

# MAKING THE CASE FOR MARINE SPATIAL PLANNING IN SCOTLAND

May 2004



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# **MAKING THE CASE FOR MARINE SPATIAL PLANNING IN SCOTLAND**

**DAVID TYLDESLEY AND ASSOCIATES**

**May 2004**

**COMMISSIONED BY THE ROYAL SOCIETY FOR THE PROTECTION OF BIRDS  
SCOTLAND AND THE ROYAL TOWN PLANNING INSTITUTE SCOTLAND**



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This report may be cited as Tyldesley, D. (2004) 'Making the case for marine spatial planning in Scotland' report commissioned by RSPB Scotland and RTPI in Scotland



## Foreword by RSPB Scotland and RTPI in Scotland

Scotland's firths, coasts and inshore waters are of great importance for both wildlife and people. They support a wealth of marine biodiversity, being home to over 8,000 species of marine life. They are also home to internationally important numbers of breeding seabirds and wintering shorebirds. Important industries such as fisheries and aquaculture are also dependent on the quality and productivity of our coastal waters. They provide the sites for an increasing variety of energy-related, navigational and other installations, as well as recreational activities.

However, questions are beginning to be asked about the increasing pressures on coastal communities and our marine resources. Competition for resources and space, coupled with a lack of integration between different marine sectors, is leading to conflict. Marine aquaculture development continues alongside growing interest in offshore renewable energy generation through wind and wave power and uses of the coastal zone, such as inshore fisheries and recreation, are also intensifying. The need for the introduction of some form of planning 'system' at sea is growing.

In response to these concerns, UK and international commitments have been made to progress spatial planning at sea as a mechanism for resolving conflict and promoting sustainable management of marine areas. For example, the UK's Marine Stewardship Report *Safeguarding Our Seas* commits the Westminster Government to "...*explore the role of spatial planning for the marine environment ...*". Whilst we are yet to mirror such commitments in Scotland, a Scottish Coastal Forum seminar on this issue in autumn 2002 concluded that there is support amongst planners and marine sectors for the extension of some form of forward planning regime to our marine environment.

Nevertheless, there has been little other debate about what 'marine spatial planning' should entail in Scotland. Research was needed urgently; after all, the Scottish Parliament is already committed to the extension of planning controls to inshore marine fish farms. Consequently, in Autumn 2003, RSPB Scotland and RTPI in Scotland commissioned David Tyldesley Associates to identify options for introducing marine spatial planning.

Their research, presented in this report, begins this process by developing thinking on what marine spatial planning could and should mean in Scotland. We are certain that this report will also prove a valuable and timely contribution to the wider debate about the future shape of 'planning' in Scotland. For example, the first National Planning Framework was published in April 2004 and many commentators have raised concerns that it has little application in the marine environment.

Finally, we would like to note that the contractors undertook this study as independent research. The report has, therefore, been published as received to stimulate debate and discussion. Hence, its content and conclusions do not necessarily reflect the policy of the sponsoring bodies (RSPB Scotland and RTPI).

**Stuart Housden**  
Director, RSPB Scotland

**Graham U'Ren**  
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## 1. INTRODUCTION

This report was jointly commissioned by the Royal Society for the Protection of Birds (RSPB Scotland) and the Royal Town Planning Institute in Scotland. The purpose is to identify and evaluate the options for taking marine spatial planning forward in Scotland and to prompt and inform debate within the Scottish Parliament and Scottish Executive.

The report intends to:

- Develop the case for marine spatial planning in Scotland;
- Identify the central questions to be addressed when examining the introduction of marine spatial planning;
- Develop options as to how marine spatial planning in Scotland might be delivered; and
- Identify priorities for future research and debate.

Marine spatial planning is treated here in its widest sense, not merely as an extension of the town and country planning system on land, but including the spatial implications of all ongoing activities and proposals for change. Section 5 provides definitions of marine spatial planning in the context of this project.

The report draws extensively on published papers, conferences and web site material but, in order to keep the report succinct and readable, only key references have been given. In addition to desk studies, the report draws on discussions with the project steering group and an e-mail consultation with a wide range of stakeholders, in Scotland and elsewhere. The project was undertaken during the autumn and winter 2003/2004, partly overlapping with other research projects relating to the evolution of marine spatial planning in the UK. These other reports are referred to in footnotes in this report and provided an important background in terms of the lessons that can be learnt from the terrestrial planning system and from the development of marine planning in other countries.

## 2.

## **HOW THE MARINE ENVIRONMENT IS PLANNED NOW AND WHY WE NEED A MARINE SPATIAL PLANNING SYSTEM**

This section summarises the present situation with regard to planning in the coastal and marine environment in Scotland today. It then looks briefly at the changes driving the agenda for introducing a planning system for the seas around Scotland.

### **There is no planning system seawards of low water mark**

- There is no comprehensive planning system in Scotland operating below mean low water mark of ordinary spring tides (MLWMOST).
- The Court of Session has held that even where a local authority's jurisdiction extends to sub tidal waters, such as in sea-lochs, estuaries, creeks or bays, planning powers nevertheless end at MLWMOST (1).
- In the Orkney and Shetland islands the local authorities regulate aquaculture and other kinds of development in inshore waters through the powers of local Acts of Parliament. The Scottish Parliament is extending planning control over aquaculture development throughout Scotland seaward of low water but the details of the development control regime have yet to be decided.
- However, more fundamentally, there is no system for producing an integrated forward plan for the sea and no system whereby plans have to fit into a marine planning strategy.

### **Existing regulation at sea is fragmented, varies between sectoral interests, overlaps the land use planning system and is not well understood or integrated**

- As there is on land, there is a range of regulatory processes by which licences, consents and other authorisations have to be obtained for specific proposals or activities.
- These regulatory regimes have evolved over a long period of time, in response to changing forms and patterns of developments in the marine environment. For example, the exploration for and extraction of oil and other minerals, the laying of cables and pipelines, the building of ports, bridges, causeways and other infrastructure.
- The regulatory processes have, therefore, tended to be related to particular sectors, interests or activities, such as oil and gas, transport, energy, fishing or navigation.
- Regulatory processes at sea are less well understood by the public than the land use planning system, because the public is less familiar with and involved in them.
- Jurisdiction of maritime regulatory processes vary: seaward of mean high water mark they may extend out to 3, 6 or 12 nautical miles (nm) or to 200 nm or the limits of UK marine competency (the UK continental shelf).
- The Scottish Executive has devolved powers only out to 12 nm, although it does

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1 Argyll and Bute District Council v Secretary of State for Scotland 1976 S.C. 248 S.L.T. 33

have some jurisdiction over a few specific activities out to 200nm, such as the enforcement of fisheries regulations.

- There is overlap of land and sea based regulatory regimes, on the intertidal and for projects that span the marine and terrestrial environments (for example, pipelines or an offshore windfarm with its grid connection).

**Changes at sea are regulated largely by centralised authorities, there is no local community of 'ownership' of the sea and mechanisms to plan and coordinate regulatory controls are weak and incomplete**

- Most regulatory controls at sea are operated by or through central government (UK government departments and the Scottish Executive), not local, government.
- There is no 'planning authority' for the sea. Indeed, away from the coast, there is no equivalent body to a 'local authority', so there is no common body of local 'ownership' with local accountability.
- Whereas, on land, the planning authority prepares plans and regulates proposals for most forms of development, at sea, many forms of development have a specific regulator for that activity.
- Ownership of the seabed is generally vested in the Crown. The Crown Estate legitimately seeks economic benefit from leases and other forms of consent, but is no more a planning authority for the sea than it is where it owns land.
- The need to have a legal interest in the land (for example, by ownership or lease) is a pre-requisite for development or implementing change on land, but not necessarily at sea.
- Mechanisms for co-ordination and consultation, where they exist, are weak. This is the case in respect of mechanisms operating vertically, for example, between central government and local stakeholders, and horizontally, for example, between government departments, between regulators and even between local interest groups and other organisations.

**There is no system of making integrated, cross-sectoral, comprehensive and coherent forward-looking plans at sea, where planning systems exist they are sectoral and local and may be focused on specific issues**

- For the sea there is no obligation on any regulator to prepare a plan that co-ordinates and expresses the spatial implications of various proposals, programmes of investment, developments or other changes.
- There is no system for providing a framework for consistent and co-ordinated decision making.
- There is no plan or policy framework against which regulators should check all new proposals for compliance.
- There is no system through which the various regulators of the marine environment can achieve integrated planning.
- Local initiatives such as those focused on the Firths have been successful in bringing stakeholders together, raising awareness of the need for co-ordinated

planning and action and in producing the first policy frameworks with a spatial dimension for sub-tidal areas. They are, however, non-statutory, voluntary initiatives of uncertain duration.

- Other important initiatives, such as the Clyde Inshore Fishery Study, bring stakeholders together to pro-actively explore ways of implementing common objectives for the sustainable harvest of the sea's resources, but they are focused on specific issues and are unable to engage more widely with other commercial sectors and interests.

### **Information, understanding and other essential tools for planning at sea are under-developed**

- Although improving, generally, there is relatively less known about the use of the sea and the marine environment than there is in respect of the use of the land and the terrestrial environment, in particular, less is known about the distribution of marine habitats and habitat mapping is incomplete and inconsistent.
- As on land, there is no single repository of environmental information, but the way in which the existing information about the marine environment is dispersed and poorly integrated is a greater impediment to effective planning than on land.
- The sea has been the poor relative of terrestrial conservation, planning and environmental understanding (though not for the want of trying by some non-governmental organisations) over many years.
- Although there is comprehensive and detailed mapping of the seabed topography, in the form of charts, there is no single geographic information or other mapping system to collate, integrate, interpret and use information or to form a basis for spatial planning at sea.
- The sectoral approach to regulating the use of marine areas and resources has tended to create pockets of expertise in respect of particular activities or resources, but there is a lack of a coordinated overview of the marine environment, its systems and the way that activities and developments interact with each other and the environment, that is provided by planners on land.

### **There is inadequate monitoring; enforcement of regulatory controls at sea is difficult**

- The sectoral approach to regulation has tended to reduce and dissipate the effect of monitoring and enforcement that, in any event, is more difficult at sea owing to the scale and geographic area involved and the environmental conditions in which monitoring and enforcement have to operate.
- In sharp contrast to the land, there is little "public policing" of development or activities because there are no, or very few, (residential) communities that would report nuisance or other concerns.
- There may have been a culture of out-of-sight out-of-mind in respect of the sea's environmental problems.

### **There is an increase in development pressures for sectors that rely on the natural resource of the sea and sectors that use the space and locational advantages offered by**

**the marine environment; in combination they create potential conflicts that a marine spatial planning system could help to resolve**

- Despite the hostile nature and often remote location of the marine environment for construction projects, there is an increase in developments that do not directly rely on the sea as a resource. They are utilising its space and locational advantages, perceived to be less constraining than the land. The sea may become increasingly used by occupiers that do not fully understand and respect its nature and may have less interest in sustaining the sea's environment than those who depend upon the sustainable harvesting of its natural resources.
- There has also been a significant growth in some sectors that do directly rely on the sea as a resource, for example, in Scotland especially, marine aquaculture.
- Together these development pressures appear increasingly similar to those experienced on land which have relied on the planning system to resolve conflicts between them.
- Some activities at sea are subject to international regulation or rights endowed by international law and convention.
- Increasingly, international conventions and directives are influencing regulatory controls (for example water quality or habitat and species protection) and the assessment of environmental effects at sea as well as on land, but marine regulatory systems are less well adapted to accommodate these changes.
- A feature of the land use planning system has been the deterrent effect of strong spatial designations, such as green belts and National Parks that represent areas or zones of very strong, often decisive, policy restraint or environmental sensitivity.
- Marine areas are likely to become more subject to designations. For example, the OSPAR Commission is pursuing the application of Marine Protection Areas and the Special Protection Areas and Special Areas of Conservation, required under the EC Birds and Habitats Directives respectively, will need to be classified in wholly sub-tidal areas.
- However, presently at sea, designations are relatively few, small and of limited effect compared to those on land. Whether spatial designations at sea become as extensive as land based designations remains to be seen, but they are bound to become more numerous and extensive and they will increasingly influence decisions on marine developments and management. Their constraints need to be taken into account in an integrated and consistent way.

**There is an increasing recognition of the need for marine spatial planning**

- After 50 years of a land use and development planning system on land, that is regarded as broadly successful and essential in the public interest, there is increasing acknowledgement that the sea needs a planning system too.
- The UK Government has indicated acceptance of marine spatial planning as a

possible approach through the 2002 Bergen Declaration (2) agreed at the 5th North Sea Conference of Ministers. This paves the way for greater emphasis on spatial planning to prevent and resolve the potential problems created by conflicts between development, conservation and restoration of the marine environment and the different uses of the North Sea.

- This commitment is mirrored in the UK Marine Stewardship Report *Safeguarding Our Seas* (3) that states that the UK Government "...will explore the role of spatial planning for the marine environment...".

**In Scotland, an interest in progress towards more holistic and integrated planning and management of marine areas is growing.**

- The results of a Scottish Coastal Forum (SCF) seminar in autumn 2002 suggest that there is support for the extension of planning control to the marine environment. However, whilst supportive of the introduction of planning control for the marine environment, the extension of terrestrial planning controls was not necessarily seen as the best option. In April 2003, the SCF wrote to the Chief Planner at the Scottish Executive encouraging the Executive to take a creative and constructive lead, to convene an inter-agency working group to take forward the issue of marine spatial planning and to develop and trial new approaches on the ground (4).
- In presenting the findings of the seminar to the Scottish Executive, the SCF concluded that there is a need for marine spatial planning as an important tool for resource management. They noted, however, it still requires to be much better developed by determining how best to deliver it and assess how extension of aspects of the terrestrial land use planning system could play a part.
- In November 2002 the Scottish Executive initiated the 'Sustainable Scotland Marine Environment Initiative' to develop new management framework options for the sustainable development of Scotland's marine environment.
- The Scottish Coastal Forum is developing a comprehensive strategy for Scotland's coast and inshore waters.
- The Scottish Executive are preparing a 'Strategic Framework for the Marine Environment'.
- The implementation of the planning control system for marine fish farms in the Water Environment and Water Services (Scotland) Act 2003 will require the provision of a suitable offshore policy framework under the development plan system, which is under active consideration by the Scottish Executive.
- It is now an appropriate time to consider what a marine spatial planning system

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2 Ministerial Declaration of the 5<sup>th</sup> International Conference on the Protection of the North Sea, Bergen, Norway, 20-21 March 2002, Section XI para 76

3 Department for Environment, Food and Rural Affairs, Scottish Executive and Welsh Assembly Government, 2002, *Safeguarding Our Seas: A Strategy for the Conservation and Sustainable Development of our Marine Environment*.

4 Letter from Captain A H F Wilks MBE FNI, Chair of the Scottish Coastal Forum to Mr J Mackinnon, 28<sup>th</sup> April 2003

for Scotland might be and to consider the alternative ways of shaping it and delivering its potential benefits. In doing so, we need to learn lessons from the evolution of the terrestrial land use planning system (5).

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5 TYLDESLEY, D., 2004, *Review of how the land use planning system could influence the development of a marine spatial planning system for England*, English Nature Research Report No 566

### **3. THE BENEFITS THAT A MARINE SPATIAL PLANNING SYSTEM COULD DELIVER.**

A marine spatial planning system could:

- Deliver a coordinated, holistic, integrated, pro-active, effective, enforced, forward-looking, plan-led and targeted approach to the use and management of the sea;
- Involve the influential participation of all stakeholders at a level that delivers accountability and distinctiveness;
- Replace the largely sectoral, reactive, application-led, centralised, remote, regulatory system characterised by ad-hoc planning, extensive duplication, inadequate coordination and integration, and limited information gathering, enforcement and monitoring;
- Improve the consistency and compatibility of regulatory decisions;
- Improve the understanding and consideration of cumulative and combined effects and inter-actions between differing users and developments as well as between them and the environment;
- Enable government and agencies to more effectively deliver their commitments to sustainable development;
- Provide greater clarity of policy and decision making, more confidence in regulatory processes and more certainty about what changes will be acceptable, promoted or resisted in different areas of the marine environment for the benefit of developers, operators, users and protectors of the sea's resources;
- Improve information collection, storage and retrieval, data processing and sharing;
- Provide the context for improved management of sensitive areas that require protection and environmental conservation;
- Reduce conflict and tensions between sea users and between them and regulators;
- Create new working partnerships and communities with a common purpose;
- Improve public participation;
- Help to avoid trade-off and compromise and build on consensus;

- Change the approach to management of the sea from one dominated by regulation and control to an approach that is based on forward planning;
- Share the beneficial results of monitoring and reduce the uncertainty of decision making, resulting in a reduced reliance on the precautionary principle; and
- Help to reverse the decline in biodiversity and act as a catalyst to restoration of marine ecosystems.

A marine spatial planning system would deliver substantial economic benefit to government and industry. For example, it could:

- provide greater steer and confidence in future investments;
- enhance the effectiveness of public and private financial and resource investment;
- improve integration and reduce duplication of effort and its associated waste of resources;
- improve the speed, quality, accountability and transparency of decision making enabling the principles of 'Better Regulation' and 'Best Value' to be incorporated into administration so reducing regulatory costs;
- improve the effectiveness and consistency of regulatory compliance, so providing better conditions for fair competition; and
- provide an improved understanding of the implications of sustainable use and development of the marine environment as a component of economic growth.

#### **4. DIFFERENCES BETWEEN LAND AND SEA THAT POTENTIALLY AFFECT THE FORM OF A MARINE SPATIAL PLANNING SYSTEM**

There are obviously differences between the land and the sea, but they are intimately connected, especially at the coast, and economically, socially and environmentally inter-dependent. In the context of how a marine spatial planning system may need to differ from a land based spatial planning system, we see the key relevant differences between terrestrial and marine planning circumstances as follows.

##### **Ownership, stakeholders and communities**

- At sea, the Crown seeks economic benefit in different ways to those of the complex economic interests of a multitude of private landowners.
- The sea is not divided into parcels in the way that land is, so there are no identifiable, reasonably static planning 'units'.
- The questions of land assembly and compulsory purchase, that may be needed to achieve planning objectives, such as the assembly of land for regeneration schemes, do not arise below mean high water mark.
- Common rights and interests, for example fishing, access and navigation, limit the potential for the Crown to attempt to restrict activity on the sea in ways that are commonplace on land to protect private interests.
- These common rights and interests give the wider public a stakeholder interest in the use and management of all of the sea, not just parts that are open to the public as on land.
- Population and communities are very different. On land one of the greatest influences on the town and country planning system is that of the public acting individually or in communities, to further their interests.
- The sea has business, industry and recreation but, at least away from the coast, not residential communities. Business and recreational communities at sea can sometimes operate in narrow sectoral interests, rather detached from other stakeholders and can operate at relatively low densities, compared to the intensity of land based recreation and business.
- In the absence of influential residential community voices, industry voices have the potential to dominate some debates, which highlights the important role of stakeholder groups and other non-government organisations in representing the general public and communities

### **Environmental depletion, and ecosystem fragility and vulnerability**

- It seems increasingly clear that the environmental condition of the sea is seriously depleted and, whilst it can be fairly argued that the biodiversity of the land is also seriously depleted, the implications of the state of the marine environment are far less clear.
- The land and the sea are both key resources. Land is essentially a resource providing space and location for development and activities. Some uses, such as farming, forestry and mineral working, rely on its characteristics, but most other uses have tenuous and diminishing relationships with the character of the land they occupy.
- Despite an increase in developments that do not rely on the sea's healthily functioning ecosystems *per se*, the sea itself is still the key resource of common currency for most of its users. The sustainable use of the sea still relies more on healthily functioning ecosystems than does the use of land.
- Mobile fauna are not protected by geographic designations and the species themselves need protection from adverse effects of changes. On land the distribution of appropriate habitat tends to mean that identifying areas where protected species might reasonably be encountered is relatively straightforward for most species. At sea, adverse effects on mobile fauna will be more difficult to anticipate and noise can be a particular problem in the water column.
- There is, *prima facie*, a case for considering whether the protection and restoration of marine ecosystems should prevail in respect of sea use planning decisions over other interests in a way that they do not in respect of land use planning decisions.

### **Uses, activities, movement and infrastructure**

- Land use tends to be largely exclusive. Most land is used for one purpose, or for a primary and perhaps one or two ancillary or temporary uses.
- Multiple use areas on land are relatively few (though not necessarily small in area e.g. forests).
- More areas of sea tend to be in multiple uses than land, partly because different uses can be carried out at sea on its surface, in the water column and on or beneath the seabed.
- Equally, there are considerable variations in the temporal use of sea areas, the same area can be used for different uses at different times, for example, fishing, transport and recreation. The uses can vary on a daily, monthly or seasonal basis.
- Whilst the sea is not free of competition for space, especially inshore waters, the

competition for space on land is more intensive especially where the density of use and the need for sole occupation or mutually exclusive activities means the single highest bidder often determines land use.

- Land use is frequently determined by the nature of fixed assets such as buildings or land quality and characteristics which do not change significantly from year to year. Land use is also strongly influenced by the distribution and capacity of infrastructure. These factors are generally less influential at sea.
- On land, linear routes tend to be set aside exclusively for transport (roads and railways are not used for anything else). At sea they tend not to be so exclusively defined. Although there are shipping lanes and approach channels etc where other uses are restricted, there is the common and international rights of passage or fishing which means that with some limitations, vessels can travel widely across the surface of the sea for many different purposes.
- Many activities at sea are highly mobile and move from area to area on a seasonal or more random basis according to prevailing conditions and circumstances. Land use is more static and permanent; seasonal variation may change intensity of use rather than the use itself.

### **Physical characteristics and dynamics**

- Three-dimensional zoning is also a potential feature of the marine environment. The town and country planning system applies to development in, on, over or under land but even in lochs and rivers (defined as land covered by water (6) ) zoning and designation has been two-dimensional. The change in legislation relating to aquaculture development control in inshore waters (7) will extend planning control for such developments from inland to inshore waters.
- Unlike the land, the water column of the sea is itself highly mobile through wave and tidal actions, currents and streams. Pollution can therefore spread much quicker than on land.
- Some physical, topographic features in the sea such as sand-banks are also potentially more dynamic than equivalent land-based features away from the coast.

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6 Town and Country Planning (Scotland) Act 1997

7 Water Environment and Water Services (Scotland) Act 2003

## **5. WHAT SHOULD SPATIAL PLANNING FOR THE SEA ACHIEVE?**

### **What is spatial planning?**

There is no current statutory definition of "spatial plan" or "spatial planning". In 2001, however, the Royal Town Planning Institute defined spatial planning as comprising the twin activities of 'the management of the competing uses for space and the making of places that are valued and have identity' in its 'New Vision for Planning'. The definition also describes a system which is not only spatial, but also engages processes and secures outcomes which are sustainable, integrated and inclusive. The emphasis is on a discipline which has wide application and not on the statutory planning system of the last five decades.

The use of the expression in several publications indicates that it is wider than land use, or town and country planning (8).

It appears to be intended to embrace all aspects of public policy that have a spatial dimension whether or not it includes physical development of land or change of use of land. Thus, for example, spatial planning can include policy development for the spatial dimensions of transport and communications, social cohesion, economic competitiveness, environmental protection and the management of natural and cultural resources.

Spatial planning implies that there must be a 'plan' or 'plans'. These might be expected to be based on a vision, aims or objectives and to incorporate principles designed to help the planning process achieve the aims that created the need for the plan.

Self-evidently, the plans must have a spatial dimension - a map or diagram - so that they can express the spatial dimensions of the policy areas that they cover.

### **What is marine spatial planning?**

The United Nations has considered Integrated Coastal Area Management (ICAM) to be " a continuous and dynamic process by which decisions are taken for sustainable use, development and protection of the coastal and marine areas and resources" .

ICAM, also known as Integrated Coastal Zone Management (ICZM), acknowledges the interrelationships that exist among coastal and ocean uses and the environments they potentially affect, and is designed to overcome the fragmentation inherent in the sectoral

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8 EUROPEAN COMMISSION, 1999. European Spatial Development Perspective (ESDP), Towards balanced and sustainable development of the territory of the European Union. Agreed at the Informal Council of Ministers responsible for spatial planning Potsdam, May 1999. COUNCIL OF EUROPE, 2000. European Conference of Ministers responsible for regional planning (CEMAT) Guiding principles for sustainable spatial development of the European Continent, adopted at the 12th session of CEMAT, 7-8 September 2000, Hanover. WONG, C., RAVETZ, J. & TURNER, J., 2000. The United Kingdom Spatial Planning Framework: A Discussion. Commissioned from the University of Manchester, Royal Town Planning Institute, London.

management approach. In July 2002, the European Union agreed a Recommendation on ICZM, which Member States, including the United Kingdom, are now considering how to implement.

In England, the Department of Environment, Food and Rural Affairs (Defra) has suggested a definition of a marine spatial plan as "*a strategic plan for regulating, managing and protecting the marine environment that addresses the multiple, cumulative and potentially conflicting uses of the sea.*" (9).

The above definition assumes that marine spatial "planning" will include the "management" of ongoing uses or activities. However, other papers that address the potential scope of marine spatial planning have felt it necessary to express its scope as "marine spatial planning and management", in order to emphasise, to an international audience, that it needed to include both aspects (10).

The definition and scope of marine spatial planning was further explored in a CoastNET conference in October 2003 and its proceedings will be widely disseminated.

The Scottish Coastal Forum (SCF) has defined the purpose of marine spatial planning as "*two fold: (a) to secure sustainable and integrated development which balances and, where appropriate advances, economic, social and environmental objectives, and considers the implications of the ecosystem approach; and (b) to allocate space in inshore waters in a rational manner which minimises conflicts of interest and maximises synergistic relations.*" (11).

### **What is the broad scope of marine spatial planning and what processes should it include?**

In an area that has been governed by single-issue, sectoral regulatory regimes, which have had very limited regard for the spatial and cross-sectoral implications of decisions, the introduction of the *principle* of marine spatial planning is the key issue. The only alternatives to adopting a marine spatial planning system that have, so far, been offered amount to a continuation of the status quo or ad hoc development of existing regimes that are likely to perpetuate the problems that are becoming increasingly apparent.

It is clear that in order to fulfil the aspirations of the stakeholders urging that a marine spatial planning system be introduced, it will be necessary for that system to embrace the management of ongoing activities as well as the regulation of proposals for change. In that way it would be markedly different from the land use planning system and so the

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9 CANNING, R., 2003. *The Elements of Marine Spatial Planning* in CoastNET Conference Spatial Planning in the Coastal and Marine Environment: Next Steps to Action, 1st October 2003, proceedings in press.

10 BIRDLIFE INTERNATIONAL, 2003. Developing a Framework for Marine Spatial Planning in the North Sea: Principles. Paper presented to the OSPAR Convention for the Protection of the Marine Environment of the North East Atlantic, Meeting of the Commission, 23-27 June 2003 ref OSPAR 03/4/12-E, in press.

11 Letter from Captain A H F Wilks MBE FNI, Chair of the Scottish Coastal Forum to Mr J Mackinnon, 28<sup>th</sup> April 2003

debate about marine spatial planning must continue to include whether the system should regulate ongoing activities as well as proposed changes.

Furthermore, a marine spatial planning system does not necessarily have to lead to a single system of planning, producing a single plan, or single set of plans. It could be established more as a discipline, or a process, that may result in several plans (expressions of proposals and policies), but which are better integrated and their spatial implications are better understood and coordinated.

**To achieve its purpose marine spatial planning requires three ongoing processes**

Respecting these different visions for a marine spatial planning system, it needs to include:

- a) **plan-making** - generating and adopting one or more integrated plans or policy frameworks, which have strong spatial dimensions, for the protection, enhancement and sustainable use and development of the sea and its resources;
- b) **implementing** the plan enabling change and encouraging improvement and investment by the execution of programmed works, and by the regulation, management and enforcement of proposed changes and ongoing activities in, on, over and under the sea, all in accordance with the plans; and
- c) **enforcement, monitoring and performance review** - enforcing regulation, assessing the effectiveness of the plans, their time scales and implementation mechanisms, considering ways in which they need to be improved and establishing review and adaptation procedures.

These three processes are explained further in the following section.

## 6. WHAT A MARINE SPATIAL PLANNING SYSTEM MIGHT ENTAIL

The process of **plan making** should involve:

Stocktaking	Information gathering, including surveying and mapping of the environment and a better understanding of the influences acting upon it and the interaction of activities with each other and with the environment, identifying and filling gaps in information and describing the existing policy framework.
Scoping	deciding what needs to be included in the plan to deal proportionally with the issues to be resolved.
Forecasting	Analysing trends and changes, identifying issues and what needs to be done, or not done, and what needs to be resolved, potential conflicts, opportunities for multiple use and developments.
Setting objectives	Reviewing and selecting aims, objectives and aspirations to evolve a strategy for the plan and to steer the subsequent plan-making steps.
Assessing options	Considering the merits and disadvantages of alternatives and options.
Consulting	Including the meaningful involvement of stakeholders, at a time when they can be genuinely influential on the plan, for example in the selection of options or alternative strategies, and where necessary, possibly involving mediation to resolve any more deeply embedded conflicts of interest.
Environmental appraisal	As an iterative process to improve the plan by assessing the likely significant effects of the plan on the environment in accordance with the EC Directive and, if compliant with the Directive, the socio-economic effects in a wider sustainability appraisal.
Publicising	Making the draft plan available to the public, along with supporting reports such as the environmental report, issues papers, surveys etc and providing meaningful opportunities for interested members of the public to express their views in a reasonably informal, open and non-adversarial setting.
Adopting	An open and transparent process for adopting the plan with an explanation as to why particular representations or options were selected in favour of others, summarising the likely effects of the plan in the short, medium and long-terms, how the plan will be monitored and resource implications for its implementation.

**Compliance** A statutory duty on all competent authorities to implement the plan in the exercise of all of their functions and to generate their own plans and programmes in accordance with the plan.

The process of **implementing** the plan and its policies should involve:

- a) The five step approach to decision making promoted by the RTPI in ‘Planning for Biodiversity’ (12):
  1. there should be adequate information to inform the decision;
  2. adverse effects should be avoided wherever possible;
  3. where adverse effects are unavoidable they should be minimised by mitigation;
  4. where, despite mitigation, there could be residual adverse effects that mitigation cannot reduce further, these effects should be compensated by measures that try at least to off-set the harm; and
  5. where there would be no significant harm to wildlife species or habitats and there are opportunities to provide new benefits for wildlife, for example by habitat creation or enhancement, these new benefits should be legally guaranteed.
- b) Assessing and determining proposals for change in accordance with the plan unless exceptional material considerations indicate otherwise, this process would include environmental impact assessment, powers to require submission of further information and the power to refuse an application on the grounds of inadequate information.
- c) The application of the precautionary principle and, where there was a potential for significant irreversible environmental harm or economic impact on otherwise sustainable uses and activities, a requirement for the applicant to demonstrate how the harm could be avoided, or why the harm would be acceptable and how it was to be minimised and compensated for, rather than, or in addition to the regulator having to show how likely the harm would be and why it was unacceptable.
- d) Meaningful and timely consultation processes that influence decisions and add benefit to the proposals.
- e) Restricting consents by imposing conditions which, inter alia, limit the time in which the development or change shall begin and which could require validation monitoring.
- f) The use of legal agreements, possibly even international protocols, including

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12 ROYAL TOWN PLANNING INSTITUTE, 1999. *Planning for Biodiversity A Good Practice Guide* RTPI

provision of financial incentives to help implement the plan and to encourage any activity, or restraint of activity, expedient in the public interest and conducive to helping to achieve the principles of sustainable development.

- g) Managing and, where necessary, regulating ongoing activities e.g. by the use of byelaws or statutory and enforceable Codes of Practice, embracing Best Available Techniques and Best Environmental Practice.
- h) Publicising decisions made and specifying the reasons for consents as well as refusals and how the decision fitted with the policy framework
- i) Where the stakeholders identify collaborative action to be necessary to overcome a problem or take advantage of an opportunity (which an individual body cannot undertake on its own) implementation should involve:
  - 1. preparation of planning briefs
  - 2. selection of a lead agency
  - 3. establishment of a steering group or partnership
  - 4. preparation of an action plan ensuring compliance with all regulatory processes
  - 5. consultation as appropriate
  - 6. identification and allocation of resources
  - 7. programming, specification and delivery of the action.

The process of **enforcement, monitoring and performance review** should involve

- a) Rigorous and effective enforcement of consents and their conditions, regulations, codes of practice and byelaws.
- b) Systematic environmental monitoring generally, with particular regard to cumulative effects and long term changes.
- c) Validation monitoring of consents.
- d) Procedures for regularly reviewing the results of monitoring and the effects of consents and, where necessary the power to further restrict or revoke consents, without compensation, where they are damaging the marine environment.
- e) Assessing the effectiveness of the plan and implementation mechanisms (including monitoring itself), considering ways in which they need to be improved and establishing review and adaptation procedures.

Many of the above processes are reflected in existing spatial planning systems, especially in the terrestrial land use planning system.

## **7. THE MAIN OPTIONS FOR SHAPING A MARINE SPATIAL PLANNING SYSTEM**

The main options for establishing a marine spatial planning system in Scotland cover the following general areas:

- a) Whether it should be a statutory system with statutory purposes and duties?
- b) What should be the scope, jurisdiction and scale of marine spatial planning?
- c) Whether a marine spatial planning system should operate in the same way over all areas of the sea?
- d) What might be an appropriate hierarchy of plan-making?
- e) Whether there should be any changes to existing regulators and their advisors to deliver a marine spatial planning system?
- f) How marine spatial planning might mesh with ICZM and other planning initiatives.

After consideration of the options and their implications, and having received the personal views of some well informed stakeholders in government, statutory agencies and non-government organisations on the options set out below, some recommendations are made based on current thinking. However, these are likely to evolve as they are further refined and tested and more stakeholder views are taken into consideration and the implications of options are more fully explored.

### **Whether it should be a statutory system with statutory purposes and duties**

- Options:
- 1A a statutory system
  - 1B a non-statutory system.

If statutory, a system with a statutory purpose

- Options:
- 2A explicitly to contribute to sustainable development, in the public interest and explicitly for the protection, restoration, enhancement and sustainable use and development of the sea and its resources
  - 2B a statutory system with no defined purpose.

If statutory, a system statutorily requiring the application of the precautionary principle

- Options:
- 3A all competent authorities to apply the precautionary principle
  - 3B a system that does not require application of the precautionary principle
  - 3C a policy expectation rather than statutory requirement to apply the precautionary principle.

A statutory obligation to protect and restore marine ecosystems

- Options:
- 4A all competent authorities to apply the principle that where an acute conflict of interest appears to be inevitable, the conservation (and restoration) of the sea's biodiversity and natural physical and ecological systems and the conservation of the historic environment shall be given greater weight
  - 4B a system that does not require competent authorities to give precedence to environmental protection (and restoration)
  - 4C a policy expectation rather than statutory requirement for the above

A statutory remit to make and adopt a plan and to regulate,

- Options
- 5A a system that includes plan making and regulatory controls
  - 5B a system relating only to plan making and not to regulatory controls which would remain as existing.

### **Recommendations**

Marine spatial planning should be introduced as a statutory process embracing both plan making, regulatory controls and implementation processes, explicitly to contribute to sustainable development, in the public interest and explicitly for the protection, restoration, enhancement and sustainable use and economic development of the sea and its resources. It should require all competent authorities to apply the precautionary principle and the principle that where an acute conflict of interest appears to be inevitable, the conservation (and restoration) of the sea's biodiversity and natural physical and ecological systems and the conservation of its historic environment should be given the greater weight.

### **What should be the scope, jurisdiction and scale of marine spatial planning?**

Defining what is and is not included

- Options:
- 6A all forms of physical and spatial development, changes of use and all ongoing or proposed activities
  - 6B a system relating only to the control of proposed change and not control of ongoing activities
  - 6C a system excluding fishing and / or navigation owing to international rights.

Defining its geographical jurisdiction with defined boundaries seaward -

- Options:
- 7A seaward out to 200nm / the UK marine competency
  - 7B seaward out to 3nm
  - 7C seaward out to 6nm
  - 7D seaward out to 12nm.

Tackling the overlap of terrestrial and marine regulatory jurisdictions on the intertidal

- Options:
- 8A a statutory modification to the town and country planning system that avoids duplication of control over the intertidal areas by ending the town and country planning jurisdiction at MHWM
  - 8B a system of marine spatial planning overlapping with town and country

- 8C      planning on the intertidal  
a system of marine spatial planning below MLWMOST with town and country planning unchanged.

Deciding on an appropriate scale for the planning system to operate at

- Options:      9A      a system operating at national level in Scotland  
                  9B      a system operating at regional / regional sea / sea regions level  
                  9C      a system operating at a local level, possibly in Scotland coastal local authority level.

### **Recommendations**

Marine spatial planning should cover all forms of physical and spatial development, changes of use and all ongoing or proposed activities, seaward out to 200nm / the UK marine competency.

It should operate at national and regional (sea-regions) level and it is unrealistic to anticipate a system that could operate at a local level, where sea-regions are subdivided. A sea-region is envisaged as a large scale maritime area defined on biogeographical and physiographical criteria (or combinations thereof).

The definition of the sea-regions, that may be appropriate for Scottish waters, requires considerable thought and further investigation and trial. There are two ways of expressing the sea-regions in geographic terms. Firstly, they can be defined as a transboundary entity that may be divided between different national administrations so the Irish Sea, for example, would be administered by the governments of Scotland, Wales, Northern Ireland, England, the Isle of Man and Ireland. Alternatively reference may be made simply to the sea-regions of each country, so Scotland's Irish Sea sea-region would be confined to Scottish waters.

To promote a holistic and integrated approach to the planning of sea-regions it is recommended that the planning of the whole sea-region is coordinated by a multi-national body where necessary, with each country contributing to that coordinated approach and administering its waters consistently with the transboundary plan.

To define sea-regions will, in any event, involve consultation with UK and other devolved governments owing to the likelihood that most Scottish sea-regions will abut those of other devolved administrations and/or the English regions and, of course, other countries outwith the UK.

Some preliminary work has been undertaken by the Joint Nature Conservancy Council (JNCC) and this is a valuable indication of what sea-regions for the UK might be. **Figure 1** is an illustration of possible sea-regions based on biogeographical criteria.

It is envisaged that the plan for territorial waters out to 12nm in the sea-region would be prepared under the auspices of the Scottish Executive. However, where it is necessary, more detailed local studies and plans could be undertaken, as indeed they have been for the Firths

and in respect of Aquaculture Framework Plans. By contrast, the marine spatial plan(s) outside territorial waters (to 200nm) would need to reflect the limited influence of central and devolved governments, the different spatial scales and development pressures, fewer potential conflicts of use and the stronger influence and limitations of international conventions and agreements which the Government has adopted.

The duplication of control over the intertidal should be ended, by a statutory modification of the town and country planning system, to limit terrestrial planning jurisdiction to highest astronomical tide (HAT) or, if considered to be more practical, to mean high water mark (MHWM). HAT or MHWM are recommended because above these is a purely terrestrial environment (albeit influenced by the proximity of the sea in the coastal zone). In many parts of Europe the 'Roman Law' has long recognised that land covered even only by the very highest tides is subject to marine influences that require different legal and practical approaches. There will always need to be a dividing line between terrestrial and marine systems and no line will perfectly meet the requirements of every function. However, all parts of the sea should be embraced in a single planning and regulatory system. The intertidal areas are far more strongly related to the marine environment, use and activities than terrestrial ones. They are characterised and influenced by the physical, chemical and biological processes of the sea rather than the land.

The current introduction of the local authority planning regime for aquaculture developments in inshore waters will be another partial solution to the problem of the lack of maritime planning generally. It will add to the range of sectoral controls and maritime regulators, rather than integrating them, and should be seen as a temporary step towards a more comprehensive, holistic planning system. It should not be seen as a herald of further change in which local authorities take more planning powers over marine areas. This paper anticipates a more radical and comprehensive review of marine spatial planning, which should lead to a new system, compatible with the above recommendations.

### **Whether a marine spatial planning system should operate in the same way over all areas of the sea?**

Should there be provision in statute or policy (or both) allowing discretion about the way in which planning is applied to different areas of the sea? The options are not mutually exclusive.

- Options:
- 10A allowing the system to treat different areas in different ways, recognising spatial variations in the nature and intensity of marine developments and activities and the sensitivity of the marine environment
  - 10B initially a system only covering areas where it was required or where the Scottish Ministers directed that a plan be prepared or a system be operated.
  - 10C a system that is compulsorily applied throughout the area of jurisdiction but not necessarily to the same level of detail
  - 10D a system that requires all areas to be treated the same.

### **Recommendations**

The marine spatial planning system should have some flexibility to treat different areas in different ways, recognising spatial variations in the nature and intensity of marine developments and activities and the sensitivity of the marine environment, as explained above. However, there should be a last-resort mechanism whereby marine planning bodies could be required to treat particular areas in particular ways where directed to do so by the Scottish Ministers.

**What might be an appropriate hierarchy of policy frameworks and plan-making?**

- Options:
- 11A a UK-wide expression of national objectives and principles for all the coasts and seas within the UK 's competency
  - 11B a system without the context of a UK-wide policy statement
  - 11C a system operating at national (Scotland, England, Northern Ireland, Wales) level
  - 11D a system operating at regional sea / sea-region level
  - 11E a system operating at a local level, possibly in Scotland coastal local authority level.

**Recommendations**

There should be a Marine and Coastal Planning Policy Statement which should be a UK-wide expression of national marine planning principles for all the coasts and seas within the UK 's competency. This would be supported in Scotland by:

- a) policy statements in the National Planning Framework;
- b) statutory Marine Spatial Plans for each sea-region; and
- c) where they are necessary, statutory local Maritime / Coastal Area Action Plans.

**Figure 2** (at the end of this report) and **Table 1** (below) are a diagrammatic representation of the marine spatial planning system envisaged.

Ultimately the local plans may absorb the European Marine Site Management Plans generated under regulation 33 of the Conservation (Natural Habitats &c) Regulations 1994 (13). Whilst these are nature conservation management plans they have the effect of seeking to regulate activity and direct the course of changes likely to affect European Marine Sites. To that extent they are a form of plan, but not one that is fully cross-sectoral and integrated, nor do they necessarily engage stakeholders other than the relevant authorities cited in the Regulations. The Regulations also indicate that only one plan can operate in a European Marine Site; this would conflict with the concept of a hierarchy of plans promoted here. Duplication of planning effort should also be avoided, the European site interests will be fully protected by the application of Article 6 of the Habitats Directive and by domestic

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13 COUNCIL OF THE EUROPEAN COMMUNITY, 1992. Directive 92/43/EEC on the Conservation of Natural Habitats and of Wild Fauna and Flora adopted 21 May 1992.

Regulations, as well as the marine spatial planning system.

<b>Table 1 DIAGRAMATIC REPRESENTATION OF THE MARINE SPATIAL PLANNING SYSTEM ENVISAGED IN THIS REPORT</b>				
<b>SCALE</b>	<b>PLAN</b>	<b>STATUS</b>	<b>LOCALE</b>	<b>EQUIVALENT IN LAND USE PLANNING</b>
UK	UK Government Marine and Coastal Spatial Planning Policy	Non statutory policy statement of principles for marine spatial planning	UK wide, all seas in UK competency to 200nm / Continental Shelf	UK Strategies / White Papers on Sustainable Development, Biodiversity, Climate Change etc
National	National Planning Framework and National Marine Policy Guidance for marine spatial planning bodies	Marine issues statutorily required to be included in the National Planning Framework	Scotland	National Planning Framework Scottish Planning Policy / NPPGs / PANs
Regional	Marine Spatial Plan	Statutory integrated marine spatial plan each covering whole area HAT/MHWM to 200nm but not necessarily whole area at same scale / detail	5 biogeographical sea-regions of Scotland	City region structure plans
Local	Maritime Action Plans	Statutory framework but only as needed or directed	Estuary, firth, loch, bay, areas under pressure out to say 3nm or <30m CD	Local Development Plans Transport Plans, Community Plans, LBAPs etc

**Whether there should be any changes to existing regulators and their advisors to deliver a marine spatial planning system?**

A body or bodies that determine proposals for change and manage and regulate ongoing activities -

- Options:
- 12A these could evolve over time, starting with the existing regulatory regimes and gradually working towards a single planning and regulatory body operating at "regional" level.
  - 12B a system creating a new single marine spatial planning body to prepare the plan, regulation would rest with the existing regulators
  - 12C a system where the Scottish Ministers direct one body to prepare the plan (in consultation with all others), regulation would rest with the existing regulators
  - 12D a system creating a new single marine spatial planning body to prepare the plan and implement it through regulation with existing regulators being replaced / absorbed.

Consultees - advisers with relevant expertise in respect of all types of developments, uses, activities, resources and the natural and cultural heritage -

- Options:
- 13A a single, statutory specialist advisory body for the marine environment covering all aspects of environment, natural and cultural heritage
  - 13B the interests of different users and potential developers served by a suite of bodies each representing sectoral interests (could operate together with (13A))
  - 13C a system which relies on the existing scope and structure of consultees, extended where necessary to cover a wider maritime area or remit, no new body created.

### **Recommendation**

In 1992, the House of Commons Environment Select Committee on Coastal Zone Protection and Planning identified that “*much of the problem of a lack of coordination and duplication between agencies with coastal responsibilities could be resolved if there were a stronger government lead; and proposed “a central unit to adopt a national overview of coastal zone policy”.*

A long-term goal may, therefore, need to be the integration of marine planning into a single plan-making and regulatory body. However, at this stage the most effective way of delivering the marine spatial planning system might be to establish a new single marine spatial planning body to prepare the plans, whilst leaving regulation with the existing regulators for the time being.

It seems logical that the plan making body would be responsible to a single government department in the Scottish Executive, to which all maritime regulatory functions would be transferred. However, it would be vital in this process to retain the working units of staff, because their knowledge, experience and expertise would take years to replace and its loss or dissipation would be a serious disadvantage to the emerging marine planning system.

The plan-making body could be drawn from, or at least include, representatives of the regulators; the regulators may need to adapt to fit the sea-region structure of the system, and decentralise as necessary to operate at regional level. The wider the stakeholder membership of the plan-making body the more effective it will be and the wider will be the ownership of the planning outputs. However, if stakeholder representation becomes too unwieldy on the body itself, there are alternative approaches well tried in Scotland, including participation via ‘planning for real’ type models and structures that may involve topic working groups assisting with the drafting of the plan. Experience in Canada and Australia endorses this approach.

Self evidently, the structure of delivery is complicated by the transboundary issues of all sea-regions and cannot be fully explored until the scale and nature of the marine spatial planning system is decided. Consequently, proposing major changes to regulatory bodies would be premature even if it were ultimately necessary. Similarly we envisage that whilst the long-term option of a single, specialist marine advisory / consultation body should not be rejected, in practice a system which relies on the existing scope and structure of consultees, extended where necessary to cover a wider maritime area or remit, may be the only option that can be

considered to be realistic and necessary until the scale and nature of the marine spatial planning system is decided.

One of the greatest challenges for marine spatial planning will be how to engage the public and how to make relatively large, sea-regional plan-making and regulatory bodies adequately accountable to the public. The difficulties of public participation will be particularly acute where more than one national administration is involved.

### **How marine spatial planning might mesh with ICZM**

Could land and sea planning systems be meshed by using an ICZM strategy -

- Options:
- 14A a duty on all competent authorities to participate in preparing an ICZM strategy and, once adopted, to exercise their functions so as to give effect to the implementation of the ICZM strategy, so that the ICZM strategy is the formal way in which the land and marine spatial planning systems mesh
  - 14B a system that does not have a way of meshing land and sea planning regimes and does not embrace ICZM
  - 14C a non-statutory system of ICZM
  - 14D ICZM unlikely to be the way that marine and terrestrial systems will mesh.

### **Recommendation**

The drive towards Integrated Coastal Zone Management (ICZM) may well have resulted from the mismatch of land and sea planning systems in Europe, and the lack of marine spatial planning. ICZM is intended to create a framework to facilitate the integration of activities of all those involved in the development, management and use of the coastal zone. It aims to establish sustainable levels of economic and social activity in coastal areas while protecting the environment. The European Union adopted its recommendation on implementing ICZM in Europe on 30 May 2002 (14). This commends Member States to undertake a 'stocktake' of legislation, institutions and stakeholders in the coastal zone and to develop national strategies to deliver ICZM. It highlights the principles of ICZM as follows:

- taking a long term view;
- a broad holistic approach;
- adaptive management;
- working with natural processes;
- support and involvement of relevant administrative bodies;
- use of a combination of instruments;
- participatory planning;
- reflecting local characteristics.

However, there is a danger of generating too many planning tiers and too many plans and strategies. Careful thought needs to be given as to how ICZM can be meshed with whatever

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14 European Commission (2002) *The Communication from the European Commission and the Council of the European Parliament on Integrated Coastal Zone Management: a strategy for Europe*

system emerges. At this early stage it is likely that a non-statutory process that could deliver an ICZM strategy to inform the terrestrial and marine planning systems, where necessary, is the best option. We cannot identify any country that has established a separate, third, regulatory or planning system for the coast, in addition to the almost universal separation of land and sea. However, the decision, as to how to mesh ICZM, should be deferred until the shape of any new marine spatial planning system begins to unfold.

If, marine spatial planning is to be used to deliver the objectives of ICZM it will be necessary to ensure that ‘coastal’ issues are adequately addressed in both land and sea planning systems and fully integrated into both of them.

Similarly the meshing of River Basin Management Plans required under the Water Framework Directive, with the terrestrial and marine spatial planning systems needs to be considered carefully, and in due course because it is unlikely that a marine spatial planning system will be in place in time to deliver the statutory requirements of the Water Framework Directive in the immediate future.

## 8. HOW A MARINE SPATIAL PLANNING SYSTEM MIGHT BE DELIVERED

It is difficult to predict how the establishment of a marine spatial planning system may progress, because it depends on so many variables and uncertainties. It could progress very quickly if the UK Government and Scottish Parliament introduced major new legislation and allocated substantial resources to the system in the short term.

It is worth bearing in mind how the fundamental shape of the town and country planning system has survived since it was first laid down in the 1947 Act. Governments have experimented with a few new ideas and the system has changed a great deal in detail, but not in its basic concept or broad scope. There is also the benefit of hindsight, and the lessons to be learned from the evolution of the terrestrial planning system to help get more of the detail right first time (15). In theory, and if there is the political will to do so, Scotland ought to be able to introduce a reasonably robust and sophisticated marine spatial planning system in one step and relatively soon.

However, the differences between land and sea planning and messages from the evolution of the planning system, together with the fact that it is difficult to anticipate future spatial planning requirements at sea, makes it seem unrealistic to assume that a marine spatial planning system will be established in one step.

More realistically, a step-by-step approach is likely. **Figure 3** illustrates a possible course and timetable for a statutory marine spatial planning system. However, the time scales indicated demonstrate that, whilst a step-by-step process may be preferable, this is not a reason for treating the evolution of a marine spatial planning system as non-urgent.

Furthermore, the likely time scales for considering new statutory provisions in the various legislatures at UK and Scotland levels, means that there is time to undertake a non-statutory trial of a model marine spatial planning system, or substantial elements of it. There is a significant opportunity to explore and deliver tests and trials through the Scottish Sustainable Marine Environment Initiative.

Such a project would help to test many of the requirements of a marine spatial planning system to inform the preparation of legislation. Consultation and the generation of a consensus of what a possible new marine spatial planning system might be, and then a trial to test it, would seem to be the most sensible next steps.

A further reason for advancing the development of marine spatial planning is the upcoming Planning Bill which could incorporate the primary legislation that facilitates the first steps in marine spatial planning, although this should not merely attempt to bolt a marine spatial planning system on to the existing, narrower remit of the town and country planning system.

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15 TYLDESLEY, D., 2004, *Review of how the land use planning system could influence the development of a marine spatial planning system for England*, English Nature Research Report No 566.

The first National Planning Framework for Scotland is also to be considered by the Scottish Parliament very soon. It will represent a spatial plan extending beyond the town and country planning system and a material consideration in future planning related decisions and development plans. It is understood, however, not to include the marine environment. In future revisions it would be essential for Scotland's National Planning Framework to include policies and proposals for Scottish waters, helping to integrate the terrestrial and marine planning systems and helping to deliver Integrated Coastal Zone Management.

## 9. CONCLUSIONS

A marine spatial planning system is needed in Scotland. It would deliver social, economic and environmental benefits.

Interest in progress towards more holistic and integrated planning and management of marine areas in Scotland is growing.

It is now an appropriate time to consider what a marine spatial planning system for Scotland might be and to consider the alternative ways of shaping it and delivering its potential benefits. Lessons can be learned from the terrestrial town and country planning system but further sectoral transfer of local authority planning powers to the sea is not appropriate.

There are significant differences between the land and sea that will affect the form of a marine spatial planning system.

To achieve its potential benefits marine spatial planning requires three ongoing processes:

- a) plan-making
- b) implementing the plan and
- c) enforcement, monitoring and performance review.

The main questions that need to be addressed in establishing a marine spatial planning system in Scotland are:

- a) Whether it should be a statutory system with statutory purposes and duties?
- b) What should be the scope, jurisdiction and scale of marine spatial planning?
- c) Whether a marine spatial planning system should operate in the same way over all areas of the sea?
- d) What might be an appropriate hierarchy of plan-making?
- e) Whether there should be any changes to existing regulators and their advisors to deliver a marine spatial planning system?
- f) How marine spatial planning might mesh with ICZM.

### **Recommendations**

Marine spatial planning should be introduced as a statutory process embracing both plan making, regulatory controls and implementation processes, explicitly to contribute to sustainable development, in the public interest and explicitly for the protection, restoration, enhancement and sustainable use and economic development of the sea and its resources.

It should require all competent authorities to apply the precautionary principle and the principle that where an acute conflict of interest appears to be inevitable, the conservation (and restoration) of the sea's biodiversity and natural physical and ecological systems and the conservation of its historic environment should be given the greater weight.

Marine spatial planning should cover all forms of physical and spatial development, changes of use and all ongoing or proposed activities, seaward out to 200nm / the UK marine competency.

It is clear that in order to fulfil the aspirations of the stakeholders urging that a marine spatial planning system be introduced, it will be necessary for that system to embrace the management of ongoing activities as well as the regulation of proposals for change.

In that way it would be markedly different from the town and country planning system and so the debate about marine spatial planning must continue to include whether the system should regulate ongoing activities as well as proposed changes.

Marine spatial planning should operate at national and regional (sea-regions) level and it is unrealistic to anticipate a system that could operate at a local level, where sea-regions are subdivided.

It is envisaged that the plan for territorial waters out to 12nm in the sea-region would be prepared under the auspices of the Scottish Executive. However, where it is necessary, more detailed local studies and plans could be undertaken, as indeed they have been for the Firths and in respect of Aquaculture Framework Plans. By contrast, the marine spatial plan(s) outside territorial waters (to 200nm) would need to reflect the limited influence of central and devolved governments, the different spatial scales and development pressures, fewer potential conflicts of use and development pressures and the stronger influence and limitations of international conventions and agreements which the Government has adopted.

The duplication of control over the intertidal should be ended, by a statutory modification of the town and country planning system, to limit terrestrial planning jurisdiction to highest astronomical tide or, if considered to be more practical, to mean high water mark.

The marine spatial planning system should have some flexibility to treat different areas in different ways, recognising spatial variations in the nature and intensity of marine developments and activities and the sensitivity of the marine environment.

There should be a Marine and Coastal Planning Policy Statement which should be a UK-wide expression of national marine planning principles for all the coasts and seas within the UK's competency. This would be supported in Scotland by:

- a) policy statements in the National Planning Framework;
- b) statutory Marine Spatial Plans for each sea-region; and
- c) where they are necessary, statutory local Maritime / Coastal Area Action Plans.

Effective marine spatial planning will require strong political leadership with a single Scottish Executive Department and Minister responsible for it and able to encourage the engagement of all sectors, even those that may be unfamiliar with planning processes and reluctant to engage with a new system.

The plan-making body could be drawn from, or at least include, representatives of the regulators; the regulators may need to adapt to fit the sea-region structure of the system, and decentralise as necessary to operate at regional level. The wider the stakeholder membership of the plan-making body the more effective it will be. One of the greatest challenges for marine spatial planning will be how to engage the public and how to make relatively large, sea-regional plan-making and regulatory bodies adequately accountable to the public. The difficulties of public participation will be particularly acute where more than one national administration is involved.

It is difficult to predict how the establishment of a marine spatial planning system may progress, because it depends on so many variables and uncertainties. It could progress very quickly if the UK Government and Scottish Parliament introduced major new legislation and allocated substantial resources to the system in the short term. In theory, and if there is the political will to do so, Scotland ought to be able to introduce a reasonably robust and sophisticated marine spatial planning system in one step and relatively soon.

However, the differences between land and sea planning and messages from the evolution of the terrestrial planning system, together with the fact that it is difficult to anticipate future spatial planning requirements at sea, makes it seem unrealistic to assume that a marine spatial planning system will be established in one step.

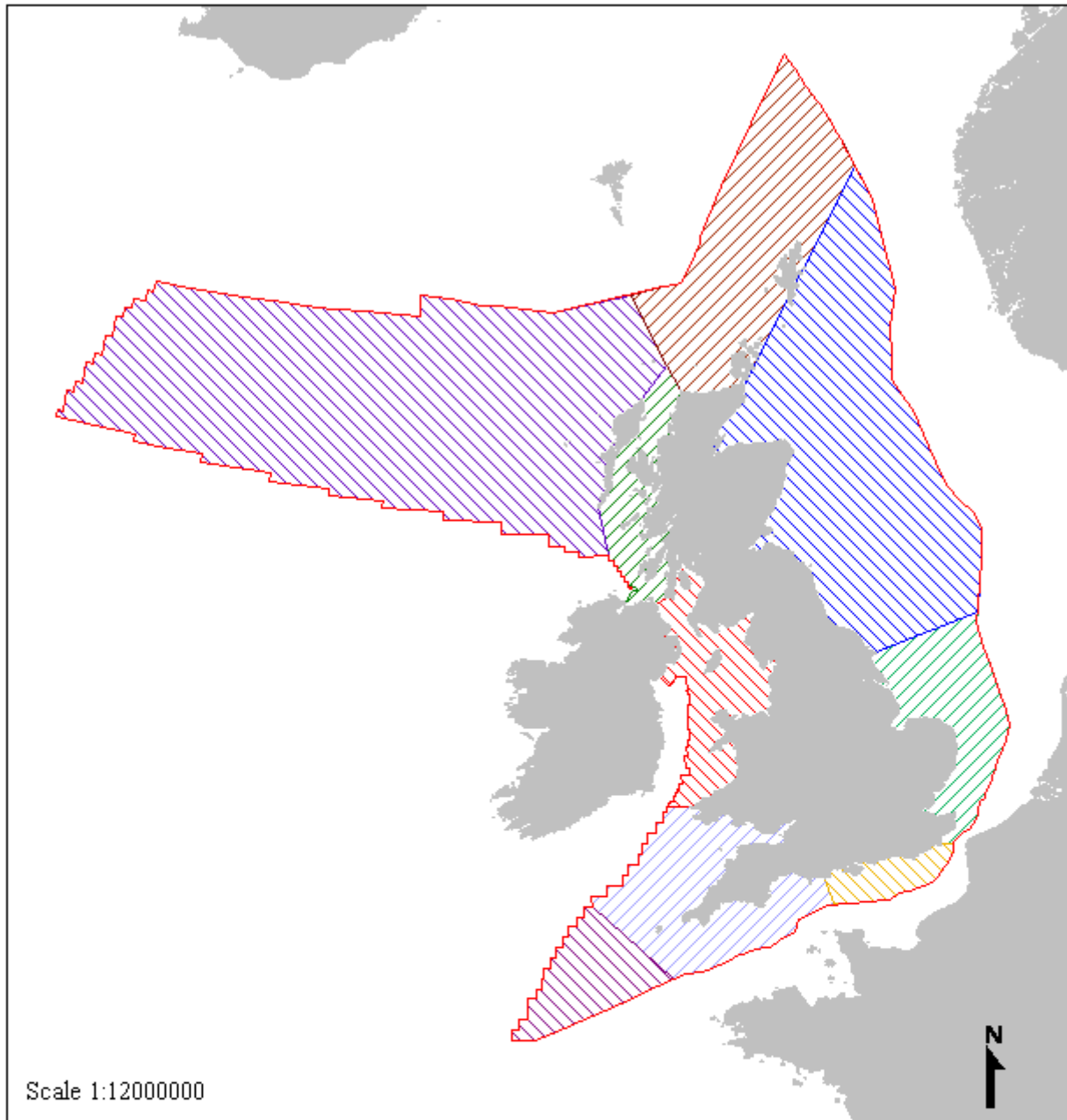
More realistically, a step-by-step approach is likely. However, this is not a reason for treating the evolution of a marine spatial planning system as non-urgent, and there is time to undertake a non-statutory trial of a model marine spatial planning system, or substantial elements of it. There is a significant opportunity to explore and deliver tests and trials through the Scottish Sustainable Marine Environment Initiative.

The upcoming Planning Bill could incorporate the primary legislation that facilitates the first steps in marine spatial planning, but this should not merely attempt to bolt a marine spatial planning system on to the existing, narrower remit of the town and country planning system.

The first National Planning Framework for Scotland will represent a spatial plan extending beyond the town and country planning system. It should include policies and proposals for Scottish waters, helping to integrate the terrestrial and marine planning systems and helping to deliver Integrated Coastal Zone Management.

Given strong political will and government leadership, it is possible that the first non-statutory marine spatial plans could emerge in 2007 and new legislation delivering a statutory marine spatial planning system in Scotland, that has been tested in trials, could be in place by 2010.

**Figure 1 Draft Review of Marine Nature Conservation regional seas boundaries (October 2001)**




Scale 1:12000000

**Key**

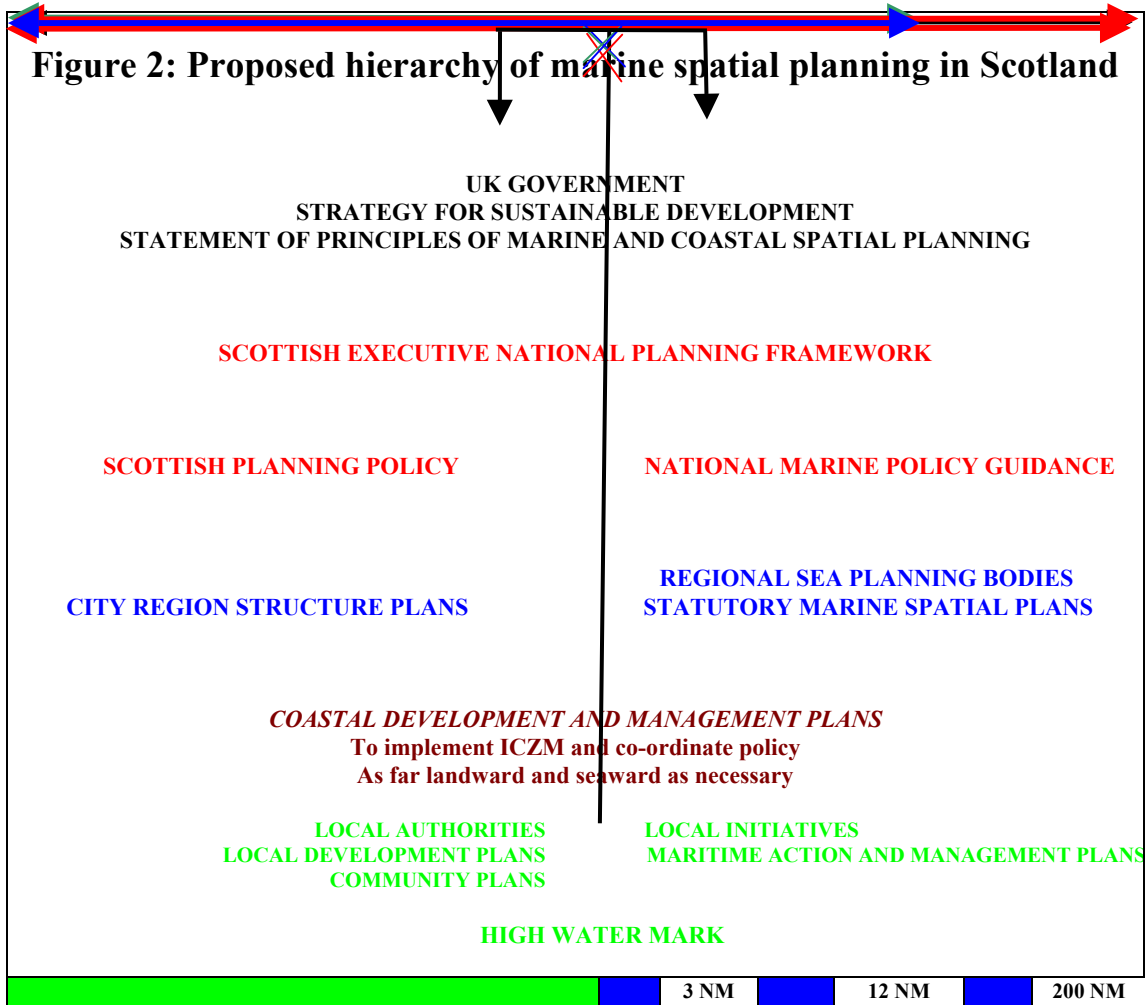
Draft Regional seas

-  Minches
-  North West approaches
-  Celtic sea and Western English Channel
-  South West approaches
-  Southern North Sea
-  North of Scotland
-  Eastern English Channel
-  Irish Sea
-  Northern North Sea

 UK Continental Shelf Designated Areas limit

 Land

The exact limits of the UKCS are set out in orders made under section 1(7) of the Continental Shelf Act 1964 (© Crown).



**Figure 3 Example of a possible process and timetable to introduce a marine spatial planning system in Scotland**

Stage	2004	2005	2006	2007	2008	2009	2010	2011	2012
Research, consultation and pilot project									
Preparations for and execution of major regional sea trial project									
Government consults on a proposed marine spatial planning system									
Government proposes establishment of a marine spatial planning system and legislative programme, timescales, Departmental and agency responsibilities.									
Scottish Executive issues preliminary policy guidance in form of a marine spatial planning policy statement and a Good Practice Guide for preparation of non-statutory plans for each sea-region									
Scottish Executive commissions a single public body, existing or new, in respect of each sea-region to commence preparation of a non-statutory marine spatial plan									
Consultation on draft legislation									
Preparation of first round of draft, non-statutory marine spatial plans									
First round of non-statutory marine spatial plans adopted									
Marine spatial planning legislation enacted all competent authorities have a duty to further the aims of the non-statutory marine spatial plans									
Review of first round, non-statutory marine spatial plans under statutory procedures									
Examination of first draft statutory marine spatial plans in public									
Adoption of first statutory marine spatial plans*									
Any statutory changes in regulating and managing the marine environment are introduced to achieve the efficient implementation of the marine spatial plan.**									
Statutory procedures in respect of enforcement, monitoring and review initiated									

\* On adoption of first statutory marine spatial plans all competent authorities have a duty to determine proposals for change in accordance with the plan unless exceptional material considerations indicate otherwise and any plans and programmes of any competent authorities must be in accordance with the marine spatial plan

\*\* This may involve changes required to Departmental responsibilities and the structure of relevant public bodies.