



**Environment and Rural Development Committee**

**26th Meeting, 2006**

**Wednesday 20 September 2006**

The Committee will meet at 9.30 am in Committee Room 2.

1. **Items in private:** The Committee will consider whether to take item 3 in private and whether to consider its draft report on the Environmental Levy on Plastic Bags (Scotland) Bill in private at any future meetings. The Committee will also consider whether to take item 5 in private.
2. **Subordinate legislation:** The Committee will consider the following negative instruments—
  - the Inshore Fishing (Prohibition of Fishing for Cockles) (Scotland) (No. 2) Order 2006 (SSI 2006/383);
  - the Avian Influenza (Preventative Measures) (Scotland) Amendment Regulations 2006 (SSI 2006/399); and
  - the Products of Animal Origin (Third Country Imports) (Scotland) Amendment (No.2) Regulations 2006 (SSI 2006/419).
3. **Environmental Levy on Plastic Bags (Scotland) Bill:** The Committee will consider a draft Stage 1 report.

*Not before 10:00am*

4. **Public petition:** The Committee will consider PE799 by the Community of Arran Seabed Trust (COAST) requesting that the Scottish Parliament supports COAST's proposals to close an area of Lamlash Bay to all forms of marine life extraction (No Take Zone) and the rest of the Bay to mobile fishing gear (Marine Protected Area), and will take evidence from—

Don Macneish, Chairman of COAST;  
 Professor Callum Roberts, Professor of Marine Conservation, University of York; and  
 Tony Wass, commercial angling skipper on the Clyde;

and then from—

Alistair Sinclair, Secretary, Scottish Creelers and Divers Association;  
 Patrick Stewart, Secretary, Clyde Fishermen's Association; and  
 John Hermse, Secretary, Mallaig and North West Fishermen's Association;

and then from—

John Thomson, Director for Strategy and Operations West Areas, Scottish Natural Heritage; and

David Donnan, Senior Fisheries Advisories Officer, Scottish Natural Heritage;

and then from—

Ross Finnie MSP, Minister for Environment and Rural Development;

Eamon Murphy, Sea Fisheries Conservation Division, Scottish Executive; and

Phil Alcock, Marine Management, Scottish Executive.

5. **Crofting Reform etc Bill:** The Committee will consider arrangements for the Stage 1 debate.

**Mark Brough**

Clerk to the Committee

Direct Tel: 0131-348-5240

The following papers are attached:

<u>Agenda Item 2</u>	
<u><a href="#">The Inshore Fishing (Prohibition of Fishing for Cockles) (Scotland) (No. 2) Order 2006 (SSI 2006/383)</a></u>	<a href="#">ERD/S2/06/26/2a</a>
<u><a href="#">The Avian Influenza (Preventative Measures) (Scotland) Amendment Regulations 2006 (SSI 2006/399)</a></u>	<a href="#">ERD/S2/06/26/2b</a>
<u><a href="#">The Products of Animal Origin (Third Country Imports) (Scotland) Amendment (No.2) Regulations 2006 (SSI 2006/419)</a></u>	<a href="#">ERD/S2/06/26/2c</a>
<u>Agenda Item 3</u>	
Draft report <i>[Members only]</i>	<a href="#">ERD/S2/06/26/3a</a>
<u>Agenda Item 4</u>	
Note from the Clerk	<a href="#">ERD/S2/06/26/4a</a>
Briefing paper <i>[Members only]</i>	<a href="#">ERD/S2/06/26/4b</a>
Briefing from SPICe on Marine Protected Areas	<a href="#">ERD/S2/06/26/4c</a>
The petition and previous correspondence relating to it were circulated with the agenda for the Committee's meeting on 6 September 2006 and are available at: <a href="http://www.scottish.parliament.uk/business/committees/environment/papers-06/rap06-25.pdf">http://www.scottish.parliament.uk/business/committees/environment/papers-06/rap06-25.pdf</a>	
The following new or updated papers are enclosed:	
Submission from COAST	<a href="#">ERD/S2/06/26/4d</a>
Submission from Scottish Creelers and Divers Association	<a href="#">ERD/S2/06/26/4e</a>
Submission from the Clyde Fishermen's Association	<a href="#">ERD/S2/06/26/4f</a>
Submission from the Mallaig and North West Fishermen's Association	<a href="#">ERD/S2/06/26/4g</a>
Letter from North Ayrshire Council	<a href="#">ERD/S2/06/26/4h</a>

**SSI DESIGNATION FORM**

<b>SSI Title &amp; No:</b>	The Inshore Fishing (Prohibition of Fishing for Cockles) (Scotland) (No. 2) order 2006, <b>(SSI 2006/383)</b>					
<b>Responsible Minister</b>	Ross Finnie, Minister for Environment and Rural Development					
<b>Standing Order</b>	<b>Affirmative</b>	10.6.1(a)		<b>Negative</b>	10.4	✓
		10.6.1(b)			10.5	
	10.6.1(c)		<b>Other</b>	NL		NP
<b>Lead Committee</b>	Environment and Rural Development		<b>Other Committee</b>			
<b>Purpose of Instrument</b>	The purpose of this instrument is to close an area of the Solway estuary to cockle fishing.					

<b>Laid Date</b>	30 <sup>th</sup> June 2006	<b>20 day date</b>	23 <sup>rd</sup> September 2006
<b>1<sup>st</sup> SLC Meeting</b>	5 <sup>th</sup> September 2006	<b>40 day date</b>	12 <sup>th</sup> October 2006
<b>Lead Committee Report Due</b>	2 <sup>nd</sup> October 2006	<b>Other Committee Report Due</b>	

<b>SE Contact</b>	Eamon Murphy, 44976
<b>Committee Contact</b>	Mark Brough, 85240

**For SLC use:**

<b>Article 10 Compliance</b>	<b>Breaks 10(1) rule</b>		<b>Breaks 10(2) rule</b>	✓	<b>PO Letter dated</b>	30 June 2006	<b>PO Letter received</b>	✓
<b>Revocations</b>	<b>Revokes</b> ✓	<b>See Purpose of Instrument</b>		<b>Partially Revokes</b>				
<b>Executive Note</b>	✓	<b>Regulatory Impact Assessment</b>	✓	<b>European Regulations/ Directives</b>				
<b>Additional Information</b>								

**SSI DESIGNATION FORM**

<b>SSI Title &amp; No:</b>	The Avian Influenza (Preventative Measures) (Scotland) Amendment Regulations 2006, <b>(SSI 2006/399)</b>					
<b>Responsible Minister</b>	Ross Finnie, Minister for Environment and Rural Development					
<b>Standing Order</b>	<b>Affirmative</b>	10.6.1(a)		<b>Negative</b>	10.4	✓
		10.6.1(b)			10.5	
	10.6.1(c)		<b>Other</b>	NL		NP
<b>Lead Committee</b>	Environment and Rural Development		<b>Other Committee</b>			
<b>Purpose of Instrument</b>	The purpose of this instrument is to implement European Commission Decision 2006/405/EC which amends 2005/734/EC laying down biosecurity measures to reduce the risk of transmission of highly pathogenic avian influenza between birds living in the wild to captive birds.					

<b>Laid Date</b>	14 <sup>th</sup> July 2006	<b>20 day date</b>	23 <sup>rd</sup> September 2006
<b>1<sup>st</sup> SLC Meeting</b>	5 <sup>th</sup> September 2006	<b>40 day date</b>	13 <sup>th</sup> October 2006
<b>Lead Committee Report Due</b>	9 <sup>th</sup> October 2006	<b>Other Committee Report Due</b>	

<b>SE Contact</b>	Debbie King, 46453
<b>Committee Contact</b>	Mark Brough, 85240

**For SLC use:**

<b>Article 10 Compliance</b>	<b>Breaks 10(1) rule</b>	✓	<b>Breaks 10(2) rule</b>	✓	<b>PO Letter dated</b>	13 <sup>th</sup> July 2006	<b>PO Letter received</b>	✓
<b>Revocations</b>	<b>Revokes</b>	<b>See Purpose of Instrument</b>		<b>Partially Revokes</b>				
<b>Executive Note</b>	✓	<b>Regulatory Impact Assessment</b>		<b>European Regulations/ Directives</b>	✓			
<b>Additional Information</b>								

**SSI DESIGNATION FORM**

<b>SSI Title &amp; No:</b>	The Products of Animal Origin (Third Country Imports) (Scotland) Amendment (No. 2) Regulations 2006, <b>(SSI 2006/419)</b>					
<b>Responsible Minister</b>	Ross Finnie, Minister for Environment and Rural Development					
<b>Standing Order</b>	<b>Affirmative</b>	10.6.1(a)		<b>Negative</b>	10.4	✓
		10.6.1(b)			10.5	
	10.6.1(c)		<b>Other</b>	NL		NP
<b>Lead Committee</b>	Environment and Rural Development		<b>Other Committee</b>			
<b>Purpose of Instrument</b>	The purpose of this instrument is to implement European Commission Decisions 2006/521/EC and 2006/522/EC which amend 2005/760/EC and 2006/7/EC respectively so that restrictions on imports to Scotland of live captive birds (except pet birds and poultry) from third countries are extended until the end of the year.					

<b>Laid Date</b>	10 <sup>th</sup> August 2006	<b>20 day date</b>	23 <sup>rd</sup> September 2006
<b>1<sup>st</sup> SLC Meeting</b>	5 <sup>th</sup> September 2006	<b>40 day date</b>	13 <sup>th</sup> October 2006
<b>Lead Committee Report Due</b>	9 <sup>th</sup> October 2006	<b>Other Committee Report Due</b>	

<b>SE Contact</b>	John Peerless, 46555
<b>Committee Contact</b>	Mark Brough, 85240

**For SLC use:**

<b>Article 10 Compliance</b>	<b>Breaks 10(1) rule</b>		<b>Breaks 10(2) rule</b>	✓	<b>PO Letter dated</b>	10 <sup>th</sup> August 2006	<b>PO Letter received</b>	✓
<b>Revocations</b>	<b>Revokes</b>	<b>See Purpose of Instrument</b>		<b>Partially Revokes</b>				
<b>Executive Note</b>	✓	<b>Regulatory Impact Assessment</b>		<b>European Regulations/ Directives</b>	✓			
<b>Additional Information</b>								

**Environment and Rural Development Committee**

**PE799 – Proposals for No-Take Zones and marine protection in Lamlash  
Bay, Arran  
Background note**

1. The Public Petitions Committee (PPC) has referred PE799 to the Committee. The petition, by Tom Vella-Boyle, calls for the Scottish Parliament to urge the Scottish Executive to support COAST's (Community of Arran Seabed Trust) proposals for a trial closure of an area of Lamlash Bay to all forms of marine life extraction [No Take Zone (NTZ)] and the rest of the Bay to mobile fishing gear [Marine Protected Area (MPA)].
2. The petition and previous correspondence relating to it were circulated with the agenda for the Committee's meeting on 6 September 2006 and are available at:  
<http://www.scottish.parliament.uk/business/committees/environment/papers-06/rap06-25.pdf> . This background note draws on a SPICe briefing prepared for the Public Petitions Committee in 2004.

**Background**

3. COAST is a community group which has been working on its aims of protecting and conserving Lamlash Bay for over ten years. The majority of its members live on Arran and represent approximately 20% of its population. It has consulted widely on its proposals, both locally and with fishermen, academics, politicians, SNH and the Scottish Executive.
4. Under the proposal, no fishing of any kind would be allowed in the no-take zone. Fishing with pots and creels for shellfish, and recreational sea angling would be allowed in the protected area, but other types of fishing with "mobile" gears which are towed along the bottom of the seabed i.e. scallop dredges or trawled nets, would not. The purpose of the trial would be to compare the effects on marine life in the no-take zone, the protected area and the "staus quo" area outside the bay.
5. The aim of COAST's petition is to allow marine life to regenerate from fishing activities in order to benefit the local marine environment, the local economy and (through spillover of species from the NTZ) the Clyde fishermen. COAST also wishes to protect a species of maerl<sup>1</sup> in the bay.

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<sup>1</sup> Maerl is the name for several species of slow growing, fragile red seaweeds that grow unattached on the seabed where there are specific growing conditions and incorporate chalk into their structure (calcification).

6. Two species of Maerl are listed in Annex V of the Habitats Directive<sup>2</sup> (92/43/EEC). These include *Phymatolithon calcareum* which is reported to be abundant around the West coast of Scotland and Ireland<sup>3</sup>. The Directive requires Member States to conduct monitoring programmes to measure the conservation status of habitats and species protected by the Directive. If they find that the conservation status of the species listed in Annex V is compromised as a result of this monitoring, they are required to take measures to ensure the conservation status of these species remains “favourable” (defined in the Directive). The Directive therefore affords the species listed in Annex V a lower degree of protection than it does for other species, e.g. for which the Directive requires Member States to designate Special Areas of Conservation (SAC).
7. The petitioner’s website<sup>4</sup> explains that Maerl beds are sensitive to damage from trawling. They cite research which shows that the beds in Lamlash bay are currently in a favourable condition compared to other sites in the Firth of Clyde.
8. The petitioner proposes that Lamlash Bay could be the ideal site to test whether MPAs (including NTZs) could be effective tools for fisheries management in Scotland. COAST proposed in its oral evidence to the Public Petitions Committee (PPC) on 22 December 2004 that this trial would last for a 10 year period and could be monitored with the assistance of COAST which has received training from the Marine Conservation Society in surveying and has undertaken its own research into existing NTZs and methods of monitoring them.
9. In its evidence to the PPC, COAST said that the fishermen who use static gear (pots and creels) support the petition’s proposals (with the proviso that the area under proposal is not large enough and should be extended out into the Clyde for full benefits from the trial) and a majority of those trawling the seabed with mobile gear are not supportive.

### **Progress of the petition**

10. The PPC has considered written and oral evidence from the petitioners, and also written evidence from the Scottish Executive, Scottish Association for Marine Science, Scottish Natural Heritage, Clyde Fisherman’s Association, Clyde and South-West Static Association, Commercial Fishermen on Arran and Arran Sea Angling Association. The PPC also requested information from North Ayrshire Council (the authority responsible for implementing the biodiversity action plan in the area concerned) but the council did not respond. The PPC subsequently requested further information from the petitioner to comment on the responses listed above, and also asked for information from Professor Callum Roberts of the University of York, an expert in this field of marine studies, and the Scottish Executive. The PPC did not believe that all its questions about the petition had been answered

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<sup>2</sup> Link to consolidated version of [directive](#)

<sup>3</sup> Further information about this [species](#)

<sup>4</sup> <http://www.arrancoast.co.uk>



and referred the petition to the Environment and Rural Development Committee.

11. Scottish Ministers have powers to establish closed areas in inshore waters<sup>5</sup> under the Inshore Fishing (Scotland) Act 1984. These can be temporary or permanent, and can also be limited to certain types of fishing. Many such closures are in existence around the Scottish coast to protect fish stocks and marine habitats and to resolve conflicts between fishermen fishing with different types of gear. However, the Executive states that 'other legislative tools would be required to prohibit the extraction of other forms of marine life'.
12. In initial correspondence to the PPC, the Executive stated that it would be desirable to have the consensus of the fishing industry in the area on COAST's proposals before it could implement them in legislation. This is not a requirement of the Act, which says that Ministers can make Orders establishing closed areas "after consultation with such bodies as they consider appropriate".
13. COAST explained that it has endeavoured to discuss issues repeatedly with various fishing bodies and individuals but that it is unable to bring all the parties to consensus<sup>6</sup>. The Executive also believes that agreeing to COAST's proposals for a trial could set 'a precedent which might lead to a more general "squeezing out" of the fishing industry through multiple demands for fishing-free areas regardless of whether scientific, social and environmental analyses argue in favour of such areas'. The Executive also highlights that the measures proposed by COAST could 'cut across our attempts to build a consensual approach to marine nature conservation which at present utilises statutory no take zones in areas which have been designated as a Special Area of Conservation' (SAC).<sup>7</sup> In this case, SNH has advised the Executive that Lamlash Bay does not meet the criteria for selection as a SAC.
14. On the specific subject of the maerl beds, the Executive highlights that not every occurrence of the species protected under the Habitats Directive is required to be protected legally and that it does not think the existence of maerl at this site gives it potential as a SAC although it may change that position once greater understanding of the Clyde area is achieved through various marine initiatives. The existence of maerl, however, has led to Scottish Water's decision to re-route a sewage outfall pipe to avoid unnecessary impact.
15. The Executive lists various initiatives (such as the Inshore Fisheries Groups and the Scottish Sustainable Marine Environment Initiative pilot project in the Clyde) which it hopes will provide opportunities for COAST to discuss their proposals<sup>8</sup>. In his most recent correspondence on the petition, the

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<sup>5</sup> within the 12 mile limit around the coast

<sup>6</sup> COAST's oral evidence to the PPC, 22 December 2004.

<sup>7</sup> Scottish Executive correspondence to the petitioners, 19 June 2006.

<sup>8</sup> Scottish Executive correspondence to the PPC, 3 October 2005.

Minister has also asked his officials to facilitate further discussions between COAST and local fisheries interests<sup>9</sup>.

### **Comments from third parties**

16. Amongst the other written submissions to the PPC, COAST's proposals are supported by all except Scottish Natural Heritage (SNH) and the Clyde Fisherman's Association (CFA) which does not believe the area to be of sufficient importance to be a MPA and does not think the proposals would produce any benefits for marine conservation but would damage the fishing industry and any proposals for future MPAs.
17. The CFA suggests an alternative approach where the proposed NTZ would be financially backed by the petitioner for the cultivation and laying of scallops, and the proposed MPA would be open to scallop dredgers under strict conditions, including gauging the effectiveness of the NTZ regeneration of scallop numbers. COAST's later response to the PPC supports this proposal but thinks this approach should take place in waters around Carradale, a fishing village on the Kintyre peninsula.
18. The Arran Sea Angling Association (ASAA) and Scottish Association for Marine Science agree with COAST that large scale trawling and fishing has diminished the seafish stocks available around Lamlash Bay. ASAA also comments that angling festivals around the Clyde have disappeared as a result with a knock on effect to the local tourist economy in communities like Arran. Professor Roberts states that decline of commercial fishing stocks in the Firth of Clyde indicates that the ecosystem there is unstable and prone to disease and could be remedied by creating MPAs free from fishing preferably covering a larger area than that proposed by the petitioners (30% of the Clyde estuary). Professor Roberts states that his research has shown that NTZs are an important component of MPAs as a protection from commercial fishing and can contribute to fisheries. He states that, judging on research on NTZs in other countries, the Bay would quickly achieve importance after becoming a NTZ and would bring income from tourists as well as having conservation and fisheries value.

### **Conclusion**

19. The Committee has agreed to take oral evidence from the petitioners, a number of fisheries organisations, SNH and the Minister for Environment and Rural Development. The Committee has also requested and received a written submission from North Ayrshire Council from its perspective as the local authority responsible for implementing the biodiversity action plan in the area concerned. Following this evidence the Committee is invited to consider how it wishes to proceed with this petition.

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<sup>9</sup> Scottish Executive correspondence to the petitioners, 19 June 2006.

## Marine Protected Areas

The Committee asked for some information on the development of Marine Protected Areas (MPAs) in other countries - New Zealand, Norway, Japan and Canada. It may be of interest to know that the first International Marine Protected Areas Congress<sup>1</sup> was held in Australia in October 2005.

### **Canada**

Canada's *Oceans Act* gives the Government the ability to “establish Marine Protected Areas to conserve and protect unique habitats, endangered or threatened marine species and their habitats, commercial and non-commercial fishery resources (including marine mammals) and their habitats, marine areas of high biodiversity or biological productivity, and any other marine resource or habitat requiring special protection.”

The *Oceans Act* gives the Minister of Fisheries and Oceans lead responsibility in delivering a federal network of MPAs. Three departments are involved in delivery - Fisheries and Oceans Canada, Parks Canada Agency and Environment Canada. The Federal Marine Protected Area Strategy<sup>2</sup> outlines how different departments and agencies will work together to establish a comprehensive network of marine protected areas with the aim of *conserving and protecting Canada's natural and cultural marine resources*. The Strategy has four key objectives:

- Establish a more systematic approach to marine protected area planning and establishment.
- Enhance collaboration for management and monitoring of marine protected areas.
- Increase awareness, understanding and participation of Canadians in the MPA network.
- Link Canada's network of marine protected areas to continental and global networks.

In November 2005 Canada designated three new MPAs along its Atlantic Coast. Each is different in character, supporting cod, lobster and a rare type of Irish moss<sup>3</sup>.

### **Japan**

It has been reported in the Japanese Press<sup>4</sup> that Japan has been unwilling to engage with the worldwide movement seeking to develop a network of Marine

<sup>1</sup> <http://www.impacongress.org/>

<sup>2</sup> <http://www.dfo-mpo.gc.ca/canwaters-eauxcan/infocentre/publications/docs/fedmpa-zpmfed/toc#toc>

<sup>3</sup> <http://depts.washington.edu/mpanews/notes>

<sup>4</sup> The Daily Yomiuri, 2 June 2006

Protected Areas. For example, there was no Japanese representation at the first International Marine Protected Areas Congress. However, one example protected area in Japan is on the northernmost island, Hokkaido<sup>5</sup>. As a World Heritage Site, this appears to be managed well. However whilst it contains 7,400 hectares of sea, most of the site is on land.

In 1998 the Environment Agency of Japan published a document entitled *Promoting a Plan for a Marine Environment Monitoring Network in the North Pacific*<sup>6</sup> however this did not extend to considering protection of areas of the sea. Japan and South Korea have issues relating to the ownership of some areas of sea, however it is understood that there is now an agreement<sup>7</sup> in place to carry out joint environmental monitoring in disputed areas.

Japan has established 58 Marine Parks, though these do not cover large expanses of water for conservation purposes. Instead, according to information posted on a UN 'virtual conference' website<sup>8</sup>, they "consist of a core area, surrounded by an ordinary marine area of up to 1-kilometer radius, which acts as a buffer zone. The Marine park zone is preserved, whilst the ordinary marine area is used for park visitors with facilities such as underwater observatories, glass-bottomed boats and diving sites. These facilities are planned and constructed by park authorities and usually operated by non-profit organisations." It is argued that the Parks engage local fishermen, and allow them to diversify their interests.

However these Parks have met with considerable controversy with reports that during the annual Japanese dolphin hunts the Parks pick the best of the dolphins available, whilst the rest are killed for food<sup>9</sup>. The Whale and Dolphin Conservation Society<sup>10</sup> will lead a protest against this practice on 20 September.

### ***New Zealand***

In December 2005 the New Zealand Government approved three new marine reserves, taking the total around the country to 31 protecting 7.5% of NZ territorial seas. Another four reserves await an approval decision. The three new reserves were approved under the existing marine legislation, but this had been under review, and in January 2006 the New Zealand Government published a new policy and implementation plan for MPAs. The new 'Marine Protected Areas Policy and Implementation Plan'<sup>11</sup> according to the Government, "provides an integrated

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<sup>5</sup> <http://www.unep-wcmc.org/sites/wh/shiretoko.html>

<sup>6</sup> <http://nautilus.org/archives///papers/energy/ShishimeESENAY2.pdf#search=%22japan%20marine%20Environment%22>

<sup>7</sup> <http://english.bna.bh/?ID=50086>

<sup>8</sup> [http://www.unescap.org/dpad/vc/conference/bg\\_jp\\_15\\_jmp.htm](http://www.unescap.org/dpad/vc/conference/bg_jp_15_jmp.htm)

<sup>9</sup> [http://www.animalsvoice.com/PAGES/writes/editorial/news/invest/dolphin\\_business.html](http://www.animalsvoice.com/PAGES/writes/editorial/news/invest/dolphin_business.html) citing *Independent* article <http://news.independent.co.uk/world/asia/article19335.ece>

<sup>10</sup> <http://www.drivenbydemand.org/>

<sup>11</sup> [http://www.biodiversity.govt.nz/seas/biodiversity/protected/mpa\\_policy.html](http://www.biodiversity.govt.nz/seas/biodiversity/protected/mpa_policy.html)

process, including regional consultation, for establishing a network of marine protected areas around New Zealand." The MPA network will develop through:

- Identifying areas based on science
- Setting a suitable level of protection
- Deciding what new areas are needed
- Choosing new MPAs

A recent proposal<sup>12</sup> by the fishing industry to develop a network of Benthic Protected Areas (BPAs) has met with a varying response<sup>13</sup>. The proposal would cover a third of NZ's Exclusive Economic Zone, and would ban bottom trawling and dredging. Some view the proposal as a move in the right direction, others are of the opinion it has only been proposed in areas which are not fished anyway, or which are too deep for bottom trawling anyway.

### **Norway**

In March 2006 the Norwegian Government presented its plans<sup>14</sup> for the first integrated plan for a Norwegian sea area. Focusing on the Barents Sea and the sea areas off the Lofoten Islands, this plan is described as "a milestone in the work towards establishing an ecosystem-based management in all Norwegian seas areas" and gives special protection to valuable and vulnerable areas. The plan is fleshed out with the following key aspects:

- Area-based management, where activities and measures are adjusted to the environmental quality of the ecosystems
- Protection of the most valuable and vulnerable areas against negative pressures, included oil pollution
- Reduction of long-range pollution
- Strengthening of the fisheries management
- Securing control with the development of the state of the environment in the Barents Sea – Lofoten area through a more coordinated and systematic environmental monitoring
- Strengthening the knowledge base through better surveys and increased research.

One of the results of this new plan is a map detailing factors such as where petroleum activities will not be started during this Norwegian Parliamentary session.

### **Graeme Cook**

**SPICe Research, September 2006**

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<sup>12</sup> <http://depts.washington.edu/mpanews/MPA72.htm#notes>

<sup>13</sup> <http://depts.washington.edu/mpanews/MPA73.htm#Stokes>

<sup>14</sup> <http://odin.dep.no/md/english/topics/IntegratedManagementBarentsSea/bn.html>

**SUBMISSION FROM COAST (  
COMMUNITY OF ARRAN SEABED TRUST)**

Briefing Paper for Environment and Rural Affairs Committee  
Being held at Holyrood, Wednesday 20<sup>th</sup> September 2006.

This is COAST's perception of the main players in marine management.

Scottish Natural Heritage

COAST has been supported by local staff of SNH but the national SNH management team take a differing view. They say that the COAST project could fit into their vision but this will not happen for 5 or 10 years at least (this is an optimistic estimate, see CFA position).

COAST feels SNH have forgotten the fundamental priority of any protection agency which is "what will happen if we fail to act now?" SNH have adopted a high risk strategy with no element of precaution. If it fails who will take responsibility? SNH spends approximately 5% of their budget on the protection of Scotland's marine habitat. They do not propose any major protection of this habitat for the next decade, which will be inevitably too little too late. Bringing together stakeholders in meetings to discuss protecting the environment in 10 years time, an environment that is disappearing now, does not seem the best use of time or money, to a community that has waited 35 years already.

After the public relations disaster of the Loch Sween, National Nature Reserve project, the upper management team seem to have learned nothing about dealing with local community issues, despite the fine words they show in their vision statements, especially when the community is in favour of protecting a tiny area of marine habitat.

Scottish Executive, Rural Affairs Department

For an organisation with ENVIRONMENT in their name, it beggars belief that up until now they have shown so little effort in protecting the long term sustainability of the marine environment. All dialogue on this subject has been with the mobile sector of the fishing industry, leaving the people of Scotland disenfranchised with regard to the 'common law right to fish'. They seem impervious to the findings of any of the 3 major reports below:

Royal Society of Edinburgh Report  
Royal Society Report on Environmental Pollution  
Prime Minister's Strategy Unit Report

All call for experimental Marine Protected Areas to be set up. They quote:

“UK & devolved administrations should develop an experimental programme of MPAs focusing initially on areas which provide benefits to multiple users, commercial fishing, tourism, environment & recreational fishermen.”

SEERAD continue to ignore the possibility of a trial of some of these proposals and offer only more of the same management practices that have lead to the sorry state of Scotland’s marine environment today.

When asked on their position on Marine Spatial Planning they seemed less than enamoured with the prospect of this, a complex and expensive operation, they were unable to give any estimate as to the cost or the time frame such legislation would take.

#### Clyde Fishermen’s Association & Scottish Fishermen’s Federation.

The CFA have been at the heart of decision making with SEERAD and wish to protect this position. They do not want any other organisations having any say in the management of the marine environment and say it is for the Executive to decide on issues within the marine environment.

They have indicated to SEERAD that they would not be party to Marine Spatial Planning or a complete network of Marine Protected Areas for at least 20 years. They will resist all parties including, island communities, sea anglers or even commercial creel fishermen, who wish to see a change in the way the marine is managed.

Any proposals even ones which might benefit their members will be attacked with vigour, in order to maintain the status quo.

They have said they are not in favour of ‘voluntary agreements’, one reason given is that they cannot see who a voluntary agreement would be between. COAST agrees.

Other issues which COAST believes are important to this debate:

The whole community of Arran, its local councillors and its local MSPs support COAST’s proposals

The Scottish Federation of Sea Anglers unequivocally support the COAST proposals

One commercial fisherman COAST interviewed said “it took 17 years to bring the Clyde to its knees, another 10 to 15 years will wipe it out entirely!”

A report from New Zealand shows that a small MPA set up at Leigh in New Zealand has generated 22 million dollars [NZ] annually, to the local economy.

A report from Orkney says that tourism angling brings £1.7 million to the local community annually. COAST believes substantial revenue would accrue to Arran from tourism if a MPA was introduced here.

COAST believes that there is the necessary legislation in place to create a trial

No Take Zone and Marine Protected Area on Arran.

Minister for Environment and Rural Development  
Ross Finnie MSP  
Pentland House  
47 Robb's Loan  
Edinburgh  
EH14 1TY

28<sup>th</sup> July 2006

Dear Mr Finnie

Thank you for your letter 19<sup>th</sup> June 2006, we are very grateful to at last have a reply.

Reading between the lines of your letter we can perceive that the COAST proposal creates something of a quandary for your office and it may assist if we put our understanding of the position of the respective parties as frankly as possible, before we turn to how we see this being resolved.

### **Background**

The COAST proposal has much to recommend it. It has strong local community support and is also supported by some of the world's leading marine scientists both as a fisheries management measure and a measure for marine conservation.

The Inshore Fisheries Scotland Act 1984 states:

*s1 (1) The Secretary of State may after consultation with such bodies as he considers appropriate, make orders under this section regulating fishing for sea fish in any specified area within Scottish inshore waters*

*s 1 (2) Order under this Section may prohibit, within the specified sea area, all or any, or a combination of the following:*

*(a) all fishing for sea fish.*

*(c) fishing by specific method*

There would not appear to be a requirement in the Act for specific grounds for the exercise of this discretion except for the need for consultation. There is certainly no need for consensus on the issue or the fettering of your discretion



to purely use this Act for fisheries management measures or marine nature conservation measures. It would seem that your only duty was to consult and then make a decision and as long as that decision is reasoned there can be no question that such a decision was within your gift and it is doubtful whether a legal argument could be sustained against such a decision as long as due consideration was given to the parties cases.

It was suggested to us that there is no policy backing to COAST's proposals. Starting with the United Nations FAO Code of Conduct for Responsible Fisheries:

*"A responsible fisheries policy has to ensure effective conservation, management and development of living aquatic resources with due respect for the eco-system and bio-diversity in order to provide, both for present and future generations, a vital source of food, employment, recreation, trade and economic well-being for people."*

The kind of cross sectional support which the COAST proposals enjoy from among, local commercial fishermen, marine conservationists, local employers and the local community are clearly in line with the thrust of this policy. In fact it is a far more tenable argument in our view to run with the COAST proposal, than to permit scallop dredging to continue, which is a policy decision almost entirely at odds with the above requirements.

The European Union's Common Fisheries Policy is set out in Council Regulation (EC) No 2371/2002 at Article

*"In their 12 nautical mile zone, Member States should be allowed to adopt conservation and management measures applicable to all fishing vessels, provided that, where such measures apply to fishing vessels from other Member States, the measures adopted are non-discriminatory and prior consultation has taken place, and that the Community has not adopted measures specifically addressing conservation and management within this area."*

It also states at Article 4

*"The objective of the Common Fisheries Policy should therefore be to provide for sustainable exploitation of living aquatic resources and of aquaculture in the context of sustainable development, taking account of the environmental, economic and social aspects in a balanced manner."*

According to EU policy therefore the Scottish Executive has the powers to adopt fisheries measures as long as the objective of the CFP is maintained. Once again the COAST proposals are in line with those objectives (while as we have stated the continued allowance of scallop dredging and associated very visible damage is not). A test of the efficiency of a No Take Zone [NTZ] in Scottish Waters investing in methods of sustainable exploitation. The lack

of such Zones in Scottish waters speaks of the overwhelming balance against sustainable development which is a feature of the current system.

The "Seas the Change" document state that the aim of Scottish Policy is:

*"A Scottish sea fishing industry that is sustainable and profitable and supports strong **local communities**, managed effectively as an integral part of coherent policies for the marine environment"*

There is clearly room in this policy for community involvement. In fact a short glance at the document reveals quite how many of the Scottish policies the COAST proposals comply with. On page 2 for instance, the policies of:

*"Living within Environmental Limits"*

*"Ensuring a strong healthy and just society"*

*"Achieving a sustainable economy"*

*"Promoting good governance"*

*"Using sound science responsibly"*

are all dealt with in the proposals. UN, EU and Scottish policy would seem to us to require proposals like those from COAST to be viewed in a open minded, fair and dispassionate way and with due diligence. There is absolutely no doubt that stocks are in rapid decline and ERAD should be jumping at opportunities for off the peg incorporations to their general strategy. We attribute the fact that ERAD have not been successful to the lobbying by the representatives of the scallop dredgers, who oppose the idea.

## **Opposition**

The representative and the lobbyist for these three fishermen is a lawyer and it is likely that legal arguments have been raised in their support. We are of course unsure what those arguments are but must remind ERAD that however cogent those arguments sound they represent the fishermen's interest rather than ERAD's and cannot be viewed as independent. There are a number of potential legal issues which have occurred to us.

Firstly, there is a question of whether the Minister has the authority to close off the area. We hope that we have shown above that you do have such powers as long as you undertake adequate consultation.

Secondly, there is a question of compensation. There is a well known principle that the state will not deprive an individual of his property without compensation. In this case we do not feel that it applies, fishermen have no property as their right to fish belongs to the general public (under the public right to fish). In the same way that a highway authority need not compensate road users when there is a closure of the public highway there should be no requirement to compensate fishermen for a NTZ. Indeed it is an over abundance of such subsidy which has in part led to consequential over fishing and decimation of the public resource.

Thirdly and perhaps most fundamentally we are very doubtful that scallop dredging is legal at all. The mechanics of scallop dredging as we are sure you are aware is that steel bags with sprung loaded teeth are dragged along the seabed. They tend to eradicate anything in their path and leave deep furrows in the sea bed itself. Although the public right to fish includes ancillary activities as a common-law right it is also fundamentally limited to *reasonable activities*. The definition to what is reasonable is what an ordinary man thinks and not what commercial fishermen think. In that respect it reflects the public opinion of the day. There is a serious question over whether an activity which is even known as *dredging* can properly be exercised under the public right *to fish* at all. This is why the local people of Lamlash campaigned so vigorously against it in the first place in the 1980s when it was first permitted inshore. Its effects are best summed up in the words of former Campbeltown fisherman Freddie Gillies in his book '*Silver from the Sea*':

*There is now little doubt in my mind - though I admit to having been sceptical for years - that constant bottom-trawling and scallop dredging for almost five decades have contributed to the destruction of the fish breeding cycle on the Clyde and Gigha grounds*

Fourthly, it has been suggested that pressing nature conservation or fisheries management reasons are the only grounds for utilising the Act (we have disputed that above). NTZs are about ecosystem protection and therefore clearly make sense for nature conservation and, in the context of rapid stock decline, fisheries management. Special Areas of Conservation are not about ecosystem protection but about protecting significant habitats or species, which are perceived to be under threat. Conservation is not just about protecting charismatic species but about conserving general species as well. It is for this reason that Natural England is proposing NTZs both inside and outside SACs. As SNH and Natural England perform similar functions the discrepancy between the approaches of the two organisations is difficult to reconcile, particularly when the Royal Commission on Environmental Pollution gave such a devastating appraisal of stock conservation and such strong advocacy of NTZs. There is no question in our mind (nor we would suggest that of the electorate) that NTZs are a good idea for conservation and management reasons.

### **Inshore Fisheries Groups**

We do not share the same confidence that your department does in the ability of Inshore Fisheries Groups to deliver, or in their constitutional status. Somewhere down the line it has been forgotten that the fishery is a public resource, which belongs to the people of Scotland. It is a general constitutional principle in a democracy that public resources can only be allocated by elected representatives. If the IFGs are dominated or even have a majority of commercial interests (as seems likely to be the case) there is a threat that IFGs will be unconstitutional in principle and in practice have the same systemic failures which have been highlighted by Josh Eagle in his investigation of England's and Wales' Sea Fisheries Committees. Quarrymen are not permitted to sit on planning committees for the same reason.

Technical advice will always be necessary from fishermen but COAST's experience is that too much heed has been paid to fisheries representatives rather than too little. The Clyde Fishermen's Association has had strong representation in the management of the Clyde for the last 50 years and all that this has succeeded in doing is bringing about successive stock collapse. While COAST are happy to be involved in IFG's we do not want our proposals to be dealt with by a body which we do not believe to be constitutional or able to deliver dispassionate decisions.

### **Summary of COAST's position**

COAST believe that that they have a serious and credible proposal, which is supported by sound fisheries management, stock conservation and community principles, backed up by both Scottish fisheries law and policy

COAST feel that they have been poorly treated and disenfranchised – in the scale of things, this is a tiny proposal which could easily be incorporated into a nationwide strategy at some later date if necessary.

The COAST proposals are against a backdrop of catastrophic stock collapse. The only fishermen opposing the scheme are those involved in an activity which is particularly associated with marine damage and is operating on the very margins of legitimacy. A decision to support the scallop dredgers instead of the community would appear to be exactly contrary to the stated aim of Scottish fisheries policy.

COAST are concerned at over representation of commercial fisheries interests in the current decision making process and the potentially unconstitutional nature of its institutional replacement.

### **The way forward**

As it stands the COAST Proposals can be dealt with by five options:

***Option 1. COAST can seek redress through the Courts either for the undue delay for dealing with these proposals by ERAD or against the scallop dredgers for operating outside the public right to fish. Both pieces of systemic litigation are likely to attract the type of publicity and funding which could easily match the resources of the Clyde Fishermen's Association.***

***Option 2. COAST can wait for the establishment of the IFG.***

***Option 3. COAST can work within the current political framework, refuse to deal with a voluntary agreement and force a decision either one way or another from ERAD using all the campaigning skills they can muster.***

***Option 4. COAST can continue down a voluntary agreement route***

***Option 5. ERAD can implement the full COAST Proposal using their statutory powers to introduce legally binding regulations on extraction in Lamlash Bay.***

Option 1. The Courts are a messy place to sort out this kind of action and the results are likely to be unpredictable. They are a last resort. COAST has always worked within the established political system and would like to continue to do so. Litigators don't make good neighbours.

Option 2. COAST just do not have faith in the ability of IFGs to deliver and COAST have been waiting for too long already. As well as our doubts over the status of the IFG, we feel that to involve the COAST proposals in the IFG would result in undue delay.

Option 3. This is an Option COAST can consider

Option 4. COAST would consider this option provided the following criteria can be met:

- a) Delegates from the CFA are ready to negotiate (we have already been told by CFA representatives that the CFA would never agree to our proposals and their letter to ERAD of 16th December 2003 also says this).
- b) That such voluntary agreement contained serious and enforceable penalty clauses for anyone infringing the agreement.
- c) That the voluntary agreement was signed by or on behalf of **all** commercial fishermen [including commercial divers and sea anglers] with permission to operate in Lamlash Bay.
- d) That a way is found that ensures that all other users of Lamlash Bay comply with the agreement.
- e) The agreement was concluded in the next 6 months.
- f) That all parties come to the negotiating table equally. (We had a very embarrassing encounter at a meeting called by ERAD and chaired by ERAD where the CFA representative was allowed to vociferously dominate proceedings and had 'side' meetings before and after our meeting, which did not give us an impression that our proposals were going to be given the proper consideration they deserved).
- g) That if the voluntary agreement cannot work or breaks down then ERAD will bring forward legally binding statutory powers.

Option 5. This is COAST's preferred Option.

We have tried to disclose as many of our thoughts on this matter as possible, so that you can fully appreciate our position, and be as straightforward as we can.

That a NTZ would work in Lamlash is beyond question. Lamlash Bay is two hours from the Central Belt, with all the visitor numbers that that entails. The effect of a NTZ on the Island Community and Scotland as a whole cannot be in doubt. Political leaders should be using this as an opportunity to create a flagship scheme for Scotland at little risk, COAST are amazed the opportunity has not been grasped with both hands.

We look forward to hearing from your office shortly. If you are in agreement with pursuing Option 4 or 5 to settle this, it would seem sensible to request that *your officials* broker a meeting between us and the CFA. We would be happy to host such a meeting on the island. Our only feeling is that this has already been left far too long and such meeting should take place by the end of August at the latest.

**Please note.** When we say '*your officials*' we mean the people who influence policy and final decisions. Looking on the internet it appears that David Wilson and Frank Strang are the two such people, so we would expect them to attend.

Yours very sincerely,

Tom Vella-Boyle,  
Secretary of COAST and on behalf of the COAST Committee.

#### **Addendum.**

Since writing the above letter we have been forwarded a letter written by John Tait of the Marine Management Division of ERAD dated 16<sup>th</sup> June 2006 to Murray Tosh MSP where he said in his second paragraph.

“As you are aware from the SSMEI Firth of Clyde report, the Firth of Clyde pilot was selected through an evaluation system that measured potential pilot schemes objectively through a multi criteria process, followed by approval from the national steering group. **Throughout this process it was never the intention of this pilot [or indeed any of the pilots] to preclude the progress of more localised projects.**”

COAST presumes this to be ERAD's true position. This being the case COAST cannot understand why the reason that both ERAD and SNH have regularly given for not promoting the COAST Trial is 'that it does not fit in with national policy and national initiatives'. Perhaps this can be explained?

Eamon Murphy  
Head of Inshore Fisheries  
Area 1-D  
Pentland House  
47 Robb's Loan  
Edinburgh  
EH14 1TY

Copy to David Wilson

8<sup>th</sup> September 2006

Dear Eamon

### **COAST MARINE REGENERATION TRIAL**

COAST thanks both you and David for coming to the island to meet us and make SEERAD's position more clear.

We were disappointed that you chose not to deal with the detailed comment contained in our letter and that you once again attempted to lead us down the 'voluntary agreement' route with commercial fishermen, ignoring the need to create a total No Take Zone.

We are seriously concerned that the comments you made about recreational angling and diving for fish etc., bore no relevance to the real position as we see it in Scottish law and in respect of voluntary agreements was so impractical as to border on the negligent.

### **The position of recreational sea angling and diving for fish etc.**

You informed us that the proposed COAST trial would not be possible under existing legislation because recreational angling and diving for fish etc. could not be suspended.

As you will be aware fishing is permitted in Scottish waters by the Fisheries Act 1705 and the Fisheries (Scotland) Act 1756, which established by statute the public right to fish in Scottish waters. The right itself does not discriminate between commercial and recreational activity. There are only a few such public rights and they include the right to navigate and the right to use the highway. In a parliamentary democracy the public right (like anything else) can be altered by an Act of the Scottish Parliament, (or UK Parliament if appropriate), or by an official whose authority stems from those democratic bodies.

You will note that we pointed out to you the extent of your Minister's powers in our letter of the 10<sup>th</sup> July and it is clear from your comments to us at our meeting that you failed to have that detail contained in that letter corroborated, we have therefore taken the opportunity, once again, to set out your Minister's powers.

Your Minister has various powers under the Fisheries Acts. We have concentrated on those contained in the Inshore Fishing (Scotland) Act 1984, as amended. They are set out as follows:

1 (1) ..... “after consultation with such bodies as he sees appropriate, [he or she may] make orders under this section regulating fishing for sea fish in any specified area within Scottish inshore waters.”

(2) Orders made under this section may prohibit, within the specified area, all or any, or a combination of the following –

(a) all fishing for sea fish

The term “sea fish” is defined in the Act to include “any kind of fish found in the sea including shellfish, salmon and migratory sea trout”

It is therefore clear that on the face of it the Minister can make an order *prohibiting* fishing for *all sea fish* within a *specified area*, which is all that COAST requires your Minister to do. The Minister’s powers are not restricted to commercial activities or commercial stocks.

S 4 (1) of the Act refers to some offences occurring *where a fishing boat is used*. The context clearly supposes there will be circumstances where a fishing boat is not used.

If you check in Hansard when the Act was amended by Parliament in 1995, the MP for Dumfries George Kynoch, who proposed the amending Act as a private members Bill, stated in the third and final reading of the Act that it should apply to “all fishing activities” he did not propose any limitation to the regulation of just commercial fishing activities.

COAST did find reference to a general implication in Scottish law that extinguishing public rights is very difficult. Of course the COAST trial is not about the permanently extinguishing the right to fish in the trial area, but suspending the statutory right for the period of the trial using existing powers granted to the Minister by Statute.

In fact COAST could find nothing either in the Act or directly associated with it, which supports your opinion. To imply that this Act only limits Ministerial authority to commercial activities would therefore be perverse. It’s similar to implying that the Minister’s ability to close roads for maintenance under road traffic legislation can only apply to commercial vehicles, just because some road traffic legislation only applies to heavy good vehicles in their use of the public highway.

COAST do not accept your assertion that the Minister’s powers are so limited, you will need to provide us with detailed advice as to why that is the case, and allow us to examine that advice before we will accept your position.

### **Voluntary Agreement**

We have discussed the mechanics of a voluntary agreement with Patrick Stewart, the conscientious lawyer and representative of the Clyde



Fishermen's Association, on a number of occasions. It is clear that Patrick is of a view that a voluntary agreement will not work. He points out that there are fundamental problems with working out who will be the parties to the agreement, nomadic and non-affiliated fishing boats, lack of enforcement provision and the haphazard nature of fishermen's bank balances, which mean that such an agreement is impractical for nature conservation purposes, as there is no financial benefit to the commercial fishermen. We share Patrick's view.

Paradoxically, given the nature of the objection to the above, we feel that sea anglers etc. could be trusted to stop fishing voluntarily. As you should know, the trial area is at the site of the former Arran sea angling festival at Lamlash, which stopped because of stock collapse – local anglers are keen to test the benefits of highly protected no take zones and a few well placed signs in practice should be all that is required to deter recreational angling in the highly protected part of the trial area – social pressure will do the rest. If the commercial sector was as easily deterred there would have been no necessity for your involvement in the first place.

### **SEERAD's actions**

COAST now takes a very dim view of SEERAD's competence in this matter. Firstly, it would appear to us that you have given too much weight to the problems posed by recreational angling etc., based on a fundamental error in law and a failure to recognise their buy in to the process, secondly you have suggested a solution to the problem which does not appear to be practical or acceptable to us or the Clyde Fishermen's Association.

Under the circumstances COAST feel they have to insist that the Minister exercises his powers and takes this matter to public consultation, and then makes a decision on what is in the public's best interest in the use of the public's right to fish in Lamlash Bay, pending the results of that consultation. From the outset of our project some 13 years ago, SEERAD should have realised that it was not going to be able to please everyone, and this continued dithering for nebulous reasons is making SEERAD, the Minister and the rest of the Executive look ridiculous.

We look forward to hearing from you shortly and in any event before the end of September.

Yours sincerely

**Tom Vella-Boyle, Secretary, Community of Arran Seabed Trust Limited**

Please note that the Community of Arran Seabed Trust has recently incorporated and its membership has been transferred to the Community of Arran Seabed Trust Limited, a company limited by guarantee with the same objects.

SUBMISSION FROM SCOTTISH CREELERS AND DIVERS ASSOCIATION

**Letter from Scottish Executive to Scottish Creelers and Divers Association**

8 February 2005

First, on the matter of gear conflict, I agreed that SEERAD would continue to act as facilitator and a broker between parties, but that we could not agree to be the only channel of communication between parties. As I advised, I'm afraid that I cannot commit SEERAD time to passing on messages between associations, but I do know that prior to and following our meeting there has been direct communication between associations, which I hope can continue. I agreed that we would identify the common ground between draft codes of conduct – we will do that and will also remind the Clyde Fishermen's Association that they are due to provide comments.

I clarified that the proposal for a one-mile prohibition on fishing with mobile gear was not acceptable to the Executive for the purposes of resolving gear conflict. However, I did agree that we would consider the proposal further against the context of wider fisheries management objectives, and promised to provide you with a list of questions to help us understand what you are proposing to achieve from a variety of perspectives. I attach that list as an Annex, and it would be very helpful if you could address all the points noted, which will assist us greatly in considering your proposal further. I would not expect you to be able to answer all questions definitively, but from experience, it is particularly important to identify potentially positive and negative aspects that might require further investigation early on in the process.

Gabriella Pieraccini  
Inshore Fisheries Team Leader

## **Questions set by the Scottish Executive**

1. What is the purpose of the proposal? What is it that you want to achieve?
  - 1.1 Why do you think that your proposal is the way to achieve your objectives?
  - 1.2 How will you know that the proposal, if implemented, has been successful?
  - 1.3 What would "success" look like?
  
2. Is the proposal intended to have an effect on fish stocks? If yes, what effect?
  - 2.1 What impact would the proposal have on nephrops in the target area?
  - 2.2 What impact would the proposal have on other fish stocks in the target area?
  - 2.3 What impact would the proposal have on nephrops beyond the target area?
  
3. Is the proposal intended to have an effect on the marine environment? If yes, what effect?
  - 3.1 What impact would the proposal have on the marine environment in the target area?
  - 3.2 What impact would the proposal have on the marine environment beyond the target area?
  
4. Is the proposal intended to have a social impact? If yes, what effect?
  - 4.1 What social impact would the proposal have on fishermen who presently work in the target area?
  - 4.2 What social impact would the proposal have on fishermen who presently work beyond the target area?
  - 4.3 What social impact would the proposal have on other marine users who presently work in the target area?
  
5. Is the proposal intended to have an economic impact? If yes, what effect?
  - 5.1 What economic impact would the proposal have on vessels that presently work in the target area?
  - 5.2 What economic impact would the proposal have on vessels that presently work beyond the target area?
  - 5.3 What economic impact would the proposal have on other processes in the supply chain?

## **Responses from Scottish Creelers and Divers Association**

1. Purpose: To provide a volume of clean undisturbed sea to promote regeneration of the natural ecology in known white fish breeding grounds. Achievement: An increase in fish stocks of all species to the benefit of all fishermen. The availability of areas of sea with substantial catches for sport anglers and their contribution to the local economy.

1.1 From experience, areas that are regularly trawled do not have the fish or shellfish population that un-trawled areas hold. A fleet of creels shot from untouched ground into a trawler tow will demonstrate this dramatically.

1.2 Landings of all species of saleable fish will improve for all local fishermen, both static and mobile, if accurate landing figures are kept and compared over time and the practice of targeting juvenile fish for bait is ended. The sea anglers would return to their accommodation with stories of the one that got away rather than the current lament of the one that wasn't there.

1.3 Success would show an increase in employment in the static gear fleet, improved white fish catches outside the limit and a boost to the local tourist industry.

2. The point of the proposal is to have a dramatic effect on fish stocks. Without some legally protected sanctuary for breeding and juvenile fish there will soon be no inshore or breeding fish stocks. Areas in sheltered sea lochs are known to be breeding grounds. If these areas are not trawled all species will flourish.

2.1 Nephrops stocks would flourish.

2.2 As Nephrops is prey for many species of bottom feeding fish, adult fish stocks would improve and stay or return after migration to an area rich in food.

2.3 Flourishing Nephrops stocks within the limit would benefit the mobile fleet by an inevitable overspill caused by population pressure.

3. The proposal is intended to have a dramatic effect on the marine environment, returning it to a natural ecological balance.

3.1 Trawling involves scraping the sea bed, uprooting weed and coral, crushing the juvenile of all resident species and raising a cloud of mud and carrion. It causes a plague of unmarketable carrion eaters (brittle stars, starfish ) to flourish to attack stocks in un-trawled areas. Without trawling this plague would find its natural population density.

3.2 There is no marine environment in the wake of a bottom trawl or clam dredger.

4. Yes. Prosperity.

4.1a Static gear fishermen would gain in three ways:

1: An increase in the area of ground available for fishing without risk of loss of gear. Hence better earnings, lower overheads.

2: Improved quality of landed Nephrops allowing the return of berried shellfish. Hence better earnings for less work and an active stock conservation policy.

3: An increase in the number of static gear boats. Hence greater employment.

4.1b Trawler men initially would lose in two ways, but in the long run would gain through sustained fish stocks.

1. The lack of profitable, convenient fishing grounds would force a reconsideration of their fishing methods in favour of something less destructive, or an exploration of more distant grounds.

2. Trawler men would lose the bait "bi-catch".

4.2 There will be no conflict between static and mobile gear because the static gear fisherman will have somewhere to fish with minimal risk of loss of gear. Trawlers will develop to exploit new areas, or, those who fish the limit boundary will see improved catches of all marketable species.

4.3 There would be no social impact on other workers within the limit.

4A. The previous question highlights the impact on those who work in the area disregarding those who play in the area. To any casual observer at any time of decent weather, it is obvious that the shore and boat anglers and sport divers far outnumber the professional fishermen on the loch. These people support Hotels, B&Bs, cafes, camp sites, boat hirers, tackle shops, garages etc.etc. If there are no fish to catch, and nothing to look at underwater, they will all migrate to more fertile fields.

5. An economic impact is not the intended outcome of the proposal. Conservation and the perpetuation of high quality fish stocks is. The availability of these stocks of high quality produce will inevitably have an economic outcome.

5.1 Static gear vessels will prosper and increase in number. Trawlers will re-equip with static gear, or fish outside the limit. As the local waters outside the limit have been fished to unprofitability more distant grounds will be exploited.

5.2 Vessels that continue to fish the boundary of the proposed limit, over a recovery period, will see increased catches and improved quality of all marketable species. Vessels that already work outside the limit, over the same recovery period, will see an improvement in white fish landings.

5.3 The overall economic impact of the proposal is to provide self-sustaining fish stocks, and an inshore fleet that sells a quality product to a premium market while providing unsurpassed opportunities to the leisure angler and diver.

## SUBMISSION FROM THE CLYDE FISHERMEN'S ASSOCIATION

(This is a revised version of the submission originally made to the Public Petitions Committee in January 2005.)

- 1 The Respondent is a trade association comprising 75 boat owners. The Respondent is an interested party in respect that its membership vessels are presently entitled by law, subject to the necessary licences and entitlements, to dredge and trawl for sea fish in Lamlash Bay, Isle of Arran.
- 2 The Respondent objects that the Petition is without substance, in itself, and without evidence to support it. Even if it were of substance and had evidence to support it, the aim of the Petitioner is incompetent, as there is no power within UK or Scottish legislation which would permit the establishment of the project.
- 3 No Take Zones and Marine Protected Areas.
  - a) As a No Take Zone is but one type of Marine Protected Area, the object of the petition will be referred to as an MPA except where it is necessary to refer to the areas separately in Section 7 hereafter.
  - b) The following is extracted from the Defra sponsored Review of Marine Nature Conservation: Report to UK Government (2004). The full text of the report is available at <http://www.defra.gov.uk/wildlife-countryside/ewd/rmnc/pdf/rmnc-report-0704.pdf>. Any emphasis in the extracts is added by the author of this document.
    - i) 7.17 Current thinking on the role of important areas within an overall marine nature conservation strategy is that these areas should be seen not (or not only) in isolation but also as components of an ecologically-coherent network of areas. Individual areas within this network should have the capability of supporting one another ecologically, and also of supporting, and being supported by, the areas of sea and seabed adjacent to them.
    - ii) 7.18 The Irish Sea Pilot has therefore proposed that a network of mutually-supporting areas, or areas capable of supporting the biodiversity of neighbouring sea or seabed areas, is a practical ecological proposition.

#### 4 Supporting recommendations

- a) The reasoning in the Petition is entirely inductive. It does not meet any of the criteria laid down in the relevant RMNC recommendations and that for the following reasons: --
- b) The proposed MPA is not important in marine ecological terms. No evidence has been laid at the closure is likely to lead to any "improvement" in the relevant marine environment. More importantly no evidence has been led that there is any deterioration occurring to the habitat as a result of mobile fishing operations. The latter is crucial in determining whether the State has a duty to act in a European Marine Site, which Lamlash Bay is not. While it is accepted that there has been a substantial decline in fish catches in the Firth of Clyde, there is no evidence either in the Petition or extrinsically in the literature that Lamlash Bay is, or was, a significant, or even material, spawning or nursery area for either demersal or pelagic species. There is no evidence that closure, without other active management measures, would contribute to any local recovery of shellfish stocks.
- c) If Lamlash Bay is not, in isolation, important, there might be important as part of an ecologically coherent network. No evidence has led on this point. One cannot help but have the impression that the Petitioner is quite ignorant of the enormous effort deployed to produce a marine environment protection and enhancement template by the Irish Sea Pilot. For the purpose of its work the Firth of Clyde formed part of the Irish Sea and that work had its apotheosis in the RMNC report.
- d) The so-called trial of a Lamlash Bay MPA is in fact no such thing. The proposal has no base and no objective. It has no means of determining its success or failure. It makes suppositions as a basis for its creation and suppositions for its results. The latter are in the vaguest form (e.g. "through spillover of species from the NTZ, the Clyde fishermen").
- e) The Petitioner makes claims for the success of MPA's other parts of the world. He leads no evidence of the applicability in the context of Lamlash Bay. He makes no mention that the vast majority are a creation of the relevant State, imposed after much consultation with local fishermen particularly in relation to diversion of effort. The rules governing them are enforced by the State. In order to obtain co-operation from fishermen and other marine users, the State has always been careful to follow the procedure, as proposed by RMNC with regard to selection and to creation. No such thing has happened or is proposed in the instant case. Indeed the petition calls for the closure to be imposed without further reference to the affected marine users.

## 5 Legislation

- a) The Petitioner makes reference to the Habitats Directive and the Inshore Fishing (Scotland) Act 1984
- b) Habitats Directive. The duties of government referred to by the Petitioner refer to conservation duties in relation to Special Areas of Conservation. The Lamlash Bay is not an SAC.
- c) Inshore Fishing (Scotland) Act 1984. While this is primarily a measure, which allows Scottish Ministers to impose restrictions and prohibitions in Scottish inshore waters for the purpose of fisheries management, it is acknowledged that section 2A permits the powers of the Act to be exercised for marine environmental purposes. Those purposes include the conservation or enhancement of the natural beauty or amenity of marine or coastal areas (including their geological or is physiographical features). They also include the conservation of flora or fauna which are dependent on, or associated with, a marine or coastal environment.

It has not been proposed that Lamlash Bay is specifically appropriate for the exercise of these powers.

- d) Paragraph 7.24 of the RMNC report says

On the basis of its considerations, the Working Group recognises the contribution that the existing regulatory framework can make to the development of a network. However, it questions whether existing and prospective mechanisms are fully capable of establishing and conserving an ecologically coherent network of important marine areas as required to support the described marine nature conservation framework and under OSPAR.

Reference is so made to paragraph 7.20 and the Maps 8 and 9 annexed to the Report which are re referred to for their terms. Although an area at the south end of Arran (at Brown Head) would fall to be selected for consideration in the development of an ecologically coherent network, Lamlash Bay is not so identified.

This does not mean to say, however, that at some future time if it is the intention of the Scottish Executive to develop an ecologically coherent network, Lamlash Bay, whether on the proposal of the Executive's nature conservation advisers, or as a result of lobbying by local interests could not be considered as a candidate for forming part of the network.



Please also note the terms of part of paragraph 7.26

“Also, the Prime Minister’s Strategy Unit report into sustainable fisheries (Cabinet Office, 2004) recommended that the UK Government and devolved administrations should develop an experimental programme of marine protected areas focusing initially on areas which provide benefits to multiple users (commercial fishing, tourism, environment, recreational fishermen etc.).”

## 6 Socio-Economic Balance

- a) The Petitioner argues that the success of the project would have a beneficial impact on the economy of the Island of Arran, through the medium of sea angling.
- b) It is already shown that a closure will not affect the biomass of demersal fish that supply the Firth of Clyde. The closure will have a deleterious effect on the socio-economic position of Carradale. This village, on the east side of Kintyre, is entirely dependent on its fishing industry. The industry, in its turn, is in part dependent on scallop dredging in Lamlash Bay. The fishermen of Carradale do not consent to a closure of an important fishing ground, and therefore a part expropriation of their living, for spurious reason and without compensation.
- c) It is therefore the case, that any closure will have an immediate and negative impact on local income and sustainability without any provable or measurable gain in the medium to long-term.
- d) The Respondent has suggested an alternative to the Petitioner. The alternative is encouraged by current legislation, would meet most of the Petitioner's objectives and is very likely, on the basis of evidence from experiments conducted in the Isle of Man, to produce benefits for scallop fishermen in the medium term.

## 7 The Alternative

- a) To designate the proposed NTZ area (or something like it) as a Several Fishery in terms of the Seafish (Shellfish) Act 1967. All fishing would be prohibited. The area would require to be cultivated by the Petitioner and his colleagues by the laying of scallops. This, of course, implies a financial commitment on the part of the Petitioner and his colleagues. The project, as it stands, implies no financial commitment of any kind.

- b) To designate the MPA as the Regulated Fishery in terms of the same Act. This would open the possibility of licensing scallop dredgers to operate only under strict conditions, one of which would be to gauge the success of the NTZ reseeded project.
- c) This proposal has been put both verbally and in writing to the Petitioner and colleagues but without substantive, or constructive, response. COAST has now formally rejected the Association proposal for a scallop regeneration project at Lamlash Bay. Notwithstanding this, the Association, has agreed separately with Scottish Natural Heritage and the Scottish Executive to continue discussions to establish whether some voluntary arrangement can be entered into. The difficulty which the Association faces is that COAST has all the appearance of being disinclined to make any move from its entrenched position.

Again, for the avoidance of doubt, it should not be assumed that the Association is not sensitive to the important nature conservation issues to which the activities of its members give rise. The Association is currently in discussion with wild salmon interests concerning a cessation of trawling activity in parts of Loch Fyne.

## 8 Conclusion

- a) The proposal substantially fails to convince that it relates to a site, which would otherwise, in terms of internationally accepted criteria, be accepted as an MPA.
- b) Even if it were, there are no specific targets for the proposed closure. It is the position of the Respondent that the proposal, if implemented, would produce no material benefit for marine conservation in Lamlash Bay let alone the Firth of Clyde and, most importantly, the Regional Sea. Its only effect would be to reduce fishing opportunities open to local fishermen and increase measurably antagonism to proposals for a network of Marine Protected Areas which are likely, in the near future, to be proposed by government. On the other hand, the Respondent's counter-proposal is likely to achieve substantial benefits for the fishery and the interested parties.

## **SUBMISSION FROM MALLAIG AND NORTH WEST FISHERMEN'S ASSOCIATION**

### **The Use of the Marine Environment**

The perception that the whole of the sea is fished is not true. Fishermen cannot simply move, yet increasing demands on the marine environment do not take this into account. Wind farms, land reclamation, aggregate extraction, cables, pipelines, oil rigs, shipping and marine reserves all compete with fishing for space yet there is no coherent plan in the UK or Europe that ensures transparency or equity.

The UK has a number of commitments to the marine environment through international and EU agreements and legislation, the concept of many of which the fishing industry support. An example of this is OSPAR under which the UK has agreed to establish a coherent network of well-managed MPAs by 2010. It is essential that such MPAs are designated in a strategic way, ensuring that a holistic approach is taken to the use of the marine environment as a whole. If such an approach is not undertaken, and small areas are arbitrarily designated for particular use, many industries, and coastal communities, will find that they are constrained beyond economic viability.

### **Marine Protected Areas**

The majority of comprehensive, peer reviewed research that has been carried out on marine protected areas (MPAs) has been associated with sites in tropical waters. Tropical sites tend to have a large number of species that are short lived and highly territorial with large predators visiting at certain times of the day. North East Atlantic fisheries have very different characteristics, including long lived, highly migratory species.

The evidence for the benefit of MPAs to temperate fishfish is inconsistent. Strongly site attached species, such as wrasse or rockfish, have been shown to benefit from MPAs but migratory species, such as gadoids and scombrids, do not. Research supports the use of MPAs for shellfish species in certain conditions but comprehensive site assessment is needed prior to designation to ensure that a site will deliver the promised goals. The effect of overspill on surrounding populations is largely unproven and highly dependent on the hydrology of the area. An MPA that has not undergone thorough assessment for, among other factors, larval import/export and hydrodynamic characteristics may serve to further reduce confidence in the use of MPAs for either conservation or fisheries management purposes.

Many proponents of MPAs claim that the ecosystem of no take areas will return to its pristine state. In the majority of cases this does not happen as the recovery of an area is dependent upon the complex interactions and population dynamics of the species involved. In many cases the reduction of

site disturbance provides conditions ideal for opportunistic species to settle and the resulting succession communities may be far from the productive system that was envisaged. The introduction of marine protected areas cannot be treated with an 'off-the-shelf' approach as such an approach will not deliver promised benefits in individual MPAs.

### **COAST Proposal**

- A report by Millport Marine Lab stated that Lamlash Bay has some of the healthiest maerl beds in the Clyde. Fishing operations and maerl beds have peacefully co-existed in this area for decades.
- Clyde Fishermen's Association has agreed, in principle, to support a project tied to scallop regeneration, something that COAST claim is one of their goals. This has been rejected by COAST.
- There are a number of closed areas in the Clyde. A pilot on MPAs in the Clyde could be carried out in any of these areas without opposition. Again COAST has rejected this suggestion.
- SNH state that Lamlash Bay does not meet Special Area of Conservation criteria
- Fisheries management will be carried out by Inshore Fisheries Groups, as per the Ministers Strategy. COAST, as stakeholders, will be able to engage with the IFG process.

### **DRAFT Position Statement on Implementation of Marine Protected Areas**

MPAs of varying types have a role to play in fisheries management but are only a tool in fisheries management that must be used in conjunction with other management measures. The decision to implement an MPA must be viewed in the context of the specific problem to be managed or mitigated and the area, in both spatial and temporal terms. The form of a fisheries management MPA cannot be described generically as no one model will be suitable for more than a small number of areas or issues. Each candidate site must be assessed independently and each of the environmental variables, such as currents and sedimentation, quantified to ensure that the MPA can actually deliver its aim. It is the assumption that MPAs are universally beneficial that has damaged their credibility as a fisheries management tool. As with many things, the solution depends on the problem.

The SFF strongly supports the use of appropriate governance criteria in the design and implementation of MPAs for fisheries management or nature conservation. The North Sea Regional Advisory Council has developed such a set of criteria. They are as follows:

- Clear objectives, defining the management purpose of the measure

- Prior evaluation of whether the measure will meet its purpose and consideration of the impact it will have on all affected areas
- Consultation with affected interests
- Identification of indicators of success
- Subsequent monitoring and assessment of the benefits and any adverse impacts
- Setting of a specified period for review and development of an exit strategy

In addition to this MPAs must be considered in a strategic way and with an holistic approach. The effect of displacement, the real (as opposed to perceived) impact of the activity and potential socio-economic consequences of protected areas must be considered when options are being assessed to be certain that an MPA is the correct tool for the management of that area.

Currently there is no protocol for the consideration of potential or existing MPAs. Many protected areas that have been established in support of European fisheries policy have not had a clear purpose, have not been supported by good science, have not been fully developed prior to implementation and have not, therefore, delivered the assumed or promised benefits. A good example of this is the Plaice Box. It has been impossible to assess the effectiveness of this MPA as criteria and control areas were not established to provide a comparison or goal. In addition to this, evidence suggests that there has been a significant change in the spatial distribution of juvenile plaice, meaning that the plaice box is not protecting the density of juveniles that it was set up to protect. There were no mechanisms in place for changing the boundaries or reassessing an area in such circumstances.

The perception that the whole of the sea is fished is not true. Fishing activity takes place in a surprisingly small area and these 'fertile' grounds are the mainstay of many coastal communities. Fishermen cannot simply move, yet increasing demands on the marine environment do not take this into account. Wind farms, land reclamation, aggregate extraction, cables, pipelines, oil rigs, shipping and marine reserves all compete with fishing for space yet there is no coherent plan in the UK or Europe that ensures the fishing industry is not excluded from vital grounds.

The MNWFA also refers the Committee to a [research report](#) on marine protected areas prepared for DEFRA.

**Agenda Item 4**

**Environment and Rural  
Development Committee**

20 September 2006  
ERD/S2/06/26/4h gb

**SUBMISSION FROM NORTH AYRSHIRE COUNCIL**

On behalf of North Ayrshire Council I submit the following observations on the above petition.

The Council is aware of the petitioner's interest in the seabed around Lamlash, Isle of Arran. During the public consultation exercise for the new local plan covering the island, COAST made representations which called for support on the bay being designated a 'no take zone'. At the subsequent local plan public inquiry, COAST maintained their proposal. The Reporter accepted the Council's submission that it was generally supportive of the aim to protect the environment of Lamlash Bay. He concluded, "I do not believe it would be appropriate to include anything in the local plan re this matter other than a mention of general support".

This support has been incorporated into the Finalised Local Plan and is contained in section 10 'Countryside and Natural Environment'. Paragraph 10.8 makes specific reference to the Council's general support of COAST's position where it relates to seabed regeneration and marine conservation where continued existence of maerl beds is under threat.

The council continues to endorse this position.