Saving our Seas through Law Briefing No. 3 - Using Marine Spatial Planning to Support Marine Protected Area Management: A case study of the Clyde Region

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Using Marine Spatial Planning to Support Marine Protected Area Management

A Case Study of the Clyde Region

Saving our Seas through Law Policy Brief Series | Briefing No. 3
Using Marine Spatial Planning to Support Marine Protected Area Management

This policy brief considers the relationship between marine spatial planning and marine protected area management. The policy brief seeks to identify the key opportunities to utilise marine spatial planning in order to strengthen protection of marine ecosystems by drawing upon relevant international law and policy, as well as best practices from around the United Kingdom. The policy brief uses the proposed draft marine spatial plan for the Clyde Marine Region as a case study and it recommends strategies to ensure more integrated and effective protection of natural heritage in regional marine plans.

Key Recommendations

- Regional marine plans are a key informational document for developers and members of the public and they should therefore provide detailed information on the key marine nature conservation designations within the marine region, including the names, locations and protected features of Nature Conservation Marine Protected Areas (MPAs) and European Marine Sites.
- In order to ensure that appropriate weight is given to nature conservation policies, relevant policies should be expressed in prescriptive language, using terms such as ‘must’ or ‘shall’ instead of ‘should’.
- Regional marine plans will only fulfil their potential as tools to balance competing uses of the marine environment and ensure the integrity of marine ecosystems if they are ambitious in their content and their policies go above and beyond the general prescriptions of the National Marine Plan. Regional marine plans also provide an opportunity to go beyond the minimum requirements of conserving the protected features of MPAs through the adoption of policies to encourage the enhancement of these areas in order to ensure their overall resilience. Consideration should therefore be given to using regional marine plans to minimise negative pressures on MPAs by limiting new developments or activities within or in the vicinity of these areas. Where appropriate, nature conservation considerations should be integrated into sectoral policies in order to highlight restrictions on a particular type of development or activity, using ocean zoning as a planning tool where feasible.
- Particular attention should be paid by regional marine plans to ensuring that species or habitats in unfavourable conservation status are not affected by development or other activities by expressly identifying the relevant features and the precautionary steps that must be taken to ensure their protection.
- Regional marine plans should emphasise the regeneration of natural carbon sinks by establishing buffer zones around suitable sites in order to allow these features to expand, free from the pressures of new activities or developments.
- Regional marine plans should include a specific policy on cumulative impacts of activities and developments.

Regional Marine Plans and Marine Protected Areas

Marine spatial planning (MSP) is a recent development in planning policy, which aims to coordinate regulatory responses to increasing pressure on marine resources and spaces from multiple competing uses. Scotland introduced MSP under the Marine (Scotland) Act 2010, which calls for the development of a National Marine Plan, as well as supplementary marine plans at the regional level. These plans are important because decision-makers will be required to ‘take any authorisation or enforcement decision in accordance with the appropriate marine plans, unless relevant considerations indicate otherwise’ and ‘have regard to’ the plan in making any other decisions. The Clyde Regional Marine Plan (RMP) will be among the first of its kind in Scotland and will therefore become a benchmark for subsequent plans.

MSP is often linked to the ecosystems approach, as it assumes a holistic perspective on marine management. The introduction of MSP thus provides an important opportunity to bolster marine environmental protection, including Marine Protected Areas (MPAs). In this respect, the Marine (Scotland) Act 2010 requires a RMP to include ‘policies (however expressed) for and in connection with the sustainable development of the area to which the plan applies [and] policies on the contribution of Nature Conservation MPAs … to the protection and enhancement of the area to which
the plan applies. One would therefore expect MPAs to feature centrally in a RMP, with clear and precise policies to demonstrate how the plan contributes to the protection of these important ecological sites.

There are several other drivers which should also influence the manner in which RMPs address MPAs. Firstly, a RMP must be compatible with the National Marine Plan, which itself highlights certain policy objectives relating to natural heritage. The drafting of a RMP provides an opportunity to develop more specific policies in order to implement these general national policies at the regional level. Indeed, the National Marine Plan explicitly identifies a number of issues which should be addressed in this context.

### Regional marine plans should consider:

- Using relevant guidance and data sources to identify, where appropriate, areas that are sensitive to specific types of development or other activity. Particular regard should be given to protected sites, protected species and Priority Marine Features. Spatial policies should take account of the sensitivities identified.
- Developing policies that contribute to the achievement of Conservation Objectives for designated sites within the MPA network.
- Recognising the role of habitats and species in providing and supporting ecosystem services and consider opportunities to enhance these services.

*Source: Scotland’s National Marine Plan (2015)*

Secondly, RMPs must be implemented in line with the broader legal framework, including the national outcomes adopted under the Community Empowerment (Scotland) Act 2015, and the duty of every public body to ‘further the conservation of biodiversity’. This latter obligation highlights the role that international law may play in influencing the development of planning policy. Relevant treaties on the conservation of biological diversity are not solely concerned with the designation of protected areas, but also demand appropriate protection of ecosystem functions at larger scales. Effective marine spatial planning can contribute to this aim by overcoming shortcomings in MPA networks, ensuring that MPAs are protected from degradation arising from the surrounding area, and promoting connectivity of MPAs. In this context, the OSPAR Commission has highlighted ‘the further development and implementation of tools such as marine spatial planning’ as a main strategic direction for North-East Atlantic States in protecting marine biological diversity and the Parties to the Convention on Biological Diversity (CBD) have also identified the need for better protected area integration, which they defined as ‘the process of ensuring that the design and management of protected areas, corridors and the surrounding matrix fosters a connected, functional ecological network’. To this end, Parties to the CBD were called upon to ‘review and adapt landscape and seascape plans, including … marine spatial plans … in order to improve connectivity and complementarity and reduce fragmentation and impacts’.

Whilst this guidance is voluntary, it provides best practice to which the Scottish Government should aspire if it is to be a leader in the protection of the marine environment.

Approach of the Draft Clyde RMP to Natural Heritage and Marine Protected Areas

MPAs are largely addressed in Chapter 5 of the pre-consultation draft of the Clyde RMP, focusing on natural heritage. There are four natural heritage objectives and seven policies which are split into authorisation and consent policies and management policies. These range from the general - Objective NH1 seeks that ‘[t]he health of the marine and coastal natural heritage of the Clyde Marine Region is protected and, where appropriate, enhanced’ – to more specific policies addressing particular aspects of nature conservation. Objective NH2 explicitly refers to MPAs:

‘Development and use of the coastal and marine environment does not have significant negative impact on biodiversity, the Marine Protected Area network, other protected habitats and species and Priority Marine Features in line with the relevant conservation objectives and, where possible, contributes to their maintenance and/or enhancement’.

This is a welcome objective, but when it comes to particular policies in order to achieve this objective, the draft RMP does little more than reiterate requirements to ‘comply with international, national and local legal requirements for protected areas and species’ or repeat the stipulations of the National Marine Plan, such as preventing ‘significant impact on the national status of Priority Marine Features’ or ‘protect and, where appropriate, enhance the health of the marine area’. Policy NH1 does appear to go a little further than the National Marine Plan by saying that ‘where Priority Marine Features are known or found...
to exist, licence applications should demonstrate consideration of sensitivities and potential impacts through tools such as the Feature Activity Sensitivity Tool’, but it is noticeable that it employs non-prescriptive language. It is recommended that this language is amended to make it clear that licence applications must demonstrate consideration of potential impacts. Policy NH2 also provides some further clarification of the situations in which a development proposal will be supported, including if they ‘contribute to the delivery of the conservation objectives of Marine Protected Areas where appropriate,’ but this policy suffers from significant ambiguity. Indeed, it is reflective of broader shortcomings in the draft RMP, which lacks in detail as to the measures that should be taken to enhance marine biological diversity in the Clyde marine region. The following section will highlight several modest but important improvements that can be made in order to strengthen the RMP in this respect.

**Shortcomings and Proposed Changes to the Clyde RMP**

Marine spatial plans must be sufficiently detailed in order to provide clear guidance to decision-makers and developers as to how to act to achieve the objectives of the plan. The inclusion of a minimum level of information is also important because marine spatial plans play an additional educational function by highlighting the key attributes of an area. These objectives are not achieved if it is necessary to cross-reference a range of other documents in order to understand the scope and substance of the policies. In this regard, the draft Clyde RMP falls short in a number of respects. Whilst it is welcome that there are specific policies addressing MPAs and priority marine features, the current policies relating to natural heritage in the draft Clyde RMP are too abstract and a number of improvements could be made.

At present, the draft Clyde RMP does not even name the MPAs and other significant nature designations that are present in the Clyde marine region, let alone the features for which they are protected. This can be contrasted with existing marine plans already developed in other Scottish regions, such as the non-statutory Shetland Islands Marine Spatial Plan (Fourth Edition 2015) which lists and describes the two nature conservation MPAs in the plan area. This practice should be followed by the Clyde RMP. It is therefore recommended that Chapter 5 of the draft RMP incorporates a description of the three Nature Conservation MPAs located in the Clyde region and explain their protected features, as well as other important nature designations.

Nor does the draft Clyde RMP expressly recognise that certain marine species/habitats are under greater threats than others. The Clyde marine region is home to a number of species which have an unfavourable conservation status or are in decline, including a number of species within MPAs, such as the flame shell beds in the Upper Loch Fyne and Loch Goil MPA and the maerl beds in the South Arran MPA. Several species of sea birds are also in decline. Given the precarious status of these ecosystems and the need for a precautionary approach to their management, it is incumbent on the drafters of the plan to place greater emphasis on ecosystem recovery by expressly recognising that active steps must be taken in this direction. It is recommended that a policy is explicitly included in the RMP to require decision-makers to exercise caution when considering proposals for developments or activities which may impact upon those species and habitats in unfavourable condition.

There are certain species for which steps should be taken not only to promote their recovery within existing limits, but also to encourage their active enhancement and expansion. In this category, one can highlight habitats which play a vital ecosystem service as carbon sinks. It is welcome that Policy CC2 of the draft Clyde RMP already acknowledges the important role of such habitats by providing that ‘development(s) and/or activities will be supported where they can demonstrate that they will avoid damage to and/or, where possible, enhance the capacity of recognised carbon sinks in the Clyde Marine Region.’ Yet, given the urgency of addressing climate change and ocean acidification, recognised by the recent declaration of a climate emergency by the First Minister, the Clyde RMP could be more ambitious in this respect. In particular, it could establish zones around those carbon sinks capable of natural regeneration, in which developments and activities will be minimised in order to permit the expansion of the carbon sink over time. Sea grass meadows would be an obvious candidate for such protection, given their potential for growth over a relatively short period of time and the fact that the extent of these habitats is significantly condensed compared to their historic range.

The draft Clyde RMP also does not engage with the question of how specific sectoral pressures on MPAs should be controlled in order to support the overall health of ecosystems therein.
11 OSPAR Commission, North-East Atlantic Environ-
12 ment Strategy (OSPAR Agreement 2010-3) Part II, para. 3.1(c).
13 CBD/COP/DEC/14/8, Annex I (2018), para. 3.
15 UNESCO, Marine Spatial Planning: A Step-by-
17 Shetlands Islands Marine Spatial Plan (Fourth Edition 2015) 68.
21 Scottish Natural Heritage, Upper Loch Fyne and Loch Goil MPA Management Options, 15-16.
22 Scottish Natural Heritage, Upper Loch Fyne and Loch Goil MPA Management Options, 11 and 13.
23 Scottish Natural Heritage, South Arran MPA Management Options, 11.
24 Scottish Natural Heritage, Upper Loch Fyne and Loch Goil MPA Management Options, 12.
25 Shetland Islands Marine Spatial Plan (Fourth Edition 2015) 68.
26 Policy NH 6 mentions research on cumulative impacts, but there is no mention of cumulative impacts in Policy NH 1 or 2.
27 UK Government et al, United Kingdom Marine Policy Statement (2011) para. 2.3.1.6.
29 UNESCO, Marine Spatial Planning: A Step-by-
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The Saving our Seas Through Law Policy Brief Series includes:

- Briefing 1: The Establishment and Expansion of the Scottish Marine Protected Area
- Briefing 2: The Enforcement of Fishing Restrictions in Marine Protected Areas
- Briefing 3: Using Marine Spatial Planning to Support Marine Protected Area Management
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