

**SCDI RESPONSE TO SCOTTISH GOVERNMENT  
SUSTAINABLE SEAS FOR ALL:  
A CONSULTATION ON SCOTLAND'S FIRST MARINE BILL**

1. SCDI is an independent membership network that strengthens Scotland's competitiveness by formulating policies to encourage sustainable economic prosperity. Its membership is drawn from businesses, local authorities, trades unions, educational institutions and the voluntary sector across Scotland.

**Executive Summary**

2. SCDI welcomes a Scottish Marine Bill with sustainable development at its heart. The legislation comes at a key time of change, challenge and opportunity for Scotland's seas and industries such as oil and gas, transport and ports, aquaculture and fisheries, and offshore renewables, and the partnership approach which has been taken with the proposals should be continued after the formal consultation.
3. The Scottish Marine Bill should state tangible economic, social and environmental objectives for the sustainable development of Scotland's seas. Government, regulators enforcing the legislation, the marine industry and all those involved should become responsible for the delivery of these outcomes.
4. These changes proposed in the Scottish Marine Bill cannot be developed and delivered overnight. The Scottish Government must focus greater attention on planning the transitional period to ensure that this does not lead to uncertainty and inactivity which undermines the marine contribution to its strategic objectives.
5. Summary of main recommendations and key points:
  - Change is needed to the management and legislative framework and the change which is particularly needed is to make the system simpler, more efficient, and supportive and competitive for marine businesses, while continuing to protect and sustain the high environmental, social and economic value of Scotland's seas.
  - On the basis that it will take an integrated approach to planning, management and protection which reduces the burden on businesses and improve scientific research, Marine Scotland should be established and given sufficient resources.
  - While a 3 tier-approach to marine planning is supported in theory, there is a risk that it and the range of organisations with responsibilities will make the system more complex. Marine Scotland - working with the Scottish Government, SNH, SEPA, the Scottish Marine Regions, local authorities etc - must be responsible for ensuring that it is streamlined in practice. A common approach is needed around Scotland and the UK, with more clarity about how co-ordination will be achieved.
  - Regulation and management must be cost effective and simplified. As far as possible in the proposals, Marine Scotland should act as a 'one stop shop'. Robust mechanisms designed to resolve any potential conflicts should be developed along with an appeals mechanism for industry to a genuinely independent body.

## CHAPTER 1 – SETTING THE SCENE

### **Q1 Do you agree that change is needed to the management and legislative framework for managing Scotland's seas?**

1. There is widespread agreement that the management and legislative framework could be significantly improved. There is certainly a need to do so if Scotland's seas are to contribute fully to the Scottish Government's overarching Purpose of higher sustainable economic growth and to the national outcome that: "We live in a Scotland that is the most attractive location to do business in Europe." Competition and conflicting demands for space is an increasingly complex issue.
2. Environmental standards are good. The report 'Scotland's Seas: Towards Understanding their State' published earlier this year by the Scottish Government found that "Scotland's seas are generally clean and safe, with a trend towards reduction of most pollutants over the past 20 years" with 94% of coastal waters designated as excellent water quality and "the seas are generally healthy and biologically diverse." The commitment of marine users to best practice in stewardship should be further encouraged in the nature conservation proposals.
3. Industries which operate in the marine environment and contribute significantly to Scotland's GDP have identified regulation and bureaucracy in the current framework as a barrier to their higher growth. The change which is particularly needed, therefore, is to make the system simpler, more efficient and supportive for businesses and competitive for investment, while continuing to protect and sustain the high environmental, social and economic value of Scotland's seas.
4. The intention that the Bill should provide greater certainty for marine developers and marine users, and reduce the burden on developers by streamlining and modernising marine licensing and consents, is welcome. Unfortunately, the proposals as drafted are not felt to offer sufficient clarity to engender certainty in developers and users that they will bring about this change and not one which could simply add another level of administration to the already cluttered regulatory landscape. SCDI has not been made aware that the separate impact assessment, which is referred to as forthcoming during the consultation period, on the costs and benefits of the Scottish Government's approach has, in fact, been published. There is, in consequence, a general view that it is not possible to respond definitively to the questions which have been asked in the consultation and that detailed discussion is required with the full range of industry sectors and all those with an interest before the Bill can be agreed and subsequently proceed.
5. Strong concern has also been expressed about the long time between the intended passing of the Bill next year and the establishment of Marine Scotland and the new system of marine planning, which has been estimated at 2013. It is feared that, in the meantime, the performance of the current system will deteriorate and

become an even larger disincentive to investment. In that vacuum changes may be made on a piecemeal and ad-hoc basis at a regional level which the National Marine Plan then incorporates rather than it setting the national marine objectives for regional and local planning to follow. The Bill should as a result include an agreed transition process which is probably faster than envisaged in the consultation, and this must be sufficiently resourced and efficiently managed.

**Q2 For each of the following areas, do you agree that Scottish Ministers/Scottish Parliament should put in place a new legislative and management framework to deliver:**

- a) a new system of marine planning for the sustainable use of Scotland's seas;**
- b) improvements to marine nature conservation to safeguard and protect Scotland's marine assets;**
- c) a streamlined and modernised marine licensing and consents system;**
- d) better stewardship backed up by robust science and data; and**
- e) a new structure, Marine Scotland, to deliver sustainable seas for all?**

6. These are all laudable objectives, if implemented correctly. At present there is a lack of detail on policy and on what objectives will have the priority. From SCEDI's perspective, there is particular scope to make improvements in marine planning and introduce a less burdensome marine licensing and consents system, underpinned by a more evidence-based approach to policy-making. If it is felt necessary to launch a new structure to deliver this, Marine Scotland is supported.
7. For the new legislative and management framework to work in practice, it will need to be backed with increased resources. It is not felt that the comments in the consultation document offer sufficient reassurance on the Scottish Government's commitment. This point is discussed in more depth in response to Question 56.

**Q3 What difference would these changes make to your area of interest?**

8. SCEDI's role is to promote higher sustainable economic growth for all of Scotland on behalf of our membership. In our view, a new marine planning system and a quicker, efficient and more cost effective licensing and consent process, would bring significant socio-economic benefits to Scotland, especially coastal communities. These towns and villages and their industries, especially in the north of Scotland, have often had to show remarkable resilience over many years in the face of economic pressures, and their businesses have deserved a more supportive environment from government. SCEDI would expect that a more joined-up approach, backed by robust science and data, would increase investment from developers. This would enable Scotland to take advantages of the opportunities in

traditional industries and new, high growth industries such as offshore renewable energy. SCDI would anticipate that, rather than being restricted to static growth and declining market share as at present, the Scottish aquaculture would be much better able to compete in what is a global industry with production increasing at a rate of around 9% per year. It would also expect that Marine Scotland would champion across government and its agencies the vital role which Scotland's ports play in the economy, for example in relation to freight movements, and ensure that they are given a higher priority when it comes to transport integration. If Harbour Revision Orders are ultimately included in the Scottish Marine Bill, the changes should also support the £100m redevelopment of the ports and harbours infrastructure for the ferry services serving the West of Scotland and the Clyde Estuary which Caledonian Maritime Assets estimates will be necessary.

**Q4 Scottish Ministers believe there are strong practical reasons for further discussion with the UK Government on the allocation of responsibilities around the seas of Scotland. Do you agree with this approach?**

9. SCDI is not convinced by the argument which is put forward that Scotland's seas share a number of characteristics which make them "unique" and "distinct" from the rest of the UK. It is accepted that they are generally more oceanic and deep, cleaner and less intensely developed. But Paragraph 77 says that "the East and West coast marine areas are very different". The northern North Sea would seem to have more in common with southern North Sea than with the west coast of Scotland. For instance, in terms of socio-economic use, there is oil and gas; the white fish fleets; the development of offshore wind and the grid network; and the short sea shipping, 'Motorway of the Baltic Sea' maritime traffic and cruise ships. In terms of spatial perspectives, in the National Planning Framework 2 document none are suggested encompassing the west and east coasts of Scotland, while the Aberdeen-Newcastle corridor - with its offshore energy, short sea shipping and economic relationship with the Baltic - is identified as a potential growth area.
10. The former Scottish Executive's Advisory Council on Maritime and Coastal Strategy included representation from oil and gas, aquaculture, shipping, ports, fishing, renewable energy, and conservation interests. Its report, published in early 2007, recommended that "inshore waters to the 12 mile nautical limit should not be regarded as a suitable unit for Marine Strategic Planning at a regional level and options to allow the devolved Scottish administration a direct role in Marine Strategic Planning for the full extent of regional seas on the continental shelf off Scotland should be explored with the UK Government". SCDI accepts that, on the basis of proximity, practicality, management of devolved functions like fishing, and resources, there is a case for the devolution to the Scottish Parliament of maritime planning and nature conservation matters from 12 to 200 nautical miles.
11. However, if these powers are devolved, improving the effectiveness of implementation rather than necessarily putting in place a different coastal management regime for Scotland should be the priority. As already noted, much

of the economic activity in Scotland's seas involves UK or international links. Bureaucratic, inefficient and restrictive marine planning in Scottish waters would make it harder for these businesses and put Scotland at a competitive disadvantage for investment, for example in ports, compared to England. A joined-up approach would have to be taken, especially in relation to key strategic industries like North Sea oil and gas. The UK Government continues to be responsible for licensing, exploration and regulating development, and it would be important that this is co-ordinated effectively with maritime planning and nature conservation issues. The North Sea competes globally for highly mobile capital and additional regulatory complexity would make it less attractive for investment.

12. There may be a case for devolution in other related areas, such as aspects of international shipping. An issue which has been drawn to SCDI's attention is that in order to qualify for European funding a proposed international route landing in Scotland must be endorsed by the UK Government which at present has responsibility for international shipping. However, if bids could be received from other ports in the UK, it would be unlikely to support the Scottish case in Europe.

## **CHAPTER 2 – CREATING STABILITY: MARINE PLANNING & INTEGRATED COASTAL ZONE MANAGEMENT**

### **Q5 Do you agree with the overall 3-tier approach to marine planning in Scotland?**

13. SCDI supports in principle a 3-tier approach to marine planning. Co-ordination is essential between the Scottish, UK/international and regional levels. The regional tier will only be beneficial if it supports the delivery of the national objectives.

### **Q6 Do you have any comments on the proposals for a National Marine Plan and the role of Marine Scotland in relation to planning at the Scotland level?**

14. Promoting sustainable economic growth must be the foremost purpose of the planning system. SCDI is pleased that it is stated in Box 2.2 as the overall purpose of the Scottish Marine Bill and, therefore, Marine Scotland, the National Marine Plan and the Scottish Marine Regions. The Scottish Government should make this national objective explicit to those involved at every stage of the reform process. The National Marine Plan needs to set a structure that will inform the entire planning hierarchy and provide a strong direction to Regional Marine Plans.
15. The National Marine Plan should show how nationally strategic projects will integrate into the wider Scottish geographic and economic framework. It should not attempt to dictate the direction of development in the marine area. In the main, the pattern of economic activity is, rightly, determined by the market and not by central planning. The National Marine Plan should not seek to change the existing pattern of economic activity in Scotland and it should indicate how suggested new or increased activity will be compatible with existing use. Its major role should be in guiding, supporting and enabling economic activity alongside and

complementary to the market, and in identifying infrastructure improvements. It must, therefore, be a flexible and regularly updated framework. It should help to align major private sector investment decisions with public sector plans to regenerate, connect, support and enhance people and places. In those instances when the market does not or is unable to provide the required solution, the public sector should play a more prominent role. The National Marine Plan should provide a safeguard against any unsustainable or irresponsible development.

16. SCDI would expect that the National Marine Plan will be prepared and agreed with the input of key stakeholders, particularly those involved with the sustainable management and development of the resource. An appropriate balance must be struck between a full and detailed consultation and implementation. The timescale which is indicated suggests that the first National Marine Plan will not be produced for at least another three years, not less than two years behind and on a different five-year review and revision cycle from the National Planning Framework with which it is supposed to be integrated. The Regional Marine Plans would be even further off, which may create a vacuum. On these timescales, national and regional marine planning would have no meaningful impact on the 2011 renewable energy targets (as is claimed in Paragraph 6 of the consultation), but could support the development of an offshore grid for renewable energy.
17. The National Planning Framework will become a statutory document which is endorsed by the Scottish Parliament. This democratic accountability is seen as crucial in creating political consensus around the nationally significant projects (such as electricity grid reinforcements in the north of Scotland) which will be fast-tracked through the planning system and, thereby, increasing long-term certainty for investors. While it is stated that Marine Plans will have statutory force and be integrated with the National Planning Framework, it would appear that the National Marine Plan will be agreed by Scottish Ministers and not by the Scottish Parliament. Further clarification would be useful on this point.
18. The consultation lists a number of potential conflicts, but does not indicate how these would be resolved. The National Marine Plan will need to show more prioritisation. SCDI believes that opportunities for new development should not unduly restrict existing use. It agrees on the need for an effective appeals mechanism and considers that, whatever the review process, Marine Scotland or the Scottish Government must be able to consider independent expert advice.
19. One example listed of a potential conflict is seaweed harvesting. The consultation says that there could be “more effective regulation”. The Scottish Association of Marine Sciences based at Dunstaffnage is investigating whether seaweed could be used as a more sustainable form of biofuel for transport. Clearly, a balance will need to be struck, but further regulation must not damage this research and development, and should seek, in the longer term, to facilitate sustainable production which creates economic opportunity and carbon reduction benefits.

20. Box 2.1 covers Scotland's offshore renewables potential. SCDI welcomes the work of the Marine Energy Policy Group on locational guidance and the pragmatic approach it is said to be adopting to the balance between the positive economic and environmental benefits of offshore renewables and any environmental impact. SCDI supports early designation of development zones for marine energy to speed up deployment of good projects which are sensitive to biodiversity issues. It is important that these support staged development from single scale devices to commercial demonstration plants to full-scale power plants. The Crown Estate has been considering how it will proceed with leasing wave and tidal energy sites, and has outlined the application and consent procedure for the Pentland Firth. SCDI believes that the Crown Estate should recognise that it will be impossible to leap from the single scale energy devices which are being tested at locations including EMEC to a full-scale power plant of 200-300MW. Smaller demonstration commercial power plants of perhaps between 5 and 25 MW will be needed to demonstrate to utility companies considering significant investment the reliability, efficiency and environmental impact of such farms. SCDI is aware that the industry believes the Crown Estate's intention is for five year leases in nursery areas within these sites. There is concern that the substantial investment required for the construction, operation, monitoring and decommissioning of these demonstration plants could not be justified for such a short year lease. The companies recommend that there are intermediary areas within these zones between the nursery areas and full-scale power plants, with leases available for at least 20 years, for demonstration plants, which could be extended into larger generating capacity. Another suggestion might be rolling five years leases which operate on a 'use it or lose it' basis.
21. With the involvement of Marine Scotland and the Scottish Marine Regions in the planning system, possible implications for planning gain should be made clearer.

**Q7 Do you have any comments on the approach to setting out national objectives for marine planning?**

22. The development of the National Marine Plan for Scotland needs to take into account the proposals for EU legislation and the forthcoming UK Marine Bill.
23. The National Marine Plan is to be integrated with the National Planning Framework. SCDI would highlight the following comments which it made in response to the consultation on that National Planning Framework 2 which it considers should be relevant to the development of the National Marine Plan:
- The National Marine Plan should be a comprehensive, clear and accessible strategy which provides a lead as to the direction of policy and how the marine environment is expected to develop over the longer term.
  - Through spatial policies, it should encourage and, perhaps, instigate change for the better, while also seeking to enhance and improve current conditions.

- It should guide, support and enable developers and the private sector with their major investment decisions, helping align these with public sector plans.
- It should offer a clear indication of how Marine Scotland would resolve conflicting policy objectives and where the balance lies between them.

**Q8 Do you agree with the overall approach to planning at the international level beyond Scotland? Do you have any further suggestions or comments to add to the proposed approach, in particular on the UK high level objectives?**

24. There is a need for joined-up thinking and a co-ordinated approach around the UK. While there will be regional requirements, marine management in any area should not make cross-border operations harder. For example, the economically vital North oil and gas industry needs a common approach between the sectors, as does the development of an offshore grid network around the UK and Europe. International telecommunications, including the internet, are carried by submarine cables and Thus backhaul Farice's cable runs from Dunnet Head to Edinburgh and then London. Marine management in Scotland should not make it less attractive for investment. Indeed, in some respects, such as faster decision-making, it might become a source of competitive advantage. SCDI would expect that the Scottish Government is involved in preparing the UK Government's plan and vice versa.

**Q9 Should Scottish Ministers use the Marine Planning system to deliver Scotland's obligations under the Marine Strategy Framework Directive?**

25. Yes. SCDI is not aware of a more appropriate means of delivering the obligations.

**Q10 Do you agree with the overall approach and functions for Scottish Marine Regions? Do you have any further comments on the proposed approach to planning at a regional level?**

26. The principle of streamlined regional decision making, to deliver National Marine Plan objectives, is supported. The Scottish Maritime Regions model would ensure that local circumstances and activities are reflected. However, there is a lack of clarity about how they would draw up Regional Marine Plans and balance various economic, social and environmental objectives, and about their role in licencing. While Marine Scotland will licence marine activities, the Scottish Maritime Regions will apparently be able to attach certain conditions and it is uncertain who will have the final say. The consultation says that the detail will not be revealed until secondary legislation. SCDI believes that it needs to be worked out before the legislation establishing the Scottish Marine Regions is passed in order to increase confidence that any disagreements will not be bounced between the planning tiers, and that the consultation and approval processes will be simplified. A level playing field would be preferable for marine industries when it comes to the introduction of the new activity licences. A two-tier system under which some remain under the more bureaucratic impact licence system risks unfairness.

27. The Scottish Marine Regions model should be genuinely representative of those involved in sustainable economic development at the sub-Scotland level. They must focus on and support the local delivery of the National Marine Plan, not become additional forums in which to grandstand, contest and block development. In recognition of their shared interest in the marine environment, many marine industries have already developed positive relationships with other local businesses, public bodies and communities through local structures. The Scottish Marine Regions model should build on the success of existing consultative forums. However, there is a lack of clarity in the proposals, especially around the composition of the Board, which must be resolved before the Bill is introduced. These should largely compromise key local economic interests and local authority representatives, rather than an unwieldy number of self-nominating, single-interest groups. Given their responsibilities and the objective to streamline local decision-making, Board members should have relevant experience of the planning system or there should be formal training for them before they take up their roles. SCDI agrees that a form of appeals review mechanism should be developed.
28. Participating in developing the Regional Marine Plans will be difficult for people working day-in, day-out in the marine environment in comparison with some other groups and bodies. There must be sufficient, focussed opportunities for them and for their representatives to put forward their input into the process. This may require more facilitation at a local level than the proposals seem to envisage.
29. The sequence for developing the Regional Marine Plans is a concern. It seems likely that some important decisions will be taken before they are ready, including the designation of Marine Conservation Zones which will limit the input from the Scottish Marine Regions. Transitional arrangements will need to be put in place which keep these cases to an absolutely necessary minimum and allow for the same consultation and agreement with key local economic interests as would happen under the Regional Marine Plans. SCDI understands that the Scottish Marine Regions are likely to number around 9 or 10 and to come on-stream in twos and threes. The consultation says that where they share a boundary they will consult each other on their Regional Marine Plans in order to ensure integration. This process will be complicated if they are all at different stages of development and it may be that Marine Scotland has to sign them all off simultaneously.
30. One aspect of marine planning which is, very surprisingly, barely touched upon is the role of the Crown Estate in Scotland. SCDI would assume that its planning powers would remain intact as a result of these proposals. The Crown Estate will clearly need to be closely involved in the preparation of the National Marine Plan and Regional Marine Plans and it will be important to co-ordinate decision-making. SCDI member businesses report a strengthening partnership with the Crown Estate. This should be developed further in the Scottish Marine Regions.
31. While potential conflicts exist, the Regional Marine Plans should also look for synergies. It is estimated that £100m will need to be spent on the ports

infrastructure for Clyde and Hebrides ferry services over the next ten years and there is the opportunity to construct wave power stations around the harbours.

**Q11 Do you agree that Scottish Marine Regions should be responsible for integrated coastal zone management?**

**Q12 Do you agree that Scottish Ministers should place a duty on Scottish Marine Regions to adopt the eight principles defining integrated coastal zone management?**

**Q13 Do you have any other comments on the delivery of integrated coastal zone management alongside marine planning?**

32. Yes, Scottish Marine Regions should be responsible for integrated coastal zone management and Scottish Ministers should place a duty on them to adopt the eight principles. However, it should be clearly understood that they must support the Scottish Government's single overarching Purpose of higher sustainable economic growth, by helping to sustain and develop local commercial activities.

33. SCDI welcomes the statement that the basic principle will be a "presumption of use". There is no need for detailed marine planning where there is little activity.

### **CHAPTER 3 – REDUCING THE BURDEN : LICENSING AND ENFORCEMENT**

**Q14 Does licensing remain an effective method of delivering both certainty for investment purposes, and protection for the marine environment?**

34. Generally yes, but there are failings in many current consenting regimes, including a lack of strategic policy objectives, complexity, multiple processes, overlapping responsibilities and a lack of consistency. The rationalisation and simplification of some regulations need to be elements of the Scottish Marine Bill. Licensing must be proportionate to the benefits and risks of the activities, and reasonably affordable. Smaller projects are particularly threatened by heavy-handed regulation and low-risk activities should be subject to a "lighter-touch". Economic and social sustainability are as important as environmental. Clear guidance should be produced for all those involved in the system. This would be an opportunity to improve applications and create more consistency in decisions.

**Q15 The existing licensing system covers most of the impacts on the seas from existing activities. One area of activity that has potentially large impacts and is not licenced is dredging. Scottish Ministers propose to licence all new forms of dredging (i.e. those forms that agitate the sea bed). Do you agree? Are there other activities that should be licenced?**

35. Marine aggregates are used to construct Scottish homes, schools, hospitals and offices. It would be counterproductive if any changes to the licensing system impact on wider Scottish Government objectives to develop infrastructure by

increasing the regulatory burden. While the case is not clear in the consultation document, if this dredging can be shown to have a significant environmental impact which justifies any wider impact, then SCDI could support such an extension of FEPA licensing. Small quantities of dredging could be made exempt, subject to environmental assessment. However, SCDI understands that the ports industry would like a wider discussion about dredging, especially on introducing a five year licence and a consistent regime with England for maintenance dredging.

**Q16 Scottish Ministers intend to create powers to set out a list of licensable activities in regulations. Do you have any views on this approach?**

36. SCDI is cautious about this approach. While accepting that the proposals in this consultation are generally intended to reduce the regulatory burden, there is the risk that a future administration will use these new powers for the opposite purpose. If this approach is to be introduced, the Bill should make it clear that any additions to the list of licensable activities should support sustainable development, be subject to a full Regulatory Impact Assessment and follow consultation with the relevant industry before Parliamentary approval is sought.

**Q17 The proposed Marine Scotland should have general responsibility for the delivery of the marine licensing system. Do you agree?**

37. Yes, subject to it having the capacity and appeals going to an independent body.

**Q18 Scottish Ministers intend to reduce the numbers of marine licences that developers require to get before an activity can take place. There are two ways to reduce the numbers of licences either by creating a single licence for all marine impacts or by creating a single licence for each activity. Which system do you prefer?**

38. A single activity licence is preferred. While accepting that within this approach there will still be consideration of a wide range of impacts, SCDI believes that a single activity licence would streamline the application process for businesses in a way which impact licences would not. It is a concern that fish farming is the only industry which would remain subject to impact licences, particularly given that the system has proven to be a significant disincentive to international investment in Scotland. The industry believes that moving to an activity licence for fish farming is the only way to reverse this trend. As SCDI sets out in reply to Question 52, this will matter less if Regional Marine Planning leads to more certainty for investors, If not, a single activity licence for aquaculture should also be introduced and a way found of maintaining local democratic accountability.

**Q19 Marine Scotland could undertake the licence work itself or operate as a front door coordinating the work of others. Do you have any views on these options?**

39. Marine Scotland should be a one stop shop for licensing. This would tend to favour as much integration as possible of marine environment regulation in it and close relationships with other organisations which exercise a regulatory role.

**Q20 Do you agree with the proposed approach to consultation involving local stakeholders? Do you have any further comments?**

40. The principle of consultation is supported. The focus should be on making the current processes clearer and more consistent and should not further prolong the time taken for consents. The level of consultation should be appropriate to the application and not every application need be subject to a public consultation, particularly those which are of small risk or are technical in nature. Any new list of consultees should be relevant and not unwieldy, and the “new ways” of improving local involvement should not increase the burden on developers.

**Q21 Do you agree that the revised licensing system should incorporate the simplified CAR model throughout, to focus scrutiny on higher risk activities/ impacts and reduce the regulatory burden?**

41. The CAR approach seems to strike the right balance, subjecting activities posing a greater risk to more conditions, while reducing the regulatory burden for others. Presumably there would be three tiers of charging and timescales for a response.

**Q22 Scottish Ministers intend to provide Marine Scotland with powers to insert conditions into licences. Do you agree with this approach? In particular Scottish Ministers intend to create a standard condition on removal of redundant kit and installations, do you agree?**

42. This would appear to be reasonable, but there should be full consultation with the developer before conditions are inserted into licences. It may be important to define “end of its life” in relation to an installation. A developer may choose to sit on a site rather than to sell a lease to another developer which will make a more productive use of it, if it would trigger the need to pay for decommissioning.

**Q23 Scottish Ministers believe an appeals procedure for those directly involved in the licence application would be a beneficial development. Do you agree?**

43. Yes. If the appeal is made against a decision reached by Marine Scotland, it should be through a mechanism which is independent of it. If Marine Scotland is part of the Scottish Government, the review should not be undertaken by it. Those dealing with the appeal should be able to consider independent expert advice.

**Q24 To provide an easy and transparent system, do you agree that a scale of charges related to cost recovery is the most appropriate way to recover the costs of assessing, issuing, monitoring and enforcing licences?**

44. SCDI warmly welcomes the intention to set appropriate timescales for the regulators to reach decisions. There should be an overall time limit for a decision.
45. SCDI accepts that the principle of full cost recovery. The charging system must be transparent and the regulator must be able to demonstrate that costs are being kept to a minimum. It would be helpful if FEPA Part II licences covering a period of more than one year could be issued in order to reduce costs to businesses.

**Q25 The Scottish Government proposes a review of existing licence monitoring and enforcement provisions relating to the marine environment and wishes to consolidate them into a single set of coherent powers and remedies. Marine Scotland should be tasked with ensuring compliance monitoring and enforcement activity is carried out consistently and efficiently. Do you agree?**

46. This approach would seem to follow the principles of Better Regulation. SCDI believes that education should form an important part of compliance monitoring. Enforcement remedies should be a last resort to dealing with non compliance. There should be greater consistency in compliance monitoring and enforcement.

#### **CHAPTER 4 – SECURING THE FUTURE : NATURE CONSERVATION**

**Q27 Do you agree that our system of marine nature conservation should be based on the three pillar approach?**

47. Yes. The protection and conservation of the marine and coastal environment and biological diversity is a high priority for industry and environmentalists. Sustainable management of the seas is recognised as essential to the long-term health of businesses and the communities in which they are based. Industry and environmentalists often work together on marine nature conservation at national, regional and local levels, and the Scottish Marine Bill should build on this partnership. Sustainable management of Scottish seas must recognise that the approach applies as much to productive economic activity and to strong communities, as it does to environmental protection. So marine conservation must not put further pressure on the sustainability of businesses and communities.

**Q28 Please provide your views or comments on the application of Marine Ecosystem Objectives for marine nature conservation.**

**Q29 Do you agree it would be worthwhile to have a biodiversity duty in the offshore area around Scotland?**

**Q30 Do you have any other suggestions for making improvements to Pillar I - wider seas measures?**

**Q31 Do you agree with the proposals for a science-based review of whether new marine species need to be added to the existing list of protected species?**

48. An evidence-based approach is supported. The scientific review should be undertaken and be followed by consultation with any relevant industries which might be affected, at the time or in the future, before any site designations are made. It would seem sensible to keep all lists of protected species under continuous review as conservation measures have an effect and climate change has an impact on the biology of the seas. Businesses with direct experience of the species in the areas in which they operate should be able to input their evidence.

**Q32 Do you have any further comments or suggestions for making improvements to Pillar II - species conservation?**

**Q33 Do you agree with the overall principle of the introduction of a power to select new types of site?**

49. National policies and objectives on sustainable development should guide marine site protection. The designation process must be co-ordinated by Marine Scotland, taking advice from the nature conservation agencies and key economic interests.

50. SCDI is not wholly convinced that there is a need for another raft of designations. It would suggest that Scottish Ministers could meet their responsibilities with their existing powers and through the introduction of marine planning. However, if it is felt to be necessary, it is recommended that new sites are selected only after full consideration and consultation on the socio-economic and conservation factors. This would reflect the approach which is being taken with the UK Marine Bill. SCDI understands that the Habitats Directive sets out a statutory basis for Natura 2000 sites which only allows considers commercial and other issues after the designation. However, a Natura site can be designated and a development subsequently approved if it has sufficient socioeconomic value and meets certain other requirements. Unfortunately, this system has created considerable problems and uncertainty for planners. SCDI would urge that any improvements which are being implemented in the UK Marine Bill are replicated in Scotland. The assumption should always be multiple use of the site and any exceptions should be on the basis that the activity impacts on why the area had been designated.

**Q34 Do you agree with the assessment of the three main types of requirements for site protection? Do you have any further comments on this?**

51. The three main tiers of requirement for site protection are supported in principle. The wider socio-economic impact should also be carefully taken into account.

**Q35 Do you have any views on whether or not a "single approach" should be taken for marine historic and natural environment site protection?**

52. Eliminating regulatory overlap of site protection and enforcement is welcomed.

**Q36 Do you agree with the proposals on how a new flexible site protection power will be used? Do you have any other comments?**

53. A flexible site protection power to select, deselect or amend an area is supported. New sites should follow full consultation and all decisions must be evidence-led.

**Q37 Do you have any views or comments on whether a single integrated power should be used to deliver these proposals?**

54. Eliminating regulatory overlap of site protection and enforcement is welcomed.

**Q38 Do you agree with the proposals for how sites will be managed, including the site by site approach and overall context of sustainable development? Do you have any additional comments?**

55. SCDI welcomes the assumption that there will be multiple uses for a site with restrictions only on those activities which are likely to have a significant or adverse effect on the features for which sites are selected. These considerations should be part of the initial designation process as well as the site management.

**Q39 Please provide us with your views on the role that a wider planning system should have in the identification of Marine Protected Areas?**

56. If a new power is created to designate Marine Protected Areas outside the wider planning system, it must only be exercised in a transparent way following full consultation and there must be an appeals mechanism to an independent body. It would otherwise undermine the process that the Scottish Marine Bill is putting in place. The power should not be used for political reasons, but on scientific advice.

**Q40 Do you have any other comments or suggestions for making improvements to Pillar III - site protection?**

57. In linking designated land-based and marine protected areas, current commercial activities and the needs of future development on the site must be considered.

**Q41 Would you agree with the principle that the offence against damage to Natura sites should apply to marine sites? What are your views on whether a similar offence should be introduced for damage to other Marine Protected Areas?**

58. SCDI agrees in principle, but understands that there are practical challenges for the police in preventing and detecting offences in the marine environment. So education to encourage compliance would be more beneficial than enforcement.

**Q42 How can we enhance the contribution which the wild marine environment makes to Scotland's economy?**

59. There is a need to enlighten more Scots about the richness, variety and accessibility of Scotland's marine and coastal environment, and the contribution of marine businesses to the Scottish economy and stewardship of the seas. This should start in schools. It has long been recognised that Scottish tourism benefits from perceptions of the country as "clean and green". Building on the findings of 'Scotland's Seas: Towards Understanding their State', there may be potential for VisitScotland to launch marketing of the natural diversity and environmental quality of the marine environment, the outdoor activities and leisure opportunities.

#### **APPENDIX TO CHAPTER 4 – SEALS FORUM REVIEW OF THE CONSERVATION OF SEALS ACT 1970**

##### **Q43 Do you have any views or comments on the options for improving conservation measures for seals?**

60. Large numbers of seals can damage fish stock and the economic viability and social benefits of businesses so it is important that licenced control is permitted.

#### **CHAPTER 5 – UNDERSTANDING OUR SEAS : SCIENCE AND DATA**

##### **Q44 Do you agree that Scottish Ministers should develop a marine science strategy to focus marine scientific effort, integrate socio-economic considerations, and to create a framework for wider stakeholder input?**

61. Yes. Understanding of Scotland's seas is still relatively limited by a lack of quality data. The information that exists tends to have been gathered in an area of commercial activity making the information available generally site specific. Looking ahead, there is a need to become more strategic both so that planning and regulatory decisions reflect the full environmental impact and so that new industries, such as marine renewables, and technologies can be deployed more quickly. There should be an evidence-led approach. However, a lack or overly cautious interpretation of data should not be used to slow or block developments with socio-economic benefits. Good science can drive innovation by businesses.
62. SCDI support the proposal that one body, Marine Scotland, will co-ordinate the marine scientific effort and funding. This will ensure efficient government. The data collected should be made widely available inside and outside government. SCDI welcomes the integration of socio-economic research considerations.
63. SCDI understands that the Scottish Funding Council will shortly consider a bid by the Marine Science Scotland initiative to create a new network which brings together all the research, policy and knowledge transfer work by Scottish universities, marine labs and government. SCDI believes that this would be a significant development for Scotland towards a shared understanding of Scotland's seas and a focused, integrated marine science strategy. SCDI hopes that the Scottish Funding Council will be able to support this important initiative.

**Q45 Do you have views on how to integrate scientific evidence with stakeholder and local knowledge?**

64. There is a need to ensure a flow of data to Marine Scotland from all industries and in the short-term especially from the oil and gas and the fishing industries. Efforts to collect, pool, assess and evaluate this information should begin as soon as possible, perhaps through organisations such as SNH, SEPA and FRS. The overall responsibility should be passed to Marine Scotland once it is established. A licence condition might in the future be that businesses should share any data collected that can be used for developing and sustaining the marine environment.

**Q46 What do you think are the potential priorities for further work?**

**Q47 Scottish Ministers propose that the strategic role for the monitoring and assessment of Scotland's seas lies with Marine Scotland, do you agree?**

65. Yes. Funding and expertise should be focused in one strategic organisation.

**Q48 Scottish Ministers propose to instruct Marine Scotland to take forward the development of GIS as a matter of priority. Do you agree?**

66. Yes. However, the substantial resources for this major new system must not come at the expense of sufficient funding for Marine Scotland's shorter-term priorities. As far as possible, reliable, existing data from other sources should be utilised.

**CHAPTER 6 – MANAGING OUR SEAS : MARINE SCOTLAND**

**Q49 Scottish Ministers propose to develop Marine Scotland to champion the seas and their use and provide better integrated and streamlined delivery in the marine area. Do you agree?**

67. There is a need to champion Scotland's seas and their use and provide better integrated and streamlined delivery in the marine area. There appears to be a consensus that Option B, the development of a new integrated organisation, Marine Scotland, is the most effective way to achieve this objective. SCDI would expect that its single overarching Purpose would be statutorily aligned with the Scottish Government and the wider public sector in supporting higher sustainable economic growth for Scotland. Marine Scotland should set this strategic direction for the marine area. This is more than simply "a key duty" of the new body. It should have strategic oversight of and facilitate potential development, enabling the sustainable use of the seas through streamlined planning and management. Marine Scotland will, when necessary, also have to provide a safeguard against any unsustainable or irresponsible development in order to protect and sustain for the future the high environmental, social and economic value of Scotland's seas.

**Q50 Scottish Ministers propose that Marine Scotland deliver marine planning proposals as set out in Chapter 2. What are your views on this proposal?**

68. With the strategic position set out above, Marine Scotland would be the appropriate body to deliver the marine planning proposals. The National Marine Plan should clearly state the principles for Integrated Coastal Zone Management. Marine Scotland should provide guidance and guidelines for the Scottish Marine Regions in order to implement consistently the national objectives in all areas and provide more certainty for investment. Local delivery should be monitored and supported by Marine Scotland. There must be a genuinely independent appeals procedure for developers, which involves outside expert and scientific opinion.

**Q51 Do you agree with the approach set out for fisheries and aquaculture management? Do you have any further comments in connection with this approach?**

69. Sustainable growth in fisheries and aquaculture are vital in delivering the regional equity objectives of the Scottish Government Economic Strategy. This is the key industry in supporting economic growth and employment in many peripheral communities, especially in the Highlands and Islands. It has a leading role in delivering the objectives of Scotland's first national Food Policy in healthy and sustainable food production and in increasing exports. Higher production would also support greater food security in the EU. However, its growth has been stifled by a comparatively restrictive planning and regulatory environment, which has inevitably resulted in major investment being diverted to competitor countries.
70. The Scottish Marine Bill should state the Scottish Government's commitment to the long term sustainable growth of aquaculture in Scotland. This would then inform the entire planning hierarchy and the approach to regulation, Integrated Coastal Zone Management and conservation by all those involved. To promote simplification, as far as possible Marine Scotland should act as a 'one stop shop'.

**Q52 What are your views on the arguments relating to where control for aquaculture should lie?**

71. Local authorities will be closely involved with the development of Regional Marine Plans which should be consistent with the national objectives set by Marine Scotland and these plans will be approved by Marine Scotland. If the system works as it should, the Regional Marine Plan should support and steer sustainable aquaculture development, and the planning approvals process should flow from it. Which organisation issues the planning consents then becomes much less important. There is good evidence from the Western and the Northern Isles that local government can work very constructively with the aquaculture industry. In light of these positive examples, it would perhaps be appropriate for local authorities to continue to exercise planning consent, while increasing the resources which are available to do so and monitoring whether decision-making becomes more consistent and streamlined. A new right of appeal to Marine

Scotland could be introduced for developments which are refused permission and a full review could take place after the introduction of the Regional Marine Plans.

**Q53 Do you have any views on the role that FRS should take?**

72. It would make sense to create overarching body in Marine Scotland for marine activities within Scotland. It is essential that FRS's expert scientific and technical advice is not disrupted in any organisational change. FRS is currently an agency of Government, but the consultation proposes that, in Marine Scotland, it becomes part of the Scottish Government. If this is the case, great care must be taken to ensure that its reputation for independence scientific research is not compromised.

**Q54 What are your views on the creation of Marine Scotland and the proposed range of functions it should deliver?**

73. Marine Scotland must be able to act efficiently and robustly to lead delivery of higher sustainable economic growth for marine areas. It must not simply become another layer of bureaucracy, but rather improve management and planning, reduce the burden of regulation and provide expert advice – as far as possible acting for the industry as a seamless one stop shop for approval and enforcement, drawing on expert advice from SEPA and SNH. SCDI does not believe that this would be likely through an 'association of agencies'. Marine Scotland must be able to demonstrate appropriate policy and management independence from and influence with the Scottish Government. This brings into question its proposed status. Effective transitional arrangements and sufficient resources are requisites.
74. There is no consensus on Marine Scotland's functions. There is some concern that the transfer of marine functions from SNH and SEPA would cause disruption and lead to a loss of specialist marine expertise at these organisations. On the other hand, if responsibilities and consent powers remain scattered across a range of public sector bodies, the objective of streamlining the process may not be achieved. On balance, SCDI would accept the Scottish Government's proposition.
75. SCDI would suggest that Marine Scotland will require external advice from key economic interests and that a National Stakeholder Forum should be created.

**Q55 Do you have any views on the development of Marine Scotland's role and functions over time?**

76. A range of stretching measurements should be set for Marine Scotland to monitor its impact on the economy and the environment, and its efficiency and effectiveness in reducing the regulatory burden. If the organisation is making progress and there is felt to be an advantage to adding to its role as a one stop shop, the further transfer of responsibilities should be considered. For instance, in contrast with the UK Marine Bill, there is no proposal to include the licensing and planning functions of Harbour Revision Orders within Marine Scotland's remit.

77. Given the close link between Scottish Government renewable energy policy and targets, and the consents process, it would make sense for Ministers should continue to determine marine renewables applications under the Electricity Act. The Energy Consents Unit should continue to have a key role in the process.

**Q56 Ministers believe Marine Scotland should form part of Scottish Government with appropriate safeguards for science and the appeals process. Do you have any views?**

78. The consultation document acknowledges that “Marine Scotland will require new resources to deal with the substantive new tasks and responsibilities”. SCDI agrees with this statement. The constituent parts which it is proposed will comprise Marine Scotland are already very stretched and will be given significant new responsibilities. SCDI is aware of widespread concern that the Scottish Government has not been able to commit during the consultation period to providing the extra resources which will be needed to make the new system work.
79. Marine Scotland must have sufficient personnel with maritime expertise so that it fully understands the needs and challenges of the industry in all its various forms.
80. SCDI has some reservations over whether a status for Marine Scotland as part of the Scottish Government would maximise its ability to champion Scotland’s seas. It also has concerns whether the introduction of a number of ‘Chinese Walls’ to separate its scientific, enforcement and any appeals functions from the Scottish Government would work in practice. The decision on Marine Scotland’s status must not be primarily driven by a policy to reduce the number of public bodies.
81. The Scottish Government’s relocation policy criteria says that consideration “will be triggered by organisations when there is a substantial restructuring”. In whatever way Marine Scotland is organised, it would seem highly likely that it would fall into this category. At present, the Scottish Fisheries Protection Agency and the Scottish Government’s Marine Directorate are based in Edinburgh, while the Fisheries Research Services is based in Aberdeen. If the objective is to create an integrated ‘one stop shop’, then there may be longer-term advantages to bringing the new organisation together on one site. However, this may increase the transitional costs, disrupt licensing and consents, and divert its focus from the National Marine Plan. All the arguments will need to be carefully weighed up.

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