

(4) **Staff.** We anticipate that the delegate would have access to staff resources whether directly employed by the delegate or provided by another organisation such as Marine Scotland.

7.27 This structure can be represented as follows:



7.28 While this provides a relatively straightforward structure the exact arrangements should be determined by the particular delegate. For example, the technical group may be divided into sub-groups dealing with particular topics and different agencies and stakeholders will be more prominent at different stages of the plan preparation process or when dealing with different topics. It will be of fundamental importance that the respective roles and authority of the various elements are clearly defined in the governance arrangements required of and adopted by the delegate. The statutory functions are delegated to a defined group with legal responsibility for exercising these functions on behalf of the Scottish Ministers. Decision-making powers are conferred on the delegate and while the expertise concentrated in the technical group will be key to formulating options and recommendations for the RMP decision-making responsibility must remain with the delegate. The scope of any delegated authority must be clearly defined.

7.29 A wider “partnership” arrangement is developed around the delegate, allowing the delegate to access the experience of a wider group of stakeholders and community interests.

**Recommendations:**

- 1. Adoption of a tiered structure with a decision-making body, a technical group and advisory / consultative groups.**

2. **The delegate is the decision-making body to whom the statutory functions are delegated. A wider partnership is developed around the delegate.**
3. **The respective roles and authority of the various elements must be clearly defined.**

### **Membership**

7.30 The question of membership of the delegate has exercised stakeholders probably more than any other. This issue is not assisted by the relevant provisions of the Act which both permit numerous possibilities and, by virtue of late and inconsistent amendments to the Marine (Scotland) Bill, are not entirely coherent.

7.31 Discussion has tended to concentrate on a list of particular public authorities and stakeholder interests. For example, the recent SMR boundaries consultation states that:

“Marine Planning Partnerships will comprise representatives from a wide range of stakeholder interests, including public authorities and representatives that reflect the commercial, recreational and conservation interests of that region, for example, renewable energy, oil and gas, sea fisheries, aquaculture, conservation, recreation and tourism, ports, harbours and shipping.”

This approach was also reflected in many of the stakeholder responses reported in Chapter 6 and which refer to organisations which should, or indeed should not, be members.

7.32 We consider that the issue of membership can be broken down into several related elements:

- (1) the appropriate number of members of the delegate;
- (2) who these members should be; and
- (3) the related question of the criteria by which members should be selected and nominated.

### **Number of members**

7.33 The Act provides that as a legal minimum the membership of the delegate must comprise:

- a person nominated by the Scottish Ministers and a public authority; or



- a person nominated by the Scottish Ministers and a person nominated by a public authority.

7.34 No maximum membership is prescribed. We do not consider that it is appropriate to recommend any maximum number of members for the delegate. The Act allows for flexibility and the size of the delegate is clearly an area where there may be variation between different SMRs. However note that:

- (1) notwithstanding the minimum membership permitted under the Act, we recommend that where the Scottish Ministers consider it practicable the delegate should comprise a group of persons. Many different public authorities and stakeholders have an interest in the marine area and, beyond the role of the Scottish Government, marine planning and licensing is not the sole responsibility of any one public authority. The Scottish Government has advocated an inclusive approach and, subject always to the restricted nature of the survey, the stakeholder discussions broadly supported delegation to a group. The Act itself provides that where functions are delegated to a public authority in preference to a group of persons the Scottish Ministers must provide a statement of reasons setting out the grounds for doing so.<sup>59</sup> We do however highlight that delegation to a public authority and a person nominated by the Scottish Ministers remains an option. Certain local authorities may wish to lead regional marine planning and the Act provides that if this option is chosen the Scottish Ministers' direction must require consultation with the interests noted in sub-section 12(5)(b); and
- (2) plan-making partnerships such as SDPAs and RTPs have been concerned to maintain membership at a level commensurate with efficient decision-making, this being reflected in legislative requirements and/or associated statutory guidance. The recent strategic review of national parks recommended a reduction in the size of NPA boards to streamline decision-making processes<sup>60</sup>. This issue was also highlighted during stakeholder discussions where several stakeholders commented on their experience that involvement of too many parties in decision-making processes can lead to inefficiency. We would suggest that the optimal size of the delegate is unlikely to exceed a membership of 10 – 15 persons. However, this should not be prescriptive and can be adapted to reflect the particular characteristics of the SMR.

7.35 It is worth reiterating that while the delegate is responsible for decision-making in respect of the delegated functions other stakeholders will be involved in plan-preparation through

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<sup>59</sup> Marine (Scotland) Act 2010, sub-section 12(5)(a)

membership of the technical group or advisory/consultative groups as well as through making representations on the draft RMP.

### **Membership and selection criteria**

7.36 We consider that membership of the delegate should be determined on the basis of what the particular public authority or nominated person will bring to the delegate in terms of relevant expertise, skills and knowledge of the particular SMR and marine planning. Within the broad interests required to be represented within a group delegate the focus should be on the individual nominee. This is a very different approach to that of seeking to list every significant public authority, commercial, recreational or environmental interest within the SMR and then seeking to include these within membership of the delegate. We consider that such an approach would give rise to considerable difficulties in deciding, for example, which of many commercial sectors are to be represented and which party is a suitable nominee to represent the views of that sector. Equally, if various commercial sectors are represented would these be balanced by a similar number of recreational or environmental interests? How would these nominees be balanced against nominees of local authorities or other public authorities? It is important to reiterate that the purpose of membership of the delegate is not to promote the interests of any particular sector or interest within the plan-making process but rather to deploy relevant expertise and experience in delivering a RMP.

7.37 Adopting this approach, we recommend that members be selected through an initial advertisement and selection process run by an appointment group. Such a group would comprise Marine Scotland, relevant public authorities and other, perhaps independent, local members and would propose members for nomination to the delegate. Members would be identified through assessment against selection criteria which may include:

- relevant and direct knowledge of the particular SMR;
- existing statutory responsibilities in the marine or coastal area;
- a regional rather than local perspective;
- expertise in marine planning / ICZM; and
- demonstrable knowledge of commercial, recreational or protection/enhancement interests in the SMR.

7.38 We do not consider that it is appropriate to recommend that particular public authorities or organisations should invariably be members of every delegate. Given the location of existing expertise and experience in marine planning and ICZM and applying the above criteria it is of

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<sup>60</sup> National Parks Strategic Review Report, November 2008. The recommendation was accepted by the Scottish Government.

course highly likely that nominees of particular public authorities, such as local authorities and other bodies with statutory responsibilities, will be integral to plan-making and may well be members of the delegate. However, even where it is apparent that a particular public authority should be represented in the delegate the focus should remain on what knowledge and skills the individual nominee can bring to the plan-making process and this should apply equally to persons nominated by, for example, a local authority.

7.39 Many stakeholders regarded representatives of Marine Scotland and other Scottish Government agencies such as SNH and SEPA as being necessary members of every delegate. Clearly representatives of these bodies will have a vital role to play in the plan-making process. However, as noted in paragraph 7.15 above the role of Scottish Government agencies may require some further clarification. The agencies may, or may not, regard it as inappropriate to be members of the legal delegate responsible for preparing a RMP to be adopted by the Scottish Ministers and may prefer to contribute their expertise in other ways, especially through participation in the technical group.

7.40 It should be for the delegate, subject to Scottish Government guidance, to determine the composition of the technical group and the selection criteria used to invite membership. However, given the proposed role of the technical group we consider it likely to include bodies with an interest, and particularly a statutory responsibility, in the whole or a significant part of the SMR. On this basis we would expect the technical group to include representatives of:

- Marine Scotland;
- Scottish Government agencies such as SEPA and SNH;
- Local authorities;
- Other bodies with statutory responsibilities, such as harbour authorities;
- The Crown Estate;
- Groups such as IFGs or AAGs; and
- Commercial, recreational or environmental interests in the whole or a significant part of the SMR.

7.41 We consider that (i) single interest campaigning organisations or individuals or (ii) groups or individuals with an interest in only a small part of the SMR would be involved in the plan-making process through participation in the advisory or consultative groups or making representations to the delegate.

**Recommendations:**

- 1. While no maximum number for membership of the delegate is recommended the experience of other plan-making bodies is that membership should be maintained at a**

**manageable level.**

- 2. In principle the delegate should comprise a group of persons, but delegation to a public authority and a nominee of the Scottish Ministers remains an option.**
- 3. Membership of the delegate should be determined on the basis of what any particular nominee will bring to the delegate in terms of relevant expertise, skills and knowledge of marine planning and the relevant SMR. It should not be based on an attempt to include every significant public authority, commercial, recreational or environmental interest within the SMR.**
- 4. Membership of the technical group should reflect bodies with an interest, and particularly a statutory responsibility, in the whole or a significant part of the SMR.**

#### **Democratic accountability**

- 7.41 As regards democratic accountability we note that the Act does not provide for direct election to the delegate. The Act does not make regional marine planning a function of local government although we consider it highly likely that representatives of local authorities will be nominated as members of the delegate due to their terrestrial planning functions, their interest in the adjacent marine area, and (in some cases) their existing experience in marine planning and ICZM. We consider that the delegates' accountability will be through the mechanisms established in the Act. The function of regional marine planning is made the responsibility of the Scottish Ministers and the delegate will perform the delegated functions on behalf of the Scottish Ministers. In publishing the RMP the Scottish Ministers must be satisfied that the RMP meets the requirements of the Act and is otherwise satisfactory. The Scottish Ministers may impose requirements as to performance of delegated functions and reporting of progress on the RMP. Therefore we consider that the delegate is accountable to the Scottish Ministers for the discharge of its functions. We consider that it would be inappropriate to impose any other legal controls or seek to make the delegate directly accountable to any other body or group. Effective plan preparation will however require dialogue with stakeholders including local communities.

#### **Legal constraints on delegation of powers**

- 7.42 Legal constraints on the delegation of powers are described at paragraphs 3.8 – 3.13 above. The key legal constraints are that:

- (1) as regards the preparation, monitoring and amendment of a RMP only the delegable functions specified in the Act may be delegated; and

- (2) the Scottish Ministers may give directions to the delegate with respect to the performance of the delegated functions. The delegate must comply with such directions but is taken to have the powers necessary to do so.

7.43 The Act does not require that the delegate be of any specified legal form, must have a distinct legal personality, or is a new organisation.

7.44 The Act does not prohibit the delegate from engaging in activities beyond those necessary to accomplish the delegated functions. The authority to engage in any such activities would not come from the Act, would have to be provided for within the constitution of the delegate, and would be subject to any contrary direction from the Scottish Ministers.

7.45 It should be noted that the Act permits the Scottish Ministers to delegate only certain of the delegable functions, or phase the delegation of functions, or to do so for some delegates and not for others.

### **Legal Form**

7.46 The Act does not prescribe any legal form for the delegate. The delegate will not be a statutory body corporate. The Act neither establishes the delegate as a distinct legal entity nor permits the Scottish Ministers to do so by order.

7.47 We consider that it would be open to the Scottish Ministers to delegate the statutory functions to an unincorporated association. However, and particularly if the delegate comprises a group containing nominated individuals, we consider it likely that members will wish the delegate to be established as a legal entity distinct from its members. This would:

- (1) provide protection to members and directors (subject to proper compliance with company law);
- (2) permit the delegate to directly employ staff (subject to the resourcing issues noted above);
- (3) permit the delegate to otherwise directly contract, for example in contracting out elements of plan-preparation; and
- (4) permit the delegate to raise or defend legal challenges. It is likely that any legal challenge would be directed against a decision of the Scottish Ministers to publish the RMP, but it is conceivable that a legal challenge could be directed against a decision of the delegate in relation to the plan-making process.

7.48 Should the delegate be established as a legal entity separate from its members, of the various types of legal entity it appears that the delegate would have to incorporate itself as a company limited by guarantee. Incorporation will require compliance with company law and the constitutional document of the company would have to reflect the functions of the MPP and confer the necessary powers. We consider that the simplest model would be for members of the delegate to be members and directors of the company. As such the members / directors would also be responsible for managing the company to ensure that it trades properly and complies with the administrative, accounting and auditing requirements of company law.

**Recommendations:**

- 1. Consideration should be given to incorporating the delegate as a legal entity distinct from its members.**

**Decision-making**

7.49 The question of decision-making has commonly been discussed as an incident of membership. Some stakeholders have expressed concern that voting should be structured to permit the views of certain members to prevail in the event that a decision cannot be resolved by consensus.

7.50 We consider that the following principles should apply to the voting system adopted by the delegate:

- (1) the preference should be for decision-making by consensus, this being supported by Scottish Government guidance and promoted by the chairman. This approach is consistent with that of other statutory plan-making bodies and the expectation must be that most decisions will be reached through discussion and consensus. Where there is a significant dispute either among members of the delegate or members of the technical group the delegate should be able, or in some cases required, to seek further information and advice from the technical group or other experts. For example if a statutory body objected to a particular proposal impacting on their statutory responsibilities it is anticipated that the delegate would require further information.
- (2) however the delegate must make hard decisions and policy outcomes should not be determined on the option that can secure consensus. Therefore there must be a clear voting system in the event that a consensual decision cannot be reached.

- (3) when required, decisions should be taken by a simple majority of members, subject to quorum requirements and the casting vote of the chairman. The delegate as a whole is charged with making decisions and each member is responsible for promoting the delegated functions. We recommended that the membership should be selected and nominated on the basis of the expertise and experience individual nominees bring to the delegate. In these circumstances we consider it appropriate that members hold equal voting rights. It should be noted that the Scottish Ministers will retain significant powers to intervene if it is apparent that a delegate is unable to effectively reach decisions.
- (4) the delegate may make provision for delegation of specified decisions to sub-groups, the chairman or deputy chairman or employees.

**Recommendations:**

1. **There should be a preference for decision-making by consensus, supported by Scottish Government guidance and the role of the chairman.**
2. **Where consensus cannot be obtained decisions should be taken by a simple majority of members, subject to quorum requirements and the casting vote of the chairman.**

**Governance issues**

7.51 We consider that the following governance issues will be addressed by the delegate (and may be required by the Scottish Ministers' direction):

- (1) **Roles, responsibilities and relationships.** While the Scottish Ministers' functions are delegated to a delegate, regional marine planning will involve a wide range of stakeholders. Involvement may be through the technical group proposed above or in another advisory or consultative capacity. Governance arrangements must reflect a clear understanding of the respective functions and responsibilities of different parties and the relationships among them. In particular the delegate, and each member of the delegate, must have an understanding of its statutory responsibilities and decision-making role.
- (2) **Decision-making.** The delegate must adopt decision-making and voting arrangements. This should encompass matters such allocated votes, quorum for meetings and voting, appointment and role of the chairman and other officers, casting vote, conduct of meetings and participation in meetings by other parties (such as members of the technical group) on a non-voting basis. There must also be provision

for recording of meetings and decisions. Decision-making arrangements may also have to reflect the need for some members to refer to a nominating public authority for guidance.

- (3) **Conflict of interests.** A delegate may include nominees with other interests in the SMR and may include nominees other than public authorities, and potentially including commercial interests. The content of the RMP and the delegate's role as a statutory consultee may give rise to conflict of interests. It is therefore important that the delegate (and all members) recognise conflict of interests and take appropriate action. The delegate must adopt standing orders and guidance regarding the reporting of any real or potential conflict of interests by members and the role of that member in associated discussion and decisions.
- (4) **Delegation.** It is anticipated that the delegate will involve the expertise of a wider group of stakeholders in formulating the RMP and drafting of policies. The delegate will therefore have to adopt clear rules as to which tasks may or may not be delegated to sub-groups within the delegate or to other parties such as the technical group or employees. Arrangements for delegation must recognise that the delegate is charged with the discharge of the statutory functions, ensure that final decisions on the content and policies of the RMP remain with the delegate, and that in making such decisions the delegate is fully informed as to relevant options and issues.
- (5) **Renewal and replacement of members.** The delegate will have ongoing functions and provision must be made for the renewal and replacement of members. In the case of members nominated by the Scottish Ministers or a public authority provision should be made for a replacement to be nominated. We would anticipate that the delegate itself would be involved in selecting future members who are not public authorities even if such new members are then nominated by another party.
- (6) **Arrangements for reporting on performance of functions.** The delegate is responsible to the Scottish Ministers for discharge of the delegated functions. It is anticipated that the Scottish Ministers direction will require periodic reporting of performance and progress in plan-preparation.
- (7) **Financial management.** The arrangements for resourcing regional marine planning remain to be determined. In particular it is not known whether the delegate will be responsible for a discrete budget allocated to it or whether resourcing will primarily be resourced by another party, most obviously drawing on Marine Scotland resources. However, the delegate must establish systems to control, monitor, audit and report on public money expended in discharging its functions.



- (8) **Conduct.** The delegate should make provision to ensure an understanding of and compliance with the standards of behaviour required of any body or person exercising a public function. This will require adhering to the standards as established in the Ethical Standards in Public Life etc (Scotland) Act 2000.

**Recommendations:**

- 1. The delegate, subject to compliance with the Scottish Ministers' direction, must address a range of governance issues as outlined above.**

**Generic documentation**

7.52 We consider that the Scottish Government should produce two guidance documents to assist in the establishment and operation of regional marine planning:

7.53 The first guidance document would be similar in scope to the circular produced in relation to terrestrial development planning<sup>61</sup>. This document would detail the Scottish Government's interpretation of the legislative requirements in preparing, monitoring and amending RMPs together with guidance on best practice in implementing these requirements. It is anticipated that the following would be addressed:

- (1) the purpose of RMPs and what is anticipated in terms of the form and content of a RMP and the level of spatial and policy detail. For example, in Chapter 6 one stakeholder queried whether it will be possible to prepare and embed more detailed local spatial plans within a RMP;
- (2) the relationship of RMPs to the NMP, MPS, terrestrial development plans and adjacent RMPs;
- (3) chronological guidance on the various stages of the plan-preparation and adoption process and the duties of a MPP and/or the Scottish Ministers in relation to each of these stages; and
- (4) legal requirements and best practice in relation to plan-preparation and engagement with stakeholders and the public.

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<sup>61</sup> Planning Circular 1/2009: Development Planning, The Scottish Government, February 2009

7.54 The second guidance document would be similar in scope to guidance produced in respect of other statutory plan-making bodies such as SDPAs<sup>62</sup> and RTPs<sup>63</sup> and would provide guidance on the governance arrangements of MPPs. Clearly the content of such guidance is dependent upon decisions as to the most appropriate governance arrangement for MPPs but it is anticipated that the governance issues identified above would be addressed, in particular decision-making, conflict of interests and delegation of tasks.

**Recommendations:**

- 1. The Scottish Government should prepare guidance on the form and content of RMPs and the regional plan-making process.**
- 2. The Scottish Government should prepare guidance on appropriate governance arrangement for MPPs.**

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<sup>62</sup> Planning Circular 2/2008: Statutory Guidance on Strategic Development Plan Authorities, The Scottish Government, April 2008

<sup>63</sup> Scotland's Transport Future: Regional Transport Partnerships – Guidance on Membership, The Scottish Executive, December 2005.

## **Appendix A**

### **Terms of Reference**

1. Investigate the structure of a range of existing stakeholder partnerships, with and without statutory planning or other formal responsibilities, and determine the strengths and weaknesses of different options for Marine Planning Partnerships.
  - a) Identify potential structures for MPPs setting out the pros and cons of each option.
  - b) Make recommendations on the key governance issues that must be addressed (including possible degrees of independence from/oversight by Marine Scotland).
  - c) Investigate legal constraints for the delegation of statutory powers to differently constituted bodies (e.g. Company Limited by Guarantee, loosely affiliated partnership, etc.).
  - d) Consider issues relating to democratic accountability, such as precedents for bodies involved in decision making for planning being set up on a non-statutory basis, and being comprised of elected and/or appointed individuals or representative bodies.
2. Establish protocols for identifying the members of the MPP (and provide guidance on appropriate numbers for effective decision-making).
  - a) Review the advantages/disadvantages of having members selected for general marine / planning expertise rather than representing a particular sector.
  - b) Consider an appropriate mechanism to allow the addition and removal of Partnership members as necessary over time.
3. Establish the ground rules for decision making within the MPP.
  - a) Investigate how to deal with conflict of interest situations, where individual organisations represented in a MPP may also be developers or statutory consultees on a planning or marine licence decision and could have opposing views from the rest of an MPP.
4. Make recommendations on the appropriate measures to ensure financial and administrative control.
5. Consider generic documentation to assist the establishment of an MPP. Consider whether some consistency in marine planning partnerships (such as common constitution and decision-making powers) would be useful (for example, increasing efficiency for engagement of national bodies).

## **Appendix B**

### **The Scottish Coastal Forum Steering Group**

- Paul Bancks (The Crown Estate)
- Rhona Fairgrieve (Scottish Coastal Forum Manager)
- Isabel Glasgow (Firth of Clyde Forum)
- Gordon Mann (Scottish Coastal Forum Chair)
- Mark Steward (Argyll & Bute Council)
- Cathy Tilbrook (SNH)
- Johanna Yates (Scottish Renewables)

## **Appendix C**

### **Stakeholder survey participants**

- Chris Cutts (Forth Estuary Forum)
- Isabel Glasgow (Firth of Clyde Forum)
- Lorraine Gray (Shetland SSMEI)
- Patrick Jordan (Aberdeen Harbour)
- Gordon Mann (Solway Firth Partnership)
- Shona McConnell (SEPA)
- Archie McFarlane (Clyde Inshore Fisheries Group)
- Dr Derek McGlashan (Forth Ports)
- Lindsay Roberts (Scottish Environment LINK)
- Mark Steward (Argyll & Bute Council)
- Phil Thomas (Scottish Salmon Producers' Organisation)
- Cathy Tilbrook (SNH)
- David Whitehead (British Ports Association)
- Colin Wishart (The Highland Council)
- Johanna Yates (Scottish Renewables)