

UK MARINE POLICY STATEMENT: A DRAFT FOR CONSULTATION

The Joint Links response 13 October 2010

The Joint Links (Wildlife and Countryside Link (WCL), Scottish Environment LINK (SEL), Wales Environment Link (WEL), and the Northern Ireland Marine Task Force (NIMTF)) welcome the opportunity to comment on the Draft UK Marine Policy Statement ('the Draft MPS'). The Joint Links and their members have long called for the introduction of a marine planning system, based on an integrated UK Marine Policy Statement at the top of the hierarchy, to allow for a strategic view to be taken on the sustainable use and management of marine space and resources, increase certainty, reduce conflicts and ensure space for marine biodiversity.

Summary

The Joint Links, as supporters of the new marine planning systems being implemented across the UK's seas, welcome the draft Marine Policy Statement (Draft MPS) in principle as it is the first step in implementing, for the first time, an evidence-based, plan-led system, to ensure a more sustainable and coherent approach to guide development in, and management of, the marine area.

We also welcome the broad approach to public involvement in the marine planning process. However, we are disappointed that our early engagement with, and provision of detailed feedback, has resulted in so little change to the current draft. We welcome the restructuring of the document, leading to a clearer and easier to read MPS but any substantive comments we made have failed to be incorporated. As a consequence, much of our following response to the Draft MPS reiterates comments submitted on the Pre-consultation document.

The main concerns of the Joint Links continue to be the following:

- The draft MPS does not achieve its legislative purpose of clearly identifying those policies which will ensure that the marine planning system contributes to the achievement of sustainable development. It fails to adopt 'strong sustainability' by recognising that ultimately all economic and social activity is dependent on the natural environment, its resources and ecosystem services that it provides. This is evidenced by:
 - the treatment of marine conservation and marine protected areas as a sector (though we recognise that the latter is a spatial conservation tool), which fails to recognise the fundamental importance of the condition of the marine environment to all human activities that occur within it. Rather, as a cross cutting theme, conservation and protection of the marine environment should be treated as the underpinning/overarching goal, if sustainable development of the UK Marine Area is to be achieved.
 - the ecosystem-based approach and the principles of sustainable development, whilst mentioned, are not embedded within the MPS and marine planning system. In our view, the Draft MPS in its current form does not sufficiently embrace and integrate these or properly guide their implementation in practice. The focus of the draft MPS appears to be to use marine planning to achieve sectoral policy objectives, rather than to apply an ecosystem approach towards achievement of sustainable development.

- The Draft MPS does not set any strategic direction, policy prioritisation or provide a clear steer for marine plan authorities or marine decision-makers. The focus on sectoral policy objectives misses the opportunity for marine spatial planning to be used to effectively identify, assess and manage conflicts and compatibilities. As a consequence, it is not comprehensive enough to guide sustainable resource use within the planning system, and particularly where marine plans have yet to be developed.
- Sectoral policies must be integrated and interpreted within a marine planning context – there needs to be clear translation of existing policies into relevant marine planning policy. This current Draft MPS could be categorised as a type of development control document, which does nothing more than provide a list of existing legislative and regulatory requirements and a ‘wish list’ for expansion of certain activities within the marine environment. There is no information on how these sectors should be integrated, how opportunities will be utilised, such as identifying compatibilities or possibilities for co-existence of uses, or how government will manage development to halt biodiversity loss.
- There is no indication of how the Government intends the marine planning system to respond to new environmental challenges or new activities that might arise in the future. The planning system must have sufficient flexibility, or opportunities for review, to be capable of taking into account and adapting to new challenges and opportunities if and when they occur.

In addition:

- We particularly urge the use of the outcomes from the UK-wide state of the seas report, *Charting Progress 2*, in the MPS to highlight the need for planning and decision-making that truly contributes to sustainable development. *Charting Progress 2* indicates there has been an increase in marine activities and highlights that we are currently over-exploiting and damaging our marine environment. Consequently, the concept of living within environmental limits must be given much greater prominence within the MPS, if we are to achieve sustainable development in the marine area. The UK’s Governments must realise that providing a framework which allows unrestrained growth and development of maritime industries is not sustainable. They must also ensure the MPS is not in clear infringement of our international commitments, in particular those under the Marine Strategy Framework Directive.
- We believe there is a lack of clarity regarding the relationship between the MPS and the marine planning system as a whole and Marine Protected Areas, and how the two processes will interact with each other.
- We would like to see a more explicit reference within the MPS to the need to use the precautionary principle in marine planning where data or knowledge does not exist. We note that the precautionary principle is included within the sustainable development principle to use sound science responsibly. The use of the precautionary principle is particularly important as much marine development will come ahead of more comprehensive data on the marine environment.
- In England, we believe that the aspirational nature of the MPS, which only includes high level policy statements and objectives to allow for UK-wide application, creates a gap between the MPS and marine plans and decision-making. The gap is the space for strategic planning and guidance, across regions, on managing resource use and competing interests for space within the context of national priorities, targets and objectives. Consequently, we believe that there needs to be some form of national strategic planning to fill that gap which could be a national plan (as being proposed in

Scotland and Wales), a national strategy or national guidance. Strategic planning benefits any planning system by providing a framework for cross-boundary coordination of policies and major infrastructure projects, harmonisation of development/use standards, comprehensive assessment of environmental capacity and space for public discussion of these issues. It allows for a wider, strategic perspective on the resources and space available to meet national objectives and which activities and uses will be most effective and appropriate where. The lack of a national overview in England's terrestrial planning system is, we believe, one of the reasons that national biodiversity targets are regularly missed in England, as no one has ultimate responsibility to deliver them. This issue is covered in more detail in WCL's response to the *Consultation on a Marine Planning System for England*.

The Joint Links believe that the Draft MPS is currently simply a collection of existing sectoral policies and objectives, that they are not well integrated with each other or environmental factors or set within a planning framework or context. While this is a starting point, we would expect the MPS to develop over time to be a policy driver and set the direction for marine planning, which, in our opinion, this current draft does not achieve. We reiterate our view that the MPS will be critical for effective planning at all levels, particularly in areas where no effective marine plan exists at the time decisions are being made in relation to marine licensing and regulating sea users. The MPS must contain specific spatial planning objectives and establish policy direction in order to ensure that marine plans are effective and consistent with national aspirations. The Joint Links do not believe that the Draft MPS in its current form achieves these aspirations.

Detailed Comments

Introduction

As we stated in our response to the MPS Pre-consultation we do not believe that the aims presented in the introduction are an accurate reflection of the UK High Level Marine Objectives (HLMOs). For example, there is no reference in this paragraph to living within environmental limits or to allowing recovery of damaged marine ecosystems, while societal benefits fail to take account of the health and amenity values provided by the marine environment. It is our view that achieving the HLMOs (as an interpretation of the principles of sustainable development for the marine environment) should be the overriding aim of the MPS and the marine planning system. The UK Government and the Devolved Administrations intend that the HLMOs will "*underpin the development of an integrated Marine Policy Statement by Administrations which will provide a means to achieve these objectives in practice*"¹, i.e. the marine planning system should deliver the HLMO outcomes. We therefore recommend that the primary aim of the MPS should be:

- To provide a framework for the achievement of the UK High Level Marine Objectives.

In addition, we recommend that the MPS should reiterate the aims for a marine planning system, taken from the MMO's website²:

- "*to set a clear direction for managing our seas;*
- *to clarify objectives and priorities;*
- *to direct decision-makers, users and stakeholders to a more strategic and efficient approach towards the sustainable development and protection of marine resources.*"

If these recommendations relating to MPS aims are not taken forward, we believe that the current aims need to be edited. It appears that there is an intention to provide an aim/goal

¹ From the joint UK HLMOs report – *Our seas - a shared resource: High level marine objectives* (April 2009).

² <http://www.marinemanagement.org.uk/marineplanning/aims.htm>

related to each of the 'pillars' of sustainable development – economy, environment and society. We suggest that the environment aim/goal (bullet point 3) should be reworded as follows: *Ensure that our use of the marine environment is within environmental limits and promotes healthy, functioning marine ecosystems and protects, and where appropriate recovers, marine habitats, species and our most important heritage assets.* In addition, the societal aim/goal (bullet point 4) should include a reference to improving social justice through equitable distribution of resources and human well-being through access to a healthy marine environment.

MPS overarching approach

Introduction chapter, 'New marine planning systems for the UK', pg.17-18: This section should set out the process for delivering the aims in the first section of the Introduction (please note our comments on the aims above). Whilst we recognise that the current bullets under 'New marine planning systems for the UK' are improvements on paragraph 1.4 in the MPS Pre-consultation we believe that there are a number of important elements that should be included in the list, including: delivering sustainable development; forward planning; integration and assessment of cumulative impacts to achieve sustainable use of the sea. Furthermore, we would advocate the following specific additions to the list:

- to develop a holistic approach towards managing and protecting the marine environment and its biological, social and economic resources;
- to provide a mechanism for looking at and harmonising the full range of objectives and priorities for the different marine resources and sectoral uses, so helping to achieve the UK Government's sustainable development objectives.³

Under the heading 'New marine planning systems for the UK' (pg.17-18), we suggest that the first bullet point should be '*Achieve integration between different **economic, social and environmental** objectives*'. It is our view that the second bullet point requires some re-consideration. It may be true that our demand for use of our seas increases over time, but the response should not be to allow maximum resource use to meet ever increasing demand. The marine planning system should also give consideration to how these demands for resources can be appropriately managed so that we do not exceed environmental limits. We suggest that this bullet point is amended to reflect the need for sustainable resource use alongside measures for demand management. However, as stated above, our preferred option would be to replace these aims with those we have already suggested.

On page 19, we suggest that the heading 'Appraisal of Sustainability' is amended to 'Assessments' or something which better reflects the information within the following paragraphs. The paragraphs discuss a number of assessments, including an Appraisal of Sustainability, Habitats Regulation Assessment and Equality Impact Assessment. Paragraph 6 under 'Appraisal of Sustainability' advises that "*All marine plans and projects carried out in accordance with the MPS will be subject to the appropriate assessment procedure*". This is not actually correct, as the procedure under the Habitats Regulations is only triggered when there is likely to be significant effects on a listed European site. Whilst there will be cases where a marine plan or project will trigger the need for an appropriate assessment, it is incorrect for the MPS to advise that it will be in all cases.

³ From the marine spatial planning objectives in the *Initial Marine Bill Regulatory Impact Assessment (RIA)*, Annex 5A, paragraph 2.1(a), accompanying the 2006 *Marine Bill* Consultation Document.

CHAPTER 1

Q1. Does chapter 1 clearly explain the purpose and scope of the MPS and how it interacts with existing and emerging planning systems?

The Joint Links believe that while Chapter 1 briefly touches on the role of the MPS, the wider marine planning system and the relationship with other planning regimes, this is not a clear explanation, rather a passing reference to each element. We do not believe that this is sufficient detail or clarity for the MPS. On the plus side, the first paragraph s1.1, pg.21, sets out a positive aspiration for the Draft MPS, however, there is some way to go before that aspiration is met.

As we made clear in our response to the MPS Pre-consultation we are concerned that the Draft MPS does not provide “*an appropriate overarching framework for the development of marine plans and decision-making in the UK marine area*”. Marine planning should lead to more coherent and consistent decision-making and, despite containing useful information, this document does not deliver the policy guidance to enable this. Whilst it is a high-level document, the considerations for development of marine plans are vague and do not provide firm guidance on key issues such as what constitutes a sound evidence base, what is an acceptable level of impact or how conflicting costs and benefits should be assessed by marine planning authorities. As it stands, it does little more than reiterate in a single document existing legislative provisions and why, in the government’s view, more activities that have the potential to impact the marine environment are needed. While highlighting relevant legislation is important and useful, it is not providing a strategic or plan-led approach. Consequently, it does not meet the aspiration set out in the first paragraph of s1.1, pg.21. There should be a framework set out for reviewing the process that includes regular review periods. However, to retain flexibility, the MPS can be reviewed more often if thought necessary.

The Joint Links believe that ensuring a sustainably managed marine environment and living within environmental limits, along with achieving a just society are cross-cutting issues, that should be given top priority, if the UK Governments are to achieve the marine vision, the HLMOs and deliver sustainable development of the marine area. These aspirations should be clearly stated in Chapter 1.

Additional detailed comments on Chapter 1

Policy Priority

One of our key concerns, as we stated in our response to the MPS Pre-consultation, is the lack of prioritisation, strategic direction or steer in the draft MPS. There is a focus on individual sectors with no information on how these should be integrated, how opportunities (such as identifying compatibilities or the possibilities for co-existence of uses) will be utilised or on how the sectoral policies seeking maximum exploitation can occur sustainably while also meeting our environmental commitments. Section 1.1, pg.21-22, makes clear that the MPS does not set relative policy priorities, but we would argue that there remain a number of references (particularly in Chapter 3) which implicitly imply priorities. These priorities should be included explicitly, to reflect what actually happens in practice and clarify government policy preferences. There does not necessarily need to be rigid policy priorities in all cases as flexibility and project or location specific issues will need to be considered in preparing marine plans and making decisions. Irrespective of whether the current implicit policy priorities are made explicit or removed, there needs to be greater steer from the MPS to aid decision-making, particularly in dealing with conflicts. Marine planners and decision-makers will need some form of steer if the MPS is going to be a useful document. It is difficult to determine how that will work as the Draft MPS states that guidance on the content, structure, context for and preparation of marine plans could be available but is to be produced separately by each Administration at a later date (see s1.1, pg.21).

Section 1.2 (Cross-border Planning)

We welcome reference within this chapter to international cross border planning, but would also like to see reference made *via* the concordat agreements and/or service level agreements between the MMO and Devolved Administrations to cross-border planning between UK Administrations. These sections do not currently provide enough leverage to really integrate cross-border and coastal planning. Further guidance is needed on the principles of integrated management to facilitate cross-border planning, with reference to the mechanisms available to facilitate the process. WCL provide further detail on their views regarding England in their response to the 'Consultation on a Marine Planning System for England'.

Section 1.3 (Integration with terrestrial planning regimes)

This section advises that the key way in which the terrestrial and marine systems will be integrated will be through overlapping plans. Whilst this will provide geographical coverage of land and sea, it does not ensure that there is integration between the different planning systems, it does not remove the administrative boundary at the coast which results in separate plans being developed and it certainly does not ensure that different planning authorities work together. There are some key considerations missing from this section.

Firstly, there is an assumption that marine plans must build upon and add to existing terrestrial plans. However, this doesn't take into account that marine or coastal based objectives that may be contained within terrestrial plans may not have been developed taking into account all relevant marine matters and may be focused on achieving objectives that are land based. For example, if through the marine planning process, the marine plan authority determines that the existing objectives within a terrestrial plan are no longer appropriate, there should be some mechanism for a review of the terrestrial plan objectives in order to provide a more strategic and integrated approach across the land-sea boundary. In addition, with the intended reform of the terrestrial planning system (in England at least) to introduce neighbourhood planning, there may be a real opportunity for terrestrial and marine authorities and communities to work together to develop broader and more strategic objectives and plans in an integrated manner.

During Stage 1 of the passage of the Marine (Scotland) Bill through Parliament the Scottish Government made clear that the regulations under the Town and Country Planning (Scotland) Act 1997 would be amended to make marine plans a material consideration in terrestrial plans, in order that the two systems will be joined up functionally. This should be reflected in the MPS, either in the main body of the text or as a footnote.

Finally, this section gives the impression that all marine plan area boundaries extend to mean high water spring tides level. However, in England this is only the case for the 'inshore' marine plan areas.

CHAPTER 2

Q2. Does chapter 2 clearly state the vision and how it will be achieved? Are the high-level principles and environmental, social and economic considerations to be taken into account in marine planning clearly expressed?

While the Joint Links welcome the inclusion of a summary of relevant UK marine-related policies and acknowledging that there has been a substantial restructuring of the Draft MPS following our comments on the MPS Pre-consultation, we are disappointed that Chapter 2 does not deliver our view of the environmental baseline. While the natural (and historic) environment is covered in brief within Chapter 2, the rest of the chapter relates to man-made impacts or effects, such as noise, flooding, air quality, while climate change adaption mixes

adaptation for marine activities with the need to facilitate natural adaptation. There appears to be confusion between:

- (a) providing an environmental baseline, including setting out a brief summary of the current state of the marine environment; the relevant policy objectives and legislative obligations for protection, management and conservation of the marine environment; explaining environmental limits and the application of the ecosystem approach within marine planning and decision-making; and
- (b) identifying what topics (based on impacts on the environment) should be taken into account in marine planning and decision-making – normally achieved through an environmental assessment process.

We welcome and strongly support the references to taking a holistic and ecosystem-based approach to marine planning (Introduction (bullets), pg. 18; s2.3, pg.26). We strongly welcome the reference to the Marine Strategy Framework Directive's legal obligation on all Member States to "*apply an ecosystem-based approach to the management of human activities*" (Art1(3)), as the interpretation of the ecosystem-based approach (see footnote 8). However, we would note that Defra have done some work on defining environmental limits and the ecosystem approach⁴ and it would be useful to reference this work here too. We agree with the widely held view that the ecosystem-based approach is a tool to achieve sustainable development and is an important element of effective marine spatial planning. However, despite being declared as the basis of the MPS, the ecosystem-based approach is only mentioned in passing. If the MPS is to guide marine plan authorities in contributing to the achievement of sustainable development in the marine area, then the MPS must elaborate on how an ecosystem-based approach is to be delivered through the marine planning process. For further detail on our view of the role of the ecosystem-based approach, please see WCL's *Marine Planning Principles* leaflet⁵.

We are very concerned that section 2.1 (*UK vision for the marine environment*) appears to be setting out two parallel, non-integrated approaches to achieving the marine vision. As currently worded, the Draft MPS suggests that the process of marine planning will:

- integrate delivery of the high level marine objectives alongside
- the achievement of sectoral/ activity specific policy objectives.

The HLMOs set out the outcomes that marine polices are to achieve if they are to deliver the marine vision and sustainable development in the marine area. Therefore, this needs to be redrafted to make clear that the process of marine planning will contribute to the achievement and integration of the sectoral/activity policy objectives in order to deliver the HLMOs.

The first paragraph of section 2.2 (*Achieving the vision through marine planning*) states that "*An overriding principle will be to promote compatibility and reduce conflict.*" However, we would argue that the overriding principle of marine planning is to achieve sustainable development in the marine area and hence the marine vision. Promoting compatibility and reducing conflict will not deliver sustainable development alone.

⁴ Defra (2010) *Delivering a healthy natural environment - An update to "Securing a healthy natural environment: An action plan for embedding an ecosystems approach"*. <http://www.defra.gov.uk/environment/policy/natural-environ/documents/healthy-nat-environ.PDF>

⁵ http://www.wcl.org.uk/docs/2010/Link_marine_planning_principles_leaflet_30Jun10.pdf

Additional detailed comments on Chapter 2

Sustainable Development and the HLMOs

(Summarised version of our response to the MPS Pre-consultation)

The Joint Links support the use of sustainable development principles and the High Level Marine Objectives (HLMOs) (Box 1) in assessing proposed activities. However, the MPS fails to provide information on what these objectives mean with regards to marine planning and the integration of the development of each sector with conservation and social objectives (see our comments on MPS aims above).

The joint UK Sustainable Development Strategy (UK SDS), *Securing the Future* (2005) introduced the five guiding principles to be used to achieve sustainable development, with a more explicit focus on environmental limits. These principles are to be used to form the basis for any UK or Devolved Administration policy⁶, and have been used to form the joint UK HLMOs. For a policy to be sustainable, it must respect all five principles. However, the UK SDS states that the “goals” of sustainable development are “*living within environmental limits and [achieving] a just society, and we will do it by means of a sustainable economy, good governance, and sound science*”. This approach to achieving sustainable development is represented in the UK SDS by a diagram that places the principles of living within environmental limits and achieving a just society uppermost with arrows directed at them from the other three principles. It is also recognised within the UK SDS that there will be some policies which will need to place more emphasis on some principles than others. It is our view that the application of the five principles and hence, the HLMOs within the MPS and marine planning should be in the same manner as intended by the UK SDS, and should be represented in the MPS by the diagram from the UK SDS.

We support the view that without a sound, healthy and functioning marine ecosystem, many marine ecosystem goods and services which are beneficial to society and the economy will be lost. It is clear, therefore, that to achieve the UK’s marine vision, sustainable development of the marine area and delivery of an ecosystem-based approach, living within environmental limits must be an overarching principle that cuts across all sectoral policies within the MPS.

In setting out marine objectives, we believe that this section should also include, the UK Government’s Strategic Goals for the Marine Environment which were devised to help deliver the UK-wide vision for the marine environment – see *The Government’s response to its Seas of Change consultation* (2004).

Operational/practical objectives for the marine planning system and MPS

In developing operational objectives for the MPS and the marine planning system we believe that the bullets in s2.3 (pg.26) go some way to achieving that requirement. However, we still reiterate our specific points about those bullets from the Pre-consultation MPS and the wider points we made previously regarding operational objectives (below).

High level approach to marine planning (s2.3, pg.26):

- Bullet 1 – we fully support the clear statement that development of marine plans must be consistent with UK and EU legislation and international commitments.
- Bullet 2 – this states that marine planning is to be conducted in a way that achieves the relevant sectoral policy objectives. In our view, this places greater emphasis on using marine planning to satisfy sectoral interests than to achieve sustainable

⁶ Reiteration of the five guiding principles throughout the UK’s four political Administrations: the UK shared framework for sustainable development, *One future - different paths*; *One Wales: One Planet; Choosing our future*; *Scotland’s sustainable development strategy*; *Sustainable Development Strategy for Northern Ireland*.

development. It would be better to rephrase this principle to say that consideration is to be given to how marine planning can contribute to achieving these sectoral objectives. We also suggest that further recognition of the requirement to contribute to the achievement of sustainable development needs to be included as well as ensuring that bullet 2 is conducted in a manner that is consistent with bullet 1, i.e. national, EU and international legislation, obligations and agreements. It may also be beneficial to include a principle for consideration of how marine planning can contribute to the mitigation or and adaptation to climate change.

- Bullet 4 – we fully support a marine planning system, i.e. MPS and marine plans, based on an ecosystem approach. However, as we have mentioned above, there needs to be greater clarification of what this actually means for marine planning within the draft MPS.
- Bullet 5 – we welcome the positive identification of public representations as a source of information to inform the development of Marine Plans. The MPS should also, however, elaborate on the need for an inclusive approach, i.e. participative planning as opposed to formal consultation and suggest appropriate mechanisms to achieve this.
- Bullet 5 – references making effective use of existing data, but more comprehensive data is desperately needed for the marine environment to fill the data gaps. We welcome the addition of the new “*where appropriate*” caveat to this bullet regarding the use of existing data and arrangements.
- Bullet 7 – as well as horizon scanning for future demands, marine planning will also need to consider current and future conflicts and how they are to be addressed and managed.

Whilst it is accepted that this is a ‘high-level’ document, there are no benchmarks set and very limited specific guidance on issues such as what might constitute a “*sound evidence base*” or how social, economic and environmental costs and benefits can be assessed and weighed against each other by marine plan authorities. This lack of specific guidance means that a wide range of interpretations could be applied. For example, the considerations in s2.4 are generally rather vague (except for reiterating existing legislation) and do not offer much that is new or would not be covered by existing regulations – they are not interpreted to guide a marine planning system that will deliver an ecosystem-based approach and sustainable development.

Section 2.3 (Decision Making)

Section 2.3 refers a number of times to balancing economic, social and environmental considerations in coming to a decision. We dislike this wording as it assumes that trade-offs between the three factors are acceptable. There should be clear reference that a benefit in one factor does not necessarily make the activity sustainable – for example, a project which has significant economic benefit but significant adverse environmental impacts is not automatically sustainable and the environmental impacts cannot simply be traded for economic benefits. Therefore, it is not just balancing or weighing up but ensuring that the best outcome is chosen. There must be clearer guidance on how the marine planning authorities are to consider and integrate policy objectives for the environment, society and the economy if conflicts are to be resolved based on the MPS.

We would reiterate our comments in the MPS pre-consultation relating to the principles for decision-making:

- Bullet 4 – As well as taking account of other relevant projects, programmes, plans and national policies and guidance, decisions should be conducted in a manner that is inclusive, involving stakeholders in the decision-making process with reference to non-statutory guidance where available.

- Bullet 5 – it is unclear why the term ‘liaison’ is used in reference to terrestrial planning authorities and other regulators, yet ‘consultation’ is used in reference to statutory advisors. We strongly recommend that decision makers adopt open, transparent, inclusive and participatory consultation procedures with all relevant authorities, advisors, stakeholders and the public in order to enable truly informed decision making;
- Bullet 7 – while we welcome the addition of the reference to using sound science responsibly within the context of the HLMOs, we would prefer an explicit reference to the use of the precautionary approach here. We prefer the statement as expressed earlier in s2.3 and in s2.7 which make explicit reference to applying “*precaution*”, but again an explicit reference to the precautionary principle would be better.
- Bullet 8 – while we welcome the reference to protected sites and sites of significance, we again stress that the marine environment and its protection must be considered at the wider level too, e.g. at the scale of ecosystems and living within environmental limits, etc. Therefore, impacts will also need to be considered and avoided at that level if environmental sustainability is to be achieved.
- Bullet 11 (originally bullet 9 in old paragraph 4.1) – there is inappropriate emphasis on mitigation rather than avoiding the impact in the first place – the general principle should be to avoid all harm. The management of impacts must follow the recognised hierarchy of ‘avoid => reduce => compensate’ (from the IEEM Ecological Impact Assessment Guidelines). (see also s2.7 Issues for Consideration, pg.33)
- Missing principles include:
 - making decisions that contribute to the achievement of sustainable development in the marine area; and
 - the consideration of the multiple and cumulative impacts of specific proposals.

Additional points on the decision-making principles (s2.3) include:

- Bullet 3 – we note the difference between the principle stated here in relation to sectoral policy interests (take account of) and the one related to marine planning (achieve). We welcome clarification of why there has been a difference in language and reiterate our comments made above (‘High level approach to marine planning’, s2.3) about this principle. If there is to be a specific principle related to sectoral policy interests, there should also be a principle related to the achievement of sustainable development;
- Bullet 9 – includes a reference to the impacts of climate change on applications and ensuring appropriate adaptation measures have been identified. We agree this is an important principle to include, but recommend that there is also a principle related to mitigating climate change and addressing the impacts that development may have on the climate.

Section 2.4 (Considering benefits and adverse effects in marine planning)

The Joint Links are still of the opinion that this section of the Draft MPS, as in the Pre-consultation MPS document, focuses more on specific proposals than actual strategic direction for what policies/provisions should be included within marine plans. This implies that the marine planning process will be dominated by the need to accommodate specific proposals (considered as hard constraints), thereby immediately imposing restrictions on the use of sea space for other activities, developments or marine conservation. This inhibits consideration of the options for strategic planning and identifying how demands for use of the marine environment can be most appropriately accommodated taking into account competing interests and the need to protect the marine environment.

We agree that these are important issues which need to be considered at both the marine planning and decision making stages. The current wording of s2.4 is geared towards considerations which should be taken into account as part of determining an application for a

marine licence. The MPS should also be providing advice and guidance to marine plan authorities on how to address these types of considerations within their marine plans, in particular in determining the policies, provisions, zones/siting criteria and development restrictions which are to go within a plan, and ensuring that legislative requirements are met.

We believe that the strong focus on project specific issues misses the point of spatial planning and perhaps several important steps identified by the UNESCO Marine Spatial Planning Guide⁷, including:

- defining and analysing existing conditions, by identifying and assessing possible conflicts and compatibilities among human uses and between the environment and human uses; and
- defining and analysing future conditions, by considering alternative trend, use and management scenarios to identify a preferred scenario and, therefore, a preferred plan.

Whilst these are steps to be followed in developing a marine plan, we believe that the MPS should be giving guidance to marine plan authorities on these steps and how they should be carried out within the UK.

Further comments on s2.4

(As previously stated in our response to the MPS Pre-consultation)

- It is unclear how environmental, social and economic activities will be integrated.
- We welcome the reference to the need to consider the cumulative and in-combination effects of activities, however, guidance will need to be provided on how this is to be achieved.
- Sustainability Appraisal (SA) and SEA – in considering the potential social, economic and environmental benefits and effects of the proposals set out in a Marine Plan, the SA and SEA must do so at the pre-publication stage (i.e. draft plan) allowing the consideration of the benefits and effects of alternatives to ensure that the proposals in the final plan are sustainable. A similar approach will be required to meet the obligations of the SEA Directive. We consider it would be beneficial when referring to SEA and Habitats Regulation Assessment to include a reference to all EU and UK guidance on such assessments.
- s2.4, pg.30 – This paragraph is very similar to text in col.1, pg.27. We believe that this version of the text is better and that s2.4 is the more appropriate location.
- pg.30 – we are concerned that environmental considerations appear to be limited to legal requirements. Whilst recognising that there is much relevant legislation, there are also policy priorities, etc that will also need to be considered.

Section 2.5 (Economic & Social Considerations)

Section 2.5 states, “*There will ... be a presumption in favour of sustainable development in the marine planning system*”. If the MPS is to establish a presumption, it must advise what this covers and how it is to be applied. What are the criteria to be met for an activity or development to be ‘sustainable development’ and to trigger the application of the presumption? At the very least, the MPS should clarify that the concept refers to sustainable development, as set out in the UK SDS, and not just development which is sustainable. It must also be a “*presumption in favour of sustainable development where this is in accordance with the MPS and the relevant Marine Plan*”. Our overall preference however, is for this statement to be removed. Furthermore, any decisions must be set in the context of *Charting Progress 2*, which concludes that the marine environment is already in an

⁷ ‘Marine Spatial Planning: A Step by Step Approach towards Ecosystem-based Management’, Intergovernmental Oceanographic Commission, Manual and Guides No. 53, ICAM Dossier No.6.

unsustainable situation: it is damaged, biodiversity is still decreasing and the pressures on space and natural resources are increasing.

- It should be made clear here and throughout the MPS that marine planning should reflect and address as far as possible all activities occurring in, and placing demands on the marine environment.
- We are concerned that social considerations are only being seen in economic terms. Societal benefits are more than just jobs – health, well-being, education, recreation and amenity values must also be considered.
- We ask who will be carrying out the “*identification of objectives for marine resources*” role – “*The identification of objectives for marine resources, followed by a decision-making process that integrates them with land-based plans and objectives has the potential to promote economic growth and create and sustain jobs*”; or is the implication that the MPS is fulfilling this task?
- We welcome the inclusion within ‘Issues for Consideration’ of indirect environmental benefits as well as the direct social and economic benefits of the proposed development. However, added to that, marine plan authorities must consider the existing environmental benefits that the area or ecosystem provides that could be damaged by the proposed development.

Section 2.6 (Marine Environment) & Section 2.7 (Marine Ecology and Biodiversity Considerations)

These sections are vague and mainly reiterate existing legislative controls (largely from the Marine Strategy Framework Directive (MSFD)). One of the roles of marine planning is to ensure that decision-making integrates environmental concerns, makes space for biodiversity and is based on a good understanding of environmental carrying capacity, with MPAs providing a tool to support biodiversity. We warmly welcome the opening statement in section 2.6 that a healthy marine environment is “*fundamental to supporting sustainable development*”. We would like to see this supplemented with a strong reference that to achieve sustainable development in the marine area, we must live within our environmental limits. However, as it stands the only specific guidance that would be available to marine plan authorities with respect to biodiversity issues is that contained in existing legislation and regulations, which although incredibly important and useful, does mean that the MPS is adding nothing new in terms of a strategic or plan-led approach.

- Section 2.6 should also present the requirements of the MSFD which are set out in Article 1 of the Directive, including to
 - protect and preserve the marine environment, prevent its deterioration or, where practicable, restore marine ecosystems;
 - prevent and reduce inputs in the marine environment;
 - apply an ecosystem-based approach to the management of human activities, ensuring that the collective pressure of such activities is kept within levels compatible with the achievement of good environmental status and that the capacity of marine ecosystems to respond to human-induced changes is not compromised, while enabling the sustainable use of marine goods and services by present and future generations.
- The UK’s biodiversity aims (s2.7) as set out in this section are inadequate. We believe that the jointly agreed UK-wide strategic goals for marine nature conservation (i.e. those in *Safeguarding Sea Life*, 2005 – the joint UK response to the Review of Marine Nature Conservation) must be included here as they give a more rounded and complete view of the UK’s marine conservation strategy.

Section 2.7 – ‘issues for consideration’

- *Charting Progress 2* – This section should make reference to the outcomes from the recently published cross-Government UK-wide state of the seas report, *Charting Progress 2*. This report makes it clear that we are already over-exploiting and damaging marine ecosystem goods and services and that we have not halted the loss of marine biodiversity. Despite this, the draft MPS sets out a policy of increasing the use of marine resources and space. These are critical issues that will need to be considered in every decision made with respect to marine planning and licensing of developments and activities. Furthermore, if sustainable development in the marine area is to be achieved, the current state of the marine environment and its wildlife will need special consideration if we are to live within our environmental limits and achieve GES under the MSFD.
- Natural Environment White Paper (NEWP) – With respect to English waters, the MPS should make reference to the ambitions and aspirations of the *An invitation to shape the Nature of England Discussion Document* (the Natural Environment White Paper or NEWP), as the aims and ambitions cover marine biodiversity and ecosystems as well as terrestrial biodiversity and ecosystems. The NEWP discussion document echoes points that we have made throughout this response – that we already know that we are over-exploiting our natural resources and we need to be living within limits of environmental systems.
- ‘*A Living Wales - a new framework for our environment, our countryside and our seas*’, Welsh Assembly Government Consultation (September, 2010) – It is the Welsh Assembly Government’s intention to adopt a more ecosystem-based approach through its Natural Environment Framework (NEF). The NEF has a strong focus on ensuring the real value of ecosystems, and the services and benefits they provide to people, is taken into account, to ensure sustainable and integrated management.

Further comments on Chapter 2

(and which were also made in response to the MPS Pre-consultation)

- 1st para, col.1, pg.33 – We welcome the acknowledgment in the Draft MPS that the general principle should be to avoid harm, as opposed to “*significant harm*” which was the case in the previous version. Furthermore, we also welcome the acknowledgement that where the potential damage is considered too great and/or compensation is not possible, then the activity will not be licensed. However, this statement still misses out some of the steps in the management of impacts hierarchy of ‘avoid => reduce => compensate’.
- 2nd para, col.1-2, pg.33 – we have some concerns regarding statements that suggest that the environmental benefits of a development can outweigh the adverse effects could be used as a loophole for any development that has any positive benefits. For example the CO₂ mitigation benefits of renewable power generation should not be used to avoid proper consideration of the project impacts on marine biodiversity. Furthermore, optimising the integration of policy outcomes (i.e. building-in beneficial biodiversity features or co-location of biodiversity features and marine activities) should only take place where ecologically appropriate. It is only appropriate to attempt to enhance marine ecology, biodiversity etc in areas in which there has been significant human impact in the past, rather than claiming to ‘enhance’ a marine area by creating a different marine habitat. Inger *et al.*⁸ noted that such installations in pristine habitats not threatened by human activity would be unlikely to produce any benefits.

⁸ Inger, R., Attrill, M.J., Bearhop, S., Broderick, A.C., Grecian, W.J., Hodgson, D.J., Mills, C., Sheehan, E., Votier, S.C., Witt, M.J., Godley, B.J. (2009) Marine Renewable Energy: potential benefits to biodiversity? An urgent call for research. *Journal of Applied Ecology* 46: 1145-1153

- 3rd para, col.2, pg.33 – Marine Plan Authorities must do more than “*ensure that appropriate weight is attached to designated sites*”. In most cases there will be legal obligations on all public bodies with respect to the need to ensure delivery of site conservation objectives, avoid harm and promote improved protection, etc
- 4th-5th para, col.2, pg.33; also pg.41, s3.1, col.2, end of 1st para; pg.43, col.1, 2nd paragraph – In many cases, Marine Plan Authorities have to do more than simply protect from the adverse impacts of developments, and have a duty to further environmental objectives and/or specific site conservation objectives. For example, the MSFD includes the requirement to achieve or maintain good environmental status, while under the Marine and Coastal Access Act 2009 and the Marine (Scotland) Act 2010, public authorities have a duty to further the conservation objectives for MCZs/MPAs and only where that is not possible, is the weaker duty to “*least hinder*” the achievement of the site objectives to be considered. Therefore, the obligations on Marine Plan Authorities are more proactive than simply avoiding damage, taking account of conservation objectives or integrating objectives. Paragraph 80 of the recently published, *The [UK] Government’s strategy for contributing to the delivery of a UK network of marine protected areas* (March 2010), states that there is:

“a duty on every public authority to exercise its functions (so far as is consistent with their proper exercise) so as to best further the conservation objectives stated for the MCZ (or if that is not possible, to least hinder the achievement of the conservation objectives).”

And goes on to state that “[t]his duty will be included in the Marine Policy Statement”. This paragraph therefore, needs to be edited if this duty is to be represented accurately in the Draft MPS.
- Pg.33 – adverse impacts on the marine environment should include impacts on the structure and functioning of marine ecosystems; while the social effects should include effects on human health and well-being.

Section 2.8 (Noise)

- We welcome the inclusion of a section on noise, but pile driving should be explicitly mentioned as one of the most intense noise sources in the marine environment, as verified by recent research⁹.

Section 2.10 (Climate change adaptation – ‘issues for consideration’)

- Pg.37, col.1, 1st paragraph – The Joint Links strongly welcome the recognition that “*the opportunities to increase the resilience of the marine environment to adapt to the impacts of climate change*” is an important issue. However we are disappointed that the list of issues to consider does not include a specific reference to the removal of additional pressures on marine habitats/species, (i.e. a healthy, functioning marine environment is more resilient to climate change pressures), in order to allow increased resilience to climate change. An ecologically coherent network of marine protected areas is recognised as one measure to deliver a healthier, more resilient marine ecosystem, which in turn will support continued natural mitigation and adaptation.
- Pg.37, col.1, bullet 1 – we strongly support helping the marine environment adapt and be resilient to the effects of climate change. While we agree that there should be sufficient flexibility built into marine plans to deal with climate change, we are concerned that there is an assumption that the primary option is to de-select a site should a protected feature disappear or move as the result of climate change effects. Other options that need to be fully considered include: alternative management

⁹ Mueller-Blenkle C, McGregor PK, Gill AB, Andersson MH, Metcalfe J, Bendall V, Sigra P, Wood DT & Thomsen F (2010) *Effects of pile-driving noise on the behaviour of marine fish*. COWRIE Ref: Fish 06-08, Technical Report 31st March 2010.

measures that deliver better protection under the new climatic conditions; build-up the resilience of the feature to allow it adapt to climate change; ensure that site boundaries are designated big enough to accommodate some climate-related shift; boundaries should be moved to 'follow' the altered distribution of the feature; and finally, where a site is de-designated, an alternative site for that feature should be selected to take its place. However, we welcome the addition of the reference to "safeguarding areas for future uses" assuming that it applies to conservation assets.

Section 2.11 (Coastal Change & Flooding)

- Sea level rise and increased storminess, as a result of global climate change, will place mounting pressure on coastal defences and the land that they protect. Extensive areas of intertidal habitats around the UK, that once provided natural protection to these coastal areas, are being lost to 'coastal squeeze', whereby the intertidal land is eroded away as it is progressively squeezed between hard sea defences and rising sea levels. Managed realignment enables intertidal habitat, such as mudflats and saltmarsh, to be created to compensate for the areas lost to erosion. This management facilitates adaptation to climate change, improving resilience that can deliver benefits for biodiversity as well as flood defence. Action to protect and enhance saltmarsh also has climate change mitigation benefits.
- We welcome the reference to the English 'Coastal Change Management Areas' designation under DCLG's PPS20. As these exist in England only, it would seem cognisant for marine plan authorities in other administrations to refer to the equivalent applicable documents where they exist.

Section 2.13 (Seascape)

- We welcome the commentary on landscape and seascape. This section should also include a mention of tranquillity mapping and data, used increasingly in the management of nationally designated landscapes, as an important component of 'existing character and quality'. More widely, the MPS will need to give clearer guidance on the how landscape and seascape, and in particular, the legal duty to have regard to the purposes of nationally designated landscapes will be integrated into the MPS to achieve sustainable development.

Section 2.14 (Ecological & chemical water quality & resources)

- This section omits any reference to the general aim of the MSFD to reduce pollution.

CHAPTER 3

Q3. Does chapter 3 provide a clear statement of policy objectives for the marine environment? Are the key impacts, pressures and issues for consideration in marine planning appropriately identified?

The Joint Links are disappointed that the Draft MPS is currently simply a collection of existing sectoral policies and objectives and current legal requirements, but that they are not well integrated or set within a planning framework or context. This lack of integration means that achieving the sectoral industry policy objectives could actually detract from, rather than assist meeting the commitments to achieving sustainable development in the marine area and other requirements such as GES under the MSFD. The Draft MPS does not articulate how the policies interact and integrate, where potential conflicts may arise which will need to be addressed through marine planning, or how these policies translate into a marine planning context. We would hope and expect the MPS to develop over time to be a policy driver and set the direction for marine planning, which, in our opinion, this current draft does not achieve. It currently does not provide guidance to those planners or decision-makers on how the marine planning system is to help the process or how to deal with conflicts between

objectives within the MPS. Clarification of what is legally required is helpful, but marine planning should go further and provide policy guidance and greater steer for decision-making. At best the draft MPS does little more than reaffirm the *status quo* in marine decision-making and at worst will increase marine degradation and likely conflict further down the line by supporting the drive for maximisation of marine activities and resource use.

Section 3.2-3.11 focuses on the main marine sectors. The wording for some of these is similar to that contained in the energy and ports NPSs (National Policy Statements under the Planning Act 2008) with details provided for why activities are important (e.g. citing their contribution to low carbon economy, economic development, national security, etc.). It is generally not clear what the actual planning objectives are for the purpose of the Draft MPS.

As with the MPS Pre-consultation (Chapter 2), the Draft MPS states that it will not be setting priorities. However, the implicit priorities within the Draft MPS remain, often suggesting that planning should allow or encourage certain activities and in many cases accommodate more in some places. Certain priorities are also reinforced under the section heading 'Issues for consideration for all energy infrastructure', in particular:

- referencing national documents which establish unlimited need for development of energy infrastructure; and
- specifically advising that it is a UK policy objective to maximise economic development of oil and gas resources.

Whilst we have been advised that the Draft MPS would not seek to answer the question of need for development, these statements appear to indicate otherwise. As with the draft NPSs, the problem with this approach is that justifying a need for an activity in a national context does not necessarily justify it in any location. Application of these principles may preclude the proper and reasonable consideration of the need for a development or activity at the regional or local level. Expressions of unlimited or unquantified need are not helpful in a planning context when decisions about individual applications actually need to be made. The policy should be trying to quantify, and if appropriate place reasonable limits on, what is actually needed and how fulfilment of this need could be managed through spatial planning. As with the draft NPSs, the underlying premise is of a pure 'market-led' approach to planning and assessment of need without any strategic direction or vision for how development that is needed can occur sustainably and where. Further, if there are policy priorities for development of certain human activities within the marine environment, the MPS needs to be honest and transparent about these in order to allow for effective spatial planning, including identifying real and potential conflicts and the options for managing them. However, what this does highlight is how vague and hence inadequate many of the national sectoral policies are for providing strategic policy steer. We would therefore expect and welcome further strategic policy steer from the four UK Administrations on national marine priorities, targets and objectives, which could be delivered through national marine plans.

Finally, as we have mentioned above, we would caution that many parts of the marine environment are already damaged, biodiversity is already in decline and there are increasing pressures on marine ecosystems and resources (see s3.1). This means that even under current conditions, UK seas are not being exploited sustainably. As a consequence, Government and decision-makers will need to consider carefully how sustainable development will be achieved and maintained alongside a desire for growth in many industry sectors.

Additional detailed comments on Chapter 3

Chapter 3, Introduction (bold), pg.41 – The introduction states that the "*objectives* [in chapter 3] *are the outcomes which the* [four UK Governments] *are seeking to achieve through the*

sustainable development of the UK marine area". Such a statement is very confusing as our understanding is that the 'outcomes' that the four Administrations are seeking for the marine environment are the HLMOs which are also aiming at achieving sustainable development in the marine area. There can not be two sets of outcomes in the MPS. This introduction urgently needs to be worded more carefully and accurately.

As mentioned above, the Joint Links do not believe that the marine environment and marine conservation should be treated as a sector. This is not consistent with the UNESCO guide on Marine Spatial Planning where human activities and the marine environment, and conflicts between them, are clearly distinguished and the sector-led approach is discouraged. In our view, the need to ensure a sustainable marine environment and not go beyond the environmental limits of the seas is crucial to achieving sustainable development. As such, a healthy, functioning marine ecosystem that continues to deliver marine goods and services and the protection of marine ecosystems and biodiversity should be a cross-cutting objective or priority principle rather than a sectoral objective.

We support the policy objectives for marine conservation (s3.1, pg.41, col.1-2), which include protecting, conserving, recovery and halting the loss of biodiversity, including a specific reference to a "no net loss" approach to biodiversity¹⁰ which we welcome. We particularly welcome the reference to the intrinsic value of the marine environment. We also welcome the acknowledgement that marine biodiversity is subject to pressures and that there have already been declines, and recommend that *Charting Progress 2* is cited here.

Section 3.1 (Marine Protected Areas)

The description of the MPA policy context mentions existing environmental legislation (e.g. MCZs, MPAs and SSSIs under domestic legislation, SACs under the Habitats Directive (though the actual reference in the text is incomplete), SPAs under the Birds Directive, and Ramsar sites) which we welcome, though it would be more complete to also reference the commitment to an OSPAR network of MPAs. It states that MPAs will be a key tool in ensuring that biodiversity is protected, conserved and recovered in the marine area and the contribution they will make to achieving GES under the Marine Strategy Framework Directive. We also welcome the commitment to an ecologically coherent network of MPAs by 2012. While MPAs are an invaluable tool in delivering marine conservation, Governments, through the MPS, must recognise that the entire marine environment and its functioning ecosystems need protection, within which an ecologically coherent network of MPAs form an integral part. As we know from terrestrial habitats, a site-based conservation approach on its own is not enough to achieve the marine vision or the objectives of an ecosystem-based approach and sustainable development. We recognise that MPAs will not thrive in seas that are otherwise overexploited, i.e. where human activities are not managed sustainably. Therefore, MPAs cannot be treated in isolation or as the only tool for environmental protection. The UK-wide MPS would benefit significantly from the adoption of the Scottish Government '3-pillar approach' to marine nature conservation which encompasses:

- (i) *protected sites,*
- (ii) *protected species and*
- (iii) *wider policies and initiatives that contribute to our conservation aims*)¹¹.

¹⁰ We would note that the recently agreed replacement EU Biodiversity target for 2020 should now be referenced in this section: "*halting biodiversity loss and the degradation of ecosystems services in Europe by the end of the decade, and restoring them where feasible*"

¹¹ From the 'Scottish' Ministerial Statement by Richard Lochhead, Cabinet Secretary for Rural Affairs and the Environment (12 March 2010), thus meeting the requirements of s123(6) of the UK Marine & Coastal Access Act 2009 regarding MPAs (as they will be called in Scotland):- "*MPA networks are a key part of the Scottish Government's strategy for marine nature conservation. The strategy will be delivered through a 3 pillar approach, recognising the value of (i) protected sites, (ii) protected species and (iii) wider policies and initiatives that contribute to our conservation aims. MPA networks, in combination with the new marine planning*

This is particularly pertinent given the inadequacy for inclusion of highly mobile species under the MCZ Guidance on ecological coherence of the MPA network, therefore, the use of a range of tools (consents, bylaws, etc) for the protection and conservation of such species within the marine plans and wider environment is essential.

- International sites – We welcome reiteration of the policy commitment to treating possible SPAs (pSPAs) in the same way as those that are designated, which is the legal position for pSACs.
- MCZs/MPAs – this section omits the important reference that that the network has to be 'ecologically' coherent. Plus there is no reference to the OSPAR requirement for the sites to be 'well-managed'. We would like to see another reference to the 2012 deadline for delivery of the network at the end of this paragraph (pg.42).
- SSSIs – the legislation is correctly entitled the Wildlife & Countryside Act 1981. Reference should also be made to the need to ensure the conservation objectives of the SSSIs are met.

Section 3.1 – 'issues for consideration':

This section is very unclear regarding the relationship between the MPS and MPAs and how they will interact with each other.

- Pg.42 – The MPS needs to clarify that the conservation objectives for each MPA determines the management measures within the site as well as outside the site where an activity impacts on the site or its conservation objectives. These conservation objectives and the related management requirements will then need to be accommodated in the plan and the actions taken by Marine Plan Authorities and regulators will need to ensure that the conservation objectives are achieved. This approach is explained better in the last paragraph of this section on pg.43, col.1. However, in the Scottish inshore region the obligation on public authorities under the Marine (Scotland) Act when exercising functions capable of affecting an MPA is to 'best further' the stated conservation objectives (s82(2)(a)). This is slightly different to 'contributing' to the conservation objectives.
- Our previous concerns that this section only treats the marine environment as coming under the remit of MPAs still remain. There are wider environmental considerations, such as living within environmental limits, achieving or maintaining GES under the MSFD, etc. One of the roles of marine planning is to ensure that MPAs do not end up as 'islands' of protected biodiversity in otherwise barren seas.
- Marine planning should support a two tier system, where stricter protection or recovery requirements are met through MPAs and wider environmental protection is achieved by avoiding harm to natural assets and marine ecosystems in general.
- Particular consideration is needed for highly mobile species. Under the current MCZ guidance we feel that highly mobile species are not given adequate consideration. Therefore it is vital that existing tools and potentially new tools need to be adequately considered.
- Pg 43, col. 1, paragraph 1 – advice is given that activities or developments that may result in unacceptable adverse impacts can still proceed, provided they are redesigned or relocated to avoid such impacts. There is a strong emphasis through this wording that all development can go ahead and no acknowledgement that where there are unacceptable environmental impacts – which cannot be rectified through the avoid, mitigate, offset sequence – consent should be refused. We suggest that this should be reconsidered.

framework, are also an important part of our wider strategy for managing Scotland's seas, which aims to integrate conservation and other marine activities in pursuing a vision for a 'clean healthy, safe, productive and biologically diverse oceans and seas'." See: <http://www.scotland.gov.uk/Resource/Doc/295194/0096931.pdf>

- Pg.43, col.1, paragraph 2 – this paragraph appears to be giving marine planners (which are not the Minister or Secretary of State, i.e. the MMO) a new and additional role regarding MCZs/MPAs that was not envisaged in the Marine Act. It must always be remembered that individual MPAs should be identified and designated based on an ecological and conservation need, and should contribute to an ecologically coherent network of protected sites at sea, and consequently it is not the role of marine planning to determine where MCZs or other MPAs should or should not be designated.
- Pg.43, footnote 60: The reference here should be to an MPA for Scotland offshore (see s116 of the UK Marine & Coastal Access Act).

Chapter 3 would benefit from a ‘horizon scanning’ section which looks at, for example, biofuels (micro/macro algae) and biotechnologies, as well as the emerging technologies such as CCS and wet marine renewables.

Section 3.2 (Defence & National Security)

- A noted issue for consideration should be the cumulative environmental impacts of other activities in areas where defence activities occur, especially in relation to noise.

Section 3.3 (Energy Production & Infrastructure Development)

- Pg.44-45, 1st paragraph – We support the statement that the UK’s energy security is to be achieved “*while protecting the environment*”.
- Pg.45, col.1, paragraph 2-3 – We welcome the inclusion of the EU renewable energy target for 2020. However, it is not clear what the statement “*much of this renewable energy required to meet these targets and objectives will come from **marine sources***” (our emphasis) actually covers. Considering that the wave and tidal energy industry is in its infancy and unlikely to be a major contributor to the 2020 targets, it seems that the reference is largely to offshore wind. If this is the case, then this reference to ‘marine sources’ needs to be clearly explained.
- Pg.46, Issues for consideration for all energy infrastructure – It should also be noted that Scotland has an interim emissions reduction target of 42% by 2020 compared to the UK 26%. This means Scotland may have different priorities in terms of energy production and climate change mitigation policies.

Oil & Gas:

- Pg.45, issues for consideration for all energy infrastructure, 2nd bullet – we are concerned that the UK Government’s objective “*to maximize economic development of the UK’s oil and gas resources reflecting their importance to the UK’s economic prosperity and security of energy supply*” appears to have complete disregard to the UK’s environmental concerns and commitments, to climate change and to the limited resources of oil and gas that remain for future generations.
- Pg.48, potential impacts, 2nd paragraph – we note the use of the term ‘environmental risks’ instead of environmental impacts and query why this terminology has been used. We agree there may be risks, such as oil spills, but there are also very real impacts from oil and gas extraction. Perhaps it would be better to separate out the risks and the actual impacts.
- Pg.48, oil and gas potential impacts, last paragraph – there are cumulative impacts from a number of oil and gas activities that are underplayed here. For example, while the oil spills may be small, the cumulative impacts can be serious. The cumulative impacts of pipeline installation are of particular concern if considered along the entire length of the pipeline and the various sensitivities of the habitats encountered on its route.
- Pg.48, Potential Impacts – We are very disappointed that this section does not make reference to the climate change impacts related to oil and gas energy use. This impact cannot be ignored in the oil and gas section.

- Pg.48, Potential Impacts – following the Gulf of Mexico oil spill we feel it would be disingenuous of the MPS not to reference the risks and potential impacts related to exploitation at ever increasing depths.

Renewable Energy:

- Pg.48, col.2, paragraph 2 – We disagree with the statement that there are “no overriding environmental reasons to prevent the achievement of our current assessed plans for offshore for offshore wind and sub-sea grid development, if mitigation measures are implemented to prevent, reduce and offset any significant adverse effects.” Many of the studies were carried out at a strategic level, or are still continuing, and consequently, there should be an explicit admission that there are acknowledged data deficiencies and uncertainties in many areas of marine knowledge.
- The Welsh Assembly Government’s commissioned project to develop a Marine Renewable Energy Strategic Framework (MRESF) for marine renewable development within Welsh territorial waters, has a number of studies associated with it, undertaken to fill data gaps. Several of these studies are now publically available, for example, collision risk of fish with wave and tidal devices. The MPS should consider this emerging evidence base to inform statements, such as that contained in the above bullet point.
- Marine planners and decision-makers must also take into consideration the benefits of avoiding damage to habitats and ecosystems that deliver ‘free’ climate change mitigation and adaptation measures, such as CO₂ sequestration. There is no mention here of the marine environment acting as a carbon sink. Recent reports from the IUCN¹² and UNEP¹³ highlighted the globally significant role that coastal marine ecosystems (including, but not limited to, tidal saltmarshes, seagrass meadows and kelp forests) play in carbon fixation. The report also notes that such ecosystems are under significant threat and recommends that long-term carbon sequestration capacity must also be accounted for in the benefits associated with coastal marine habitat restoration and protection. Perhaps a separate section for climate change mitigation could be added
- Pg.49, potential impacts, 2nd paragraph – we agree that renewable energy offers the potential for significant environmental benefits through carbon emission reductions. However, there must also be consideration of acceptable local environmental impacts and environmental sustainability. There are some renewable developments that simply would not be sustainable due to the significant local adverse effects they would impose. There must be recognition of the need for planning to weigh up the global benefits against the local adverse impacts where necessary.
- Pg.49, renewable energy potential impacts, last paragraph – should acknowledge that fishing effort displaced by the physical presence of renewable developments may be concentrated into other areas, possibly even MPAs creating new/additional impacts.
- Pg.50, renewable energy potential impacts, paragraph 2-3 – while there is a brief outline of potential impacts on birds, marine mammals and fish, the suite of examples is incomplete and there is little mention of potential direct impacts habitats that also affect these species, e.g. from construction, on sensitive marine habitats (except the mention of possible scouring effects).

Tidal range, tidal stream and wave:

¹² Laffoley, D., & Grimsditch, G. (eds).2009. *The management of natural coastal carbon sinks*. IUCN, Gland, Switzerland. 53 pp.

¹³ Nellemann, C., Corcoran, E., Duarte, C. M., Valdés, L., De Young, C., Fonseca, L., Grimsditch, G. (Eds). 2009. *Blue Carbon. A Rapid Response Assessment*. United Nations Environment Programme, GRID-Arendal, www.grida.no

- Pg.49 – We welcome the removal of references to specific sites in this section. It would also be useful to make reference to adaptive management here. The MPS should contain or provide a route to finding strategic level locational information where it exists, i.e. especially where there are locational constraints on certain activities including wave and tidal power, oil and gas deposits and aggregates. It must be noted that Environmental Impact Assessments (EIAs) for specific projects could uncover unacceptable conflicts or environmental impacts that would prohibit future consents.
- The paragraph appears to presume that wave and tidal technology will be proven and become feasible before 2020 and, therefore, marine planning should be used to identify suitable sites for development. Whilst we share the Government's and the industry's optimism in this regard and agree that emerging technologies and activities should be considered within the marine planning process, we believe that the full policy context should be represented. This includes:
 - within the UK, the continued development of the Marine Energy Action Plan and the ongoing second Offshore Energy Strategic Environmental Assessment (OESEA2) which will lead into a plan for delivery of wave and tidal energy;
 - within Northern Ireland, the completion of the Offshore Wind and Marine Renewable Energy SEA and plan;
 - within Scotland, a potential review and update of the Marine Renewables SEA and
 - Within Wales, *A Low Carbon Revolution - The Welsh Assembly Government Energy Policy Statement* (March, 2010) and *Planning Policy Wales, Section 12.8 Planning for Renewable Energy* (Consultation, July 2010) and the *Marine Renewable Energy Strategic Framework (MRESF)*.
- Pg.49, col.1-2 – We welcome the change in the text to state that “*Demonstration deployments will need to manage the potential environmental impacts...*”, as we suggested in our response to the MPS Pre-consultation.
- Pg.49, potential impacts, paragraph 2 – This paragraph should be edited to make clear that the benefits from artificial reef structures should only be considered for areas in which there has been significant human impact in the past. Inger *et al.* noted that such installations in pristine habitats not threatened by human activity would be unlikely to produce any benefits.
- Pg.50, potential impacts – Displacement of fishing activity could also potentially have environmental impacts.

Offshore electricity networks:

- Pg.51, Potential impacts – There is no mention of the potential impacts from electromagnetic fields.

CCS:

- Pg.52, col.1-2, CCS potential impacts – this section needs to acknowledge the “*significant local impacts and interference with other users of the area*” that could arise where salt caverns are used for storage as highlighted on pg.45, col.1, para 2.

Section 3.4 (Ports and shipping)

- Pg.53, col.1, paragraph 3 – there should be more emphasis on the guidance available to encourage beneficial use of dredged material.
- Pg.53, Ports and shipping potential impacts – Marine litter must be considered here
- Pg.54, port development potential impacts – while mentioned under marine dredging and disposal for example (s3.6) there is no mention of antifoulants here.

Section 3.5 (Marine aggregates)

- Pg.55, col.1, paragraph 1 – what about other minerals? We suggest that there should be reference to the sustainability of sediment cells to avoid the need for increasingly costly coastal protection works.
- Pg.55-56, marine aggregates issues for consideration – While we recognise that more detailed guidance on marine aggregate extraction is set out in Marine Minerals Guidance Notes, we are still concerned that the policy on aggregate extraction is based on market demand rather than environmental capacity and cumulative effects. This is just one example of a number of Government policies that are based solely on market demand whereas we believe that the policy should determine the most sustainable level of exploitation for the marine environment based primarily upon scientifically-derived environmental limits.

Section 3.7 (Telecommunications cabling)

- Pg.57, potential impacts – while we welcome the removal of the statement that installation of submarine cables is “*internationally recognised and classification as zero or very low impact*”, we believe that the replacement statement that “*impacts from cable installations on the sea bed are low and spatially minor*” ignores the potential cumulative impacts of cable laying, particularly if considered along the entire length and across the various sensitivities of the habitats encountered on its route, as for pipeline laying for oil and gas (see above).
- Pg.58, issues for consideration – we believe it is inappropriate to have such an explicit statement of what marine planning should deliver for a specific sector, in this case telecoms, as is seen at the end of this paragraph.

Section 3.9 (Aquaculture)

- Pg.60, aquaculture potential impacts – contrary to the statement that finfish aquaculture can alleviate pressures on wild fish stocks, this section must clearly acknowledge the pressures that aquaculture fish feeds can place on wild stocks, other marine wildlife and ecosystems. Most feeds for finfish aquaculture industry are still heavily reliant on wild capture fisheries. This has to be addressed and should be recognised here.

Section 3.11 (Tourism and recreation)

- Pg.63, potential impacts – we believe that the positive health and environmental benefits that tourism can bring through supporting conservation should also be included in this section.

Additional general points

(From the Joint Links response to Q2 of the Pre-consultation document with respect to data needs).

The Draft MPS does not provide any information with respect to data and information in marine planning. The following are the Joint Links’ main concerns with respect to data and knowledge:

- Plans need to be based on best available scientific data and include historical data to avoid shifting baselines.
- Reference should be made to the UK Marine Science Strategy.
- There is no framework for better cross-sector data collection or commitment to systematic surveys of the marine environment. Improving and coordinating data collection systems, as well as filling data gaps to ensure that marine plans are based on the best available evidence is vitally important.

- Better integration and sharing of data will provide a more solid basis for marine planning.
- However, there is no detail on which potential evidence/data sources to use or how they will be set up. For example, s2.3 states that marine plans should be based on a “*sound evidence base*”, but does not define this.
- Need a framework for sharing data between planning authorities and guidance on data storage etc.
- Where data does not exist, the precautionary principle (which is included within the principle of sustainable development to use sound science responsibly) must be used. This is particularly important as much marine development will come ahead of more comprehensive data on the marine environment.
- Finally, it is not clear how the MPS will deal with unknowns, i.e. how will it support adaptive management or how new/novel activities will be integrated in the future.

APPRAISAL OF SUSTAINABILITY

Q4. Do you agree with the findings of the AoS?

The Joint Links note the efforts which seem to have been put into the AoS to improve the assessment process, and in some ways there does seem to be improvement over other SEAs and AoSs we have been involved in. However, having said that, there are what we believe to be critical errors in the manner in which the AoS has been conducted which may have adversely affected its outcomes. These errors are such that Joint Links have serious concerns as to whether the UK is meeting its obligations under the SEA Directive.

Sustainable Development

The AoS advises (section 2.1, pg 9) that it has been undertaken to include an SEA which meets the requirements of the SEA Directive and the Environmental Assessment of Plans and Programmes Regulations 2004. It is said to additionally cover social and economic effects to ensure a holistic appraisal of the MPS with regard to sustainable development. This is assuming that merely carrying out an SEA would not provide an appropriate appraisal for the purpose of achieving sustainable development. **In our view, this is not correct and does not give adequate consideration to the objective of the SEA Directive.**

The SEA Directive recognises that making development more sustainable is in part a matter of elevating environmental considerations in the development of plans and programmes. Its objective is:

*“to provide for a **high level of protection of the environment** and to contribute to the **integration of environmental considerations** into the preparation and adoption of plans and programme **with a view to promoting sustainable development...**”*
(Article 1) (emphasis added)

Thus the purpose of SEA is very much to ensure that environmental considerations are integrated into strategic decision-making, in recognition that traditionally that has not been done sufficiently. Many plans and programmes will have a strong economic rationale to their promotion, so in the absence of SEA that is likely to be the most determining factor.

The Joint Links do not consider that the Appraisal of Sustainability has been conducted and taken into account in a way that enables this central objective of SEA to be achieved. That is to say it has not elevated environmental considerations in the plan or raised the level of environmental protection it affords, and has therefore not been used with a view to promoting sustainable development.

The draft MPS defines environmental protection as one ‘activity’ (the designation of marine protected areas) among the many forms of ‘sustainable development’ that take place in the marine environment, alongside defence, shipping, energy production, fisheries and the like. This betrays a fundamental misunderstanding of sustainable development and the importance of respecting environmental limits in its achievement. Environmental protection is not an activity that merely produces benefits to the economy and society that are commensurable with the benefits of shipping or renewable energy. A healthy environment is an essential (and threatened) *precondition* for sustainable development, not just one facet to be aimed for.

UK Wide MPS – Political Context

The Joint Links believe that the political context in which the draft MPS is being developed and agreed has adversely impacted on the delivery of a robust and legally compliant AoS. It

appears that political preferences relating to the nature of the draft MPS and perceived difficulties in agreeing a more prescriptive and detailed MPS have been applied at the beginning of the AoS process, rather than at the end once a full and proper assessment has been completed. This has resulted in a bias applied to Option 2 ('the Preferred Option') which has severely limited the assessment of reasonable alternatives and potentially rendered the AoS non-compliant with the SEA Directive and the Regulations.

The purpose of the AoS should be to identify those options which perform best for the purpose of achieving sustainable development, not those which are easiest for the Government to implement. The ODPM Practical Guide provides a useful paragraph for consideration here:

*"It is not the purpose of the SEA to decide the alternative to be chosen for the plan or programme. This is the role of the decision-makers who have to make choices on the plan or programme to be adopted. The SEA simply provides information on the relative environmental performance of alternatives, and can make the decision-making process more transparent."*¹⁴

We acknowledge the difficulties that may arise in trying to agree a prescriptive MPS across all UK administrations. We agree that these are relevant considerations to take into account when the decision is made about which form of MPS to proceed with. However, it appears that this decision has already been made before the AoS was even completed and this has led to an assessment framework that has been developed in order to achieve a pre-determined outcome. The correct approach, in our view, would have been to enable an unbiased assessment of all reasonable alternatives to help inform what would have been the best option/s for the purpose of achieving sustainability. Once that assessment has been completed, political will can be applied to help decide the ultimate form of the MPS which is to be taken forward for adoption – but this should be done in light of the outcomes of an unbiased AoS process and not before.

Treatment of Alternatives

The Joint Links believe that the way in which reasonable alternatives have been treated within the AoS is not in full compliance with the SEA Directive, the European Commission Guidance¹⁵, the Regulations or the ODPM Practical Guide. It appears that a similar situation to that experienced with the AoS of the draft energy NPSs has arisen – the consultants undertaking the AoS have suggested a number of reasonable alternatives to be assessed yet the Government has dismissed these alternatives as unreasonable or unfeasible and therefore excluded them from full and proper assessment within the AoS. This resulted in lost opportunities to engage in a real debate and further specify existing policy as well as avoid environmental impacts through the appropriate selection of the most environmentally favourable options.

In the MPS AoS Report, Annex L is a checklist for compliance with the SEA Directive. One item on the checklist is:

"An environmental report shall be prepared in which the likely significant effects on the environment of implementing the plan or programme... are identified, described and evaluated." [Article 5 (1)]."

¹⁴ A Practical Guide to the Strategic Environmental Assessment Directive, para 5.B.7, pg 31
<http://www.communities.gov.uk/documents/planningandbuilding/pdf/practicalguidesea.pdf>

¹⁵ on the implementation of Directive 2001/42/EC on the assessment of the effects of certain plans and programmes on the environment, <http://ec.europa.eu/environment/eia/sea-support.htm>

This item does not state in full the key requirement of the Directive, which is:

*“an environmental report shall be prepared in which the likely significant effects on the environment of implementing the plan or programme, **and reasonable alternatives taking into account the objectives and the geographical scope of the plan or programme**, are identified, described and evaluated”* (emphasis added).

It is clear from the wording of Article 5(1) of the Directive that the obligation is to not only to identify, describe and evaluate the likely significant effects of the plan or programme, but also those of the reasonable alternatives. The wording of the obligation as transposed into the Regulations is even clearer:

“The report shall identify, describe and evaluate the likely significant effects on the environment of—

(a) implementing the plan or programme; and

(b) reasonable alternatives taking into account the objectives and the geographical scope of the plan or programme.” (Regulation 12(2))

Reasonable alternatives are mentioned in another item in Annex L:

“The information to be provided [in the environmental report]”. [sic] an outline of the reasons for selecting the alternatives deal [sic] with, and a description of how the assessment was undertaken including any difficulties (such as technical deficiencies or lack of know-how) encountered in compiling the required information’ [Annex 1(h)]”

The response here is “Section 3.4 **describes** the development of alternatives for the MPS as part of the AoS process.” (emphasis added) The AoS authors do not even claim to have met the requirement under Article 5(1) in relation to reasonable alternatives.

The Commission's Guidance para 5.12 states:

*“...The essential thing is that the likely significant effects of the plan or programme **and the alternatives** are identified, described and evaluated in a comparable way. **The requirements in Article 5(2) concerning the scope and level of detail for the information in the report apply to the assessment of alternatives as well.** It is essential that the authority or Parliament responsible for the adoption of the plan or programme as well as the authorities and the public consulted, are presented with an accurate picture of what reasonable alternatives there are and why they are not considered to be the best option.”* (emphasis added)

The Joint Links do not consider that the requirement to assess reasonable alternatives has been met. Only the ‘MPS’ and ‘no MPS’ alternatives have been fully addressed and in a comparable way throughout the AoS. The assessment of the ‘no MPS’ scenario is merely a brief summation of the evaluation of the evolution of the baseline in the absence of the MPS, which is a separate requirement under the SEA Directive. This is used as a basis upon which to assess the likely significant effects of the alternatives under scrutiny. Thus, in effect, the AoS has only assessed one option - the MPS as drafted.

Section 3.4 outlines the process that was followed in identifying, developing and ‘appraising’ reasonable alternatives. The ‘appraisal’ process includes a summary of what the alternative is, a scorecard based on a qualitative assessment of the alternatives against the AoS objectives, discussion of implications and an outcome which includes reasoning for whether or not an option has been taken forward for impact assessment. It is not clear how the scorecard was developed, how values were attributed, the level of assessment that was

undertaken to determine the values and there is inconsistency in the discussion of implications with the values ultimately attributed.

We do not accept the reasoning for rejecting some of the other proposed 'reasonable strategic alternatives', nor that the partial assessments of them presented in Section 3.4.2 of the AoS report constitute an adequate assessment of reasonable alternatives as defined in the SEA Directive and Commission Guidance on its application. These partial appraisals do not make any attempt to indicate how well the alternatives perform against the guide questions. They merely give a very rough qualitative indication of performance against the AoS objectives. This does not give the reader any clear indication of "*the likely significant effects on the environment of implementing the plan or programme, and reasonable alternatives*" (as required by Article 5(1) of the SEA Directive), but merely an indicator of the possible directions of those effects.

The 'appraisal' of the reasonable alternatives stops short at a qualitative assessment against the AoS objectives. It is not clear whether this arises from a misinterpretation/misapplication of the ODPM Practical Guide. Section B2 of the Guide¹⁶ advises:

At paragraph 5.B.4: "In conducting SEA, Responsible Authorities must appraise the likely significant environmental effects of implementing the plan or programme and any reasonable alternatives... Each alternative can be tested against the SEA objectives, with positive as well as negative effects being considered, and uncertainties about the nature and significance of effects noted. This will often be an iterative process, with the alternatives being revised as part of the SEA to enhance positive effects and reduce negative ones."

and at paragraph 5.B.6: "At this stage it may be possible to drop some alternatives from further consideration and document the reasons for eliminating them. Justifications for these choices will need to be robust, as they can affect decisions on major developments."

It appears from the AoS that these sections may have influenced the framework for the partial assessment of reasonable alternatives and testing against the AoS objectives, and have been misunderstood to mean that a full assessment of reasonable alternatives is not required. If this is the case then we suggest the Guide requires amendment. This guidance must be read in conjunction with the obligations of the SEA Directive, the Regulations and the Commission Guidance. It is then clear that what is required is a full assessment of the likely significant environmental effects of each alternative. The testing of each alternative against the AoS/SEA objectives should happen within that assessment, not as a precursor to the assessment for the purpose of excluding alternatives from full impact assessment.

The commentary that follows the qualitative indicators of environmental effects does little to clarify how these conclusions were drawn, and mainly serves to justify dropping all of the reasonable alternatives from full consideration.

For example, the consideration of 'Option 2' on pages 38 and 39 provides a '+' value against each of the indicators advising that the Option would support achievement of all AoS objectives. However, the commentary on the implications would suggest that perhaps this scoring is not accurate. Under 'Implications for Environment' it states:

"This scores positively against a number of the AoS Objectives although it is considered unlikely to significantly alter baseline conditions when compared with the

¹⁶ Developing Strategic Alternatives, page 30

business as usual scenario and it is anticipated that growth in potentially damaging activities will continue to put pressure on environmental resources.”

There is also acknowledgement of the uncertainty that exists due to the potential differences in implementation of the MPS and weighting applied to environmental considerations. Considering that this option does not improve much beyond the baseline, and the values for Option 1 are largely negative, it is difficult to see how a positive score fits with these statements. At best, we would suggest that the score should have been ‘o/?’ (the option does very little or nothing to achieve or detract from the achievement of the AoS Objective and that there is some uncertainty) or ‘-/+’ (the option both supports and detracts from the achievement of the AoS Objective).

Under ‘Implications for Economy’, the short term implications are that little will occur to help avoid conflicts or sustainable growth. There are longer term benefits noted based on the consistency that may be achieved in marine planning due to the existence of an MPS. Again, a ‘+’ score is provided against both economic AoS Objectives, when we consider that perhaps the better scoring is ‘-/+’ to acknowledge short term detractions and long term support. Similar considerations apply in respect of the ‘Implications for Society’.

A further example is the consideration of ‘Option 3’ on pages 39 and 40. This option would be for an MPS that also provides specific criteria based policy guidance for activities. The commentary on p. 40 states *“this approach would provide significant opportunities to improve levels of environmental protection and enhancement.”* This is precisely the purpose of SEA – to identify and assess such opportunities.

The option is rejected on the grounds that:

“it is likely such criteria would be based around environmental limits which may impose some restrictions on certain activities...This has potential to work against the AoS objective ‘To support development of a sustainable marine economy’ by restricting development.”

However, the commentary goes on to say this approach could provide *“greater certainty for developers, and thus speed up the project application and delivery process”*, which must surely be supportive of a sustainable marine economy. In respect of the social implications, it is noted that restrictions on economic development may have indirect adverse effects on society, yet there is also *“potential to generate win-win solutions whereby development scenarios could be steered towards encouraging benefits for those areas most at need”*. Despite potentially positive implications for economy and society, they are scored as either uncertain or detracting from the AoS objective.

Ultimately, the economic and social implications are understood to be uncertain, while the environmental implications are overwhelmingly positive. We consider that excluding assessment of Option 3 as a reasonable alternative prevents the AoS from bringing evidence to bear on these conclusions. Failure to appraise reasonable alternatives of this kind means that the AoS has not enabled SEA to be applied in a way that can achieve the SEA Directive’s objectives to afford a high level of protection to the environment and to integrate environmental considerations into preparation and adoption of the MPS. Further, the reasoning for rejecting this Option appears inconsistent with the commitment of the UK administrations to apply an ecosystem approach and the principles of sustainable development, which includes living within environmental limits, to the MPS.

It is recognised that Option 3 could create more sustainable patterns of growth and a more strategic and integrated form of planning. The reasoning that trying to advocate this approach at the UK level with collective politics is likely to have a negative impact needs

further explanation. Whilst we are strong advocates of community involvement in planning, we do not agree that if Option 3 were taken forward, it would mean the MPS would be attempting to fulfil the function of area specific Marine Plans. Local needs must be known, understood and recognised through full stakeholder and public engagement processes, but more strategic guidance is also needed at the UK and national levels.

We understand the current constraints to a more prescriptive MPS in the absence of any regional marine plans. However, once plans have progressed and more information exists on current and potential future development activity, there will be a clear need for more national strategic guidance. We welcome the MMO's current work on a strategic scoping plan. We feel that once this has been completed, and projects have been considered on a case by case basis through regional plans, there will be a strong need to revise the MPS in order to provide UK wide guidance.

In light of the problems surrounding the consideration of reasonable alternatives, the Joint Links call for a revision of the AoS so that all reasonable alternatives can be fully and properly assessed in compliance with the SEA Directive and Regulations.

We also suggest that alternatives should be included, such as a UK wide MPS with separate national marine plans or equivalent for each of the administrations.

Assessment of Environmental, Social & Economic Effects

The assessment of the effects of the 'no MPS' scenario is simply a qualitative statement as to whether baseline conditions are expected to get better, remain the same or get worse. A brief reasoning is offered under each appraisal topic, based on the discussion of the evolution of the baseline set out in annexes A-J. This means the one 'reasonable alternative' (Option 2) studied has not been addressed in a way that is additional to the separate requirement to describe the evolution of the baseline in the absence of the plan. It is also not assessed in a way that allows comparison of likely significant effects, as specified in the Commission Guidance.

Under every appraisal topic the AoS finds that implementation of the MPS would have no effect on the baseline relative to the no MPS scenario. This is on the grounds that development would go ahead anyway, but in a less coordinated fashion, so no effects can be ascribed to the MPS alone. This neglects the requirement in the SEA Directive to assess 'secondary' effects, namely those that will arise from the implementation of Marine Plans. The real physical effects of the consequences of the MPS and Marine Plans, their ability to speed up the planning process and result in greater impacts that occur sooner, were not assessed.

In addition to this totally uninformative 'baseline-led' appraisal, the AoS offers an 'objectives-led' appraisal for each topic, based on a set of 'AoS Objectives' and related 'guide questions'. In each case the appraisal finds that the performance against the AoS objectives is positive. For two topics (Marine Economy, Other Users and Material Assets; and Population and Human Health) this is substantiated in the text (following the appraisal summary tables) by indicating how the MPS justifies a positive answer to relevant guide questions. However for the remaining topics the guide questions are not directly addressed. The reader is merely assured that the MPS contributes positively to the relevant AoS objective(s).

In the appraisal of effects on 'marine ecology and conservation sites' the AoS finds a positive effect on the AoS objectives and that it is 'supportive' of the guide questions "*through its description of existing good practice and legislative requirements...*" (p. 104). However, the reader is not told specifically how the MPS will, for example, "*recognise the ecosystem*

importance of land/sea coupling for example through diadromous fish", nor specifically how any of the other guide questions might be answered.

In summary, the 'baseline led appraisal' is totally unrevealing in that no effect is reported anywhere. The 'objectives led' appraisals are done in a very broad brush and inconsistent way that largely makes no use of the specific guide questions and does not clearly justify the consistently positive appraisals against the AoS objectives.

The assessment of cumulative effects (Section 15) is simply a further presentation of this qualitative information (qualitative representation of findings for the evolution of the baseline with no MPS, finding of no effect on the baseline, finding of positive effects with regard to AoS objectives).

The remaining issue regarding these two forms of appraisal is the glaring contradictions between the two sets of findings. How can it be possible that the MPS could have no effect on the baseline, and yet simultaneously "*protect, conserve and... recover biological diversity...*"? Similarly, how can the MPS positively "*promote the efficient production of energy within the boundaries of sustainability and security of energy supply*" without having any impact on the baseline conditions for 'Marine Economy, Other Users and Material Assets'?

Q5. Do you think there are any areas in the AoS which have not been reflected properly in the MPS?

Treatment of Uncertainty

Section 2.3.4 of the AoS provides commentary on technical limitations and uncertainty due to the level of detail within the draft MPS. There are a number of issues identified which would give rise to uncertainty in predicting the effects of implementing the MPS. However, what is not addressed (in either the AoS or the draft MPS) is how this uncertainty has been dealt with and also how marine planning authorities and decision-makers are to deal with uncertainty beyond the AoS and in implementing the MPS. We request clarification on how uncertainty has been treated within the AoS. We also suggest that further consideration is given to what may be necessary to address the treatment of uncertainty within marine planning and licensing decisions.

Q6. Do you have any comments on any aspect of the AoS not covered by the previous questions?

Early Public Consultation

The Joint Links are disappointed that the consultation for the scoping stage of the AoS was conducted with only statutory/regulatory consultees (section 2.3.5 and 2.3.7). Link members have for a long time advocated earlier and more transparent engagement of the public within SEAs. In our view, it is unfortunate that consultation on scoping was not broadened at least to individuals and organisations with interest and expertise in the marine environment, including environmental NGOs. We would have liked to have been invited to comment on the AoS Scoping Report with statutory/regulatory consultees in October 2009 (ref Figure 3.1, p.71, Draft Non Technical Summary of the AoS). Not only would this have helped with our understanding of the development of the draft MPS, but it could also have aided in that development as we could have provided our expertise and assistance. In particular, it would have been immensely useful to have the conversation about reasonable alternatives and resolve any differences at an earlier stage.

There is inconsistency in approach by the UK administrations in this regard, as key stakeholders and the public have been consulted on the scoping stages for other SEAs that have been conducted – which we clearly support. Considering the importance of the draft MPS and its prominence within the new marine planning systems in each UK administration, we would have expected commitment to wider public consultation on the AoS than the legislative requirements.

We have received and read the summary of the consultees' comments and changes made to the AoS in response to the scoping stage (see pg.17). However, this summary did not seem to address the discussions on the development of alternatives. We request any information which may be available which discusses the development of the reasonable alternatives and their appraisal.

Compliance with different devolved SEA requirements

We note that section 2.1 of the AoS advises that it has been undertaken to comply with the Environmental Assessment of Plans and Programmes Regulations 2004 – the Regulations applicable to England. However, we are uncertain whether the AoS has also been undertaken in compliance with the legislation which is applicable in the devolved administrations. Particularly in the case of Scotland, some of the obligations do vary to those prescribed in England. We, therefore, request clarification of this point.

Objectives

The Joint Links are confused by the assessment of the MPS objectives within section 3.2 of the AoS. This section outlines the purpose of the MPS, as stated in the draft. It then goes on to outline the UK vision for the marine environment and the HLOs (referred to as HLMOs by the Joint Links), but does not explain how these are relevant. We have provided comments on the purpose of the MPS within our response to Question 1 above.

We query whether this correctly identifies the objectives **of the MPS** – as separate from the vision, the HLOs and the marine planning systems. Is it correct to say that the UK vision and HLO's are objectives for the MPS? Perhaps it is better to say that the objective of the MPS is to contribute to successful implementation of the HLO's in order to achieve the vision. Given the confusion, it is difficult to say whether this approach to the objectives of the MPS has inhibited the AoS process. We would welcome a clearer explanation of the objectives for the MPS, and its relationship to the UK vision, the HLOs and the marine planning systems.

Mitigation

Article 5(1) and Annex 1(g) of the SEA Directive require information on "*measures envisaged to prevent, reduce and as fully as possible offset any significant adverse effects on the environment of implementing the plan or programme*". Annex 1(f) makes it clear that secondary effects are significant, so mitigation measures should address likely adverse effects of implementing Marine Plans. However, the actual mitigation measures identified within the AoS are minor adjustments to the text of the draft MPS (or more often an explanation for not making such amendments), rather than actual measures that would help prevent reduce or offset adverse effects.

Monitoring

The SEA Directive requires Member States to:

“monitor the significant environmental effects of the implementation of plans and programmes in order, inter alia, to identify at an early stage unforeseen adverse effects, and to be able to undertake appropriate remedial action” (Article 10(1)).

However, the monitoring provisions outlined in the AoS do not suggest ways in which any effects could be attributable to the MPS directly or indirectly through marine planning. For example, the AoS proposes monitoring of ‘greenhouse gas emissions’, but not greenhouse gas emissions as a result of marine activities. It is not clear how this will help identify unforeseen adverse effects or to trigger remedial action.

Non-technical Summary

The SEA Directive requires a non-technical summary to contain information under all of the headings in Annex 1. Several areas are not covered at all in the Non-Technical Summary of the AoS for the draft MPS:

- Relationship with other plans and programmes (Annex 1 (a))
- Any existing environmental problems which are relevant to the plan... (Annex 1 (d))
- The environmental protection objectives... relevant to the plan... (Annex 1 (e)).

Q7. Do you have any comments on the HRA?

UK Marine Policy Statement: Habitats Regulations Assessment

The Joint Links are concerned that there is a gap between the outcomes of the Habitats Regulations Assessment and the reality of the statements of unrestrained development need set out in Chapter 3 of the Draft MPS. If all or even most of this ‘need’ was attained, it is highly likely that there would be a significant adverse effect on the Natura 2000 network and its integrity, including individual sites.

Additional comments on the HRA

The Joint Links welcome that, for the purpose of considering development proposals affecting them, as a matter of policy, the UK Administrations consider pSPAs and listed Ramsar sites in the same way as if they had already been classified (§1.2). This approach is entirely consistent with settled case law of the European Court, which has held that Member States are required to take appropriate protective measures to safeguard the relevant ecological interest of candidate SACs at the national level¹⁷.

SACs with a marine component

The Joint Links note that the HRA states that one or more of the species listed in paragraph 2.2 must be listed as a qualifying feature within a SAC for it to be considered a SAC with a marine component. We are deeply concerned about the JNCC’s current approach to the designation of SACs for highly mobile marine species such as the harbour porpoise (*Phocoena phocoena*), with particular regard to the Dogger Bank dSAC.

¹⁷ See Case C-117/03 *Commission v Italy* – “Dragaggi”

The HRA states that the MPS itself does not specifically promote activities, but instead provides high level guidance to marine plan authorities when developing marine plans. As a result, it has not been possible to provide detailed consideration of the impact on the integrity of individual European sites (§4.1). While we note the measures listed in paragraph 4.2, we would urge the MMO to ensure that the full range of relevant stakeholders are consulted at the earliest opportunity when projects or proposals affecting particular sites are mooted, as is subsequently recognised in paragraph 4.2.1.

Marine Plan and Project level mitigation

Paragraph 4.2.1 refers to a number of principles that should be applied to all plans or projects when considering avoidance and mitigation measures. The European Commission has published detailed guidance on the interpretation of the provisions of Article 6 of the Habitats Directive, including Articles 6(3) and 6(4), which would usefully be referred to in this document and in any subsequent guidance published by the MMO¹⁸. This applies equally in relation to compensatory measures covered in paragraph 5.3.2.

¹⁸ See http://ec.europa.eu/environment/nature/natura2000/management/guidance_en.htm#art6