

MARINE (SCOTLAND) BILL

Rural Affairs and Environment Committee

Stage 1 Report

SCOTTISH GOVERNMENT RESPONSE

28 October 2009

No.	(para no.) Recommendation	Draft Response
1.	<p>The Committee invites the Cabinet Secretary to clarify the reasons for establishing Marine Scotland as a Scottish Government directorate rather than proposing in the Bill to establish it as a statutory body, at arms length from the Scottish Government. The Committee also invites the Minister to explain what governance arrangements he proposes to put in place in order to ensure the independence of scientific advice provided to the Scottish Ministers as to the exercise of their functions under the Bill. [paragraph 14]</p>	<p>The views of stakeholders provided in their responses to <i>Sustainable Seas For All</i> suggested broad support for a Scottish marine management organisation. Careful consideration was given to the status of Marine Scotland. Its establishment as a Directorate of Scottish Government allowed aspects of policy and sensitive issues such as EU fisheries negotiations to remain with Ministers without the need to retain a policy core separate from a distinct body. This offered the best scope for integration of marine management functions. A Scottish Government Directorate also offered the most cost effective option in comparison to Agency or NDPB status. As an example, the latter would require establishment and servicing of a Board and sponsorship, and which would also offer fewer options for shared services etc.</p> <p>The question of independence of functions such as science was given particular consideration because of the excellent international reputation the former Fisheries Research Services enjoyed. Scottish Government is confident this issue is addressed by the governance structure of Marine Scotland which will incorporate a Science Advisory Board. Work is underway to establish the Board: appointments for Board members were advertised earlier this month. The Board will provide independent comment on Marine Scotland Science output as well as advice on Marine Scotland's research programme.</p>

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2.	The Committee invites the Cabinet Secretary to note our observations on the lack of detail or proper discussion in parts of the policy memorandum. [paragraph 37]	<p>The comments of the Committee regarding the policy memorandum are noted.</p> <p>Response 1 above refers to the status of Marine Scotland.</p> <p>With regards to the absence of science and data in the Bill, the deliberations of the Sustainable Seas Task Force concluded that while good science and data was vital in underpinning marine policy development, a framework for cooperation and communication was more appropriate than legislative processes. Responses to <i>Sustainable Seas for All</i> showed strong support for the proposal to develop a Marine Science Strategy to focus scientific effort.</p> <p>As the Committee acknowledges, much detail regarding implementation of the Bill required further consideration at the time of preparation of the Policy Memorandum.</p>
3.	Para 50. The Committee invites the Cabinet Secretary to clarify whether he considers current enforcement provisions on marine littering are sufficiently robust, and whether he considers there are sufficient resources for them to be applied effectively.	<p>Litter from shipping falls to be dealt with under merchant shipping legislation. Such legislation is reserved to Westminster. Regulations to prevent marine litter arising cannot therefore be made by the Scottish Government. Relevant enforcement by Scottish bodies include action by the Scottish Environment Protection Agency, Scottish Water and local authorities largely in relation to litter originating on land.</p> <p>Marine litter is a challenging problem involving land and marine issues. Joined up action across reserved and devolved interests is needed to tackle marine litter effectively.</p>
4.	Para 55. The Committee recommends that the Bill place a duty on the Scottish Ministers and all relevant public bodies, when exercising functions, to have regard to the need to maintain and improve the	The Scottish Government understands the Committee's thinking on this issue. Nonetheless the Scottish Government must take account of the legal impact of the Marine Strategy Framework Directive. The Directive commits member states to work towards Good Environmental Status by 2020. The Directive

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	<p>health of the Scottish marine area. We recognise that, were this duty to be inserted into the Bill, there would be a need to provide indicators, whether in subordinate legislation or through guidance, as to the factors that constitute a healthy marine environment. The Marine Strategy Framework Directive, which sets out indicators of “good environmental status”, may provide some pointers.</p>	<p>sets out a process and timetable for this, including the setting of indicators.</p> <p>Transposition of the Directive is being carried out on a UK basis and the various administrations will be launching a consultation on implementing regulations shortly. The Scottish Government considers that it would be potentially confusing to insert in the Bill a duty of the sort suggested. Scottish Government believes that overarching duties of this sort are best left to the regulations implementing the Directive.</p>
5.	<p>57. The Committee invites the Cabinet Secretary to note industry concerns as to the status of the pacific oyster in the course of preparing the forthcoming Bill on wildlife and the natural environment.</p>	<p>The concern from industry as to the status of pacific oysters is noted.</p> <p>The consultation on the Wildlife and Natural Environment Bill set out proposals to improve the legislative framework which protects Scotland against the threat posed by invasive non-native species. Officials are meeting with a wide range of stakeholders to discuss options for taking the proposals forward.</p>
6.	<p>63. The Committee would encourage the Cabinet Secretary and SEPA to continue to engage in dialogue with the Scottish shellfish growers’ industry as to the latter’s concerns over the replacement of the Shellfish Waters Directive in 2013. We invite the Cabinet Secretary to press for clarification from the European Commission as to whether there will be any diminution in the legal protection afforded to growers once the new regime under the Water Framework Directive is in place, and to indicate whether he would do so before Stage 2.</p>	<p>The Scottish Government notes the concern of the shellfish grower’s industry regarding replacement of the Shellfish Waters Directive in 2013. The Scottish Government would be pleased to continue to work with the industry to provide reassurances. As the Committee has acknowledged, this issue is not directly relevant to the Bill.</p>

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	Part 1 of the Bill: the Scottish marine area and the meaning of “sea”	
7.	65. The Committee is content with the definitions used in Part 1.	The Committee’s approval of the definitions is welcomed and noted.
	Part 2 of the Bill: Marine Planning	
8.	80. The Committee suggests that it would reflect the national, and indeed international, importance of climate change mitigation and adaptation if it were expressly included in the list of objectives in section 3(3) that a national marine plan may set out.	Climate change is a matter of importance to the Scottish Government and reassurances have been given to the Committee that relevant measures will be reflected in the national marine plan. The Committee’s suggestion to include climate change mitigation and adaptation in the list of objectives in section 3(3) is noted and the Scottish Government is considering an amendment on this point.
9.	82. The Committee recommends that the Bill expressly sets out a minimum time period for Parliamentary consideration of a draft national marine plan. The Committee proposes that this be set at 40 sitting days.	The Scottish Government will bring forward an amendment as the Committee recommends.
10.	104. The Committee largely supports the flexible approach to the membership and governance of marine planning partnerships proposed in the Bill.	The Scottish Government welcomes the support of the committee on this matter. Scottish Marine Regions will be diverse in nature as will the interests and industries within them. A flexible approach to membership and governance will be necessary to reflect this.
11.	105. The Committee considers that MPPs should be diverse bodies, drawing their membership from a wide selection of local stakeholders, and should not be dominated by narrow sectoral interests. It follows that we find it almost impossible to envisage circumstances where a single public authority would be an appropriate “partnership” and suggest that the	There are a range of possible circumstances around the Scottish coast and it is conceivable that a single public body may offer the best option as the delegate for planning functions in some areas. Where this is so, the Scottish Government intends to use the direction giving powers to ensure that the delegate takes full account of the views and input of all stakeholders.

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	provision enabling this to happen be removed from the Bill.	The Scottish Government would therefore like to retain the flexible approach to delegate that the Bill provides.
12.	106. On the other hand, the Committee would make the practical observation that any policy-determining body with too large a membership risks being unwieldy and may lack the momentum to drive through timeous agreement of a marine plan. As this may mean that not every local stakeholder group that wants to be on an MPP will end up being on one, Marine Scotland should consider drawing up good practice guidelines on ensuring that views can be fed in to MPPs in other ways. The forums held by advisory groups for river basin management planning appear to be one possible approach to follow.	The Scottish Government notes the Committee's concerns. Currently there are measures within the Bill which will allow for appropriate stakeholder engagement to be developed: paragraph 4 of schedule 1 requires the preparation of a statement of public participation (concerning how interested parties would be involved in the preparation of the national marine plan or regional marine plans), and section 8 allows directions to be given to a Marine Planning Partnership. In addition to this, the Scottish Government would be pleased to consider issuing good practice guidelines or to consider alternative approaches to ensure adequate stakeholder engagement.
13.	107. The Committee supports each individual MPP having discretion to determine its own working practices. However approaches should not be so flexible as to lead to national objectives being unrealised or good practice not being shared. To that end, The Committee considers that Marine Scotland's experience and expertise will be crucial for the effective running of all MPPs. The Committee would expect that Marine Scotland would take the lead role in administering MPPs.	<p>While the Scottish Government recognises there would be some situations where Marine Scotland would be required to provide a leadership role for the Marine Planning Partnerships, there will be other areas where that is not necessary given the context provided by the national plan.</p> <p>However, the Committee's concerns are noted and Scottish Government is pleased to consider guidelines on how Marine Planning Partnerships should operate.</p>
14.	108. The Committee also expects that it would be a Marine Scotland representative who would chair most MPPs, although there may be instances where it would be more appropriate for the representative of a locally-based organisation (most obviously a local authority) to take the chair. In all cases, however, the	The Scottish Government acknowledges that there may be situations where Marine Scotland will provide leadership for Marine Planning Partnerships. The Scottish Government agrees with the Committee that Marine Scotland is not the only possible source of leadership. For example there may be occasions where a local chairman with local knowledge may be able to provide better leadership.

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	Committee considers that it should be for the Cabinet Secretary to appoint the chair of an MPP.	
15.	109. The Committee invites the Cabinet Secretary to consider concerns that the requirement in section 3(5) that regional marine plans conform to the national plan “unless relevant considerations indicate otherwise” is broad, and that “relevant considerations” should be defined in the Bill or explained in guidelines.	<p>The Scottish Government understands the committee’s concern. The phrase “unless relevant considerations indicate otherwise” appears both in section 3(5) and in section 11(1) of the Bill. It also appears in equivalent provisions in the Marine and Coastal Access Bill presently before the Westminster Parliament. There are no provisions in that Bill defining the phrase or authorising the issue of guidance in relation to it. The exact meaning of the phrase will, in case of dispute, fall to be determined by the courts. It would not be possible to include in the Scottish Bill an exhaustive list of considerations which would class as “relevant” in any particular circumstances.</p> <p>A further consideration is consistency between the law for the territorial sea and the offshore zone. Scottish Ministers could take a power to provide guidance on what the phrase means for the territorial sea. However they could not do so for the offshore zone. This risks the definition of the phrase becoming inconsistent between the offshore and inshore area.</p>
16.	115. The Committee expects that the Scottish Ministers will consult widely, including with the Parliament, before designating Scottish marine regions under section 3(4).	<p>The Scottish Coastal Forum, on behalf of Scottish Government, has established the views of a wide range of stakeholders on how Scottish Marine regions could be defined. The SCF report will be forwarded to the Committee.</p> <p>The Scottish Government is committed to consult widely, including with Parliament, on a range of characteristics for identifying Scottish Marine Regions. This will be undertaken prior to proposing Marine Region boundaries in secondary legislation.</p>
17.	116. The Committee supports the principle of taking an ecosystem-based approach to designation but	The Committee’s comments are noted. As noted in the response to Recommendation 16, the Scottish Government will consult widely on the

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	recognises that the waters surrounding Scotland cannot be broken down into discrete clearly-defined ecosystems, and that accordingly it is legitimate to take other considerations into account.	characteristics for identifying Scottish Marine Regions.
18.	117. We consider that there is a reasonably clear-cut case for the major firths and for the seas surrounding Orkney, Shetland and the Western Isles to be considered discrete marine regions. Making the major firths marine regions would also have the advantage of enabling a partial integration of river basin management plans and regional marine plans.	The Committee's comments are noted. However, as noted in the response to Recommendation 16, the Scottish Government will consult widely on the characteristics for identifying Scottish Marine Regions and the final outcome will be established through consultation.
19.	123. The Committee considers that the case for treating the Solway Firth, as much as is practicable, as a single area for marine planning purposes is clear. Major planning decisions about matters such as sites for renewable energy projects should always be taken having regard to stakeholder views on both sides of the Firth, and the necessary legal or administrative arrangements should be in place to ensure that this is the case.	<p>Integrated marine management and a joined up approach across boundaries is considered important by the Scottish Government. The comments of the Committee are therefore welcomed.</p> <p>The Scottish Government has written to Defra supporting the view that the Solway Firth be treated as a single area for marine planning where possible, and have indicated that we would wish to work cooperatively with UK partners to deliver a single plan for the Solway Firth.</p> <p>A Concordat will be drawn up between the Scottish Government and UK Government which will address arrangements for cross border working and will be designed to provide integration.</p>
20.	124. The Committee recognises that the Marine (Scotland) Bill cannot, of itself, produce a solution. There should be action at a UK level too and we hope that the UK Bill will not be enacted in such a way as to place obstacles in the way of effective	The Committee is invited to note response to recommendation 19.

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	cross-border working. The Committee seeks assurances from the Cabinet Secretary that he has made representations to his UK counterpart to this effect.	
21.	130. The Committee notes that, whilst a marine plan will be an important document, it will not impose justiciable rights or duties on persons. In particular, the Bill will enable public authorities, exceptionally, to depart from marine plans in making decisions affecting the marine environment. The Committee is therefore reasonably satisfied with the restriction of appeals against a marine plan to technical objections to the plan. This does however underline the importance of plans being properly consulted upon, with all stakeholders, including the Scottish Parliament, having adequate opportunity to consider proposals before the Scottish Ministers sign any plan off.	<p>The Scottish Government notes the views of the Committee and is grateful for its support.</p> <p>The Committee can be assured that a national marine plan will be properly consulted on, and that the Scottish Parliament will have adequate opportunity to consider the proposals (see paragraph 13 of schedule 1).</p>
22.	141. The Committee notes that the Bill will not create a hierarchy of legal rights and duties, but hopes that the marine planning process will put legal rights and duties within a particular marine area in context enabling stakeholders to make more informed decisions about the use of the marine environment.	The Committee's view on this matter is well informed. The national marine plan, as a strategic framework, is intended to give greater clarity to decision making in the marine environment, while Regional Marine Plans will reduce uncertainty for marine users regarding where marine activities can take place.
23.	142. The Committee invites the Cabinet Secretary to note witnesses' concerns that the law of the sea has	The Scottish Government acknowledges stakeholders views regarding the complexity of the marine legislative landscape. As the Committee recognises,

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	become too complex, and to investigate whether this can be addressed, for instance through consolidation or codification of legal rights and duties, or through instructing Marine Scotland to provide guidance on the lawful use of the sea tailored to particular stakeholder groups. In doing so, the Committee recognises that much of the law emanates from international sources over which the Scottish Government has no direct control.	this is a particularly difficult area over which the Scottish Government has limited control or influence.
24.	149. The Committee supports the application of relevant principles of integrated coastal zone management to marine planning and notes that the role of ICZM groups will evolve and possibly reduce following implementation of the Bill and the establishment of marine planning partnerships.	The Committee's comments are noted.
25.	150. The Committee recognises the need for effective local management of inshore fisheries. We note that inshore fisheries groups are new bodies that need more time to settle into their role. However, the Committee considers that there is a strong case for re-examining the role, membership, or indeed existence of IFGs in around three or four years' time, once the Bill, if enacted, is being implemented and marine planning partnerships have been set up, and once any reforms arising from the European Commission's green paper on reform of the common fisheries policy have become clear. Until this re-examination takes place, it is vital that there be effective co-operation between IFGs and MPPs.	<p>Effective communication and co-operation between all marine stakeholders and Marine Planning Partnerships will be important in relation to marine planning. The Committee's particular views on cooperation between Inshore Fisheries Groups and Marine Planning Partnerships is noted.</p> <p>The Scottish Government considers that in the short term there is a strong case for IFGs providing advice to the Marine Planning Partnership on fisheries matters. Over the longer term and in light of any reform of the Common Fisheries Policy, there may be a need to consider what changes are required.</p>

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26.	<p>153. The Committee considers that section 11 is one of the key provisions of the Bill since it is the link between marine planning and the taking of decisions by public authorities. It is therefore important that its meaning is properly understood. The Committee does not object in principle to a policy of allowing public authorities –, exceptionally – to take a decision that is not in accordance with a marine plan. However more clarity and certainty is needed as to the circumstances where this would be permissible than is provided by the phrase “unless relevant considerations indicate otherwise”. The Committee recommends that the Bill make provision for the Scottish Ministers to issue guidance as to what would amount to “relevant considerations” permitting a public authority to depart from a marine plan.</p>	Please see the response to point 15 above.
	Part 3 of the Bill: marine licensing	
27.	<p>165. The Committee notes that a number of stakeholders are not persuaded that the Bill will lead to a simplification of the marine licensing system. Whether the problem has simply been a failure to communicate the effect of Part 3 clearly is not apparent. If the Government considers that the Bill will enable an integrated approach to marine licensing, including the likelihood of a “one stop shop”, there is a need for the Cabinet Secretary to state the case more clearly.</p>	<p>Engagement with stakeholders and interested parties has indicated a need for accessible information on the Marine Bill and its effects.</p> <p>The information leaflet entitled “Scotland’s First Marine Bill” recently published by the Scottish Government provides an overview of the Bill with illustration of the integration of licensing regimes. It is hoped the document will provide the clarity needed.</p>
28.	166. The Committee also seeks clarification that the combined effect of sections 16 and 17 will neither	The Scottish Government is content there is no overlap between sections 16 and 17. The need for a marine licence under the Bill will replace the present

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	create a legal overlap, where both Marine Scotland and another body have the right to authorise the same type of marine activity, nor create uncertainty as to the legal status of pre-existing authorisation powers apparently superseded by sections 16 and 17 but not expressly repealed.	requirements for authorisations under the Coast Protection Act 1949 and under Part II of the Food and Environment Protection Act 1985. The UK Government has not yet finalised its position on whether Part II of the 1985 Act requires to remain in force in relation to reserved activities in the Scottish inshore area and it is for that reason that the Bill does not as yet contain provisions amending or repealing that Act.
29.	171. The Committee considers that a rigorous approach to decommissioning based on leaving the sea bed in as close to its original state as possible should continue to be the norm. However, Marine Scotland should avoid taking an inflexible approach, if that were, for example, to prevent research into the effect of artificial reefs on marine biodiversity. In particular, the Committee notes that the creation of a Demonstration and Research Marine Protected Area around a marine structure could amount to a potential “win-win” situation for industry, science, and conservation. In this connection, the Committee notes section 23 of the Bill which would enable the Scottish Ministers to vary an existing marine license because of increased scientific knowledge relating to the environment, and invites the Cabinet Secretary to clarify whether this power would be available on the application of the licensee.	<p>The Bill as drafted allows the Scottish Government to impose any conditions on any licence it issues. This will ensure that any adverse impacts of the licensed activity on the environment, human health or other legitimate uses of the sea are minimised.</p> <p>In terms of section 22(3)(d), a condition may be imposed to the effect that the object or works to which the licence relates must be removed within a specified time period after the useful life of the facility ends.</p> <p>However, should the Scottish Government believe that there is minimal environmental impact of the object or works remaining, or if more damage is created through removal, then removal would not be a condition of the licence e.g. decommissioned pipes or submarine cables.</p> <p>Section 23(3) would allow the Scottish Government to vary an existing licence should increased scientific knowledge and engineering capabilities become available and there is nothing to prevent this power being exercised following an application by the licensee.</p>
30.	172. The Committee invites the Cabinet Secretary to clarify whether a decommissioning arrangement that would allow all or part of a marine structure to be laid on the sea bed would be dealt with under the Bill as a condition of the original license or as a marine	The Scottish Government would consider appropriate decommissioning arrangements for a marine structure when determining a licensing application. However, should circumstances change during the term of the licence, the Scottish Government could consider altering the decommissioning arrangements. This could be due to increased scientific knowledge, for example.

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	activity requiring a further license application.	
31.	174. The Committee invites both the Cabinet Secretary and the Crown Estate to note concerns that the Bill should not lead to the creation of a new decommissioning regime running in parallel with that already imposed by the Crown Estate under leasing arrangements, without serving any additional purpose. The Committee invites Marine Scotland and the Estate to work jointly to address these concerns in their future work.	<p>The Scottish Government notes the Committee's concerns on this matter and would be pleased to work to avoid any unnecessary duplication of process.</p> <p>The Scottish Government will continue to work with The Crown Estate to deliver a coherent approach.</p>
32.	178. The Committee agrees with the Subordinate Legislation Committee that the power to vary the list of licensable activities in section 17(1) should specify more clearly the criteria the Scottish Government may use to determine whether a particular activity should be added to or removed from the list.	The Scottish Government is considering lodging an amendment to section 17 which would require the Scottish Ministers to have regard to the need to protect the environment and human health and to prevent interference with legitimate uses of the sea when adding to, or making a removal from, the list of licensable marine activities.
33.	181. The Committee notes the lack of clarity currently as to what the minimum environmental threshold will be for registering, rather than licensing, marine activity. As this will be of considerable practical concern to stakeholders, the Committee considers that the Cabinet Secretary should outline his preliminary thinking on this issue during the passage of the Bill, giving an indication of what this would mean in practice to stakeholders.	The Committee's considerations are noted. This measure is intended to introduce a simplification of the current licensing regime which may allow small uncontroversial projects which would normally be licensed to be registered instead. The Scottish Government will undertake research to identify the 'specified threshold of environmental impact' where registration is appropriate. As this is a complicated issue the research will take some time. The Scottish Government will use the experience gained through the Water Environment (Controlled Activities) (Scotland) Regulations 2005 which includes a similar registration system. The Government would be happy to keep the Committee informed about the research.

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34.	<p>183. The Committee agrees and recommends that the Bill be amended to set out the fundamental elements of an appeals procedure against a marine licensing decision and against the issuing of a notice concerning a marine license.</p>	<p>The Scottish Government remains of the opinion that detailed provisions concerning appeals mechanisms are best contained in secondary legislation. This will allow for full consultation with interested parties and will help make the appeals process as effective as possible.</p> <p>The Scottish Government of course proposes an independent appeals process. Its current preference, without wishing to pre-determine the outcome of the consultation, is for appeals to go to the Sheriff Court.</p> <p>The Scottish Ministers will (under current drafting of this Bill and the UK Bill) require to make secondary legislation governing appeals in both the inshore and offshore zones and it makes sense to consult on the appeals process for both zones at the same time.</p>
35.	<p>195. The Committee acknowledges the vital importance of there being local input to decisions about whether, where, and under what circumstances to authorise a marine fish farm. The Committee considers that adequate provision could be made for this, at a strategic level, by ensuring local input into decisions made by MPPs about what areas should be deemed appropriate for fish farming. We propose that the Bill should allow local authorities to apply to the Scottish Ministers to handle applications for licenses. The Scottish Ministers should be empowered to allow any such application on cause shown, subject to their reaching a service level agreement with the authority on how license applications are to be dealt with.</p>	<p>At this time, the Scottish Government believes the Bill offers the best practicable way forward to the complex situation relating to aquaculture. However it would be pleased to continue to discuss this issue with the Committee.</p>

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36.	196. Where this happens, the Committee proposes that the Cabinet Secretary should seek to ensure that there is a consistency of approach towards licensing aquaculture within each marine region, for instance by providing that, in a region bordering two or more local authority areas, only one authority will handle applications.	The Scottish Government recognises that consistency of approach towards aquaculture licensing across Scottish Marine Regions may be desirable. However we are not immediately attracted to an approach under which a local authority would have functions in relation to waters which are more appropriately the responsibility of another local authority.
37.	202. The Committee is reassured to note the Cabinet Secretary's comments that accepted forms of dredging with recognised minimal environmental impacts are likely to be exempted. Clearly stakeholders in shipping and ports would appreciate having sight of the detail of any proposed exemptions well in advance of the Bill's implementation. The Committee also invites the Cabinet Secretary to consider the merits of three-year rather than one-year dredging licenses, which would apparently bring Scotland into line with the rest of the UK.	The Committee's support of the intent to exempt some forms of dredging is welcomed. The Scottish Government will continue to work with shipping and ports interests on this matter, and will consult on the proposed exemptions before commencement of the licensing function. The Bill already provides for multi year licensing and the Government will use this approach where feasible.
38.	206. The Committee notes the Cabinet Secretary's intention to introduce an amendment clarifying that a remediation notice may require restoration of a damaged site. We call on the Cabinet Secretary to ensure that shipping and port interests, as well as environmental groups, have the opportunity to consider the proposed approach.	As the Committee acknowledges, the Scottish Government intends to introduce an amendment providing for notices to require the restoration of a damaged site.
Part 4 of the Bill: marine protected areas		

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39.	217. The Committee notes that Scotland is under international obligations to create an ecologically coherent and representative network of marine protected areas and therefore has some concerns that the power to create MPAs under the Bill is discretionary. The Committee considers that the Bill should impose a duty on the Scottish Ministers to create such a network, as this would both help ensure compliance with our international obligations and guarantee further protection of the marine ecosystem.	The Scottish Government is already committed to establishing an ecologically coherent network of MPAs and would be pleased to consider further amendment in this area.
40.	220. The Committee is not persuaded that there is a need for a formal process in the Bill entitling communities to propose an MPA, especially if the process is to be predominantly scientifically driven. However, it is vital that there are open channels within Government to enable communities to propose MPAs for consideration, and that this is well known at a local level, so that communities feel engaged in the process. Marine Scotland should have a clear advocacy role in this regard. MPAs will work best where local communities feel that have enjoyed ownership over the process of helping create them.	The Scottish Government welcomes the Committee's consideration of this point. The Scottish Government plans to engage widely on Nature Conservation proposals. It envisages a significant role for communities on Demonstration and Research MPAs by working with the local marine planning partnerships. Any data or MPA proposals put forward by communities would be assessed against designation criteria by Marine Scotland, SNH and JNCC before final decisions are taken by Ministers.
41.	237. The Committee agrees with the Scottish Government that the process for designating Nature Conservation MPAs should be mainly science driven. However, the Committee recommends that provision be inserted into the Bill requiring the Scottish Ministers, when drawing up a marine conservation order for an MPA under section 74 to have regard (a)	<p>The Scottish Government welcomes the support of the Committee with regards to the designation of MPAs being driven by science.</p> <p>The existing drafting does not exclude consideration of these factors and the Scottish Government believes that there is little value in drawing attention to these 2 factors alone.</p>

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	to social and economic factors, and (b) the desirability of mitigating climate change.	MPA guidelines (on designation) are currently being developed by Marine Scotland and guidance on management issues is planned. The factors raised by the Committee could be taken into account when defining possible management measures for Nature Conservation MPAs.
42.	238. The Committee also invites the Cabinet Secretary to clarify the extent to which, under the Bill, there is sufficient linkage between the marine planning process and the process of designating MPAs, and whether there is any risk of national objectives set out in the national plan (for instance on economic activity or climate change) failing to integrate with the designation of a network of MPAs under Part 4.	<p>The Scottish Government considers that there is a sufficient linkage between the marine planning process and the designation of MPAs without the need to make express provision in the legislation, as both are intrinsic elements (pillars) of the proposed 3 pillar approach to marine nature conservation.</p> <p>The MPA guidelines on network development currently being drafted by Marine Scotland, SNH, JNCC and in consultation with SFF and Environmental NGOs, will clarify the link between MPAs and Planning.</p>
43.	242. The Committee recommends that the Cabinet Secretary consider the merits of the Bill requiring MPAs to be regularly monitored and reviewed following designation	The Committee's recommendation is noted. Section 91 of the Bill already requires regular reporting to Parliament in connection with Nature Conservation MPAs. Monitoring will be an essential and intrinsic part of what needs done to allow the reports to be made. The proposed monitoring system is in line with monitoring programmes for existing protected areas in Scotland.
44.	248. The Committee notes the discussion at Scottish and UK Governmental level on the question of whether fishing activity in MPAs requires additional protection under the Bill, and looks forward to being notified of the outcome. However the Committee is not convinced that this additional protection is necessary.	The Scottish Government is considering this issue.

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Part 5 of the Bill: conservation of seals			
45.		269. The Committee recommends that the Cabinet Secretary consider putting into the Bill a requirement to set up seal management plans in all areas of Scotland where there is a perceived difficulty in the interaction between seals, angling, and fish farms.	The Scottish Government welcomes the Committee's views on the achievements of the Moray Firth Seal Management Plan. The Scottish Government considers that a Bill provision setting out a requirement to draw up seal management plans in all areas of Scotland could limit flexibility and make the introduction of the new licensing system more difficult. For example, there are areas around Scotland where there are insufficient populations to justify a management plan. In addition the Moray Firth seal management plan was developed in partnership through voluntary participation and compulsion could limit genuine stakeholder buy-in. The Scottish Government anticipates that in practice seal management planning will extend widely in Scotland as the new seal licensing system comes into effective operation and would become an established part of marine planning.
46.		277. The Committee invites the Cabinet Secretary to consider including on the face of the Bill an offence of intentionally or recklessly harassing seals, whilst recognising that careful drafting would be required to address the complexities surrounding the issue, including the risk of unintended consequences.	<p>The Scottish Government acknowledges the intent behind the recommendation, but is concerned that an offence of harassment would have unintended consequences on legitimate activities such as leisure and tourism interests and would make the deployment of some marine devices more difficult. The Committee recognises this difficulty.</p> <p>In any case, the Scottish Government considers that this issue is already adequately covered by the existence of regulation 28(3)(b) of the Conservation (Natural Habitats, &c.) Regs. 1994. In EU legislation seals are quite specifically <u>not</u> provided the level of protection offered to European protected species (such as cetaceans) in terms of killing, injuring, taking or disturbance. This important distinction recognises the existence of conflicts between seals and fisheries and fish farms and the need to regulate these.</p>
47.		290. The Committee supports the licensing system being sufficiently flexible to allow for the issuing of licenses on a group or individual basis as appropriate, recognising that there are some practical issues that may need to be ironed out where a group license is issued. This approach	The Scottish Government welcomes this support for a flexible and practical approach to the issue of group or individual licences as part of the new seal licensing system. It will almost certainly assist the process of development of local seal management.

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	should go hand in hand with the setting up of regional seal management groups, so as to encourage an open and cooperative approach to seal management within a particular area.	
48.	294. The Committee considers that the list of conditions that may be specified in a license (as set out in section 100(3)) should include the skill of the marksman, the type of firearm used, and the marksman's proximity to the target. Committee members consider that there is a case to be made for some or all of these conditions being mandatory for any license.	The considerations of the Committee are noted. Section 99 (1) already makes specification of the method of killing in the licence mandatory. The Scottish Government will be pleased to consider the other issues raised during the course of developing the new seal licence system and these could be covered in licence conditions using Section 100(2).
49.	307. The Committee sees no reason in principle why the requirement that the Scottish Ministers may only issue a license to kill or take a seal if there is “no satisfactory alternative” to doing so should not apply in all areas, rather than just in seal conservation areas as the Bill presently provides. At the same time, the Committee seeks clarification from the Government as to what deterrent or combination of deterrents could be used to satisfy Ministers that there is ‘no satisfactory alternative’ to issuing a license.	<p>The purpose of the current drafting is to allow for a clear distinction in management of grey seals (with healthy and increasing populations that can accommodate regular management without risk to populations) and declining common seal populations which require additional safeguards in respect of possible management.</p> <p>With regards to satisfaction of Ministers of the “no satisfactory alternative”, the Scottish Government would seek scientific advice on the issues of effectiveness of deterrents and ‘no satisfactory alternative’.</p>
50.	308. The Committee recommends that the Scottish Government consider making it a condition of granting a license to shoot a seal that, if the farm is not fitted with anti-predator nets, the applicant	The Scottish Government will consider this point as part of the new seal licensing system.

No.	(para no.) Recommendation	Draft Response
	provide an explanation as to why this is so.	
51.	314. The Committee recommends that the Cabinet Secretary set out reporting standards in guidance. The Committee suggests that there should be a requirement on a licensee to report the taking or killing of a seal at least quarterly	The Scottish Government will set out reporting standards, including timing of reports, in guidance to accompany the new seal licensing system. The Scottish Government agrees with the Committee view that reporting should initially be quarterly, though this is still be agreed with interested parties.
Part 6 of the Bill: enforcement powers		
52.	329. The Committee seeks clarification as to whether it is intended that port authorities should be compensated for their exercise of the power to direct a ship to port set out in section 135 in a manner which has caused them financial loss.	The power to direct a vessel to port is not new. It exists, for example, for officers authorised under the Sea Fisheries Act 1968. The Bill applies the power to new areas of enforcement - for instance, where there may have been a violation of a marine licence.
53.	335. The Committee notes and agrees with the views of the Finance Committee and invites the Cabinet Secretary to respond to them, whilst recognising that costs falling on the Scottish Government as a result of the UK Marine and Coastal Access Bill are not directly a matter for consideration in respect of the Marine (Scotland) Bill.	The Committee will wish to note that the Minister for Parliamentary Affairs has written to the Finance Committee addressing these particular issues.
54.	336. As noted earlier, concerns have been raised as to the adequacy of data-gathering on the marine environment, especially in view of the huge marine planning responsibility that will be placed on public authorities, Marine Scotland in particular. The Committee is considering this issue separately through its scrutiny of the 2010-11 budget	The Scottish Government considers that data collation, gathering and storage are important issues given the need for good quality information to underpin decision making in the marine environment. It looks forward to the committee's considerations.