

# Planning Scotland's Seas

## 2013 POSSIBLE NATURE CONSERVATION MARINE PROTECTED AREAS

### RESPONSE COVER

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

The response confirms the continuing support of the Federation for the Marine Protected Area (MPA) Project. The Federation has however detected a number of important areas in which the Consultation proposals have departed from the underlying legislation and relevant policy, some might say, in a bid for marine environment empire building. It has determined that these departures drastically affect the outcome of the consultation with the result that too many Marine Protected Areas are being proposed for Scotland's Seas.

The SFF acknowledges that designation of an MPA by itself does not affect fishing but the control measures which are being suggested by Scottish Natural Heritage and the Joint Nature Conservation Committee will substantially, and quite unnecessarily, reduce fishing in Scotland's Seas endangering, at one and the same time, employment and well-being, in coastal Scotland and the Country's food security.

UK Administrations have determined that their policy for MPA designation will be guided by the rules set down by the Oslo Paris (OSPAR) Convention for the protection of the marine environment of the North East Atlantic, of which the United Kingdom is a Contracting Party. The SFF agrees with this approach and thus is deeply disappointed that the Marine Scotland consultation paper ignores it.

# Planning Scotland's Seas

## 2013 POSSIBLE NATURE CONSERVATION MARINE PROTECTED AREAS

### RESPONSE OF THE SCOTTISH FISHERMEN'S FEDERATION

#### 1. PREAMBLE

- 1.1. The Scottish Fishermen's Federation (SFF) is pleased to be able to respond to this important consultation particularly as it has been involved in the development of proposals.
- 1.2. The SFF has taken a close interest in the Marine Protected Area (MPA) project and has given the Government, and, through it, Marine Scotland its support for the principles involved.
- 1.3. In giving this support it should be understood that the SFF is not being entirely altruistic. It understands, as does its members, the importance, for its industry, of healthy and productive seas. Human pressures of every kind both direct and indirect are in the process of degrading the marine environment.
- 1.4. The SFF is however concerned that certain parties, some acknowledging, but many not, the benefit of fresh healthy seafood, are determined that the process, by which that seafood is delivered to the plate, is brought to an end. They will not be satisfied until there is, as they see it, at best, a termination of all fishing and at worst, a reduction to a level that would have been familiar to St Andrew on the Sea of Galilee.
- 1.5. Recognising concerns from responsible sources concerning the effect, on particularly sensitive habitats, of certain fishing methods, and separately on its own initiative, the SFF is expending considerable effort to ensure that a reasonable balance between food production and environmental protection is achieved.
- 1.6. In attempting to reach that balance, the SFF attempts, in this response, to understand the meaning and limits of the relevant legislation adopted by Parliament at Holyrood and Westminster together with the gloss, which is policy, added to that legislation by UK Administrations either separately or together.

- 1.7. In following that path, the SFF hopes that it will demonstrate, beyond doubt, that the Scottish Government has been deceived, into straying from it. This therefore forms an appeal to the Government to reconnect with its legislation and its policy. It must not now suggest that the premise on which it induced the SFF to join it on the journey was intended to mean something other than that which it clearly does.
- 1.8. The SFF welcomed the MPA initiative on the basis that it too had, the same goal. It was on that basis that the SFF supported, subject to constructive criticism, the passing of the Bill which became the Marine (Scotland) Act 2010 ("the Act") and thereafter responded positively to the process which culminated in the Guidelines for MPA Designation. The position of the SFF has not changed one iota.
- 1.9. It is therefore with considerable disappointment that the SFF notes that, that is substantial deviation occurred, as a result of the advice given to Scottish Ministers by Scottish Natural Heritage (SNH), for Territorial Waters, and the Joint Nature Conservation Committee (JNCC) for offshore waters and together hereinafter referred to as Statutory Nature Conservation Bodies (SNCBs).
- 1.10. The SFF makes no accusation that it has been the intention to drive the consultation on the course which was not set for it by legislation. Unless proven otherwise, it is of the view that the position now reached rises from misunderstanding and a lack of time for proper preparation.
- 1.11. Whatever the reason we find ourselves in a policy position which is very distant from the position in which the UK should be to deliver its OSPAR obligations. This, coupled with the enthusiasm of SNCBs for the opportunity being offered to them, has resulted in proposals for designation which far exceed that which is permitted by Law.
- 1.12. The result has been that the Consultation started from a place which was not intended for it. It leaves the MPA initiative in a state of disarray but which is, with combined effort, redeemable.
- 1.13. This response will examine, first, the matter of individual MPA designation before passing on to network design. This response will not attempt to confront each proposed designation. That is for its member Associations, individually, in respect of those areas which are of interest to their members. It will, however, to demonstrate its support for those Associations and its concerns in relation to individual designations, will examine two proposals in detail.

## 2. REFLECTION ON THE CONSULTATION

- 2.1. *“Stakeholder input will be sought in developing the recommendations on the location and conservation objectives, as well as highlighting options of potential management measures for any MPAs in their activity area.”* (Marine Scotland Stakeholder Engagement Policy). Marine Scotland has delivered on its policy with the active engagement of SFF in a number of very useful workshops and numerous bi-laterals. However it is important to draw attention to the fact that, that engagement related, mainly, to questions of location and, to a lesser extent conservation objectives. It did not extend to high-level questions such as network design, OSPAR obligations and replication. It is in relation to these latter matters, in the main, that the SFF is now taking objection.
- 2.2. It would not be fair to pass without the SFF recognising the considerable effort expended by Marine Scotland and SNCBs in assisting the SFF to come to a better understanding of the proposals. It is to be regretted that the SFF finds itself in a position where it is clear that not all issues, and including some of the most important, which divide it from Government, have not been properly addressed, far less resolved. Tribute is also paid to the stamina of Marine Scotland and SNCB officials who have travelled the length and breadth of Scotland, often in circumstances requiring the greatest fortitude, in a valiant attempt to engage communities large and very small, in this important process.

## 3. THE MEAT OF THE CONSULTATION

### MPA DESIGNATION, NETWORK DESIGN AND REPLICATION

- 3.1. The examination of the OSPAR, UK and Scottish legislation and policy in relation to, and requirements for these matters is lengthy and somewhat tortuous. Accordingly examination of these matters is laid out in Annex I. The essentials arising from that examination are to be found in the next section.

## 4. MATTERS ARISING

- Is an MPA network authorised by legislation, at the scale of Scotland Seas?
- Is one authorised at the scale of UK Seas?

- If so of what must it comprise?
- Is one required at the scale of the North East Atlantic?
- If so of what must it comprise?
- What progress has been made?
- Where are the gaps?
- Does the consultation address the need to fill these gaps and the process by which that will be done?
- What roles do representation and replication play and how should the rules governing each, be applied
- Are representation and replication required in the UK Network?

## 5. DISCUSSION

- 5.1. The SFF could make reference to other matters of policy, which, it is convinced, had been misinterpreted in the drawing up of the advice on which it is being consulted. For the moment, though, it is satisfied that enough has been presented to form the foundation for a serious discussion on whether the Consultation approaches a correct interpretation of the laws and policy governing designation and network design.
- 5.2. The SFF will make a case that the Consultation fails the test seriously and that, as a consequence, should be recalled for redrafting.
- 5.3. It will have been noted that there are a number of definitions of the extent of the ecologically coherent network. Putting aside the definition of such a network, this discussion will concentrate on its extent. The following in legislation and policy are postulated: –
- Scottish territorial waters
  - Scottish waters (as defined following administrative devolution).
  - UK waters. (UK Marine Area)
  - OSPAR biogeographic regions
- 5.4. The Joint Administrations now favour the latter but legislation (s. 79 of the Act) which mirrors the equivalent provision in the Marine & Coastal Access Act 2009, (“the UK Act”), requires a network at the extent of the UK Marine Area. To square the circle the UK Joint

Administrations Statement of 2012 (JAS) proposes that the UK Network is a contribution to the OSPAR Ecologically Coherent Network (ECN). While it is difficult to understand what the UK Network will comprise, logic dictates that there will be individual MPAs contributing to the relevant OSPAR Regions which will fill gaps in the ECN requirements for those Regions

- 5.5. There is neither right nor duty in the Act for the establishment of a network at the level of Scottish waters which indeed would have been, for many species and habitats very difficult, if not impossible, as application of the Act extends only to the width of the territorial sea and no such right was devolved administratively, for the wider seas.

#### ROLE OF MPAS

- 5.6. It is noted that the role of MPAs is defined as being important at the scale of Scotland's Seas for the purpose of conserving (and recovering) *threatened and/or declining habitats and sessile benthic species at global, north-east Atlantic or UK scales* and of conserving (and recovering) *significant areas for geographically restricted habitats or species at global, north-east Atlantic or UK scales*. That immediately betrays a concern, which is not addressed in the Consultation that despite the scale of Scotland's Seas, that scale is still too small to confer certain conservation and recovery, following the creation of a network.
- 5.7. There is nothing in the legislation which permits the designation of MPAs to enable the protection of *significant aggregations or communities of important marine species in Scottish waters* nor, as far as can be seen, *areas contributing to the maintenance of ecosystem functioning*.

#### SPECIFICATION OF MPAS FOR NETWORK CONSTRUCTION

- 5.8. It will be remembered that the only network which is relevant to the implementation of the UK legislation is a UK network. The only MPAs the Scottish Ministers can designate are those which will form part of that network. Neither representation nor replication can be assessed until the gaps in the Regions II III and V network construction have been identified.
- 5.9. It will be said later, but it is now abundantly clear, that the cart (designation of sites and proposed replicates for those sites) has been put before the horse (agreement within the UK of the elements required for completion of the regional networks themselves

contributing to the ECN (based on ECN representation and replication rules).

### REPLICATION

5.10. The result of the erroneous approach taken in the Consultation Document to replication means that before identification of the gaps in Regions II and III, there is already, not just replication, but in many cases, extensive replication proposed.

	Barrowed mud	Deep sea sponge	Marine shell beds	Horse mussel beds	Kelp and seaweed	Sponges on soft sediment	Marl or coarse shell	Reefs with burrowing sea cucumbers	Northern sea fan and sponges	Offshore subtidal sand and gravels	Seamount	Sophisticated seep aggregations	Tide-swept coarse	Walls with burrowing sponges	Northern leather star	Fan mussel	Ocean quahog	Change roughy	Sandels
Central Fladen																			
Clyde Sea Sill																			
East Caithness Cliffs																			
East of Gannet and Montrose Fields																			
Faroe-Shetland sponge belt																			
Fetlar to Haroldswick																			
Firth of Forth Banks Complex																			
Geike Slide and Hebridean Slope																			
Hatton-Rockall Basin																			
Loch Creran																			
Loch Sunart																			
Loch Sunart to the Sound of Jura																			
Loch Sween																			
Lochs Duich, Long and Alish																			
Monach Isles																			
Mousa to Boddam																			
North-east Faroe Shetland Channel																			
North-west Orkney																			
North-west sea lochs and Summer Isles																			
Norwegian boundary sediment plain																			
Noss Head																			
Papa Westray																			
Rosemary Bank Seamount																			
Small Isles																			
South Arran																			
South-east Fladen																			
South-west Sula Sgeir and Hebridean Slope																			
The Barra Fan and Hebrides Terrace Seamount																			
Turbot Bank																			
Upper Loch Fyne and Loch Goil																			
West Shetland Shelf (formerly Windsock)																			
Western Fladen																			

5.11. This outcome does not conform to any of the policies referred to. The Marine Scotland policy, contained in paragraph 4.14 of the Guidelines, is clear that replication will have been achieved if there is more than one example across the Scottish network. However we have already established that there cannot be a Scottish network. The requirement for replication is, following both the Scottish and UK Acts and OSPAR Guidelines, for there to be more than one replicate site in any OSPAR biogeographic Region.

5.12. SNCBs have, erroneously, concluded that the requirement is to have a feature with more than one replicate site in each OSPAR Region where Scotland's Seas form part of that Region. In other

words, there will be a feature, if available, provided from Scottish Waters, defined below, for each of OSPAR regions II & III together with replicates, if possible, similarly provided for each of those features. While SNCBs are defining features in different ways it would appear that 'feature', in this context, means features whether or not on the OSPAR list of threatened and/or declining habitats and species or in addition, for habitats, EUNIS level 3 features.

- 5.13. Sometimes even this definition proves too narrow for SNCBs. SNH suggests in justification for 4 replicates for flame shell beds within Scottish waters and also within OSPAR Region III, the following. *"Flame shell beds are included within more than one search location / potential area for an MPA but these (beds) are all within OSPAR Region III i.e. there is no replication between regions. It is not possible to achieve replication between regions because flame shell beds are only recorded in OSPAR Region III. Therefore this part of the guideline is considered to be met."*
- 5.14. Finally, it is axiomatic that before any replication can be proposed the representative feature must be identified. No attempt has been made to identify the representative feature in any category. This factor, on its own negates the purpose of the Consultation which is to produce a result which complies with OSPAR Guidance.

## 6. CONCLUSIONS

- 6.1. At the beginning of this section the following questions were asked. The SFF now provides its answers based on the discussion above and the facts arising from the explanations contained in Annex I
- Is an MPA network authorised by legislation, at the scale of Scotland Seas?  
**The answer is in the negative. The only network authorised by the Act is at the level of UK Seas**
  - Is one authorised at the scale of UK Seas?  
**Yes. See above and also the UK Act.**
  - If so of what must it comprise?  
**Neither Act specifies the constituents of the Network. The JAS, however, in policy terms, provides that the UK Network is a**



**contribution to the ECN. It does not, however, provide any detail of how that might be achieved. It does make it clear, however, that OSPAR Guidelines, will be used.**

- Is one required at the scale of the North East Atlantic?

**Yes. This is required by the OSPAR Convention. Although the SFF cannot find a specific reference it believes it is intended that the constituent parts of that network being the OSPAR regions should themselves be ecologically coherent.**

- If so of what must it comprise?

**Its five Regions, with all meeting the ecologically coherent test.**

- Has progress has been made?

**OSPAR reports that good progress is being made in certain Regions. For example it notes that Region II is showing the first signs of ecological coherence and that Region III is following in its path.**

- Are there gaps?

**Yes there are according to OSPAR. It would have helped had it set out where those gaps occur. According to its own information there appear to be very few habitat gaps in Regions II & III. Perhaps OSPAR concentrates on habitat gaps, believing that the capture of habitat results in the capture of threatened and/or declining species, which would, as a matter of course, dwell in that habitat.**

- Does the consultation address the need to fill these gaps and the process by which that will be done?

**No, it does not. It does seem odd that the UK which has contributed so much already to the OSPAR ECN Network does not share, with consultees, its knowledge of the gaps. Sites already designated contain much of what is required for an ECN in both Regions II & III. To be productive, constructive and additive the consultation under response should have started with the state of the network, identified the gaps and made proposals for a UK network that would have contributed to completion, or indeed completed, the relevant regional networks. Having said that, the contribution from the UK must be no more than proportionate to the contribution that other Contracting Parties have made or should make.**

- What roles do Representation and Replication play and how should the rules governing each, be applied?

**For each region the habitat or species which is the best example of that habitat or species to represent that habitat or species in the region and is capable of being protected by an MPA, is to be identified. Thereafter, in that region, and that no lesser scale, identification of another representative of that habitat or species should be identified for protection in order to spread the risk. There is some discussion as to the number of replicates which should be protected but by 2013 it appears that the maximum relates to critically endangered species and stands at 3.**

- Are Representation and Replication required in the UK Network?

**The answer is in the negative. Sites designated by authority of the Acts must contribute to the UK Network. It in turn is a contribution to the OSPAR Network (JAS). If the habitat or species is already designated for protection in the relevant Region, no further representation is required unless the candidate can be shown to be a better representative than that which is already designated. The Acts lay down no test for replication As with Representation, Replication will only be required if the OSPAR test for replication has not yet been met. Please note that the test must be applied at the scale of the Region not at the scale of the UK Network.**

- 6.2. The requirements for representation and replication within the UK Network cannot be established until an assessment of gaps in the networks as they know exist, is completed.
- 6.3. The identification of replicates cannot start until the representative, which is to be replicated, has been identified.

## 6. EVIDENCE

### LEGAL POSITION MARINE (SCOTLAND) ACT 2010

6.1. 68(2) *The Scottish Ministers must—*

*(a) prepare and publish guidance setting out scientific criteria to inform consideration of whether an area should be designated a Nature Conservation MPA,*

6.2. *Representations and hearing in relation to proposed designation order*

*(1) The Scottish Ministers may, before deciding whether to make a designation order (or an order amending or revoking any such order), give any person the opportunity of making oral or written representations to them or to any person appointed by them for that purpose at a hearing.*

*(2) The Scottish Ministers may make regulations providing for the procedure to be followed (including decisions as to expenses) at any hearing held under subsection (1).*

### THE COURTS

6.3. *Al Rawi v Security Services [2011] UKSC 34*

*“To be truly valuable, evidence must be capable of withstanding challenge. I go further, evidence which has been insulated from challenge may positively mislead.”*  
Lord Kerr of Tonaghmore

*“..... a closed material procedure involves a departure from both the open justice and the natural justice principles.”* Lord Dyson

### POLICY POSITION

6.4. Sound evidence and monitoring underpins effective marine management and policy development. (HLMO 20)

### UK GOVERNMENT AND DEVOLVED ADMINISTRATIONS

- 6.5. Sound evidence and monitoring underpins effective marine management and policy development.

Where evidence is inconclusive, decision makers should make reasonable efforts to fill evidence gaps but will also need to apply precaution within an overall risk-based approach", in accordance with the sustainable development policies of the UK Administrations. This will apply equally to the protection of the natural marine environment, impacts on society and impacts on economic prosperity. (Marine Policy Statement)

#### SCOTTISH MINISTERS

- 6.6. To allow development of policy aimed at ensuring the sustainable use of the marine environment, a sound evidence base providing an assessment of the condition of Scotland's seas is essential. (Draft Marine Plan)
- 6.7. SNH and JNCC used the best available evidence and supporting guidance on MPA search features, applying expert judgement when assessing against the MPA selection guidelines (MPA Consultation Document)
- 6.8. "Best available evidence" is not in every case "sound evidence".

#### SELECTION GUIDELINES

##### SNCBs

- 6.9. *"SNH and JNCC used the best available evidence and supporting guidance on MPA search features, applying our expert judgement when assessing the MPA proposals against the Scottish MPA Selection Guidelines. Our judgements on whether the guidelines were met (for each MPA search feature), and a summary of the evidence that was used to support these assessments, are outlined in the detailed assessment against the MPA Selection Guidelines and the data confidence assessment documents that have been produced for each MPA proposal. The data confidence assessments also provide a description and an evaluation of the type, age, source and extent of evidence used to support each of the Nature Conservation MPA proposals / search locations."*
- 6.10. *"All evidence used to support Nature Conservation MPA selection will be subject to quality review before being incorporated into GeMS (the Scottish MPA Project geodatabase)."*

6.11. *“We will use independent expert review at intervals during the project to examine the quality of the evidence and the scientific integrity of our gathering, synthesis and interpretation of evidence. “*

6.12. *“We will routinely publish background material and consultants’ reports, to show how evidence has been gathered, analysed and applied “*

#### MARINE SCOTLAND GUIDELINES

6.13. *“Nature Conservation MPAs will be based primarily on scientific evidence using the guidelines in Annex 1 of this document.”*

6.14. *“The selection of Nature Conservation MPAs will be based primarily on scientific evidence, drawing upon the best available information on Scotland’s marine biodiversity and geodiversity.”*

#### DISCUSSION

6.15. If the test of the evidence to be used in MPA designation were no lower than that appearing in 6.12 then the concerns of SFF would have been minimised. However 6.13 suggests that scientific decisions will be based on “best available information”. SNCBs reproduce that as “best available evidence”.

6.16. Defra recognised, after much prodding, that the term “best available evidence”, is not a standard at all and, as a consequence, and for other reasons, restricted its proposals from 127 MCZs to 31.

6.17. Representations on the same grounds have been made to Marine Scotland but all to no effect. SFF attempted to reach agreement on the basis that the evidence would have to be in favour of designation on the balance of probabilities, but this was rejected, presumably on no other basis than much of the evidence failed that standard

6.18. SFF does not accept this rejection because a designation without, or on the basis of insubstantial, evidence is against natural justice and scientific probity.

6.19. Further SFF does not accept that the peer review of SNCB’s evidence, carried out in-house, is anything like sufficient or acceptable in the scientific world. “Not only must justice be done, but must be seen to be done” is the aphorism applicable.

- 6.20. The outcome of the independent expert review referred to at 6.10 has not been brought to the attention of SFF and, until it is, SFF will proceed on the assumption that any review of evidence, carried out in-house, is rendered worthless by the irresistible charge of conflict of interest.
- 6.21. Marine Scotland is reminded that Defra conceded that the MPAC argument on the matter of minimum evidence was sustained. This is believed to be the, or one of the, considerations that saw a substantial reduction in MCZ final proposals. One of the other reasons for the reduction was the elimination of reference areas. It was never the intention of Marine Scotland to include reference areas which demonstrates, in that context, if no other, a clear understanding of the limits imposed on MPA designation by the Act.

#### DATA CONFIDENCE ANALYSIS

- 6.22. SFF has conducted a sweep of the data confidence analysis of each proposed MPA. It has concerns, ranging from fundamental to mild in relation to the following MPAs.
- 6.23. The Summary is set out in Annex II.
- 6.24. It has to be emphasised that the Data Confidence Analyses are not independent of those recommending the designations. Without in any way impugning the ethics of those that have prepared the Analyses, the Analyses are not capable of being treated as robust and therefore cannot have the confidence of those who are being asked to accept them.

#### 7. OBSERVATIONS

- 7.1. It is a *sine qua non* that only those species and habitats which fall within the definitions contained in the Acts may be designated as reason for an MPA designation.
- 7.2. The SFF in its response to the consultation on Primary Marine Features will indicate which species habitats and features should not appear on that list. However it will expand on some of them here.

- 7.3. **Black Guillemot.** It is understood that this species appears because it is protected by neither the Habitats Directive nor the Birds Directive. However hard it might try, a Black Guillemot has not yet evolved into a marine species and therefore, as an avian species, falls outside the ambit of the Act.
- 7.4. Even if it were characterised as a marine species it is as far as one can get from a vulnerable or threatened species. Birdlife reports *“This species has an extremely large range, and hence does not approach the thresholds for Vulnerable under the range size criterion (Extent of Occurrence <20,000 km<sup>2</sup> combined with a declining or fluctuating range size, habitat extent/quality, or population size and a small number of locations or severe fragmentation). The population trend appears to be increasing, and hence the species does not approach the thresholds for Vulnerable under the population trend criterion (>30% decline over ten years or three generations). The population size is very large, and hence does not approach the thresholds for Vulnerable under the population size criterion (<10,000 mature individuals with a continuing decline estimated to be >10% in ten years or three generations, or with a specified population structure). For these reasons the species is evaluated as **Least Concern.**”*
- 7.5. It is noted that Defra has strongly hinted that designation of an MCZ of any form of bird would require a change to the UK Act
- 7.6. **Fronts.** A Front is ephemeral. As with Black Guillemot, it does not fall within the definition of an object which justifies the designation of an MPA as set out in 68 (1) of the Act.
- 7.7. **Sandeels.** The species of sandeels appearing in Scottish waters do not appear on the OSPAR threatened/declining list. They appear in Table 12 of the Guidelines on the list of commercial fish, any of which could be used to underpin, and therefore not the primary purpose, of the designation of an MPA. Table 12 carries a specific explanation of why a sandeels complex might be designated. *“These species are commercially fished in the seas around Scotland and Marine Scotland is the lead organisation responsible for their wider management. However, these species are also of conservation importance and could benefit from the protection afforded by a MPA (it is recognised that spatial measures other than MPA designation may also be effective). Nature Conservation MPAs are not intended to be used for fisheries management purposes. So, for example, MPAs could be used to protect sandeel populations in locations where sandeels play a key functional role in supporting top predators such as seabirds and cetaceans but would not be used for the purpose of managing a sandeel fishery.”*

Where there is a fishery concern, sandeels are protected by fishery measures. Under the “three pillar” approach further badging is not appropriate. In other areas, while it might be considered desirable to designate an MPA primarily for sandeel protection, any action to do so would go beyond both the law and the guidelines.

**Sea-Pen and burrowing megafaunal communities.** This range does appear in the list of threatened and/or declining habitats and species that OSPAR recognises as requiring protection. However it is very clear from document OSPAR 10/23/1 – E, Annex 33, that the protection by an MPA is not appropriate. It is not competent (OSPAR Convention Annex V, Article 4.1) to a habitat which requires fisheries measures to attain conservation objectives. OSPAR, therefore, calls upon Contracting Parties to consider fisheries measures to protect the relevant communities.

The SFF will be considering further the consequences of OSPAR Convention Annex V in relation to fisheries measures designed to reduce or eliminate fisheries effort for the purposes of Scottish MPA protection.

## 8. SFF ASSOCIATIONS AND MPAS

- 8.1. The Table on the following page sets out the reaction of SFF Associations to MPA proposals. That reaction is a view of the ‘worst case’ management proposals for the relevant MPA.
- 8.2. It to be hoped that Associations give their reasons for acceptance, compromise and rejection in their individual returns. If that does not occur to the satisfaction of Marine Scotland, it is asked to return to the SFF for assistance to obtain information.
- 8.3. Certain of the returns for the Mallaig Association are missing as a result of the indisposition of its Secretary. If the relevant information is provided to SFF it will be forwarded to Marine Scotland.



SCOTTISH PROPOSED MPAs-ASSOCIATION REACTION										
				ANGLO-SCOTTISH	CLYDE	MALLAIG	ORKNEY	SCALLOP	SCOTTIS H WHITE FISH	SCOTTISH PELAGIC
NO VIEW	ACCEPT	POSSIBLY ACCEPT/	REJECT							
CENTRAL FLADEN CFL										
CLYDE SEA SILL CSS										
EAST CAITHNESS CLIFFS ECC										
EAST OF GANNET AND MONTROSE FIELDS EGM										
FAROE-SHETLAND SPONGE BELT FSS										
FETLAR TO HAROLDSWICK FTH										
FIRTH OF FORTH BANKS COMPLEX FOF										
GEIKE SLIDE AND HEBRIDEAN SLOPE GSH										
HATTON-ROCKALL BASIN HRB										
LOCH CRERAN LCR										
LOCH SUNART LSU										
LOCH SUNART TO THE SOUND OF JURA SJU										
LOCH SWEEN LSW										
LOCHS DUICH, LONG AND ALSH DLA										
MONACH ISLES MOI										
MOUSA TO BODDAM MTB										
NORTH-EAST FAROE SHETLAND CHANNEL NEF										
NORTH-WEST ORKNEY NWO										
NORTH-WEST SEA LOCHS AND SUMMER ISLES NWS										
NORWEGIAN BOUNDARY SEDIMENT PLAIN NSP										
NOSS HEAD NOH										
PAPA WESTRAY PWY										
ROSEMARY BANK SEAMOUNT RBS										
SMALL ISLES SMI										
SOUTH ARRAN ARR										
SOUTH-EAST FLADEN SEF										
SOUTH-WEST SULA SGEIR AND HEBRIDEAN SLOPE SSH										
THE BARRA FAN AND HEBRIDES TERRACE SEAMOUNT BHT										
TURBOT BANK TBB										
UPPER LOCH FYNE AND LOCH GOIL LFG										
WEST SHETLAND SHELF (FORMERLY WINDSOCK) WSS										
WESTERN FLADEN WFL										

## 9. TWO PROSPECTIVE MPAS

- 9.1. While SFF Associations will respond in respect of the prospective MPAs which are of interest to the members, they have requested the SFF to demonstrate against the example of two prospective MPAs the deficiencies as perceived by SFF of the procedures used in the assessment process. One example has been taken from each of Regions II & III, with one being offshore (JNCC) and one being inshore (SNH). The examples used are of particular importance to the fishermen who exploit the respective areas but also give rise to questions which are relevant in many other cases

### CENTRAL FLADEN

#### THE JNCC REASON FOR DESIGNATION

- 9.2. *The Central Fladen possible MPA is recommended for the protection of the seapens and burrowing megafauna (Central Fladen) and the tall sea-pen (Central Fladen 'Core') components of burrowed-mud habitat, and a sub-glacial tunnel-valley geodiversity representative of the Fladen Deeps Key Geodiversity Area (Brooks et al., 2012). The original possible MPA boundary was defined by data points from 2008-2010 which met or exceeded the average seapen density for burrowed-mud habitat across the wider Fladen grounds. The area of records of the tall seapen to in the southern part of the possible MPA has been identified as the Central Fladen 'Core'. Survey data collected during 2013 confirmed the presence of the seapens and burrowing megafauna (SS.SMu.CFiMu.SpNMeg) habitat across the possible MPA boundary and identified further tall sea pen records in the Central Fladen 'Core'.*
- 9.3. The OSPAR definition of this habitat is "Sea-pen and burrowing megafauna communities" means plains of fine mud, extending over an area of at least 25m<sup>2</sup> and at water depths ranging from 15-200m or more, which are heavily bioturbated by burrowing megafauna, with burrows and mounds typically forming a prominent feature of the sediment surface, and which may include conspicuous populations of sea-pens, typically *Virgularia mirabilis* and *Pennatula phosphorea*.
- 9.4. The difference between the minimum patch size in the area intended to be protected is highlighted below. Neither of the two species of sea pen specifically referred to is the tall sea pen.
- 9.5. Measures: SFF is certain that objection will be taken not just by Scottish fishermen but also by OSPAR Contracting Parties to a

proposal that MPA protection is extended to a feature the protection of which requires a CFP agreed fisheries pressure.

- 9.6. Extent: the habitat extent proposed for the MPA is 702 km<sup>2</sup>. The minimum patch size proposed by OSPAR protection extends to 25m<sup>2</sup>. It is submitted by SFF that as the area proposed for protection far exceeds required by OSPAR, it should be substantially reduced.
- 9.7. Representation: while OSPAR directs this feature is worthy of protection, it being included in the list of threatened and/or declining habitats, the feature is, likely to be represented elsewhere in Region II. No assistance is given in the consultation as to whether or not this is true and therefore no further steps for either MPA designation or fisheries protection should be taken until a position concerning the feature protection is clarified. If, as SFF suspects, MPA protection is not appropriate; the question of replication does not arise.
- 9.8. It is noted that the glacial tunnel feature does not require protection.

## SOUTH ARRAN

### THE SNH REASON FOR DESIGNATION

#### Proposed Protected Features

- 9.9. Biodiversity: **burrowed mud; herring spawning grounds; kelp and seaweed communities on sublittoral sediments; maerl beds; maerl or coarse shell gravel with burrowing sea cucumbers; ocean quahog; seagrass beds; shallow tide-swept coarse sands with burrowing bivalves.**
- 9.10. The aim is to recover the maerl beds and to conserve the other features in order to make a long lasting contribution to the MPA network.
- 9.11. While this area was contained within a larger Area of Search, it did not graduate to a pMPA. Perhaps that has much to do with the fact that Government and other surveys found little therein which would be valued for conservation.
- 9.12. The MPA proposal did not, originally, come from Government but originated as a 3rd party proposal promoted by an environmental pressure group based on Arran called COAST.
- 9.13. It made a proposal with the outer boundary drawn on the same line as the old 3 mile limit abolished in 1984. This was no coincidence.

COAST suggests that the decline in fish stocks in the Clyde results directly from that abolition. The inconvenience of providing supporting evidence is bypassed. It is also clear that assumptions have been made which are entirely erroneous. For example at the Marine Scotland event in Brodick on 30 October 2013, it was specifically stated and widely supported that the introduction of scallop dredging following the abolition of the 3 mile limit was responsible, either entirely, or in the main for the destruction of the seabed. In fact scalloping, up to the shoreline, has always been legal in the Firth of Clyde, in those parts where fishing is allowed.

- 9.14. Remaining with that event, the indelible impression gained was that marine protection was being used as a vehicle to obtain the elimination of fishing in the whole of the MPA. A suggestion by Marine Scotland that parts only of the area might require protection was vociferously rejected.

Proposals not accepted for "Protected Features"

- 9.15. Almost as pertinent as the features accepted for protection are the features forming part of the 3rd party proposal which were rejected, as well as the reasons for rejection. The features rejected are Horse Mussel Beds, Northern sea fan and sponge communities, Native Oysters and ocean quahog aggregations. Rejection was on the basis of no evidence of the species either at all, or in the state in which the species could be protected. One has to wonder why proposals have been made which were not supported by evidence. The fact is that those proposals were made and it follows that the effect on the remainder of the proposal is destructive.

Evidence

- 9.16. The foregoing credibility concern raises a natural reluctance to accept evidence which has allegedly been attested by SNH. An example is the evidence of maerl having been located at the Iron Ledges. Previous expeditions to this area have found nothing and, particularly, no maerl. SNH accepts the evidence of a set of photographs, the location of where they were taken being confirmed by a set of GPS readings. While this might very well be the case the standard applied is woefully short of acceptable. The photographs were provided, the SFF understands by Mr Howard Wood who is the chairman of COAST the body which made the 3rd party proposal. There is no evidence that any attempt at corroboration has been made.

- 9.17. There has not been time to examine the evidence for other features but the foregoing should cast more than enough doubt for the proposal to be withdrawn from the process for further examination.

#### Status of the Proposal

- 9.18. The reduced proposal, now adopted by Government, is designed to give protection to the following: –
- o Kelp and seaweed communities on sublittoral sediment (SS.SMp.KSwSS)
  - o Tide-swept algal communities (IR.HIR.KSed.XKHal)
  - o Seagrass beds (SS.SMp.SSgr.Zmar)
  - o Maerl beds (SS.SMp.Mrl)
  - o Maerl or coarse shell gravel with burrowing sea cucumbers (SS.SCS.CCS.Nmix)
- 9.19. There is also a claimed benefit from the imposition of an MPA with appropriate restriction to the herring spawning ground at Brown Head.
- 9.20. Burrowed mud is not mentioned and nor should it be. It is already over replicated in Scottish waters and probably additionally in UK waters, if we only knew.

#### Discussion

- 9.21. Dealing with the last first, it is understood that the spawning ground is protected by current legislation. However a search, which confirms that the Ballantrae Banks continue to have seasonal protection, suggests that the Brown Head closure may have lapsed. Further information on this as requested from Marine Scotland including the reason why the closure was allowed to lapse and what benefit may be expected from its reintroduction. If there is spawning spring stock herring to be protected, then it should be.
- 9.22. **Kelp and seaweed communities on sublittoral sediment (SS.SMp.KSwSS)**
- These do not appear on the OSPAR list of threatened and/or declining species and thus should be removed as an underpinning reason for MPA designation.
- 9.23. **Tide-swept algal communities (IR.HIR.KSed.XKHal)**

These do not appear on the OSPAR list of threatened and/or declining species and thus should be removed as an underpinning reason for MPA designation.

**9.24. Seagrass beds (SS.SMp.SSgr.Zmar)**

This feature, according to Marine Scotland, is protected by another measure and therefore should not be used to underpin MPA selection.

**9.25. Maerl beds (SS.SMp.Mrl)**

This feature appears, specifically for Region 3 in the OSPAR List. However maerl is already protected in the Lamlash Bay NTZ which lies within the boundaries of the proposed MPA. This fact excludes the Iron Ledges possible maerl site from being used to underpin MPA selection.

OSPAR Principle 11 states “Replication of habitats, species and ecological processes in separate OSPAR MPAs in each biogeographic area is desirable where possible.

Replication is already proposed within the Scottish Waters in other MPAs lying within Region III.

Concerns in respect of the evidence which underpins the existence and location of the species have already been expressed.

**9.26. Maerl or coarse shell gravel with burrowing sea cucumbers (SS.SCS.CCS.Nmix)**

These do not appear on the OSPAR list of threatened and/or declining species and thus should be removed as an underpinning reason for MPA designation.

## 10. SUBMISSION

### 10.1. REPRESENTATION

- 10.1.1. Before anything further is done, and particularly prior to designation, a thorough examination must be made of sites already designated as MPAs within those OSPAR Regions into which a UK network will stretch. The purpose of that examination would be to identify features, capable of designation under UK legislation, which are already designated. If any are identified then they are, or one of them is, the representative of that feature.

### 10.2. REPLICATION

- 10.2.1. It must be recognised, at this stage, that replication is not required in all cases. Those features for which it is proposed that replication is required must be identified and consulted upon.
- 10.2.2. The examination proposed in 10.1.1 should also identify where features are already replicated in MPAs in the various OSPAR Regions.
- 10.2.3. If there is a sufficiency, following OSPAR standards, of replication, no further replication is required as part of the UK contribution. No designation must occur until this exercise has been undertaken, consulted upon and concluded.

### 10.3. NETWORK

- 10.3.1. It must be conceded that there is no duty to create a Scottish network or, if that concession, can be justifiably ignored that the network extends only to Scottish territorial waters.
- 10.3.2. The SFF agrees with the thrust of the JAS but notes that its repetition of OSPAR requirements goes further than those requirements themselves. It must be modified accordingly.
- 10.3.3. In particular the SFF is content that the proposed UK Network is created for administrative purposes only. One of those purposes is to ensure that the UK contribution to the OSPAR ECN is an addition to that which has already been designated by the UK and others. That addition must not exceed the obligations which the UK has towards the OSPAR ECN.

### 10.4. REPRESENTATION

- 10.4.1. Given the agreement amongst UK Administrations that designation is for the purpose of contributing towards the OSPAR ECN only, there cannot be any designation which is not for that purpose. The

SFF will submit as part of Annex II its list of MPAs, proposed for Scottish Waters which it considers to be *ultra vires*.

- 10.4.2. Those species and habitats which fall outside those which may be protected by MPA designation have already been noted. They should be removed from the list.
- 10.4.3. Within UK proposals the representative site for each feature must be identified. The SFF considers that there must be a ranking of replicates so that excess designation can be pared down, in preparation for the application of the OSPAR replication test.
- 10.4.4. Replication within the same site (e.g. maerl in South Arran) must be removed to meet OSPAR policy.
- 10.4.5. No habitat and/or species (e.g. burrowed mud and tall sea pens) must be designated for MPA protection which could not be designated under OSPAR Convention annex V.

#### 10.5. EVIDENCE

- 10.5.1. Corroboration of evidence is essential. In particular, evidence cannot be accepted from a 3<sup>rd</sup> party without the original source being verified. This is particularly true where evidence is provided by a party who has a declared interest in achieving designation. Excluded from the above should of course be conclusions which had been properly and independently peer-reviewed by a recognised academic individual or body.
- 10.5.2. A data confidence assessment cannot be a substitute for corroborated evidence. It is after all only an opinion. Opinions must not be allowed to result in designations.
- 10.5.3. Given the serious concerns which the SFF has in relation to the standard of evidence and the process by which that evidence was reviewed the Scottish Ministers are requested to put in hand the process permitted by s.78 (2) (regulations to permit independent scrutiny of designation proposals) so that independent scrutiny, following representations, can be made prior to designation.

#### 10.6. MANAGEMENT

- 10.6.1. The management proposals made are all interesting and in some cases entertaining. However they are not yet at a stage where acceptance of a proposal can be given or withheld. Even strong hints that the management will not affect, to any material extent, fishing in a proposed site, cannot be relied upon.



- 10.6.2. It is proposed that before designation takes place management measures are settled upon, leaving an opportunity to oppose designation, if it is considered that the proposals go too far. It is recognised that proposals which affect fishing activities will be subject to a 12 week consultation period prior to an SSI being made under the Inshore Fishing (Scotland) Act 1984.

#### 10.7. GENERAL

- 10.7.1. As stated in the preamble, the SFF supports the MPA process and the intention to create an Ecologically Coherent Network, on OSPAR guidelines, in the North East Atlantic.
- 10.7.2. In order to turn that support into practical assistance, fishermen represented by its member Associations must be persuaded that the process being followed is fair and reasonable and that sacrifices which they will be asked to make are at the minimum needed to ensure compliance with the Law.
- 10.7.3. The SFF has come to a view that this test is far from being met in relation to compliance with the Act, the UK Act and the OSPAR Convention.
- 10.7.4. The SFF has made every attempt to ensure that its response, while coming to a conclusion which cannot support the Consultation recommendations, is based, not just in the subjective interests of its members but on the objective basis of deduction and logic. It is not intended that that outcome should have favoured any party. It is not partisan, but is reaching for the truth based on what our Governments have concluded in legislation and policy.
- 10.7.5. The Scottish Government must not, therefore, detect any intention to derail the MPA process nor indeed to undermine the principle. It is invited to rejoin the SFF on the path on which it originally agreed to set out.

## 11. ENDNOTE

- 11.1. The SFF regrets that it could not find the time to analyse each prospective MPA in order to determine whether the individual proposals therein met OSPAR guidelines for MPA protection and, if so, whether they were likely to qualify as a network candidate. This major piece of work still requires to be concluded before any designation takes place.
- 11.2. The SFF regrets that he did not receive from Government the list of proposed MCZ designations to enable it to establish, at the present state of the proposed UK Network whether there had been over representation and over replication at that level.
- 11.3. The SFF regrets that it could not locate any information which would have assisted it in determining what gaps exist in the OSPAR biogeographic regions abutting the United Kingdom for the purpose of establishing the gaps in that network and how the contribution of UK proposals could assist in plugging those gaps.
- 11.4. The SFF regrets that, in attempting to identify OSPAR and EUNIS 3 declining habitats that a lack of consistency in nomenclature made that task extremely difficult and unfortunately impossible in the time available.
- 11.5. The SFF points out that the end of consultation date arrive before it had completed its discussions with Marine Scotland concerning certain aspects of legislation, particularly representation and replication.

# ANNEX I

## MPA DESIGNATION

### 1. THE LAW

- 1.1. The right of Scottish Ministers to designate Marine Protected Areas for Nature Conservation purposes is found in the Act as follows: –

*67 Marine protected areas*

*The Scottish Ministers may by order (a “designation order”) any area of the Scottish marine protection area as –*

*a nature conservation marine protected area (a “Nature Conservation MPA”),*

*68 Nature Conservation MPAs: additional requirements relating to designation*

*(1) An area may be designated by a designation order as a Nature Conservation MPA if the Scottish Ministers consider it desirable to do so for any of the following purposes –*

*(a) conserving marine flora or fauna,*

*(b) conserving –*

*(i) marine habitats or types of such habitat,*

*(ii) features of geological or geomorphological interest.*

- 1.2. This definition is undoubtedly very wide and could, *reductio ad absurdum*; enable the Scottish Ministers to designate the entire Territorial Waters of Scotland as an MPA.

- 1.3. The following sub-clauses of s. 68 are not, except in one important regard, mandatory but give some general guidance as to the priorities for MPA designation.

*(4) Before designating an area as a Nature Conservation MPA, the Scottish Ministers must have regard to the extent to which the designation of the area would contribute towards the development of a network of conservation sites (namely a network referred to in section 79(2)).*

*(5) For the purposes of subsection (1)(a), conserving marine flora or fauna includes (in particular) conserving any species that is rare or threatened because of –*

*(a) the limited number of individuals of that species,*

*(b) the limited number of locations in which that species is present.*

*(6) For the purposes of subsection (1)(a) and (b)(i), conserving marine flora or fauna, or (as the case may be) marine habitat or types of such habitat includes conserving the diversity of such flora or fauna or (as the case may be) such habitats or types of such habitats, whether or not any or all of them are rare or threatened.*

*(7) In considering whether to designate an area, the Scottish Ministers may have regard to the extent to which doing so will contribute to the mitigation of climate change.*

*(8) In considering whether it is desirable to designate an area as a Nature Conservation MPA, the Scottish Ministers may have regard to any social or economic consequences of designation.*

- 1.4. As already remarked, for the proper flow of this document it is best to leave the matter of the network until a later section. We continue with the discussion on the subsequent sub-sections of section 68.
- 1.5. While subsection (5) does not restrict the type of flora, fauna or habitat which may be MPA protected, it does establish a priority. "Rare and threatened" is defined as the object of conservation being limited in its numbers or the locations in which it is found. This is assumed to have some connection with the definition of "Threatened and Declining" used by OSPAR in its conservation policy. This is confirmed by the JAS.
- 1.6. Subsection (6) expresses in other words the width of the appropriate construction of subsection (1).
- 1.7. Subsection (8) is of particular importance to those participating in fishing. While the reference does not require the Scottish Ministers to take into account the social and economic consequences which designation may have, it gives them an opportunity to do so, and to modify, or reverse, a decision which would otherwise have been taken had this sub-clause not appeared in the Act on the grounds that the designation, or more properly the management measures proposed to follow that designation, are materially disadvantageous to Scottish fishermen.

#### ROLE OF MPAS

- 1.8. The Guidelines, the purpose of which, presumably, is to explain the legislation, set out the role as follows: –
  - *In Scotland's seas, Nature Conservation MPAs are considered appropriate for contributing to the protection of: Biodiversity*

- *Threatened and/or declining habitats and sessile benthic species at global, north-east Atlantic or UK scales*

Note: the minimum scale is at the UK level.

- *Significant areas for geographically restricted habitats or species at global, north-east Atlantic or UK scales;*

Note: the minimum scale is at the UK level

- *Significant aggregations or communities of important (undefined) marine species in Scottish waters;*

Note: this is not a statutory duty.

- *Features representative of the range present in Scottish waters;*

While this may fall within the ambit of section 68 (1) of the Act, the feature concerned may not be a network component.

- *Essential areas for key life cycle stages of important mobile species that persist in time, including habitats known to be important for reproduction and nursery stages; and*

Note: this is not a statutory duty.

- *Areas contributing to the maintenance of ecosystem functioning in Scottish waters.*

Note: this is not a statutory duty.

1.9. Ambitious, and no doubt worthy, as these aims are, the only statutory ground for designation of an MPA in Scottish Waters is as a contribution to a UK Network.

1.10. The Consultation Document does not set out any principles in the sections “Why do we need Marine Protected Areas?” and “What else can MPAs do?” Those sections however are very informative in that they provide examples of species and habitats which could benefit from protection or recognition. In particular, in the second section there is much made of the benefits the sea provides for us.

#### REPRESENTATION

1.11. Should a species or habitat, which qualifies to be represented in a network, appear, replication apart, in more than one MPA in the network? OSPAR guidelines are clear, “To support the sustainable use, protection and conservation of marine biological diversity and ecosystems in the OSPAR area, areas which best represent the range of species, habitats and ecological processes present within the

OSPAR area (for which MPAs are a suitable measure) should be considered for inclusion within the OSPAR MPA network. This principle of representativity (sic) is embodied in aim (c) of the OSPAR MPA network". Only one example can "best represent". The network will, if circumstances permit, or require, designate a replicate of the best representative.

#### APPLICABILITY OF OSPAR CONVENTION TO FISH

- 1.12. In OSPAR is document 08-06e, setting out its lists of threatened/declining species it paraphrases a major exclusion from features qualifying for MPA protection as follows: – *"Fish species affected by fishing in this list are marked with an asterisk (\*). These species are subject to management by an international or national fisheries authority or body. The OSPAR Commission has no competence to adopt programmes or measures on questions relating to the management of fisheries. Where the OSPAR Commission considers that action is desirable in relation to such a question, it is to draw that question to the attention of the authority or international body competent for that question. The inclusion of species affected by fishing in this list must be read in this context.*

#### EXAMINATION OF THE VARIOUS DEFINITIONS OF A NETWORK

- 1.13. The JAS makes a powerful case for an ecologically coherent MPA Network it says, in answering the question "Why do we need an ecological coherent MPA network?", *"Linking MPAs together into an ecological a coherent network, supported by wider environmental management measures will achieve benefits more effectively than individual MPAs can alone. A well-designed network will contain MPAs of different sizes for different habitats and species, connected through movements of adult species and larvae, with a range of protection levels, to protect biodiversity. A coherent network can therefore function to protect multiple habitats and species, and support a variety of key habitats and life stages of species."* A network is not formed, it will be noted, from a disparate collection of MPAs. It must be designed. Not only that, it must be well-designed.

- 1.14. The definition appears to include both the OSPAR northeast Atlantic and the proposed UK networks, although the UK Act and the Act do not require an ecologically coherent network (ECN), (as opposed to an undefined network).

## OSPAR NETWORK

### BACKGROUND

- 1.15. The object of the OSPAR 2003 recommendation (2003/3) was to have Contracting Parties contribute MPAs to an ECN, to be established by 2010 and extending across the North-East Atlantic. That text of 2003/3 was amended by document 2010/2.
- 1.16. OSPAR issued guidance in 2006 (2006/3) for the development of an ECN. Further guidance was issued in 2007 to support the assessment of ecological coherence of the network. The current position in respect of network development is reviewed in the OSPAR Commission 2012 Status Report. At that stage the UK had nominated 183 MPAs as a contribution to the ECN.
- 1.17. In the very short time available, it has been difficult to understand the level at which the building blocks of the ECN are created. The best assessment which the SFF can make is that it is at the level of OSPAR biogeographic regions. OSPAR in its latest assessments also makes reference to Dinter provinces. While those provinces may, in the future, form the basis of ecological coherence, they do not yet cover the North-East Atlantic.
- 1.18. It seems to be, therefore, that each Region must fulfil the OSPAR requirements so that the regional building block will form an essential contribution to the ECN. In other words if the regional building block is not constructed in accordance with OSPAR advice, it is not considered to meet the standard required.
- 1.19. It is essential to remember that each OSPAR Region has more than one riparian contracting party. Co-operation between and amongst parties is essential to form the building blocks. Although there is no requirement for a network within each region, that region must demonstrate ecological coherence, when the design of the building block is complete and it has been constructed.

- 1.20. There are four main assessment criteria drawn from the 13 principles set out in the OSPAR Guidance document on developing an ECN (2006 – 3). Those criteria are: –
- Adequacy/Viability;
  - Representation;
  - Replication; and
  - Connectivity
- 1.21. The document then sets out the 13 principles by which the ECN will be formed. Given that the smallest area against which assessment is currently made is an OSPAR biogeographic area, it is improper, unless specifically required by international, or national law, to attempt an assessment using ECN tests to any subdivision of that area.
- 1.22. Thus, if we look at one of the contentious issues which is replication, we find in the Guidelines “Replication refers to the duplication of features in separate marine protected areas within a given biogeographic area”.

#### UK view of OSPAR ECN Guidelines

- 1.23. Looking at the ECN, the JAS suggests that the following mirrors OSPAR Guidelines, but as SFF has detected a substantial amount of gold plating.
- *Features: Sites should represent the range of species, habitats and ecological processes in the area. The proportion of features included in the MPA network should be determined on a feature-by-feature basis, considering whether features that are in decline, at risk or particularly sensitive are of a higher priority and would benefit from a higher proportion being protected by MPAs.*  
**SFF Comment:** SFF cannot find any reference in the OSPAR Guidelines to representation meaning that a higher proportion of features in decline, at risk, or particularly sensitive, are entitled to MPA protection, than if they are not. Resilience is delivered by replication. Representation means the best example
  - *Representivity (sic): To support the sustainable use, protection and conservation of marine biological diversity and ecosystems, areas which best represent the range of species, habitats and ecological processes.*



**SFF Comment:** SFF agrees that representation, as defined by OSPAR, relates to the example which best represents the feature. However it rejects the suggestion that the definition of the word 'feature' extends to ecological processes.

- *Connectivity: This may be approximated by ensuring the MPA network is well distributed in space and takes into account the linkages between marine ecosystems.*

**SFF Comment:** Agreed

- *Resilience: Adequate replication of habitats, species and ecological processes in separate MPAs in each biogeographic area is desirable where possible. The size of the site should be sufficient to maintain the integrity of the feature for which it is being selected.*

**SFF Comment:** The SFF understands that the definition of the word 'replication' is evolving. In the 2006 it meant 'duplication'. In 2012 the definition has expanded. In the Channel matrix, it was settled at "at least two MPAs for each EUNIS level 3 habitat and at least three examples of OSPAR threatened and declining habitats and species for which MPAs are considered appropriate control measures. It should be specifically noted that replication was not required for any habitat or species falling outside the foregoing definition.

More generally, broadscale habitat replication is considered to have been met, in spatial terms, if the habitat is contained within an MPA of minimum patch size of 0.24 km<sup>2</sup>. There appears to be no minimum set for species. It is seen to be essential that further research by SFF is undertaken. The time allowed for the consultation response has not been adequate to allow anything but a relatively superficial consideration of relevant material.

- *Management: MPAs should be managed to ensure the protection of the features for which they were selected and to support the functioning of an ecologically coherent network.*

**SFF Comment:** The first part of the sentence is agreed. The second part does not seem to be a function of management but should be a consequence of good management.

- *A network of MPAs can be considered to be ecologically coherent if it satisfies the network design principles agreed by OSPAR. These principles have been applied during the identification of MCZs/marine protected areas. The OSPAR Commission guidance has been used by England, Scotland and Wales to develop network design principles and national guidance to select sites as MCZs/marine protected areas*

**SFF Comment:** The SFF is troubled by the logic in the paragraph above. The OSPAR principles apply to the design of an ECN. The principles which apply during individual site identification relate to the assumed value of that site in ECN construction. Until a network design is complete, it will not be known whether the choice of individual sites is relevant to the construction of the network. The JAS says nothing about the design of the UK network. In fact, it appears that practically, the idea of a UK network has been abandoned because, although it is not said, a network at that scale would be too small to be effective. The JAS is clear, *“We consider that there is a strong scientific case for an assessment of a marine protected network to be based on biogeographic regions.”*

Further, the Guidelines contain no reference to the OSPAR network design principles, and most importantly, in that respect each proposed MPA meets those principles. It cannot be said that the identification of a habitat or species within a proposed MPA is a valid reflection of network design principles. It is merely an indication that that habitat or species is assumed to be present in the proposed MPA.

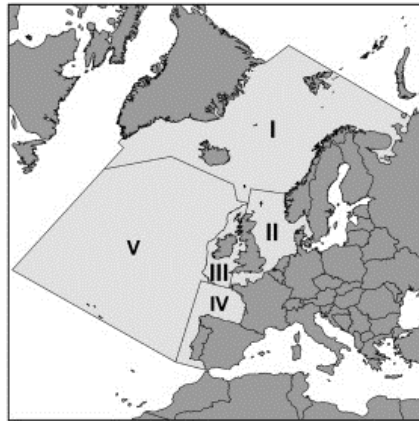
Thirdly can it be asked what respect OSPAR guidance has been used to develop network design principles when the very same paragraph acknowledges that ecological coherence arises from a network designed on the principles already agreed in OSPAR?

Lastly, if the network is to be a UK network, as legislation demands, why would England, Scotland and Wales, separately, as opposed to Great Britain alone, be each engaged in network design? Is Northern Ireland included in this design team?

It is believed that this paragraph represents the deep confusion which has led to an unnecessary, and as yet premature, proliferation of MPA designation proposals.

- 1.24. The only known and formally accepted demarcation of biogeographic regions which include UK Seas is that published by OSPAR: –

## OSPAR BIOGEOGRAPHIC REGIONS



- 1.25. It will be noted that the designated regions extend well beyond the boundaries of UK, let alone Scottish, seas. Given that the OSPAR requirements are to be delivered at biogeographic level it is impossible, unless authorised in some legislative form, for the OSPAR requirements to be delivered at even a national level. The SFF agrees with MS that the assessment of marine protected areas is based on biogeographic areas and that the areas settled by OSPAR are the only areas within which that can be done.
- 1.26. It has been proposed to SFF that there is a view, if not within Government, at least in the minds of their scientific advisers, that the biogeographic regions above are too large. That may be the case but there are, as yet, no alternatives. Reference was made to Dinter provinces which are much smaller and are at the scale adopted for the purposes of the Irish Sea Pilot. JNCC consulted on the adoption of those areas in 2003 but the UK Government did not adopt them. There is no reference to them in the Consultation.
- 1.27. Having said this, the latest OSPAR documents, (e.g. An assessment of the ecological coherence of the OSPAR Network of Marine Protected Areas in 2012 and 2012 Status Report on the OSPAR Network of Marine Protected Areas), make much reference to Dinter areas. It may well be that OSPAR will move away from its own biogeographic regions, at least for some purposes and towards the adoption of Dinter provinces. For the present, however, Dinter provinces do not extend across the whole of the OSPAR north-east Atlantic. An example of a reference to Dinter provinces follows:-
- 1.28. Test 2: Does the OSPAR MPA Network cover at least 3% of most (seven of the ten) relevant Dinter biogeographic provinces?

- 1.29. In 2012, the majority of the ten biogeographic provinces considered in this test surpass the 3% threshold coverage by OSPAR Marine Protected Areas (marked in green): the five continental shelf provinces Boreal (11.64%), Lusitanian-Boreal (11.24%), Boreal-Lusitanian (6.48%), Macaronesian Azores (3.60%), and Lusitanian (Cool & Warm) 3.23%), and the two pelagic provinces Cooltemperate Waters (7.19%) and Warm-temperate Waters (4.17%).
- 1.30. Notwithstanding this flirtation with Dinter, the real assessment is made against the OSPAR biogeographic regions.
- 1.31. Coverage of the Greater North Sea (Region II) and the Wider Atlantic (Region V) by OSPAR MPAs has increased substantially in 2012. For the first time one of the OSPAR regions, the Greater North Sea, has reached the target of having at least 10% of coastal and marine areas effectively protected by 2020 as agreed within the Convention on Biological Diversity (CBD)<sup>22</sup> with an OSPAR MPA coverage of 10.39%.
- 1.32. Hence, for the first time the results of this initial spatial test indicate a degree of ecological coherence of the OSPAR Network of MPAs with regards to coverage of the various biogeographic provinces within the North-East Atlantic.
- 1.33. However, it might be inferred from the spatial arrangement of OSPAR MPAs particularly in the Greater North Sea, but to some extent also in the Celtic Seas and around the Azores archipelago, as well as in ABNJ/in the High Seas of the Wider Atlantic, that the Network in these areas shows first signs of ecological coherence.
- 1.34. It is important to note that this assessment has been made before any contribution to the Regions has been received from MPA or MCZ designation. This requires to be taken into account in assessing the nature and number of areas to be designated in implementation of the duty of contribution to the ECN.

## 2. POLICY

- 2.1. A considerable amount has been published by Marine Scotland setting out the policy that will be applied to the designation of MPAs and the creation of the Network. While reference may be made to other documents the intention is to concentrate on (i) the Ministerial **Statement** made to the Scottish Parliament by Cabinet Secretary Lochhead on 1 September 2010, (ii) **Guidelines** on the

selection of MPAs and development of the MPA network and (iii) the **Consultation Document**.

- 2.2. The **Statement** applies to Scottish inshore and offshore waters so any reference to a matter, e.g. the network, should be taken as a reference to that matter applying to what are now commonly called Scottish waters. It should be remembered however that any intention to designate, for any nature conservation purpose, including network building, in offshore waters requires the consent of UK Ministers.
- 2.3. Reference is made, in the **Statement**, to a network of MPAs in Scotland's seas.. *"A network of MPAs in Scotland's seas, which contributes to a wider MPA network in cooperation with other countries, is a key part of the Scottish government's strategy for marine nature conservation"*
- 2.4. The **Statement** continues: – *"The Scottish Government anticipates that the new nature conservation MPAs ..... will... deliver our (sic) contribution to the ecologically coherent network of MPAs under the OSPAR convention...."*
- 2.5. Section 3 of the **Guidelines** is intended to set out "the overall vision and principles for the MPA network for biodiversity protection in Scottish territorial waters and the Scottish region."
- 2.6. Specifically Clause 3.2 (i) is a policy principle. *"The MPA network should be capable of delivering Scotland's MPA commitments, including national and international priorities for marine nature conservation."*
- 2.7. The **Consultation Document** defines the Network, in Scotland's Seas as a network "designed to conserve a selection of Marine biodiversity (species and habitats) and geo-diversity... offering long-term support for the services our seas provide to society."
- 2.8. Elsewhere Marine Scotland has made it clear *"As the work in Scotland's seas is a contribution to the UK network and wider network of the north-east Atlantic, we are working with UK government and devolved administrations to coordinate and deliver our common aim of a well managed network of ecologically coherent MPAs"*.
- 2.9. To clear this confusion we must return to the Act.
- 2.10. **The mandatory requirement is found in sub-section 68 (4) which enjoins Ministers to have regard to the extent which the designation would contribute towards the development of a**

**network of conservation sites. The network definition is to be found in section 79 (2).**

- 2.11. **At this point there is no duty on Ministers to ensure that any MPA designated must contribute towards the development of a network. If the relevant legislation ended there, MPAs could be designated for the purpose of contributing towards the network, or not.**
- 2.12. **Section 79 (2) puts an end to speculation.**

#### CREATION OF A NETWORK OF CONSERVATION SITES

- 2.13. The objective is that the areas designated as Nature Conservation MPAs by the Scottish Ministers, taken together with any areas designated as marine conservation zones under section 116 of the 2009 Act and any relevant conservation sites in the UK marine area, form a network which satisfies the conditions in subsection (3).
- 2.14. That duty requires, therefore, that only those sites, which contribute to the network, may be designated as Nature Conservation MPAs by the Scottish Ministers. The Scottish Ministers are required, further, to demonstrate the extent to which the designation contributes towards the development of a network. (NB not the formation of a network in Scottish waters, as is proposed in the Guidelines.)
- 2.15. The criterion, set out in 79 (2), is that the network is a UK network. The Act contains no authority to create a Scottish network. The Scottish MPAs taken together with other UK MPAs, and other nature conservation designated sites, will form the network.
- 2.16. It is surprising that there is confusion, because the Scottish Government joined with other Devolved Administrations in the JAS which set out clearly the steps being taken to form the network described in the Act.
- 2.17. The SFF agrees with the thrust of that document which confirms that the only ecologically coherent network which is in play at the moment is the OSPAR network which will encompass all its biogeographic regions.
- 2.18. Finally, for this section, a mild enquiry is made. In paragraph 2.8 above the following forms part of the Marine Scotland statement, *“deliver our common aim of a well managed network of ecologically coherent MPAs”*. A new concept is delivered to the mix which is an

ecologically coherent MPA but no explanation of what that might be is vouchsafed to us. Might we enter a plea for such an explanation?

### 3. REPLICATION

- 3.1. As this factor is particularly important in the choices made for proposed Scottish MPAs its definition and the policy relating to it is worth taking a little further.
- 3.2. As the JAS is both very high level and recent (2012) the definition contained in it is worth repeating. *“Adequate replication of habitats, species and ecological processes in separate MPAs in each biogeographic area is desirable where possible.”* The definition of biogeographic area appears above. It should also be noted that the JAS very firmly dictates that delivery of the policy must be based on OSPAR principles to which the UK is legally committed.
- 3.3. The Ministerial Statement as with the Guidelines (paragraph 1.17) follows the intention of the JAS.
- 3.4. Confusion, however, reigns later in the Guidelines in Table 5 Stage 5 (vi). *“For biodiversity, OSPAR MPA Guidelines recommend that there should be replication of features within MPAs in each biogeographic area. These areas extend across the seas around Scotland and into adjacent waters and are therefore not being used directly for the assessment of replication. This part of the guideline will be considered to have been met if there is more than one example of each feature within the network in Scottish waters.”*
- 3.5. The Consultation Document tries yet another approach. *“Is there more than one example of each feature within the Scottish MPA network? If yes, is there replication across the OSPAR regions in which the feature is recorded?”*
- 3.6. Here is the crux of the confusion in which Marine Scotland has invited us to join it. SFF believes that the drafters of the Act were working from the OSPAR Guidelines. They noted the requirement for replication and inserted that requirement in very general terms into their draft. No definition of what might require replication was inserted. It was left to Marine Scotland to attempt to interpret. This was done without reference to OSPAR Guidelines and resulted in yet another ill-defined definition, which certainly left the SFF understanding that if a feature required replicating then one replication was sufficient.

- 3.7. Unfortunately, it has been forgotten that even if replication were required it must occur at the level of the UK Network and not in the Scottish seas. For this purpose Scottish seas mean no more than the extent of territorial waters.

#### THE OSPAR POSITION

- 3.8. We have already seen that in its Guidance (2006-3) replication is defined as duplication. While it is obvious that duplication means two it also fulfils the definition of "more than one". This is important when we come to the meaning of the relevant part of the Act.
- 3.9. Nothing however remains simple when scientists get to work. Reference has been made to the change of emphasis which appears in the 2012 Assessment.

#### Habitats

- 3.10. The OSPAR requirement for habitat replication appears, therefore, to be required in the case of OSPAR designated threatened and/or declining habitats and where those habitats are not EUNIS level 3 habitats, those latter habitats.
- 3.11. Test 6 at Level 2 for large-scale habitats at EUNIS level 3 determined which are already represented within MPAs in Region II and III. The representation and replication tests for these habitats are met if they appear within an MPA, with a minimum pack size of 0.24 km<sup>2</sup>
- 3.12. How is the test for replication of broadscale habitats applied in Regions II and III? The threshold for replication of those habitats is 2. The outcome of the assessment is 71% of broadscale habitats in Region II and 76% in Region III are represented. Of those broadscale represented 2 (in Region II) and 1 (in Region III) are not meeting replication threshold of 2.
- 3.13. For both habitats and species the test now appears to be, "Most (70%) of the OSPAR threatened and/or declining habitats and species (with limited home ranges) [are] represented in the MPA network. 5% [or at least 3 sites] of all areas within each OSPAR region in which they occur is protected."
- 3.14. Extracted from the Report, the tables below show against which EUNIS level 3 habitats in both Regions II and III, replication has already been achieved and the number of replicates involved.



## Species

- 3.15. It is more difficult to find guidance in relation to the replication of MPA protected species. Subject to further research, the test which seems to have found favour with OSPAR is that which appears as a test for the Channel matrix on page 28 of the ecological coherence report of 2012. That test is for replication and resilience having at least 3 examples of OSPAR threatened and declining species for which MPAs are considered appropriate control measures.
- 3.16. It is assumed that, although, this test was applied to a relatively small area, it is a test which is appropriate for each biogeographical area.
- 3.17. OSPAR has no requirement for replication between Regions. Its guidance on developing an ecologically coherent network of Marine protected areas (2006 – 3) is clear. Replication is one of the components of resilience. Resilience is not a requirement defining whether or not a network has been properly established. However replication is. Principle 11 states “Replication of habitats, species and ecological processes in separate OSPAR MPAs in each biogeographic area is desirable where possible. As with MPA network design in the UK context, replication is not a requirement unless the subject falls within the definition of threatened and/or declining.
- 3.18. **Table 1.** Reproduction of the findings for biogeographic provinces (OSPAR, 2013a) and number of replicates. Green indicates provinces where the test criteria have been met – at least 3% coverage and with replication (2 or more examples).

Region	Sub region	Province	Total Area (km <sup>2</sup> )	Area protected (km <sup>2</sup> )	MPA Coverage (%)	Replicates
<b>(Holo) Pelagic</b>						
Arctic			3 334 941	76 002	2.28%	7
Atlantic	East Atlantic Temperate	Cool-temperate Waters	6 690 666	462 869	6.92%	305
Atlantic	East Atlantic Temperate	Warm-temperate Waters	3 522 504	146 940	4.17%	45
<b>Shelf and Continental Slope</b>						
Arctic		North-East Greenland Shelf	277 879	0	0%	0
Arctic		Northeast Water Polynya	71 845	0	0%	0
Arctic		High Arctic Maritime	809 874	11 036	1.36%	4
Arctic		Barents Sea	1 258 371	67 285	5.81%	6

Arctic		South East Greenland – North Iceland Shelf	425 600	0	0.00%	<b>2</b>
Atlantic	East Atlantic Temperate	Norwegian Coast (Finnmark and Skagerrak and West Norwegian)	413 698	4 688	1.13%	<b>13</b>
Atlantic	East Atlantic Temperate	South Iceland-Faeroe Shelf	306 382	156	0.05%	<b>9</b>
Atlantic	East Atlantic Temperate	Boreal	710 185	55 823	7.86%	<b>210</b>
Atlantic	East Atlantic Temperate	Boreal – Lusitanian	455 947	39 882	8.75%	<b>73</b>
Atlantic	East Atlantic Temperate	Lusitanian – Boreal	151 202	16 844	11.14%	<b>24</b>
Atlantic	East Atlantic Temperate	Lusitanian (Cool and Warm)	118,277	3,972	3.36%	<b>14</b>
Atlantic	East Atlantic Temperate	Macaronesian Azores	22 545	812	3.60%	<b>4</b>
<b>Deep Sea</b>						
Arctic			2235011	0	0	<b>0</b>
Atlantic			6 995 818	483 218	6.91%	<b>23</b>

**Tables 2 and 3** show the area of each broadscale habitat in Regions II and III, respectively, together with the total area assumed to be protected within an MPA boundary. All broad scale habitats that are found in each Region are presented, several of which are not protected/covered yet by the MPA network. Those broad scale habitats that have not met the current threshold are highlighted in red.

A broadscale habitat is considered represented if an area greater than 0.24 km<sup>2</sup> or a proportion greater than 3% of the respective MPA exists within the boundary of an MPA. Those that are represented in Region II and III are identified in the tables with green shading. **Table 2.** Broad-scale habitats that are represented in the network highlighted in green and the number of replicates that surpass a threshold of 2 highlighted in green for **Region II**

Eunis Level 3 code	EUNIS Level 3 reference	Total area in region II ( km <sup>2</sup> )	Area in MPAs (km <sup>2</sup> )	Replicates
A3.1	Atlantic and Mediterranean high energy infralittoral rock	3561.03	1321.43	45
A3.2	Atlantic and Mediterranean moderate energy infralittoral rock	3 200.34	939.51	59
A3.3	Atlantic and Mediterranean low energy infralittoral rock	285.04	32.77	14
A4.1	Atlantic and Mediterranean high energy circalittoral rock	2336.26	646.84	30
A4.2	Atlantic and Mediterranean moderate energy circalittoral rock	20 647.69	2 299.60	42
A4.3	Atlantic and Mediterranean low energy circalittoral rock	9 340.66	539.16	13
A5.1	Sublittoral coarse sediment	112 235.98	14004.00	82
A5.2	Sublittoral sand	377 999.23	41 286.67	89
A5.3	Sublittoral mud	59 981.35	3987.55	44
A5.4	Sublittoral mixed sediments	16 769.33	1 521.03	45
A6.1	Deep-sea rock and artificial hard substrata	990.06	2.21	1
A6.2	Deep-sea mixed substrata	2 910.32	0.04	
A6.3 or A6.4	Deep-sea sand or deep-sea muddy sand	12 070.69		
A6.5	Deep sea mud	61 770.09	1 136.69	4
	Deep circalittoral mixed hard sediments	5 282.04	7.29	1
	Deep circalittoral seabed	4 209.21	3.61	4
	High energy circalittoral mixed hard sediments	105.02	6.42	3
	High energy circalittoral seabed	748.27	6.66	6
	High energy infralittoral mixed hard sediments	539.47	24.81	4
	High energy infralittoral seabed	4 317.23	108.60	15
	Low energy circalittoral mixed hard sediments	740.16	0.64	1
	Low energy circalittoral seabed	727.92	3.77	5
	Low energy infralittoral mixed hard sediments	0.34		
	Low energy infralittoral seabed	266.62	3.28	3
	Mid bathyal coarse sediment	172.48		
	Mid bathyal seabed	1 429.46		

	Moderate energy circalittoral mixed hard sediments	3 504.98	<b>381.69</b>	<b>6</b>
	Moderate energy circalittoral seabed	1 831.95	<b>3.36</b>	<b>2</b>
	Moderate energy infralittoral mixed hard sediments	488.94	<b>121.12</b>	<b>3</b>
	Moderate energy infralittoral seabed	875.87	<b>15.44</b>	<b>12</b>
	Upper bathyal coarse sediment	2 341.70		
	Upper bathyal seabed	711.55		
	Upper slope coarse sediment	6 886.33		
	Upper slope mixed hard sediments	3 920.06		
	Upper slope seabed	2 873.84		
	<b>Total</b>	<b>726 071.54</b>	<b>68404.21</b>	<b>533</b>

The replication threshold was set to the minimum (*i.e.* 2).

**Table 3** Broadscale habitats that are represented in the network highlighted in green and the number of replicates that surpass a threshold of 2 highlighted in green for **Region III**

<b>Eunis Level 3 code</b>	<b>EUNIS Level 3 reference</b>	<b>Total area in region III (km<sup>2</sup>)</b>	<b>Total area in MPAs (km<sup>2</sup>)</b>	<b>Replicates</b>
A3.1	Atlantic and Mediterranean high energy infralittoral rock	5 725.85	<b>589.46</b>	<b>38</b>
A3.2	Atlantic and Mediterranean moderate energy infralittoral rock	1 952.10	<b>384.96</b>	<b>40</b>
A3.3	Atlantic and Mediterranean low energy infralittoral rock	705.66	<b>83.43</b>	<b>18</b>
A4.1	Atlantic and Mediterranean high energy circalittoral rock	2 125.05	<b>238.97</b>	<b>21</b>
A4.2	Atlantic and Mediterranean moderate energy circalittoral rock	1 5235.35	<b>1 222.81</b>	<b>35</b>
A4.3	Atlantic and Mediterranean low energy circalittoral rock	12671.58	<b>545.39</b>	<b>22</b>
A5.1	Sublittoral coarse sediment	83 150.29	<b>4445.12</b>	<b>42</b>
A5.2	Sublittoralsand	86479.63	<b>4064.04</b>	<b>52</b>
A5.3	Sublittoral mud	28 720.20	<b>1 119.19</b>	<b>32</b>
A5.4	Sublittoral mixed sediments	20 941.01	<b>780.57</b>	<b>26</b>
A6.1	Deepsea rock and artificial substrata	52.75	<b>20.97</b>	<b>3</b>
A6.2	Deepsea mixed substrata	47.55	<b>0.45</b>	<b>1</b>
A6.3 or A6.4	Deepsea sand or deepsea muddy sand	648.72	<b>3.72</b>	<b>2</b>
A6.5	Deepsea mud	1 467.40	<b>24.68</b>	<b>2</b>
	Deep circalittoral seabed	88 611.00	<b>66.35</b>	<b>8</b>
	High energy circalittoral mixed hard sediments	15.06		
	High energy circalittoral seabed	598.86	<b>65.87</b>	<b>11</b>
	High energy infralittoral mixed hard sediments	12.12		
	High energy infralittoral seabed	3 678.33	<b>419.16</b>	<b>17</b>

	Low energy circalittoral mixed hard sediments	6.84		
	Low energy circalittoral seabed	836.79	<b>16.66</b>	<b>6</b>
	Low energy infralittoral mixed hard sediments	19.73		
	Low energy infralittoral seabed	205.66	<b>13.02</b>	<b>13</b>
	Moderate energy circalittoral mixed hard sediments	47.22		
	Moderate energy circalittoral seabed	5 316.22	<b>115.37</b>	<b>7</b>
	Moderate energy infralittoral mixed hard sediments	2.58		
	Moderate energy infralittoral seabed	405.02	<b>19.13</b>	<b>9</b>
	Upper slope coarse sediment	309.99	<b>0.02</b>	
	Upper slope seabed	718.14		
	<b>Total</b>	<b>360706.69</b>	<b>14239.32</b>	<b>405</b>

### The UK Position

- 3.19. The UK Act contains the following reference to replication “that the designation of sites comprised in the network reflects the fact that the conservation of a feature may require the designation of more than one site.”
- 3.20. The definition of ‘feature’ is much wider than the OSPAR definition and applies to any description of marine flora and fauna, habitat and features of geological or geomorphological interest.
- 3.21. However, as discussed elsewhere, no MPA can be designated unless it contributes towards the ECN and follows its rules for representation and replication.

### The Scottish Position

- 3.22. The Scottish legislative position reflects the UK position. It should be remembered that the Scottish duty applies to territorial waters only. Those waters beyond the 12 mile limit and comprised in UK territorial waters are subject to the provisions of the UK Act.

### The UK Position-Policy

- 3.23. In relation to network design and its components including representation and replication the positions contained in the UK Ecological Network Guidance and the Scottish Guidelines have been superseded by JAS.
- 3.24. Its approach to Resilience has already been discussed. While claiming to subscribe to the OSPAR concept of an ECN, it goes considerably further than the OSPAR requirements, referring to “Adequate replication of habitats, species and ecological processes...”

3.25. At this point, the SFF cannot help further. It requested from Marine Scotland a matrix setting out the replication of Scottish representative features in English waters but this has not yet been forthcoming.

## ANNEX II

Species or Habitats, which do not appear on the OSPAR Threatened/Declining List and, therefore, which, following UK policy, should not appear as a supporting item for MPA designation are highlighted in grey.

Name	Code	Protected Feature	Stakeholder Associations
Clyde Sea Sill	CSS	<i>Biodiversity protected features</i> - Black guillemot, circalittoral sand and coarse sediment communities, Fronts <i>Geodiversity protected features</i> - Marine Geomorphology of the Scottish Shelf Seabed - sand banks, sand ribbon fields, sand wave fields	Not noted as threatened features on the OSPAR list of Threatened/declining Species and Habitats.
East Caithness Cliffs	ECC	<i>Biodiversity protected features</i> - Black guillemot	Black Guillemot is not on the OSPAR list of threatened species and is classed as stable/increasing in Scotland by JNCC (+3%) and SNH (<+1%). Unlikely to meet the criteria for protection
Fetlar to Haroldswick	FTH	<i>Biodiversity protected features</i> - Black guillemot, circalittoral sand and coarse sediment communities, horse mussel beds, kelp and seaweed communities on sublittoral sediment, maerl beds, shallow tide-swept coarse sands with burrowing bivalves <i>Geodiversity protected features</i> - Marine Geomorphology of the Scottish Shelf Seabed (components to be confirmed)	Horse Mussel ( <i>Modiolus modiolus</i> ) beds are under threat/declining in all OSPAR regions they occur. Maerl beds are only classified as under threat/declining in OSPAR region III but does feature on the UKBAP priority list. Shallow tide-swept coarse sands are not noted as a habitat in decline/threatened.

Name	Code	Protected Feature	Stakeholder Associations
Loch Creran	LCR	<i>Biodiversity protected features</i> - Flame shell beds <i>Geodiversity protected features</i> - Quaternary of Scotland (components to be confirmed)	Flame Shell beds feature on the UKBAP list of priority features.
Loch Sunart	LSU	<i>Biodiversity protected features</i> - Flame shell beds , northern feather star aggregations on mixed substrata, serpulid aggregations.	Serpulid aggregations feature on the UKBAP list of priority species requiring protection. Northern feather star beds are protected under Annex 1 of the habitats directive
Loch Sunart to the sound of Jura	SJU	<i>Biodiversity protected features</i> - Common Skate <i>Geodiversity protected features</i> - Quaternary of Scotland - glaciated channels/troughs (other components to be confirmed)	Common Skate is listed as threatened/declining in all OSPAR regions on the OSPAR list of threatened/ declining species. <b>(Fisheries measure and not MPA protection required)</b>
Loch Sween	LSW	<i>Biodiversity protected features</i> – Burrowed mud, native oysters, sublittoral mud and mixed sediment communities	Native oysters ( <i>Ostrea Edulis</i> ) beds are listed as threatened/declining in all OSPAR regions on the OSPAR list of threatened/ declining species. Maerl beds are only classified as under threat/declining in OSPAR region III <b>but does feature on the UKBAP priority list.</b>
Lochs Duich, Long and Alsh	DLA	<i>Biodiversity protected features</i> – Burrowed mud, flame shell beds.	Inshore deep mud with heart urchins and burrowed mud feature in the UKBAP list of priority species/habitats ‘UK Biodiversity Group, Tranche 2 Action Plans, Maritime Species and Habitats, 1999’
Monach Isles	MOI	<i>Biodiversity protected features</i> – Black Guillemot <i>Geodiversity protected features</i> – Marine Geomorphology of Scottish Shelf (Components to be confirmed); Quaternary of Scotland – landscape of aerial glacial scour	Black Guillemot is not on the OSPAR list of threatened species and is classed as stable/increasing in Scotland by JNCC (+3%) and SNH (<+1%). Unlikely to meet the criteria for protection



Name	Code	Protected Feature	Stakeholder Associations
Mousa to Boddam	MTB	<i>Biodiversity protected features</i> – Sandeels <i>Geodiversity protected features</i> – Marine Geomorphology of the Scottish Shelf Seabed (components to be confirmed)	Lesser Sandeels listed as a UKBAP priority species but not as threatened by OSPAR.
North-west sea lochs and Summer Isles	NWS	<i>Biodiversity protected features</i> – Burrowed mud, circalittoral muddy sand communities, flame shell beds, kelp and seaweed communities on sublittoral sediment, maerl beds, maerl or coarse shell grave with burrowing sea cucumbers, native oysters, northern feather star aggregations on mixed substrata. <i>Geodiversity protected features</i> – Marine Geomorphology of the Scottish Shelf Seabed – banks of unknown substrate; Quaternary of Scotland – glaciated channels/troughs, megascale glacial lineations, moraines; Seabed Fluid and Gas Seep – pockmarks: Submarine Mass Movement – Slide scars.	Only kelp/seaweed communities (Subtype SS.SMp.KSwSS.LsacR.CbPb only) requiring a cobbled/pebble substrate in less than 30m of water containing red seaweeds and kelp to qualify. Maerl beds are only classified as under threat/declining in OSPAR region III but does feature on the UKBAP priority list. Native oysters and burrowed mud feature on the OSPAR list of threatened/declining features and northern feather star aggregations are protected under the habitats direction annex 1 (Habitat only)
Noss Head	NOH	<i>Biodiversity protected features</i> – Horse mussel beds	Listed on the OSPAR list as threatened/declining feature.
Papa Westray	PWY	<i>Biodiversity protected features</i> – Black Guillemot <i>Geodiversity protected features</i> – Marine Geomorphology of the Scottish Shelf Seabed – Sand wave field	Black Guillemot is not on the OSPAR list of threatened species and is classed as stable/increasing in Scotland by JNCC (+3%) and SNH (<+1%).

Name	Code	Protected Feature	Stakeholder Associations
Small Isles	SMI	<i>Biodiversity protected features</i> – Black Guillemot, burrowed mud, circalittoral sand and mud communities; fan mussel aggregations, horse mussel beds, northern feather star aggregations on mixed substrata, shelf deeps; white cluster anemone	White cluster anemone is listed as a UKBAP species. Northern feather star aggregations are afforded protection under the habitats directive annex 1 (habitat only) and the other features are present on the OSPAR list with the exception of Black guillemot.
South Arran	ARR	<i>Biodiversity protected features</i> – Burrowed mud, herring spawning grounds, kelp and seaweed communities, maerl beds, maerl or coarse shell gravel with burrowing sea cucumbers, ocean quahog (species), seagrass beds, shallow tide- swept coarse sands with burrowing bivalves.	All biodiversity protected features are listed as threatened/declining in the OSPAR list except Herring Spawning grounds. Herring is not listed as threatened/declining and isn't listed as endangered on IUCN and MPAs cannot be used as a fisheries management tool.
Upper Loch Fyne and Loch Goil	LFG	<i>Biodiversity protected features</i> - Burrowed mud, flame shell beds, horse mussel beds, low or variable salinity habitats; ocean quahog (species), sublittoral mud and mixed sediment communities	Burrowed mud, Horse mussel beds and Ocean Quahog listed as threatened/declining on the OSPAR list. Flame shells, sublittoral mud and variable salinity habitats present on the UKBAP list.
Wyre and Rousay Sounds	WYR	<i>Biodiversity protected features</i> - Kelp and seaweed communities on sublittoral sediment, maerl beds <i>Geodiversity protected features</i> - Marine Geomorphology of the Scottish Shelf Seabed (components to be confirmed)	Maerl beds are only classified as under threat/declining in OSPAR region III but does feature on the UKBAP priority list. Only kelp/seaweed communities Subtype SS.SMp.KSwSS.LsacR.CbPb protected, requiring a cobbled/pebble substrate in less than 30m of water containing red seaweeds and kelp to qualify.
Central Fladen	CFL	<i>Biodiversity protected features</i> - Burrowed mud <i>Geodiversity protected features</i> - Quaternary of Scotland - sub-glacial tunnel valley	Burrowed mud features on the UKBAP and OSPAR list of priority features.

Name	Code	Protected Feature	Stakeholder Associations
East of Gannet and Montrose Fields	EGM	<i>Biodiversity protected features</i> - Ocean quahog aggregations, offshore subtidal sands and gravels, offshore deep sea muds	Ocean Quahog is listed as threatened/declining by OSPAR in region II only.
Faroe-Shetland sponge belt	FSS	<i>Biodiversity protected features</i> - Continental slope, deep sea sponge aggregations; ocean quahog aggregations; offshore subtidal sands and gravels <i>Geodiversity protected features</i> - Marine Geomorphology of the Scottish Deep Ocean Seabed - sand wave field, sediment wave field; Quaternary of Scotland - continental slope channels; iceberg ploughmark fields, prograding wedges; Submarine Mass Movement - slide deposits	Deep sea sponge aggregations are listed as threatened/declining by OSPAR. Ocean Quahog is listed as threatened/declining by OSPAR in region II only. Offshore subtidal sands and gravel features on the UKBAP list of priority habitats
Firth of Forth Banks Complex	FOF	<i>Biodiversity protected features</i> - Ocean quahog aggregations; offshore subtidal sands and gravels; shelf banks and mounds <i>Geodiversity protected features</i> - Quaternary of Scotland - moraines	Ocean Quahog is listed as threatened/declining by OSPAR in region II only. Offshore subtidal sands and gravel features on the UKBAP list of priority habitats.
Geikie Slide and Hebridean slope	GSH	<i>Biodiversity protected features</i> - Burrowed mud; continental slope, offshore deep sea muds, offshore subtidal sands and gravels <i>Geodiversity protected features</i> - Submarine Mass Movement - slide deposits, slide scars	Burrowed mud features on the UKBAP and OSPAR list of priority features. Offshore deep sea muds and sub tidal sands features on the UKBAP list of priority habitats
Hatton-Rockall Basin	HRB	<i>Biodiversity protected features</i> - Deep sea sponge aggregations; offshore deep sea muds <i>Geodiversity protected features</i> - Marine Geomorphology of the Scottish Deep Ocean Seabed - sediment drifts; Polygonal fault systems	Deep sea sponge aggregations are listed as threatened/declining by OSPAR. Offshore deep sea muds features on the UKBAP list of priority habitats.

Name	Code	Protected Feature	Stakeholder Associations
North-east Faroe Shetland Channel	NEF	<i>Biodiversity protected features</i> - Continental slope, deep sea sponge aggregations; offshore deep sea muds; offshore subtidal sands and gravels <i>Geodiversity protected features</i> - Cenozoic Structures of the Atlantic Margin - mud diapirs; Marine Geomorphology of the Scottish Deep Ocean Seabed - contourite sand/silt; Quaternary of Scotland - prograding wedge; Submarine Mass Movement - slide deposits	Offshore deep sea muds features on the UKBAP list of priority habitats. Deep sea sponge aggregations are listed as threatened/declining by OSPAR.
West Shetland Shelf	WSS	<i>Biodiversity protected features</i> - Offshore subtidal sands and gravels	Offshore subtidal sands and gravels feature on the UKBAP list of priority features.
North-west Orkney	NWO	<i>Biodiversity protected features</i> – Sandeels <i>Geodiversity protected features</i> - Marine Geomorphology of the Scottish Shelf Seabed - sand bank, sand wave field, sediment wave fields	Lesser Sandeels are included on the UKBAP list of priority species but not as threatened/declining by OSPAR.
Norwegian boundary sediment plain	NSP	<i>Biodiversity protected features</i> - Ocean quahog aggregations, offshore subtidal sands and gravels	Ocean Quahog is listed as threatened/declining by OSPAR in region II only.

Name	Code	Protected Feature	Stakeholder Associations
Rosemary Bank Seamount	RBS	<p><i>Biodiversity protected features</i> - Deep sea sponge aggregations; seamounts; seamount communities</p> <p><i>Geodiversity protected features</i> - Cenozoic Structures of the Atlantic Margin - Rosemary Bank Seamount; Marine Geomorphology of the Scottish Deep Ocean Seabed - scour moats, sediment drifts, sediment wave fields; Quaternary of Scotland - iceberg ploughmark field; Submarine Mass Movement - slide scars</p>	Deep sea sponge aggregations and seamounts are listed as threatened/declining by OSPAR
South-east Fladen	SEF	<p><i>Biodiversity protected features</i> - Burrowed mud</p> <p><i>Geodiversity protected features</i> - Seabed Fluid and Gas Seep - pockmarks</p>	Burrowed mud features on the UKBAP and OSPAR list of priority features.
South-west Sula Sgeir and Hebridean slope	SSH	<p><i>Biodiversity protected features</i> - Burrowed mud; continental slope; offshore deep sea muds; offshore subtidal sands and gravels</p> <p><i>Geodiversity protected features</i> - Quaternary of Scotland - iceberg ploughmark fields, prograding wedges; Submarine Mass Movement - slide deposits</p>	Burrowed mud features on the UKBAP and OSPAR list of priority features. Offshore muds and subtidal sands and gravels feature on the UKBAP list of priority features

Name	Code	Protected Feature	Stakeholder Associations
The Barra Fan and Hebrides Terrace Seamount	BHT	<p><i>Biodiversity protected features</i> - Burrowed mud; continental slope, coral gardens (suspected); offshore deep sea muds; offshore subtidal sands and gravels; orange roughy; seamounts; seamount communities (suspected)</p> <p><i>Geodiversity protected features</i> - Cenozoic Structures of the Atlantic Margin - continental slope, Hebrides Terrace Seamount; Marine Geomorphology of the Scottish Deep Ocean Seabed - scour moat; Quaternary of Scotland - iceberg ploughmark field, prograding wedges; Submarine Mass Movement - continental slope turbidite canyons, slide deposits</p>	Orange Roughy and Seamount habitat are listed as threatened/declining by OSPAR. As the coral gardens and seamount communities are 'suspected' they are data deficient and therefore do not qualify for protection using JNCC's own selection criteria. Offshore muds and subtidal sands and gravels feature on the UKBAP list of priority features.
Turbot Bank	TBB	<i>Biodiversity protected features</i> – Sandeels, offshore subtidal sands and gravels, shelf banks and mounds	Lesser Sandeels are included on the UKBAP list of priority species but not as threatened/declining by OSPAR.
Western Fladen	WFL	<p><i>Biodiversity protected features</i> - Burrowed mud</p> <p><i>Geodiversity protected features</i> - Quaternary of Scotland - sub-glacial tunnel valleys</p>	Burrowed mud features on the UKBAP and OSPAR list of priority features.