

## Regional Marine Planning

### Further Information on marine planning functions delegated to Marine Planning Partnerships

#### Disclaimer

This document is non-statutory guidance to the regional marine planning regime in Scottish waters. This guidance is not legal advice and does not take the place of the relevant legislation. Readers should satisfy themselves regarding the accuracy of this document by checking the relevant legislation, which can be found at the following web link(s):

<http://www.legislation.gov.uk/asp/2010/5/contents>

[http://www.legislation.gov.uk/ssi/2013/286/pdfs/ssi\\_20130286\\_en.pdf](http://www.legislation.gov.uk/ssi/2013/286/pdfs/ssi_20130286_en.pdf)

1. Under Section 12 of the Marine (Scotland) Act 2010<sup>1</sup> (“the Act”), Scottish Ministers can direct a delegate to carry out some of their marine planning functions. The delegate must comply with the direction, and is taken to have all the powers necessary to do so. The Act does not refer to the term “Marine Planning Partnership”. A Marine Planning Partnership (MPP) is the commonly used term to describe the delegate that will prepare a regional marine plan. As the Act does not specify the legal form of the delegate the Scottish Ministers have a choice as to the form of the MPP, although it must comprise more than one single entity.

2. The Act provides that a delegate must comprise<sup>2</sup>:

- A person nominated by the Ministers and a public authority OR
- A person nominated by the Ministers and a person nominated by a public authority with an interest in the Scottish marine region to which the regional marine plan applies as the Ministers consider appropriate OR
- A person nominated by the Ministers and a public authority and a person nominated by a public authority with an interest in the Scottish marine region to which the regional marine plan applies as the Ministers consider appropriate

3. Expressions used in the Act in the singular include the plural and vice versa, so it is open to the Scottish Ministers to nominate more than one person. A ‘person’ referred to in the Act can be a natural (i.e. an individual) or legal person (i.e. an individual or other entity with legal obligations) or a body of persons corporate or unincorporated.

4. Where the delegate is a group of persons<sup>3</sup> they must (as far as reasonably practicable) include representatives of persons with an interest in - (i) the protection

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<sup>1</sup> <http://www.legislation.gov.uk/asp/2010/5/contents>

<sup>2</sup> The Marine Scotland Act 2010 Section 12(2)

<sup>3</sup> The Marine Scotland Act 2010 Section 12(3)

and enhancement of the Scottish marine region to which the regional marine plan applies; (ii) the use of that region for recreational purposes; (iii) the use of that region for commercial purposes; and any other persons the Scottish Ministers consider appropriate.

5. Reasons for delegating to a public authority rather than a group must be set out in the Direction<sup>4</sup>, which must also provide that the public authority must consult on the exercise of its functions with representatives of persons with an interest in: the protection and enhancement of that region; the use of that region for recreational purposes; the use of that region for commercial purposes; and any other person that the Scottish Ministers consider appropriate.

6. The Act does not specify the governance arrangements of the delegate, however, in order to perform their regional marine planning functions effectively, it is expected that the delegate will have established governance arrangements (e.g. relationship, roles, responsibility, processes, decision-making, addressing conflict of interest) in place.

7. Delegable functions in relation to a regional marine plan are (a) those under sections 5, 8 or 11, and (b) those under section 16 (monitoring etc. of implementation). Functions which cannot be delegated are the excepted functions under 12(8) of the Act. These include deciding whether to: prepare and publish a statement of public participation (SPP); revise an SPP; publish a consultation draft plan; and publish a regional marine plan or any amendment of such a plan.

8. Delegable Functions in sections 5,8,11,16 of the Act are–

- ❖ to prepare and adopt in accordance with Schedule 1 to the Act a regional marine plan for any Scottish marine region
- ❖ to amend a regional marine plan from time to time
- ❖ to keep relevant matters under review which may be expected to affect the exercise of their marine planning functions, including:
  - the physical, environmental, social, cultural (including historic or archaeological in nature) and economic characteristics of the Scottish marine region to which the plan applies and of the living resources which the region supports,
  - the purposes for which any part of the region is used,
  - the communications, energy and transport systems of the region,
  - any other considerations which may be expected to affect those matters,
  - any changes which could reasonably be expected to occur in relation to any matter above,
  - the effect that any such changes may have in relation to the sustainable development of the Scottish marine region, its natural resources, or the living resources dependent on the region.

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<sup>4</sup> The Marine Scotland Act 2010 Section 12(5)

- ❖ to monitor and report on implementation of the marine plan:
  - the effects of the policies in the plan,
  - the effectiveness of the policies in securing that the objectives of the plan are met,
  - the progress being made towards securing the objectives,
  - the progress being made towards securing that the objectives in the regional marine plan secure the objectives in the national marine plan

9. Schedule 1 to the Act makes provision in relation to the process by which marine plans are prepared and adopted. This includes—

- ❖ the giving of notice of the intention to prepare a regional marine plan to: any planning authority the district<sup>5</sup> of which adjoins the Scottish marine region; to the Secretary of State if the marine region adjoins the territorial sea adjacent to England; to the Department of the Environment in Northern Ireland if the regions adjoins the territorial sea adjacent to Northern Ireland.
- ❖ the taking of all reasonable steps to secure that in preparing or amending a regional marine plan that the plan is compatible with: any regional marine plan in an adjoining area; and with the development plan<sup>6</sup> for any area which adjoins the marine region.
- ❖ the seeking of advice or assistance from any body or person in relation to any matter in which they have particular expertise, in the preparation of a regional marine plan, or of any proposals for any such plan.
- ❖ the ability of convening groups of people in order to facilitate the involvement of interested persons in the development and consultation of proposals in a regional marine plan.
- ❖ having regard to the following matters when preparing a regional marine plan:
  - regional marine plan to be in conformity with any marine policy statement currently in effect for the Scottish marine area unless relevant considerations indicate otherwise,
  - regional marine plan to be in conformity with any national marine plan currently in effect, unless relevant considerations indicate otherwise,
  - the effect which any proposal for inclusion in the plan is likely to have on any area which adjoins the Scottish marine region to which the plan is to apply,
  - the results of the review required by section 11,
  - the SPP relating to the plan,

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<sup>5</sup> “planning authority” and “the district” of a planning authority have the same meaning as in section 1(1) of the Town and Country Planning (Scotland) Act 1997 (c.8).

<sup>6</sup> “development plan” is to be read in accordance with section 24 of the Town and Country Planning (Scotland) Act 1997

- any representations made as to matters to be included in the proposed regional marine plan,
  - any expert advice received following a request for advice or assistance,
  - any other plan (that doesn't fall under adjoining regional marine plan, or development plan) prepared by a public or local authority in connection with the management or use of the sea or the coast, or of marine or coastal resources, in the Scottish marine region to which the plan is to apply or in any adjoining or adjacent area in the United Kingdom or the UK marine area,
  - the powers and duties of the Crown Estate Commissioners under the Crown Estate Act 1961,
  - any other such other matters as Scottish Ministers consider relevant.
- ❖ the consideration of any representations made (in accordance with the SPP) about a consultation draft regional marine plan in the course of settling the text of the regional marine plan to be adopted and published.
  - ❖ the consideration of the appointment of an independent person to investigate the proposals contained in the draft regional marine plan.
  - ❖ Scottish Ministers decide to publish and adopt the regional marine plan.

#### Ministerial Directions

10. Once the Direction is given, it is for the delegate to do the work not the Scottish Ministers, except if something to the contrary is made by the direction or where Scottish Ministers have included something in the direction to the delegate on their performance of the planning functions. Scottish Ministers may give Directions only with the consent of the public authority, and must also publish the Direction so it can be brought to the attention of persons likely to be interested in or affected by it. The Delegate must comply with the Direction and is taken to have all the necessary powers to do so.

11. Directions may make different provision for different cases, areas or delegates. A Direction under section 12 may include terms or conditions, obligations or requirements, and financial provisions. Under section 14 of the Act, Scottish Ministers may also give further directions (following consultation with the delegate) regarding the performance of the delegated marine planning functions.

12. The main body of the text in a Ministerial Direction given under Section 12 identifies the legal delegate and directs that the regional marine planning functions are to be carried out by the Delegate on behalf of Scottish Ministers. Terms and conditions of the Direction are set out in the Schedule to the Direction. Following the giving of a direction as the relevant provisions of the Act will apply in that the delegate will act in the place of the Scottish Ministers there is, therefore, no need to include in the Direction all the regional marine planning functions.

13. The Delegate (i.e. the Marine Planning Partnership) will:

- Prepare a Regional Marine Plan in accordance with Schedule 1 to the Act,
- Keep up to date with issues to ensure effective marine planning,
- Amend a Regional Marine Plan,
- Keep matters under review,
- Monitor and Report on the implementation of the Regional Marine Plan.

14. An illustration of what this **may** mean for those Marine Planning Partnerships that have been delegated marine planning responsibilities is provided below. Please note that the Scottish Ministers may decide to make different provision for different cases, different areas or different MPP's.

Regional Marine Plan (RMP) - notification of preparation<sup>7</sup>

15. The MPP must give notice of intention to plan to any planning authority (under the Town and Country Planning (Scotland) Act 1997) adjoining their marine region. If the region adjoins England then the Secretary of State must be notified, and in the case of Northern Ireland, then the Department of the Environment in Northern Ireland must be notified.

Regional Marine Plan – compatibility<sup>8</sup>

16. The MPP must:

- take all reasonable steps to ensure that the plan is compatible with any regional marine plan for any Scottish marine region which adjoins the region.
- take all reasonable steps to ensure the Regional Marine Plan is compatible with the development plan (in accordance with S24 of the Town and Country Planning (Scotland) Act 1997) for any area which adjoins the marine region.

Regional Marine Plan – Statement of Public Participation (SPP)<sup>9</sup>

17. When Scottish Ministers have decided an SPP should be prepared, the MPP should prepare a draft SPP and submit the draft to Scottish Ministers for their approval and agreement to publish.

18. The SPP must include a proposed timetable for the:

- preparation of a consultation draft Regional Marine Plan
- making of representations about the consultation draft Regional Marine Plan

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<sup>7</sup> The Marine Scotland Act 2010 Schedule 1, para 1

<sup>8</sup> The Marine Scotland Act 2010 Schedule 1, para 3

<sup>9</sup> The Marine Scotland Act 2010 Schedule 1 para 4, 5, 6

- settling of the text of a Regional Marine Plan with a view to adoption and publication
- adoption and publication of the regional marine plan.

19. The SPP must set out when consultation is likely to take place and with whom, its likely form, and the steps to be taken to involve the general public in the stages of preparation or review of the proposed Regional Marine Plan. The SPP must also include the invitation of representations on what should be included in the Regional Marine Plan, and how and when these can be made. The SPP may also include the provision for holding public meetings.

20. Scottish Ministers will consider the draft and decide whether revisions are necessary. Once approved by Scottish Ministers, the MPP must publish the agreed SPP to ensure that it is most likely to be brought to the attention of interested persons. For example: online; notices; e-mail; in the press; or by any other means.

21. The MPP must comply with the SPP and the MPP should continually review the MPP and submit an updated SPP to Scottish Ministers at appropriate intervals during the development of the Plan. Scottish Ministers may also keep the SPP under review and if necessary will ask the MPP to prepare a revised SPP for publication. A finalised SPP should be submitted to Scottish Ministers at the time of publication of the Plan.

Regional Marine Plan – assistance in plan preparation<sup>10</sup>

22. In preparing the draft Regional Marine Plan, the MPP may seek the advice of assistance of any body or person in relation to any matter in which they have particular expertise. The MPP may also convene groups of people so as to facilitate the involvement of interested persons in the development of proposals for inclusion in the draft RMP, and for the consultation in connection with such proposals.

Regional Marine Plan – plan preparation<sup>11</sup>

23. Regional Marine Plans must meet the legal requirements of the Act. Unless relevant considerations indicate otherwise, the MPP must ensure that the Regional Marine Plan is consistent with the National Marine Plan<sup>12</sup> and the UK-wide Marine Policy Statement<sup>13</sup>. The MPP must consider the likely effect of any of the plan proposals on an adjoining area, and this will likely involve consulting with any MPP for any adjoining Scottish Marine Region on the proposals for the plan to ensure cross-border co-operation in Regional Marine Plan preparation.

24. When preparing or amending a Regional Marine Plan the MPP must consider matters under section 11(2)(b) of the Act. These matters include: the physical, environmental, social, cultural (historic or archaeological) and economic

<sup>10</sup> The Marine Scotland Act 2010 Schedule 1, para 7

<sup>11</sup> The Marine Scotland Act 2010 Schedule 1, para 8

<sup>12</sup> <http://www.gov.scot/Topics/marine/seamanagement/national>

<sup>13</sup> <http://www.gov.scot/Topics/marine/seamanagement/international/MPS/MPSAnnouncement>

characteristics of the region; the purposes of use; communications, energy and transport systems; and any other considerations that might affect these matters.

25. Other matters to include are those under section 11(3) of the Act which are: any changes that could reasonably be expected to occur in relation to characteristics and purposes and systems in the marine region; and the effect of any such changes may have in relation to the sustainable development of the marine region, its natural resources or living resources dependent on the marine region.

26. In preparing a Regional Marine Plan the MPP must comply with the SPP. The MPP must consider any representation made under the SPP as to what to include in the Regional Marine Plan and also consider any advice received from anybody or person that they have sought advice from.

27. The MPP also needs to consider any plan (that doesn't fall under adjoining regional marine plan, or development plan) prepared by a public or local authority in connection with the management or use of the sea or the coast, or of marine or coastal resources, in the marine region to which the plans apply, or in any adjoining or adjacent area in the UK or the UK marine area.

28. The MPP must also have regard to the powers and duties of The Crown Estate Commissioners under the Crown Estate Act 1961, and must also take into account any other matters the Scottish Ministers consider relevant (for example: Integrated Coastal Zone Management, terrestrial plans, Planning circulars and Notices).

#### Regional Marine Plan – plan content<sup>14</sup>

29. The MPP must prepare a draft Regional Marine Plan which states:

- policies (however expressed) for and in connection with the sustainable development of the area to which the plan applies,
- policies on the contribution of Nature Conservation MPAs and nature conservation sites to the protection and enhancement of the marine region,
- that the regional marine plan is prepared and adopted for the purposes of Section 5 of the Act.

and must ensure the plan sets:

- economic, social and marine ecosystem objectives,
- objectives relating to the mitigation of, and adaptation to, climate change,

the regional marine plan may also include:

- statements or information relating to policies contained in the plan, however if there is any conflict with any other statement or information in the plan, then the result will be in favour of the policy.

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<sup>14</sup> The Marine Scotland Act 2010 Section 5

30. An MPP must also prepare an assessment of the condition of the Scottish marine region at the time of the plan's preparation, and prepare a summary of significant pressures and the impact of human activity on the marine region.

#### Regional Marine Plan – consultation draft

31. The MPP must submit a consultation draft plan to Scottish Ministers<sup>15</sup> and seek their agreement for its publication. The MPP must make any amendments to the consultation draft if they are requested to do so by Scottish Ministers.

32. Following a decision of the Scottish Ministers to publish a consultation draft, the MPP must publish it<sup>16</sup> in such a manner (e.g. online, written notification, emails, publish in newspapers, public notices) and take the appropriate steps to ensure the proposals in the draft Regional Marine Plan are brought to the attention of interested parties.

33. The MPP must consider appointing an Independent person<sup>17</sup> to investigate the proposals in the draft Regional Marine Plan and notify Scottish Ministers of the decision. Scottish Ministers will also have the power to consider appointing an Independent person<sup>18</sup>.

#### Regional Marine Plan – draft plan and supporting information

34. In settling the text of the Regional Marine Plan the MPP must consider any comments (representations) on the consultation draft<sup>19</sup> and must also have regard to the Independent Investigator report (if applicable), and any other matters as the Scottish Ministers consider relevant<sup>20</sup>.

35. In addition to the draft Regional marine plan, the MPP must also submit to Scottish Ministers any report or statement setting out any modifications which have been made to the proposals published in the consultation draft Plan, and any report or statement on recommendations made by an independent person<sup>21</sup>.

36. The MPP must also prepare any assessments which may be required, which may include a Habitat Regulations Appraisal, Strategic Environmental Assessment, Equalities Impact Assessment, Business and Regulatory Impact Assessment, the new Child Rights and Wellbeing Impact Assessments (CRWIA), and any other relevant information in support of the Regional Marine Plan. The MPP will submit these to Scottish Ministers for their consideration and final approval.

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<sup>15</sup> The decision to publish a consultation draft plan is an excepted function for MPPs under Section 12(8) of The Marine Scotland Act 2010, and is therefore one for Scottish Ministers to make.

<sup>16</sup> The Marine Scotland Act 2010 Schedule 1, para 9

<sup>17</sup> The Marine Scotland Act 2010 Schedule 1 para 11 (1)

<sup>18</sup> The Directions for the Clyde and for the Shetland Isles marine regions provide express provision about this matter so that the functions are exercised jointly by the Ministers and the delegate (under the s13(3) power)

<sup>19</sup> The Marine Scotland Act Schedule 1, para 10

<sup>20</sup> The Marine Scotland Act Schedule 1, para 12

<sup>21</sup> The Marine Scotland Act Schedule 1 paras 11 and 14



### Regional Marine Plan – publication and adoption<sup>22</sup>

37. Scottish Ministers will consider the following submitted by the MPP:

- the Regional Marine Plan settled text for publication
- any supporting assessments, documents and information
- a modifications report (if applicable)
- recommendations from appointed independent person (if applicable)
- statement on recommendations from independent person that have not been implemented (if applicable)

38. The decision to publish the Regional Marine Plan rests with the Scottish Ministers.<sup>23</sup> The regional marine plan is adopted by the Scottish Ministers when they decide to publish the plan. An adopted Regional Marine Plan may be the same as the proposals published in the consultation draft relating to it, or those proposals with such modifications as the Scottish Ministers consider appropriate.

39. The MPP must publish the Regional Marine Plan as soon as reasonably practicable after its adoption has been agreed by the Scottish Ministers, together with the following:

- any supporting assessments, documents and information agreed by Scottish Ministers
- statement on any modifications that have been made to the proposals published in the consultation draft for the plan, and the reasons for those modifications,
- statement on recommendations from appointed independent person (if applicable)
- statement on recommendations from independent person that have not been implemented (if applicable)

### Regional Marine Plan – amendment of Plan<sup>24</sup>

40. The MPP can amend the Regional Marine Plan from time to time, subject to the agreement from Scottish Ministers. The MPP could provide suggested amendments in their periodical reporting on implementation of the plan and submit those suggested amendments to Scottish Ministers for their approval to amend the plan. The Scottish Ministers may also request that the Regional Marine Plan be amended by the MPP. However, any amendment of the Regional Marine Plan must be prepared and adopted in accordance with Schedule 1 to the Act.

### Regional Marine Plan – keeping relevant matters under review<sup>25</sup>

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<sup>22</sup> The Marine Scotland Act 2010 Schedule 1, para 14

<sup>23</sup> The decision to publish a Regional Marine Plan is an excepted function for MPPs under Section 12(8) of The Marine Scotland Act 2010, and is therefore one for Scottish Ministers to make.

<sup>24</sup> The Marine Scotland Act Section 8

<sup>25</sup> The Marine Scotland Act 2010 Section 11

41. The MPP must keep the following matters under review as they may affect their functions in marine planning:

- the designation of any area as a Scottish marine region
- the preparation, adoption, amendment or withdrawal of a national plan or a regional marine plan
- the effects of policies in the regional marine plan<sup>26</sup>
- the effectiveness of the policies in securing that the objectives for which the plan was prepared and adopted are met
- the progress being made towards securing the objectives
- the progress being made towards securing that the objectives in the regional marine plan secure the objectives in the National Marine Plan

Regional Marine Plan – monitoring of and periodical reporting on implementation of the Regional Marine Plan<sup>27</sup>

42. For so long as the Regional Marine Plan is in effect, the MPP must keep the following matters in relation to the Regional Marine Plan under review:

- the effects of the policies in the plan
- the effectiveness of the policies in securing that the objectives for which the plan was prepared and adopted are met
- the progress being made towards securing the objectives
- the progress being made towards securing that the objectives in the regional marine plan secure the objectives in the national marine plan

43. The MPP must from time to time prepare a report on the matters kept under review and submit these to the Scottish Ministers for their approval to publish the report. After a report is published, the MPP must consider and decide if the Regional Marine Plan needs to be amended, or even replaced. If replacing the Regional Marine Plan, the Scottish Ministers will withdraw the marine plan that is to be replaced, and decide whether or not a fresh Regional Marine Plan that will need to be prepared and adopted is for the identical Scottish marine region.

44. The first report on the Regional Marine Plan must be published within 5 years from the date on which the Regional Marine Plan was adopted. After the publication of the first report, successive reports must be published at intervals of no more than 5 years following the date of publication of the previous report.

Additional role of MPPs (not included under Section 12 of the Act)

45. . Under the Marine Licensing (Consultees) (Scotland) Order 2011 and The Marine Licensing (Pre-application Consultation) (Scotland) Regulations 2013 any Marine Planning Partnership will also be consulted and notified in marine licensing processes.

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<sup>26</sup> The Marine Scotland Act 2010 Section 16 (2)

<sup>27</sup> The Marine Scotland Act 2010 Section 16