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**Enterprise, Planning & Protective Services**

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Your Ref:

Our Ref: BL/LB

Date: 13 November 2013

Marine Scotland  
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Dear Sirs

**Marine Planning Consultations**

Fife Council's Executive Committee yesterday agreed a report with appendix on *Planning Scotland's Seas* consultation.

In addition to the report, the committee also agreed to the following supplementary statements which should be regarded as forming part of Fife Council's submission.

First, in relation to paragraphs 1.16-19 of the report and stakeholder involvement, the Council advises that Fife Fisheries Development Group (FDG) has provided a link between Fife Council and the Fishing industry since the formation of the Council in 1996. The FDG has a valuable role as an advisory group for Fife Council on fishing matters and should be consulted on marine planning matters.

Second, the Council will use its involvement with the North Sea Commission to represent its views on marine planning matters in addition to other consultation channels established for the marine planning regime.

Third and last, any mineral extraction whether by conventional or unconventional means is a matter of continuing interest, particularly gas production. The Council is looking at its policy position on shale gas [hydraulic fracturing or 'fracking', deep underground coal gasification (UCG), and coal bed methane (CBM)] and would want to be assured that it will be consulted on any developments affecting the marine environment including coastal areas.

The report and this cover letter should be treated as Fife Council's response to the consultation and can be made available to the public.

Thank you for the opportunity to comment.

Yours sincerely

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12<sup>th</sup> November 2013

Agenda Item No.

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## Planning Scotland's Seas – Consultation 2013

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Report by: Keith Winter, Executive Director – Environment, Enterprise and Communities/Head of Enterprise, Planning, & Protective Services

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Wards Affected: All

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### Purpose

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To agree Fife Council's responses to the *Planning Scotland's Seas* consultation documents.

### Recommendation

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It is recommended that the Executive Committee considers and approves this report together with the feedback form on offshore renewables (Appendix 1) and additional comments agreed by the Committee, as Fife Council's response to the consultation documents for Planning Scotland's Seas.

### Resource Implications

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There are no financial resource implications in publishing the information.

### Legal & Risk Implications

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None have been identified.

### Impact Assessment

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The consultation papers have been assessed by the Scottish Government and been subject to environmental assessment. A separate Equalities Impact Assessment (Appendix 2) has also been carried out on the draft supplementary planning guidance.

### Consultation

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The Executive Director, Corporate Services and the Executive Director, Finance and Resources have been consulted and are in agreement with the content of this report.

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# 1.0 Background

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- 1.1 Marine Scotland, a Directorate of the Scottish Government, is responsible for marine management in Scotland. Since July, it has been consulting on a number of proposals to take forward integrated marine planning for Scotland's seas. This includes:
- a National Marine Plan;
  - Marine Protected Areas;
  - offshore renewable energy;
  - priority marine features; and
  - a draft Circular on integration with terrestrial planning.
- 1.2 The consultation documents are available on the Scottish Government website<sup>1</sup>. The report does not attempt to address every aspect of the consultation documents but it addresses those matters considered to be of direct relevance to Fife with a focus on the draft National Marine Plan and draft Circular.

## **Scotland's National Marine Plan**

- 1.3 The Marine (Scotland) Act 2010 along with the Marine and Coastal Access Act 2009 (the UK Act<sup>1</sup>) is the legislative and management framework for the marine environment. It introduces duties to protect and enhance the marine environment. Under the Act and the devolution settlement, the Scottish Ministers have responsibility for marine planning from Mean High Water Springs out to 12 nautical miles<sup>2</sup>. In addition, the UK Act devolves responsibility to the Scottish Ministers for marine planning, nature conservation, licensing, and enforcement in waters adjacent to Scotland out to 200 nautical miles<sup>3</sup>. With the approval of the Secretary for State, this will include planning for reserved activities such as oil and gas, shipping and telecommunications, although licensing for these remains reserved to the UK Government.
- 1.4 Marine Scotland delivers integrated marine management functions – science, policy development and delivery, compliance monitoring, and enforcement – both inside and outside the territorial waters adjacent to Scotland. It is the appropriate authority for licensing most activities in Scotland's marine environment.
- 1.5 The UK Marine Policy Statement was published jointly by all the UK Administrations in March 2011. It sets a vision for the whole UK marine area and provides a framework for preparing marine plans, including economic, social and environmental considerations which need to be taken into account and strategic policy objectives for key marine sectors.
- 1.6 The Marine Policy Statement makes a presumption in favour of sustainable development in the marine planning area. The Scottish National Marine Plan and any subsequent Scottish Regional Marine Plans must accord with the Statement. All public authorities taking authorisation or enforcement decisions that might affect the UK marine area must do so in accordance with the Scottish National Marine Plan

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<sup>1</sup> <http://www.scotland.gov.uk/marineconsultation>

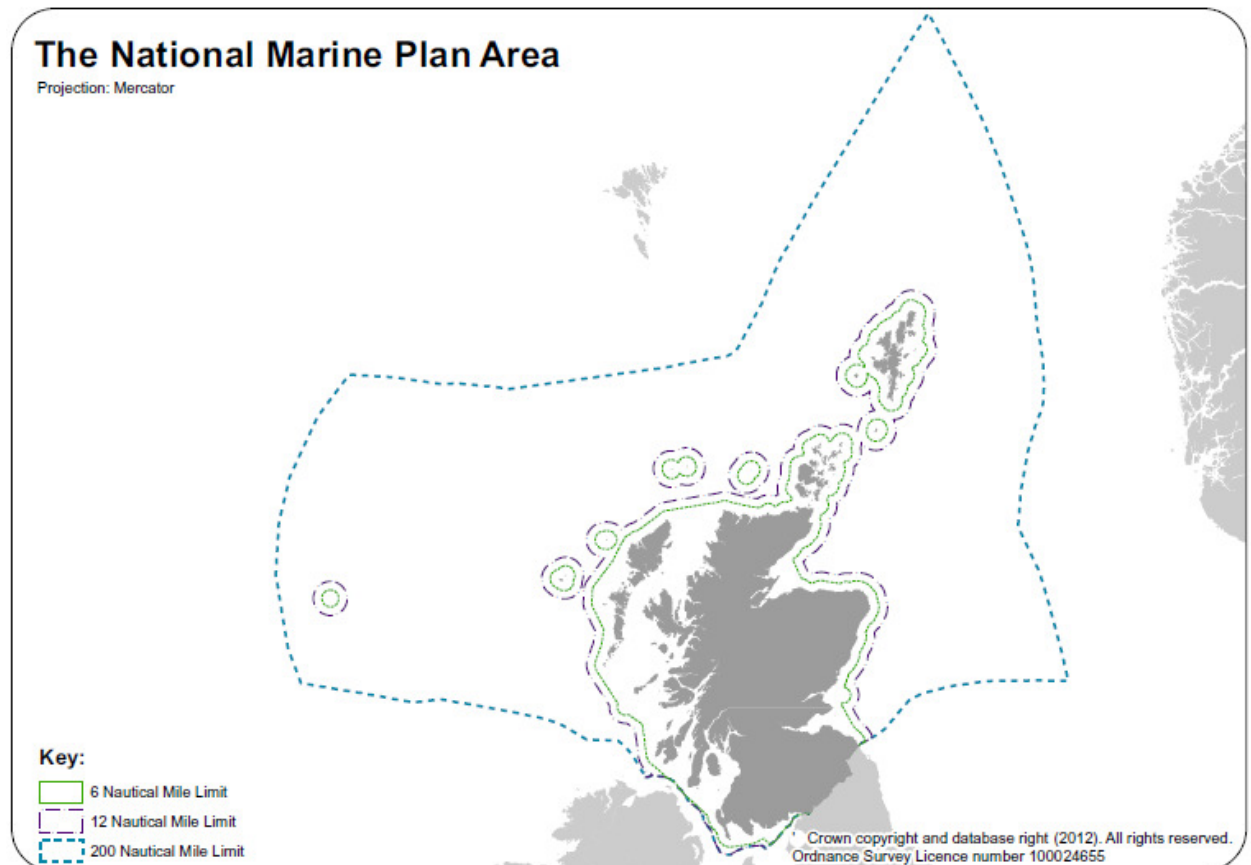
<sup>2</sup> 22 km /13.8 miles

<sup>3</sup> 371 km/230 miles

unless relevant considerations indicate otherwise. **This applies to decisions on terrestrial planning applications and enforcement actions and so is relevant to this Council.**

- 1.7 The Act empowers the Scottish Ministers to create Scottish Marine Regions, and to delegate marine planning powers for these regions. These must accord with the National Marine Plan much as strategic and local development plans must accord with the National Planning Framework. It is Ministers' intention to establish a number of Scottish Marine Regions and to devolve marine planning powers to a Regional Marine Planning Partnership (MPP) for each Region. Marine Regions will not extend beyond 12 nautical miles from the coast.

Figure 1 – National Marine Plan Area



(Source: Scottish Government, 2013)

- 1.8 The National Marine Plan includes policies on topics ranging from fisheries and aquaculture through to aggregates. There are also general policies which encourage co-ordination among decision making authorities in planning processes and in engaging stakeholders in plan preparation. These policies (GEN 1 to GEN 19, pages 24 to 51 of the draft National Marine Plan) are to be welcomed; in particular the suggestion of using scenarios as part of the engagement process is an interesting one which should be monitored for lessons applicable to Fife.
- 1.9 In relation to **renewables**, the Plan notes that the full exploitation of Scotland's offshore renewable energy resources depends on the construction and improvement of offshore and onshore grid capacity. One of the projects identified (page 89 of the National Marine Plan) is a cable connection network between offshore wind development areas including around the Firth of Forth/Fife coast. Offshore renewables is discussed in more detail below.

## **Offshore renewable energy**

- 1.10 Appendix 1 summarises recommended responses to the questions posed for this consultation. In general, Fife Council's view should be that the relevant issues have been considered in the consultation document and appropriate mitigation measures have been identified. As the plans develop and are reviewed, consultation with key stakeholders on any updates to the plans will be essential to ensure that correct and up to date information is used in the sectoral planning process. Any steering groups should include key stakeholders, particularly a mix of national and local public sector bodies with coastline geographies that have a planning, natural heritage and/or economic development remit. Other stakeholders could include some private sector organisations including the port authorities and any local fishery bodies.
- 1.11 The draft response also notes that there will have to be some consideration about the manufacturing and engineering capacity of locations identified in N-RIP (National Renewables Infrastructure Plan) so that economic gain to Scotland and the affected local authorities is maximised.

## **Historic environment**

- 1.12 In general terms, the document reflects Scottish Government policy on the historic environment with the aim of ensuring that the historic environment and cultural heritage considerations are part of the policy planning mainstream.
- 1.13 The consultation draft recognises that marine heritage assets are a finite, fragile, and non-renewable resource that require sensitive management in proportion to their archaeological significance and that marine planning and decision making authorities should seek to promote only culturally sustainable economic development proposals. However, the emphasis of this strategy is directed towards statutorily protected assets. Guidelines in relation to the management of non-statutorily protected assets is given but this could be improved; specifically, the strategy should be made more clear by the addition of a statement to the effect that:
- the principle of archaeological planning conditions, including pre-determination archaeological survey, sampling and mitigation should apply as equally to marine development as it does to terrestrial development and, when necessary, archaeological planning conditions should accompany grants of consent to ensure that where required mitigation works are implemented.
- 1.14 A sound knowledge base is the cornerstone of all informed cultural resource management. In the determination of all off-shore development proposals, marine planning and decision making authorities should make routine recourse to appropriate Historic Environment Records and the informed cultural heritage specialists who manage them. Both national and local Historic Environment Records should also ensure that their Historic Environment Records include adequate coverage of the marine environment.

## **Commercial fishing**

- 1.15 Whilst the locations of both the Marine Protected Areas and offshore renewable proposals contained in this consultation, do not appear to conflict directly with the inshore fishing grounds used by the Fife fleet, it needs to be recognised that their implementation could displace fishing efforts by other, often larger vessels into inshore fishing grounds, thereby increasing pressure on these inshore areas. Larger vessels, particularly those over 15 metres in length, are more likely to use heavy-towed gear and therefore may face exclusion to fish within a wind farm zone. However, because they are not limited by range or weather, they are able to make

multi-day trips and can operate over a wide geographic area. Even temporary migration of larger vessels into inshore grounds can have significant negative impact on the livelihoods of inshore fishermen.

- 1.16 The inshore fishing fleet operating from Fife generally consists of small businesses (often single vessel operations), predominantly in the 10 metres and under sector. With limited range, they are highly dependent on the local prawn fishing grounds around the Firth of Forth; they have limited capacity to cope with displacement, being constrained by lack of capital and licence/ quota regulations from fishing in other areas and/or diversifying into other fisheries.
- 1.17 Fife Council's dialogue with organisations such as the East Coast Inshore Fisheries Group, the Fishermen's Mutual Association (Pittenweem) Ltd, and the 10 Metre & Under Association over recent months, suggests there is a strong demand from local fishermen for assurance that they will be compensated for loss of income following disruption to/ exclusion from fishing grounds resulting from either offshore windfarm development or MPA designation. To this end, they are seeking some form of mitigation clause to be built into or underwritten in licence agreements. The obligation should be tied to the development site, since ownership could transfer after commissioning.
- 1.18 The consultation documents indicate that uncertainties in the location and nature of future activity in the marine environment also contribute to uncertainty in the estimation of costs and benefits.<sup>4</sup> Part of the concern of fishing interests in Fife centres on the lack of clarity as to precisely what the impact of development will be; For example, despite numerous research studies, it is still unclear as to how offshore installation work will affect the seabed and fisheries stocks; it is still unclear if exclusion zones will operate, and if so whether this will be a permanent displacement of all fishing, or a selective approach based on vessel size and/or fishing method (with mobile gear operations excluded, but static gear fishing allowed).
- 1.19 Given this uncertainty, it would be helpful to now take practical steps to agree and develop a mitigation and compensation mechanism, in consultation with representatives from all sectors of the fishing industry that could be applied to the Draft Plan Option Areas, and to all stages of their development (construction, operation, and maintenance).
- 1.20 It is important that any further consultation on the form and operation of these proposals involves people/organisations who can represent the interests of the Fife fishing fleet directly, and is not limited to organisations such as the Scottish Fishermen's Federation, or the East Coast Inshore Fisheries Group. The Fishermen's Mutual Association (Pittenweem) Ltd, Fife Fish Producers Association and the 10 Metre & Under Association, should be formally consulted.
- 1.21 Similar concerns about the displacement of fishing effort into inshore grounds exist for mobile gear fishing with the prospect of a new Marine Protected Area on the Firth of Forth Banks: "*The location of areas to be covered by management restrictions would be decided in consultation with fishers. Restrictions could be permanent in some cases or temporary/adaptive in others.*" (Scottish MPA Project Management Options Paper, July 2013).

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<sup>4</sup> Page xiv, Developing the Socio-Economic Evidence Base for Offshore Renewable Sectoral Marine Plans in Scottish Waters. Final Report



- 1.22 As with the offshore renewable proposals, it is important that any further consultation on the form of operation of the MPA involves people and organisations who can represent the interests of the Fife fishing fleet directly. Fife Council should therefore encourage Marine Scotland to give this due consideration.

### **Integration with terrestrial planning**

- 1.23 Draft Planning Circular *The Relationship Between the Statutory Land use Planning System and Marine Planning and Licensing* should be central to Fife Council's response as planning authority to the consultation on planning Scotland's seas. The draft circular explains the relationship between the marine and terrestrial planning systems, including related regimes such as marine licensing and consenting for offshore energy generation, ports and harbours development, and aquaculture. It accompanies the consultation on the draft National Marine Plan for Scotland. The Circular will be issued in final form concurrently with the final National Marine Plan once the consultation responses have been analysed.

#### The marine planning process

- 1.24 Marine plan boundaries extend up to Mean High Water Springs. Terrestrial planning boundaries extend down to Mean Low Water Springs, with the exception of marine aquaculture. Consequently, there is an overlap in the inter-tidal area will require careful management of the terrestrial and marine planning processes. The draft Circular suggests this can be achieved by:
- liaison between terrestrial planning and marine planning authorities;
  - timing plans to align key stages such as consultation;
  - taking account of each other's objectives;
  - consistency between respective policies;
  - integrated coastal zone management; and
  - sharing evidence bases.
- 1.25 Most of these actions are sensible and likely to happen in the same way that the Council liaises and shares with adjacent planning authorities and key agencies in preparing development plans. This is likely to be demonstrated in practice by means of consultation on respective plans and taking each regime (terrestrial and marine) into account in environmental assessments. Aligning the timing of plans is likely to be more difficult due to the various external influences affecting the variety of plans in place and time will tell how effective this will be.
- 1.26 The majority of the draft Circular deals with marine licensing, renewable energy, ports and harbours, aquaculture, and marine conservation. Renewables was discussed in more detail earlier in this report.

## **2.0 Conclusions**

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- 2.1 The responses and feedback following the *Planning Scotland's Seas* consultations will be analysed to assist in finalising:
- the Marine Protected Area network;
  - the Sectoral Marine Plans for offshore renewable energy;
  - the National Marine Plan which incorporates MPA and renewables spatial policy;
  - the list of priority marine features; and

- the circular on the integration between marine and terrestrial planning
- 2.2 The National Marine Plan will inform future regional marine plans. The Scottish Government expects that, in time, regional marine plans, and any supplementary plans or guidance associated with them, will provide the principal spatial framework for decisions about the location of new aquaculture development. This shift of spatial planning for aquaculture from terrestrial to marine planning should take place in a manner and time to be agreed between terrestrial and marine planning authorities. Fife Council will wish to maintain a watching brief on the effectiveness of the integration of the terrestrial and marine planning regimes and reserve the right to raise any issues of concern with the Scottish Government should the need arise.

## **List of Appendices**

1. Appendix 1 – Offshore renewables respondent form
2. Appendix 2 – Equalities Impact Assessment

## **Background Papers**

The following papers were relied on in the preparation of this report in terms of the Local Government (Scotland) Act, 1973:

- Draft Sectoral Marine Plans, Scottish Government, July 2013  
<http://www.scotland.gov.uk/marineconsultation>

## **Report Contact**

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## **Report agreed and signed-off by:**

Jim Birrell, Senior Manager (Development & Buildings)