

Rùnaire a' Chaibineit airson Cùisean Dùthchail, Biadh agus an Àrainneachd  
Cabinet Secretary for Rural Affairs, Food and the Environment  
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Convenor  
Rural Affairs, Climate Change, and Environment Committee  
Room T3.40  
The Scottish Parliament  
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9<sup>th</sup> October 2015

Dear Rob

Thank you for your letter dated 24 September 2015 regarding management measures for Marine Protected Areas, which you posed a number of questions. My response to these is set out below. It would be helpful if the Committee could provide clarity over their intentions with this process as soon as practicable. The Parliamentary term is nearing its end and I would like to ensure that all of the measures are in place before then. Further consultation will be required on any changes to the draft Marine Conservation Orders. Therefore the longer the delay, for this Committee process, the greater the risk of not getting the permanent measures in place.

### **Design of management measures**

At present we are determining management arrangement for existing Marine Protected Areas (MPAs). Therefore none of the MPAs are having their boundaries changed at present. These were designated in 2014 by Ministerial Order under the Marine (Scotland) Act 2010, and their physical boundaries were defined at that point. Other types of protected areas such as Special Areas of Conservation (SACs) were designated sporadically over a 20 year period before that.

These site boundaries have applied to all determinations by public authorities since designation. For example, a renewable energy proposal within a MPA would require an Environmental Impact Assessment. The application would also need to be favourably assessed against section 83 of the Marine (Scotland) Act 2010 before giving consent. In the case of SACs a "plan or project" has to be determined as not likely to affect site integrity before consent is given. This often involves what is known as an appropriate assessment.

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The Government consulted on a range of management approaches between 11 November 2014 and 02 February 2015. These were seen to be variations of minimalistic management measures favourable to the mobile fishing industry. A pre-consultation exercise took place in October 2014 using regional stakeholder management forums. It was evident from that process that there was no agreement between stakeholders over the management approaches for the larger MPAs, which are now the subject of a draft Marine Conservation Order.

Almost everyone who responded to the consultation, with the exception of those associated with the mobile fishing industry, were of the view that these measures would come with a significant risk of not achieving the conservation objectives. The Marine (Scotland) Act 2010 requires such decisions to further the conservation objectives, not hinder them.

In the case of the Loch Sunart to Sound of Jura MPA the proposed Marine Conservation Order covers most of that MPA, the existing Firth of Lorn SAC, and a small area outwith both designations. The most recent scientific research indicates that a deep trench within that area is utilised by common skate. This was not known when the MPA was designated. Under section 85 of the Marine (Scotland) Act 2010 a Marine Conservation Order can be made to apply to any area in Scotland as required to further the conservation objectives of a MPA.

In order to determine the proposed measures, as presently drafted, a series of questions were posed for each site. These are as follows:

1. Does the site have features which have a recovery conservation objective?

The network of conservation sites (the network, taken as a whole, includes sites designated by domestic and European measures) has only 4 features that have a recovery objective. The declining status of these features is likely to be indicative of reduced health in the wider MPA. In the case of 3 out of 4 recovery features there has been historical dredging activity on or adjacent to these. Therefore to ensure recovery of those impacted features, and the overall health of the MPA, it is proposed that dredging is banned throughout these MPAs. This applies to South Arran MPA, Upper Loch Fyne and Loch Goil MPA, and Wester Ross MPA.

2. Does a method of fishing have to be prohibited throughout a site to ensure the conservation objectives are furthered?

Some of the protected areas have a high coverage of a highly sensitive feature, and others have a mosaic of differing highly sensitive features. In sites with very low or no current mobile gear fishing activity then these methods are to be prohibited. This is on the basis that a future increase in fishing pressure is likely to be detrimental to site condition and overall health of the area. Some examples of this are East Mingulay SAC, Loch Laxford SAC, and Noss Head MPA for mobile gears.

### 3. Does the MPA have a feature which is the only example in the network?

This applies to the fan mussel aggregations in the Small Isles MPA, and the globally endangered common skate in the Loch Sunart to Sound of Jura MPA. In both cases the proposed measures are more precautionary to give greater certainty to their conservation, with a view to improving their status.

### 4. Can a fishing method be managed on a zonal basis and the conservation objectives still be furthered?

This applies to sedimentary habitats such as burrowed mud, and some highly sensitive features for static gear.

Management measures for these sedimentary habitats have generally been defined in two ways. Firstly some form of capacity restriction is proposed to reduce the risk of fishing pressure increasing within the MPA. Secondly a spatial restriction of mobile fishing activity of between 25 and 40% of the resource to provide certainty that, at least in part of the MPA, the condition of the habitat will improve. Examples of this are burrowed mud at Wester Ross MPA, Small Isles MPA, and South Arran MPA.

Some of the most sensitive features such as *Lophelia Pertusa*, a fragile cold water coral, also require protection from static gear. This habitat can be damaged by any physical disturbance. In the case of the East Mingulay SAC it is proposed that static gear fishing will be zoned away from these reefs but not excluded from the entire site.

## **The evidence base**

The evidence underpinning each Marine Protected Area is summarised in Data Confidence Assessments. These were published for the Planning Scotland's Seas consultation in 2013 which sought views on the evidence base. Following that consultation the scientific evidence was subjected to an independent scientific review. This concluded that the evidence base supported the designation of the MPAs.

Management Options Papers have also been available for all of the MPAs since the Planning Scotland's Seas consultation in 2013 which sought views on the content of these.

There is also the Feature Activity Sensitivity Tool (FEAST) which details the sensitivity of habitats and species to a range of human activities. It also provides references for the evidence base used to make those assessments. This has been available online since 2013.

As part of this process Scottish Natural Heritage provided updated advice on the management requirements for Special Areas of Conservation. This was made publically available for the consultation in November 2014.

The four draft Marine Conservation Orders were published on 11 June 2015 and representations invited. This can be considered an independent and transparent test of the decisions. I am awaiting the outcome of this committee process before announcing my conclusions from that process.

## Socio-economics

For the four draft Marine Conservation Orders the Scottish Government provided evidence in a set of Business and Regulatory Impact Assessments (BRIAs) that draws from the report 'Planning Scotland's Seas: The Scottish Marine Protected Area Project – Developing the Evidence Base for Impact Assessments and the Sustainability Appraisal: Final Report'.

The approach taken was developed in conjunction with a Project Advisory Group (consisting of national representatives of potentially affected marine industries, environmental NGOs, and other national and strategic stakeholders) and was consulted upon widely. It consistently followed established best practice as outlined within the report 'Economic Impact Assessments of Spatial Interventions on Commercial Fishing: Guidance for Practitioners', which was produced by the UK Fisheries Economist Network (a network founded by Seafish in 2011 in order to promote professional exchange between fisheries economists and analysts).

Where uncertainty existed regarding the extent of impact upon stakeholders, Marine Scotland consciously adopted the most conservative assumptions possible in order to produce 'worst-case' estimates. For example, three specific areas where our approach is likely to over-estimate the impacts on the fishing industry are:

- i. There is an assumption of zero displacement – i.e. all fishing effort that is effected will immediately and permanently cease. For context, within their Impact Assessments for Marine Conservation Zones in English Inshore waters and English and Welsh Offshore waters, Defra assumed that "following designation 75% of the affected fishing effort...in a site is displaced and 25% is lost."
- ii. There is an implicit assumption of no improvement in fish stocks over time as a result of the MPAs.
- iii. There is an implicit assumption of no expansion of alternative fishing methods within the MPAs.

When determining zonal management arrangements socio-economic evidence was used. Where possible the most frequently used or most economically important grounds were included in the areas where fishing was to continue. Marine Protected Areas are not designated for the purposes of sustaining fish stocks and therefore sustainability of fish was not a primary consideration in the assessment. However there is potential for improvements in scallop and crab stocks as a consequence of the measures. Within many of the areas proposed to be closed to mobile fishing gears there are more complex sand and gravel habitats. Fish are likely to spawn on these habitats so there may be future stock benefits.

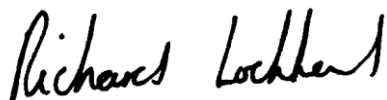
The safety of fishing boats is a very important issue and it is the responsibility of the Master to ensure that safety. I have tried to strike a balance between the legal obligations to protect vulnerable habitats and species, and continued fishing activity. Some of these grounds which are considered to be suitable for fishing in poor weather aren't frequently used when compared with more lucrative summer fishing grounds. There has to be a choice made in the context of minimising the overall potential economic impact, whilst still achieving environmental objectives. Clearly if all the so-called winter grounds had been left available at the expense of the most lucrative summer grounds then there might be a disproportionate potential economic impact.

Three of the four original draft Marine Conservation Orders would provide some sheltered waters for certain weather conditions. South Arran MPA is the exception, but there are other grounds around Arran that can be used in poor weather conditions. Some representations made on the draft Marine Conservation Orders have put forward ideas which could be used to improve the arrangements. These remain under consideration.

Marine Scotland will publish an updated economic assessment when I announce my decision on the way forward.

### **Announcement of decision**

The decisions were communicated to all consultation participants in exactly the same manner. I think for the vast majority of stakeholders their support and confidence in MPAs has actually increased since the announcement on 11 June 2015.



**RICHARD LOCHHEAD**