

Partial Business and Regulatory Impact Assessment

Title of Proposal

Shetland Islands Regional Marine Plan
Draft Consultation

Purpose and intended effect**Background**

Marine planning matters in Scotland's inshore waters are governed by the Marine (Scotland) Act 2010 and in offshore waters by the Marine and Coastal Access Act. Following the creation of the National Marine Plan (NMP) in 2015, Scotland was divided into 11 Scottish Marine Regions extending out to 12 nautical miles. Within these regions, regional marine plans will be developed by Marine Planning Partnerships in order to take account of local circumstances and smaller ecosystem units.

The Shetland Islands Regional Marine Plan (SIRMP) is being developed by the Shetland Islands Marine Planning Partnership. The NAFC Marine Centre and Shetland Islands Council form the 'Shetland Islands Marine Planning Partnership' and are guided by an Advisory Group which comprises a range of stakeholders covering environmental, community, recreational and commercial interests.

The Plan will conform to both the National Marine Plan and the Marine Policy Statement. It will add value to the existing policy frameworks outlined in the NMP by taking into account local circumstance and reflecting local challenges and opportunities. It will seek to achieve a balance between national and local interests. The SIRMP sits alongside and interacts with existing land use planning regimes, in particular the Shetland Island Council Local Development Plan (LDP). The SIRMP area overlaps with terrestrial planning boundaries to ensure that the marine and terrestrial environment are managed holistically.

The Shetland Islands is one of the first marine regions to develop a regional marine plan under the Marine Act.

SIRMP Objectives

The SIRMP has been developed to help ensure that the use of the marine and coastal environment is sustainable. Shetland's vision for the marine and coastal environment is one that is clean, healthy, safe and productive, managed to meet the long-term needs of nature and the local people.

The objectives of the SIRMP are:

- 1) **Social** - Ensure a high quality, fully functioning marine and coastal ecosystem for the health, benefit and prosperity of local communities.
- 2) **Environmental** - Protect and enhance the local marine waters and coastal environment particularly where there are regionally, nationally or internationally important marine biodiversity and geodiversity features whilst taking account of natural changes.
- 3) **Plan** - Identify in consultation with marine stakeholders the differing priorities for sustainable use (such as fishing, aquaculture, recreation & tourism, marine renewables, nature conservation etc.).
- 4) **Economy** - Promote sustainable economic marine development.

The objectives align with the shared vision of the UK and Scottish Governments as set out in the UK Marine Policy Statement and National Marine Plan respectively, for the marine environment: clean, healthy, safe, productive and biologically diverse oceans and seas, managed to meet the long-term needs of nature and people.

The main purpose of the SIRMP is to provide guidance and recommendations to assist current and future planning, regulation and management of marine and coastal activities.

Rationale for Government intervention

The marine environment around Scotland contains a wide variety of important and rare features and species, which support a range of valuable goods and services. The National Marine Plan provides a high-level strategic direction to marine decision-makers in Scottish Waters. The eleven Scottish Marine Regions and their subsequent plans aim to provide similar strategic direction to marine decision makers within their regions, of which Shetland is one. The SIRMP aims to provide a strategic framework for management of current activities around the Shetland Islands and for future development decisions. By providing this framework a high level of detail will be available to developers to assist in their planning process, thus reducing costs and providing more certainty to their application process. It will ensure that decisions within the Shetland region will not be made in isolation and will consider both the complex nature and the different uses and users of the marine environment.

As the SIRMPs' vision is that the marine and coastal environment is one that is clean, healthy, safe and productive, managed to meet the long-term needs of nature and the local people, this contributes to the objectives of the National Performance Framework and Purpose.

Consultation

Advisory Group

Regular advisory group meetings have been held to discuss the development of the Plan. In addition, sectoral specific policy workshops were held (environment, community and industry) to review all policies, the results of which were reported back to the main advisory group and subject to further discussion and refinement.

The advisory group comprises:

- Fisheries interest (SSMO¹, SFA²)
- Aquaculture interest (Seafood Shetland, SSPO³)
- Tourism
- Oil and gas
- Ports and harbours
- Environmental (RSPB, SAT⁴)
- Historic (SAT)
- Community

Within Government

Consultation with officials within Marine Scotland and the wider Scottish Government has been conducted from the outset of the plan-making process. In addition, the following have been consulted throughout the plan-making process and have representation on the Shetland Islands Marine Spatial Planning Advisory Group:

- Scottish Natural Heritage (SNH)
- Scottish Environment Protection Agency (SEPA)
- Marine Scotland Compliance

Public Consultation

Early stakeholder consultation has been undertaken in the form of eight meetings with community councils. As part of the community council meeting, community councillors are introduced to the principles of the Shetland Islands' Regional Marine Plan and its policies. Their opinions and comments are sought on a variety of issues including opportunities for business growth and areas where business growth is less suitable.

A full public consultation will be held in summer 2019. Stakeholder workshops, public drop-in sessions and individual meetings with stakeholders will take place to discuss the document

Business

Representatives from relevant sectors have frequently been involved in the development of the plans aims, objectives and policies throughout the development of the Plan. Representatives from oil and gas, aquaculture and fisheries are represented on the Advisory Group.

In addition, a number of informal meetings have been conducted with businesses and industry organisations. These include:

1. Shetland Fishermen's Association (SFA)
2. Shetland Fish Producers Organisation (SFPO)
3. Lerwick Port Authority (LPA)
4. Shetland Islands Council- Ports and Harbours
5. Shetland Shellfish Management Organisation (SSMO)
6. Visit Scotland

Initial discussions with the above organisations indicate that the predominant concern is the impact of Natura 2000 sites, and associated regulation, on their ability to develop business opportunities. Natura 2000 sites (Special Protection Areas and Special Areas of Conservation) are afforded protected by Scottish Law under *Conservation (Natural habitats, & c.) Regulations 1994*.

As part of the formal consultation face-to-face meetings will be held with 6-12 businesses from across Shetland. Businesses involved in these discussions will include those potentially affected by the proposal from a broad range of sectors:

- Ferry Operators
- Aquaculture
- Tourism
- Fishing
- Renewable energy
- Oil and Gas
- Utilities

We will further engage with fishing, aquaculture, ports and harbours, and recreation businesses by utilising industry organisation networks to disseminate information about the SIRMP and collect and collate any responses.

The results of the informal and formal consultation with business including any results obtained during the public consultation will form the main part of the Scottish Firms Impact Assessment.

Options

The options to be considered are:

Option 1 – Do nothing - continue under the current approach to management including using the SIMSP as Supplementary Guidance to the Shetland Islands Council's Local Development Plan (LDP).

Option 2 - Use the policies within the SIMSP to form a regional marine plan without update or additions.

Option 3 - Adoption of the SIRMP after a review and update of policies guided by the public consultation process and further consultation with key stakeholders.

OPTION 1 – Do nothing

Continue under the current approach to marine planning and management including using the Shetland Islands Marine Spatial Plan (SIMSP) as Supplementary Guidance to the Shetland Islands Council's Local Development Plan (LDP).

Under this option a regional marine plan would not be developed/ adopted and there would be no change to current arrangements. As the SIMSP is only used within local decision making, the disadvantage of this option is that a different suite of policies will be considered for different licences (depending on whether they are issued by Marine Scotland, Crown Estate Scotland or the Shetland Islands Council). This potentially creates uncertainty in decision making.

Option 1 does not bring marine planning in line with;

- the provision for Regional Marine Planning set out in the Marine (Scotland) Act 2010,

Option 1 is not perceived as a viable option

OPTION 2: Use the policies within the SIMSP to form a regional marine plan without update or additions

Under this option the SIMSP would be put forward unamended, to be adopted as a regional marine plan. This would allow consistency between national and local decision making. However, this would not allow a review and refinement of the policies in the light of changing legislation. In addition, as the SIMSP was written for use by the Shetland Island's Council (SIC) many policy wordings reflect this and directly reference the local authority or SIC. This option therefore risks creating confusion.

Option 2 is not perceived as a viable option

OPTION 3 – Adoption of the SIRMP after a review and update of policies guided by the public consultation and further consultation with key stakeholders

Under this option the SIMSP would be reviewed and refined, giving all stakeholders the opportunity to consider whether the Plan is fit for purpose as a regional marine plan. It would create consistency between national and local decision making and the impacts of the Plan would be fully assessed via SEA, HRA, BRIA, CREWIA, EQIA.

Sectors and groups affected

A range of sectors will be affected by the adoption of the SIRMP:

- Developers of licensed activities (including oil & gas, renewable energy, ports & harbours, and aquaculture and all other licensable activities. These activities could be Scottish-owned, Rest of UK-owned or foreign-owned).
- Activities within the SIRMP area which do not require licences or that have licences that do not have a spatial component to them (i.e. those which are not connected to specific geographical locations e.g. fishing, shipping, tourism, leisure and recreational activities).
- Coastal communities

Benefits

OPTION 1

No additional benefits are expected to arise from this option.

OPTION 2

No additional benefits are expected to arise from this option.

OPTION 3

Adopting and implementing the Shetland Islands Regional Marine Plan will build on the work of the SIMSP and help deliver the benefits of a marine planning system as set out in the Final Regulatory Impact Assessment for the Marine (Scotland) Act 2010. The potential benefits of the plan include:

- A reduction in planning uncertainty and associated risk.
- Informed site selection process.
- Efficient use of Shetlands' marine resources.
- Reduced conflict between marine users and developers.
- Increased stakeholder engagement and involvement of local communities in the area.
- Additional protection of internationally, nationally and locally important nature conservation and biodiversity sites and interests.
- Incorporation of environmental issues into the planning and management process.

Costs

OPTION 1 – Do nothing

This option would not create direct additional costs on the sectors and groups outlined above as none of the existing policies or associated costs would change.

However, developers could face ongoing uncertainty with licence applications and marine planning, with differences in local and national decision making, which could result in higher indirect costs associated.

OPTION 2: Use the policies within the SIMSP to form a regional marine plan without update or additions

Should the Plan not be reviewed, and policies not amended to reflect

changing legislative or national policy requirements, there is the potential to mislead developments on the legislative requirements. This has the potential to create unforeseen costs and delays in the licensing process.

OPTION 3 – Adoption of the SIRMP after a review and update of policies guided by the public consultation and further consultation with key stakeholders

As previously stated, the SIRMP reiterates many existing policies, specifically those in the SIMSP. However, four new policies have been added to the SIRMP and other policies amended to provide clarity or further guidance.

The SIRMP will be a statutory document once adopted by Scottish Ministers after a period of consultation. The policies within the plan may influence:

- The preparation of licence applications by developers.
- The assessment of licence applications by licensing authorities.
- The choice of location of marine activities and developments.
- Specific requirements placed on construction, operation and expansion of marine developments.

Each of the policies within the SIRMP have been grouped under a thematic description. The potential impact and costs specifically generated by the creation of the SIRMP has been assessed and recorded on a thematic basis in **Table 1**.

Following any relevant responses received during the formal consultation process, the policies will be re-assessed.

Table 1: Potential impacts, *on business*, of policies contained within the Shetland Islands Regional Marine Plan

Policy Section	Policy Theme	Costs
Clean & Safe	Water Ecology	<p>Limited/No Additional Costs to Developers</p> <p>The requirements associated with the water ecology policies are already contained within the SIMSP and also captured by the Water Environment and Water Services (Scotland) Act 2003.</p>
	Invasive Non-native Species (INNS)	<p>Limited/No Additional Costs to Developers</p> <p>The requirements associated with the invasive non-native species (INNS) policies are already contained within the SIMSP and also captured by the Wildlife and Natural Environment (Scotland) Act 2011.</p>
	Waste	<p>Potential Additional Costs for Developers</p> <p>The requirement for all applications for marine related development to include a waste minimisation and management plan, unless otherwise directed by the consenting authority or regulator, is a change in emphasis to the SIMSP. Previously, the developer was required to undertake a waste minimisation plan only if directed by the consenting authority or regulator.</p> <p>This change in emphasis may result in additional investigation and reporting and therefore incur additional costs.</p> <p>For clarity; developers are required to take vibration, in addition to noise, into consideration as part of their impact and other assessments.</p>
	Navigational Safety	<p>Potential Additional Costs for Developers</p> <p>The line <i>“developments which have the potential to restrict future expansion of important ports and harbours will be refused”</i> has been added to the SIRMP.</p>

		The requirement to investigate and consider the future potential of ports and harbours may incur additional costs.
Clean & Safe	New: Harbour Plans	Limited/No Additional Costs to Developers <i>All proposals for marine-related developments located within or adjacent to a designated harbour area must comply with any harbour plans, policies, directions and by-laws in place within such designated harbour areas. All requirements contained within existing policies therefore there is no additional cost on developers.</i>
	Avoidance of Cables and Pipelines	Limited/No Additional Costs to Developers The avoidance of activities which could damage oil and gas pipelines or telecommunication and electricity cables is already contained within the SIMSP and therefore there is no additional cost on developers.
	Climate Change	Limited/No Additional Costs to Developers The requirement to assess and minimise impacts that the development might have on climate change is already contained within the SIMSP therefore there is no additional cost on developers.
	Coastal Defence and Flood Protection	Limited/No Additional Costs to Developers The requirements associated with coastal defence construction and coastal defence demolition policies are contained within the existing SIMSP and therefore there should be no additional cost on developers.
Healthy & Diverse	Natural Heritage	Limited/No Additional Costs to Developers The requirements associated with the natural heritage policies are all covered by other legislation/policy documents including: The Conservation (Natural Habitats, &c.) Regulations 1994 (as amended) The Shetland and Orkney River Basin Plan Shetland Islands Council Local Development Plan

Healthy & Diverse	Habitat Protected Areas	<p>Limited/No Additional Costs to Developers</p> <p>The requirements associated with Habitat Projected Areas policies are contained within the existing Priority Marine Features regulatory framework, therefore there is no additional cost on developers.</p>
	Landscape and Seascape	<p>Limited/No Additional Costs to Developers</p> <p>The requirements associated with landscape and seascape policies are contained within the existing SIMSP, therefore there is no additional cost on developers.</p>
	Historical Assets	<p>Limited/No Additional Costs to Developers</p> <p>The requirements associated with historical assets policies are contained within the existing SIMSP therefore there is no additional cost on developers.</p>
	Community Assets	<p>Limited/No Additional Costs to Developers</p> <p>The requirements associated with community assets policies are contained within the existing SIMSP therefore there is no additional cost on developers.</p>
	Marine Recreation	<p>Potential Additional Costs for Developers</p> <p>There is a requirement not to affect the physical infrastructure which underpins a recreational activity, and any impacts to be appropriately mitigated.</p> <p>The requirement to mitigate any impacts to physical infrastructure could result in additional cost to the developer.</p>
Productive	<p>Marine Developments</p> <p>New: Restricted Areas</p>	<p>Potential Additional Costs for Developers</p> <p>Developments will not be permitted within stated geographical areas where they impact on specified characteristics. The clarification afforded by the new policy could generate savings to developers by indicating that pursuing a development in a restricted area will probably require additional resource.</p>

Productive	New: Decommissioning of Assets	This requires marine related developments to produce (where directed) a decommissioning plan to ensure the removal of redundant infrastructure. The requirement to produce a plan could result in additional cost to the developer.
	Commercial Fishing	Limited/No Additional Costs to Developers The requirements associated with commercial fishing policies are contained within the existing SIMSP therefore there is no additional cost on developers.
	Aquaculture Development including Seaweed Cultivation	Limited/No Additional Costs to Developers The requirements associated with aquaculture development policies are contained within the existing SIMSP therefore there is no additional cost on developers.
	Oil and Gas Extraction and Decommissioning	Limited/No Additional Costs to Developers The requirements associated with oil and gas extraction and decommissioning policies are contained within the existing SIMSP therefore there is no additional cost on developers.
	Marine Renewable Energy Development	Limited/No Additional Costs to Developers The requirements associated with marine renewable energy development policies are contained within the existing SIMSP therefore there is no additional cost on developers.
	Marine Aggregate Extraction	Limited/No Additional Costs to Developers The requirements associated with marine aggregate extraction policies are contained within the existing SIMSP therefore there is no additional cost on developers.
	Tourism and Leisure	Limited/No Additional Costs to Developers The requirements associated with tourism and leisure policies are contained within the existing SIMSP therefore there is no additional cost on developers.

Productive	Infrastructure: Shore Access and Moorings	<p>Limited/No Additional Costs to Developers</p> <p>The requirements associated with shore access and moorings policies are contained within the existing SIMSP therefore there is no additional cost on developers.</p>
	Infrastructure: Cables and Pipelines	<p>Limited/No Additional Costs to Developers</p> <p>The requirements associated with placement of cables and pipelines policies are contained within the existing SIMSP therefore there is no additional cost on developers.</p>
	Infrastructure: Port and Harbour development	<p>Limited/No Additional Costs to Developers</p> <p>The requirements associated with placement of port and harbour policies are contained within the existing SIMSP therefore there is no additional cost on developers.</p>
	Future ferry/harbour development	<p>Limited/No Additional Costs to Developers</p> <p>The requirements associated with future ferry/ harbour plans are contained within the existing SIMSP therefore there is no additional cost on developers.</p>
	Dredging and Disposal	<p>Limited/No Additional Costs to Developers</p> <p>The requirements associated with placement of dredging and disposal policies are contained within the existing SIMSP therefore there is no additional cost on developers.</p>

Scottish Firms Impact Test

This section will be informed by the evidence gathered during the formal consultation phase to be held in summer 2019 and completed in the final BRIA. The consultation process will involve written consultation and meetings/workshops with a number of businesses affected by the proposal across a range of sectors.

Sectors affected by the Plan will include small/micro businesses. Given that the SIRMP builds upon the existing SIMSP, many of the policies are the same and as the SIMSP has already been adopted by the Shetland Islands Council it is anticipated that the majority of these policies are unlikely to impose additional costs on small/micro businesses. However, the SIRMP does include four new policies and amendments to others, and these may have impacts on developers of licensable activities and may impose additional costs on businesses. The full and formal consultation will further inform the final BRIA and the impact of these new and amended policies, particularly on small/micro businesses.

Competition Assessment

Policies within the SIRMP may affect a variety of marine developments and activities, specifically those which require a licence to carry out new activities or for amended operations such as renewable energy developments, aquaculture sites, ports and harbours.

Will the measure directly or indirectly limit the number or range of suppliers?

No/Limited. It is not likely that the number or range of suppliers will be directly limited by the adoption of the SIRMP. All policies will apply to new and existing developers in equal measure.

Will the measure limit the ability of suppliers to compete?

No/Limited. The policies within the SIRMP will not directly limit the suppliers' ability to compete. The policies will not affect businesses' route to market or the geographical markets they can sell to.

Test run of business forms

No new forms will be introduced.

Legal Aid Impact Test

It is not envisaged that the SIRMP will have any impact on the current levels of justice through availability of legal aid or on the possible expenditure from the legal aid fund.

Enforcement, sanctions and monitoring

Monitoring of effectiveness of the plan will be undertaken as part of the 5 year review process.

Enforcement through responses to Marine Licence applications

Summary and recommendation

OPTION 3 – Adoption of the SIRMP after a review and update of policies guided by the public consultation and further consultation with key stakeholders, is the option being recommended.

Adopting and implementing the Shetland Islands Regional Marine Plan will build on the work of the SIMSP and help deliver the benefits of a marine planning system as set out in the Final Regulatory Impact Assessment for the Marine (Scotland) Act 2010.

Under this option the SIMSP would be reviewed and refined, giving all stakeholders the opportunity to consider whether the Plan is fit for purpose as a regional marine plan. It would create consistency between national and local decision making and the impacts of the Plan would be fully assessed via SEA, HRA, BRIA, CREWIA, EQIA.

Identified benefit to business will be addressed as part of the BRIA whereas wider economic benefit will be addressed under the SEA.

The analysis will be completed as part of the final BRIA once the formal consultation has been undertaken and all responses analysed.

Declaration and publication

I have read the Business and Regulatory Impact Assessment and I am satisfied that, given the available evidence, it represents a reasonable view of the likely costs, benefits and impact of the leading options. I am satisfied that business impact has been assessed with the support of businesses in Scotland.

Signed:

Date: 26/3/19

Minister's name Mairi Gougeon

Minister's title Minister for Rural Affairs and the Natural Environment

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