

National Assembly for Wales

The Marine Strategy Framework Directive in Wales September 2012

The Marine Strategy Framework Directive requires all Member States to achieve good environmental status in their marine waters by 2020. The Directive outlines a framework of actions that Member States must complete in order to work towards this.

This paper examines the requirements of the Directive, along with how these relate to other statutory obligations including International Conventions and European Directives. Current progress in implementing the Directive in Wales is outlined, together with future actions that are required. The different responsibilities for marine management throughout the UK are discussed, along with a comparison of the approaches and implementation progress of the UK Government and the other devolved administrations.

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National Assembly for Wales

The Marine Strategy Framework Directive in Wales

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Summary

The *Marine Strategy Framework Directive* (MSFD) was adopted by the European Union in 2008. The Directive requires that Member States achieve good environmental status in all marine waters by 2020. The Directive sets a framework of actions that Member States must undertake. These include assessing the status of the marine environment and the pressures affecting it. Member States must also implement actions, known as measures, designed to achieve or maintain good environmental status. These actions include the designation of marine protected areas. The requirements of the Directive are complementary to a number of international conventions and European Directives.

The Directive has been transposed into UK law through the *Marine Strategy Regulations 2010*. The *Marine and Coastal Access Act 2009* also provided the UK Government and devolved administrations with the powers to implement a number of aspects of the MSFD. Together these set out the responsibilities of the devolved administrations and the UK Government. Welsh Ministers have an obligation for marine planning in both the inshore and offshore region of Welsh waters and for conservation in the inshore region.

The UK Government and the devolved administrations jointly produced a marine policy statement in March 2011. This sets out a shared vision for marine waters and a joint approach to the preparation of marine plans. Additionally the Welsh Government has set out its approach to the marine planning process.

Currently the UK Government and the devolved administrations are consulting on initial environmental status assessments required by the MSFD, along with proposals for characteristics and targets that will describe and measure progress towards good environmental status. The Welsh Government is also currently consulting on the designation of marine protected areas. Ultimately 3-4 highly protected areas will be designated. It is intended that these will be managed in a way that allows them to 'function as naturally as possible'. Therefore, extraction or deposition of resources and other damaging activities will be prohibited. These highly protected sites will be selected on the basis of their contribution to ecosystem resilience and recovery and their ability to deliver ecosystem services.

The designation of protected sites is also currently being decided upon in both England and Scotland. Both the UK Government and the Scottish Government intend to designate a greater number of protected areas than in Wales. The majority of sites in England will be managed in order to allow 'minimal disruption of users' activities' and with 'an assumption for use' in Scotland. Northern Ireland is yet to pass a Marine Bill and therefore is likely to miss the MSFD target of designating protected sites by 2013.

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The Marine Strategy Framework Directive in Wales.

1. Introduction

The Marine Strategy Framework Directive (MSFD) was adopted by the European Union in 2008. The Directive was adopted in response to concerns that demand for marine ecological services are high and that a reduction in pressures is required if the marine environment is to be preserved.¹

The Directive aims to protect the environment of all marine waters in Europe more efficiently, requiring coordinated, consistent and integrated actions. It promotes an ecosystem-based approach to the management of human activities and the sustainable use of marine goods and services.

The Directive establishes a framework of actions that Member States are required to undertake in order to protect and preserve the marine environment, and where possible, restore areas that have previously been adversely affected.

The MSFD establishes European Marine Regions on the basis of geographical and environmental criteria. There are 4 marine regions in Europe, these are; The Baltic sea, The North-east Atlantic Ocean, The Mediterranean Sea and The Black Sea. These regions are further divided into sub-regions. The UK's marine waters are within the North-east Atlantic Ocean and within the sub regions of the Greater North Sea and the Celtic Sea. Member States are required to cooperate and work together in order to achieve the Directive's objectives within the regions and sub-regions of European waters.²

¹ [OJL 164, 25.06.2008](#) [accessed 27 April 2012]

² *ibid*

2. Member States' Requirements Under the Marine Strategy Framework Directive

2.1. *Achievement of Good Environmental Status by 2020*

Under the MSFD all Member States must ensure the achievement, or maintenance, of Good Environmental Status (GES) in their marine waters by 2020.³ Under Article 3 of the Directive GES of marine waters is defined as:

‘ecologically diverse and dynamic oceans and seas which are clean, healthy and productive within their intrinsic conditions, and the use of the marine environment is at a level that is sustainable, thus safeguarding the potential for uses and activities by current and future generations.’

Exceptions to achieving GES are allowed. These include where degradation has occurred due to actions or inaction for which the Member State is not responsible, natural causes, or where modifications or alterations are brought about for reasons of overriding public interest.

2.2. *Assessment of Environmental Status*

In order to work towards the achievement of GES Member States must provide an analysis of the essential features and characteristics of the waters in the marine region, along with assessments of the current environmental status of the waters. Assessments of environmental status are based on lists of elements set out in Annex III of the Directive. *Commission Decision of 1 September 2010* provides further clarification on these elements, outlining 11 descriptors of environmental status; these include biodiversity, populations of commercially exploited fish, concentrations of contaminants and marine litter.⁴

For each descriptor Member States must devise a set of qualitative characteristics which provide a description of what GES looks like in each Member State. Furthermore, targets for each of these characteristics must be established in order to guide progress towards good environmental status.

In addition to the assessment of environmental status, Member States must make an assessment of the pressures and impacts on the marine environment, as well as an economic and social analysis of the use of waters, including the costs of degradation.

Member States must ensure that all interested parties are given opportunity to participate in the Directive. **The initial assessments and the determination of good status characteristics and the environmental targets must be made publically available for comment and completed by 15 July 2012.**

³ *ibid*

⁴ [OJL 232, 02.09.2010](#) [accessed 27 April 2012]

2.3. Monitoring of Good Environmental Status

The MSFD states that sound knowledge of the state of the marine environment is essential for effective management of marine waters. Due to this, the Directive requires the on-going assessment of environmental status. Member States must implement a coordinated monitoring programme for all characteristics and targets with their marine waters. Where possible these programmes should build upon the monitoring requirements laid down by other European Community legislation. Monitoring programmes should also be comparable within marine regions and sub-regions. This therefore requires coordination between Member States to ensure consistency. The design of monitoring programmes must be based on Member State's initial assessments of features, characteristics, pressures on the marine environment. **Plans for monitoring programmes need to be made available to all interested parties for comment and be in operation by 15 July 2014.**

2.4. Marine Strategy Plans and Spatial Protection Measures

Member States are required to implement a list of actions, known as measures, designed to achieve or maintain good environmental status. Along with assessments of environmental status and pressures, these must be compiled into a marine strategy plan for each marine region.

Actions should be devised on the basis of the analysis of essential features and characteristics and the assessment of environmental status. The actions should also take into consideration the requirements of other European Directives and the principles of sustainable development. This therefore requires that the economic and social implications of measures are considered and impact and cost-benefit assessments conducted.

The list of actions contained in the marine strategy plans are also required to include spatial protection measures that will contribute to a coherent and representative network of marine protected areas. The networks should include areas that ensure that the diversity of habitats in a marine region are covered, along with Special Areas of Conservation (SACs) and Special Protection Areas (SPAs) covered by the Habitats Directive, Birds Directive and international or regional agreements. **A network of marine protected areas should be publically identified by 2013.**

Member States must ensure that all interested parties are given opportunity to participate in the Directive. Therefore the actions and marine strategy plans must be available to the public for comment. **Actions to ensure GES are required to be drawn up by 2015 and should be in operation by 2016 at the latest.**

3. Links With Other Statutory Requirements and Policies

The MSFD is complementary to a number of other statutory requirements, including International Conventions and European Directives. The MSFD states that the obligations under these should be fully taken into if there is to be successful implementation of the MSFD.

3.1. *International Conventions*

United Nations Convention on the Law of the Sea

All Member States are parties to the *United Nations Convention on the Law of the Sea*. Therefore obligations under this must be fully taken into account by the MSFD and its implementation.⁵ The convention includes obligations to ensure that activities under the jurisdiction of one country do not cause damage beyond its waters. Member States must also avoid the transfer of damage or hazards from one area to another and the transformation of one pollution type to another.⁶

Convention on Biological Diversity

The MSFD should support *The Convention on Biological Diversity*, which all Member States are party to.⁷ This Convention requires that countries halt biodiversity loss.⁸ Specifically, the Seventh Conference of the Parties to the Convention on Biological Diversity adopted a programme of work for marine and coastal biodiversity. This requires countries to halt the loss of marine diversity and to secure the capacity of marine ecosystems to support the provision of goods and services. Additionally, countries are required to establish and maintain ecologically representative marine protected areas by 2012⁹ which will be provided if the spatial protection measures required by the MSFD are designated.

Ramsar Convention on Wetlands

Under the *Ramsar Convention on Wetlands*, adopted in 1971, countries are required to identify and maintain the ecological character of their wetlands of international importance.¹⁰ Due to this the sites identified will contribute to the network of marine protected areas required under the MSFD. Within Wales there

⁵ [OJL 164, 25.06.2008](#) [accessed 27 April 2012]

⁶ *ibid*

⁷ *ibid*

⁸ Convention on Biological Diversity (1994) *First Ordinary Meeting of the Conference of the Parties to the Convention on Biological Diversity (COP 1)*, [accessed 2 May 2012]

⁹ Convention on Biological Diversity *COP 7 Decision VII/5 Marine and Coastal Biodiversity*, 2004 [accessed 2 May 2012]

¹⁰ *Convention on Wetlands of International Importance especially as Waterfowl Habitat. Ramsar (Iran) (1971). UN Treaty Series No. 14583. As amended by the Paris Protocol, 3 December 1982, and Regina Amendments, 28 May 1987*, [accessed on 2 May 2012]

are 7 Ramsar sites with 3 within both Wales and England.¹¹ However, only 4 of these, Cors Fochno and Dyfi, Burry Inlet, Sir y Fflint and the Severn Estuary, are coastal in nature.¹²

The Convention for The protection of the Marine Environment of the North-East Atlantic

The MSFD should also contribute to Member States' fulfilment of international obligations relating to the protection of the marine environment from pollution. For the UK this concerns the Convention for The Protection of the Marine Environment of the North-East Atlantic, more commonly known as the OSPAR Convention, approved by Council Decision 98/249/EC.¹³ Under the convention, the fifteen Governments of the western coasts and catchments of Europe, together with the European Community, are required to cooperate in order to protect the marine environment of the North-East Atlantic. The MSFD requires that Member States use existing regional institutions for coordination and implementation of the Directive. Therefore, the OSPAR convention will be important for the establishment and implementation of marine strategies.¹⁴

Under the OSPAR Recommendation 2003/3 the countries party to the OSPAR Convention agreed to establish an ecologically coherent network of well-managed MPAs in the North-East Atlantic.¹⁵ The establishment of spatial protection measures under the MSFD will help to achieve this obligation.

3.2. EU Directives

Habitats Directive

In addition to international conventions the MSFD is complementary to a number of other EU Directives. These include Council Directive 92/43/EEC on the Conservation of Natural Habitats and of Wild Fauna and Flora, which is more commonly known as the Habitats Directive.¹⁶ The Habitats Directive requires Member States to take action to maintain or restore the natural habitats and species, outlined in the annexes of the Directive, to a favourable conservation status. In order to do this Member States must identify SACs for the habitats and species listed.

¹¹ Countryside Council for Wales [Ramsar Sites](#), 2012 [accessed 2 May 2012]; Research Service Research paper 06/1194/ [Environmental Protection Areas in Wales](#), September 2006 [accessed 9 May 2012]

¹² Countryside Council for Wales [Protected Sites and landscapes map](#), 2012 [accessed 2 May 2012]

¹³ [Convention for the Protection of the Marine Environment of the North East Atlantic](#), [accessed 2 May 2012]

¹⁴ [OJL 164, 25.06.2008](#), [accessed 27 April 2012]

¹⁵ OSPAR Commission [OSPAR Network of Marine Protected Areas](#), 2012 [accessed 31 May 2012]

¹⁶ [OJL 206, 22.07.92](#) [accessed 2 May 2012]

There are 11 SACs that have a marine component in Wales with 2 in both Wales and England¹⁷. These protect habitats such as sandbanks, reefs and species such as bottlenose dolphins and seals.¹⁸

Birds Directive

Directive 2009/147/EC on the conservation of wild birds, commonly known as the Birds Directive¹⁹, requires SPAs to be established in order to protect rare and vulnerable bird species and wetlands of international importance. Within the UK there are 107 SPAs with marine components²⁰, which are used by 110 species of birds²¹, within Wales there are 11 SPAs with marine components.²² There are only three SPAs in the UK that solely cover marine waters, these include Carmarthen Bay which is protected for its non-breeding aggregations of common scoter and Liverpool Bay²³ which was designated due to its non-breeding aggregations of common scoter and red-throated diver²⁴.

Together SPAs and SACs make up the European Natura 2000 network in Wales which is the EU's response to the UN's Convention on Biological Diversity.

¹⁷ Joint Nature Conservation Committee, [Marine Protected Sites Spreadsheets](#), 2012 [accessed 15 June 2012]

¹⁸ Joint Nature Conservation Committee, [Different types of marine protected areas](#), 2012 [accessed 2 May 2012]

¹⁹ [OJL 20, 26.01.2010](#) [accessed 2 May 2012]

²⁰ Joint Nature Conservation Committee, [Marine Protected Areas in the UK](#), 2012 [accessed 2 May 2012]

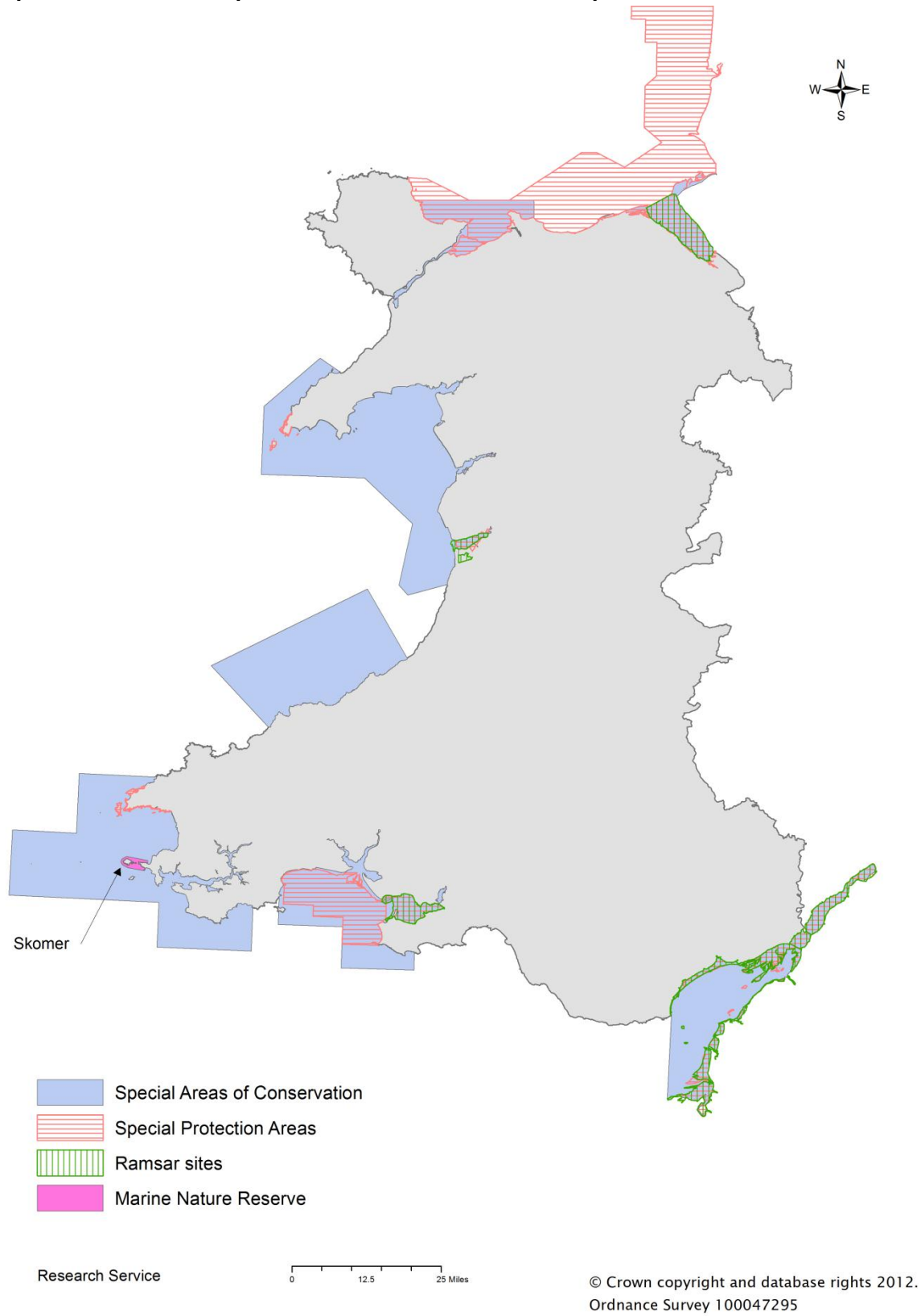
²¹ Joint Nature Conservation Committee, [Designated Marine SPAs](#), 2012 [accessed 2 May 2012]

²² Joint Nature Conservation Committee, [Marine Protected Sites Spreadsheets](#), 2012 [accessed 15 June 2012]

²³ Joint Nature Conservation Committee, [UK Marine SPAs](#), 2012 [accessed 2 May 2012]

²⁴ *ibid*

Map 1: The location of protected sites with marine components within Wales



Data source: JNCC²⁵

²⁵ Joint Nature Conservation Committee, [Download GIS data](#), 2012 [accessed 13 June 2012]

The Water Framework Directive

The MSFD is also complementary to *Directive 2000/60/EC on establishing a framework for community action in the field of water policy*, which is more commonly known as the Water Framework Directive (WFD).²⁶ The WFD introduces a framework for the protection of all water bodies within the European Union, promoting a more sustainable and integrated approach to water management. The Directive requires Member States to prevent the deterioration in status of water bodies and to restore those that are not currently at good status.

The WFD applies to all water bodies including transitional (estuaries) and coastal waters up to one nautical mile out to sea. Therefore, there will be an overlap with the MSFD²⁷, with analysis of pressures and programme of measures for coastal waters required to be integrated into marine strategies.²⁸ Additionally, the two Directives have similar objectives, with the WFD focused on the achievement of good chemical and ecological status and the MSFD aiming to achieve good environmental status. Due to these similarities the UK Government anticipates that measures introduced under the WFD will also be sufficient in meeting some of the MSFD objectives for these criteria.²⁹

The Shellfish Directive

The Shellfish Waters Directive (2006/113/EC) was adopted to protect the habitats of bivalve and gastropod molluscs, including oysters, mussels, cockles, scallops and clams.³⁰ It sets standards for water quality in estuaries and coastal areas where shellfish grow and reproduce. Within Wales there are 26 designated shellfish waters. However, the Welsh Government consulted on a review of the designation of shellfish waters between December 2011 and March 2012.³¹ The results of the consultation are not yet published.

The Bathing Waters Directive

*Council Directive 76/160/EEC concerning the quality of bathing water*³², more commonly known as the Bathing Waters Directive, sets physical, chemical and microbiological standards for bathing waters in the EU³³. *The Revised Bathing Water Directive (2006/7/EC)* was introduced to ensure compatibility with the WFD and to incorporate scientific advances. This Revised Directive will set new

²⁶ [OJL 327, 22.12.2000](#) [accessed 2 May 2012]

²⁷ Defra, [Links between the Marine Strategy Framework and Water Framework Directives](#), 2012 [accessed 2 May 2012]

²⁸ [OJL 164, 25.06.2008](#) [accessed 27 April 2012]

²⁹ Defra, [Links between the Marine Strategy Framework and Water Framework Directives](#), 2012 [accessed 2 May 2012]

³⁰ Welsh Government, [Review of Shellfish Water Designations in Wales](#), 2012 [accessed 17 May 2012]

³¹ *Ibid*

³² [OJL 031, 05.02.1976](#) [accessed 27 April 2012]

³³ Research Service Quick Guide, [Water Quality in Wales](#), 2011, [accessed 17 May 2012]

standards for bathing waters from 2015³⁴. Member States are required to integrate the measures required under the Bathing Waters Directive with those required under the MSFD³⁵. In Wales the Bathing Waters Directive covers 99 beaches³⁶. Therefore implementation of the Bathing Waters Directive will aid the achievement of the MSFD's objectives.

Urban Waste Water Treatment Directive

The Urban Waste Water Treatment Directive (91/271/EEC) has the objective of protecting the environment from the adverse effects of untreated 'urban waste water.'³⁷ It sets the standards of collection and treatment for different sizes of agglomerations.

In coastal waters it is anticipated that measures taken under the Urban Waste Water Treatment Directive will be sufficient to achieve Good Environmental Status in relation to pressures such as contaminants and eutrophication.³⁸

3.3. The Common Fisheries Policy

The Common Fisheries Policy (CFP) is the principal legal mechanism controlling fish stocks in the EU, covering the conservation, management and exploitation of marine resources, and the processing and marketing of fish and aquaculture products.³⁹ Therefore, the CFP will be important in the implementation of the MSFD and particularly for the descriptor regarding populations of commercial exploited fish and the objective that biologically safe populations of commercial fish species are established.⁴⁰ Other descriptors of the MSFD that the CFP is concerned with include biodiversity, food webs and sea floor integrity.⁴¹

For many species, including shellfish species, there are no agreed exploitation limits due to a lack of information regarding stock levels. These species therefore fall outside of the CFP and additional measures will need to be developed in order for the relevant objectives of the MSFD to be met.⁴²

³⁴ *Ibid*

³⁵ [OJL 164, 25.06.2008](#) [accessed 27 April 2012]

³⁶ Welsh Government, [Identification of new bathing waters](#), 2012 [accessed 16 May 2012]; Welsh Government, [Summary of responses and Welsh Government response: Review of Bathing Water Designations for 2012](#), 2012 [accessed 17 May 2012]

³⁷ Defra, [Sewage treatment](#), 2011 [accessed 17 May 2012]

³⁸ HM Government, Northern Ireland Executive, The Scottish Government & Welsh Government, [Marine Strategy Framework Directive Consultation: UK Initial Assessment and Proposals for Good Environmental Status](#), 27 April 2012 [accessed 8 May 2012]

³⁹ Europa, [Conservation and Exploitation of Marine Resources](#), 2010 [accessed 2 May 2012]

⁴⁰ Defra, [What the Marine Strategy Framework Directive Means for the Fishing Industry](#), 2012 [accessed 2 May 2012]

⁴¹ *ibid*

⁴² *ibid*

4. Implementation Progress in Wales to Date

4.1. *The Marine and Coastal Access Act 2009*

The Marine and Coastal Access Act 2009, more commonly known as *The Marine Act*, came into effect in the UK on 15 July 2010.⁴³ This considers the marine environment as a whole and sets out how the UK's vision of 'clean, healthy, safe, productive and biologically diverse oceans and seas' will be achieved.⁴⁴ Therefore, some aspects of *The Marine Act* cover requirements under the MSFD.

The Marine Act contains an amendment to the *Government of Wales Act 2006* which creates the Welsh Fisheries Zone. Within the Welsh Fisheries Zone, Welsh Ministers have responsibility for fishing, fisheries and fish health. This extends the areas Welsh Ministers have responsibility for fisheries, from the territorial boundary of 12 nautical miles from land, to the British fishery limit of 200 nautical miles, or the median line between countries.⁴⁵

The Marine Act covers marine management, requiring the drawing up of marine policy statements that outline the principles to be adopted in order to promote sustainable development, and marine plans that will set out how the marine policy statements will be implemented. *The Marine Act* also covers nature conservation, requiring the designation of spatial protection measures that will contribute to a coherent and representative network of marine protected areas. These are known as Marine Conservation Zones MCZs in Wales, England, and Northern Ireland and as Marine Protected Areas (MPAs) in Scotland.⁴⁶

Under *The Marine Act*, Welsh Ministers are identified as the authority responsible for marine plans for the Welsh inshore and offshore region. The inshore region is defined by *The Marine Act* as the area within the seaward limit of the territorial sea (i.e. up to 12 nautical miles) adjacent to Wales. The offshore region is defined as the area of the Welsh Zone that lies beyond the seaward limits of the territorial limit (i.e. from 12 nautical miles to the British fishery limit).⁴⁷ Welsh Ministers are also identified as the appropriate authority for marine conservation and the designation of MCZs in the Welsh inshore region. However, the Secretary of State is identified as the appropriate authority for nature conservation in the Welsh offshore region.⁴⁸

⁴³ [The Marine and Coastal Act 2009](#) (chapter 23), [accessed 27 April 2012]

⁴⁴ Defra, [The Marine and Coastal Act 2009](#) [accessed 27 April 2012]

⁴⁵ Research Service Research Paper 09/2345, [Marine and Coastal Access Bill \[HL\] Research Paper](#), July 2009 [accessed 2 May 2012]

⁴⁶ [Marine and Coastal Access Act 2009: Explanatory Notes](#), [accessed 22 May 2012]

⁴⁷ [The Marine and Coastal Act 2009](#) (chapter 23), [accessed 27 April 2012]

⁴⁸ Research Service Research Paper 09/2345, [Marine and Coastal Access Bill \[HL\] Research Paper](#), July 2009 [accessed 2 May 2012]

The Marine Act also covers; the licensing of marine activities, such as construction and dredging; the management of fishing and fisheries; enforcement procedures and coastal access.

4.2. *The Marine Strategy Regulations 2010*

The requirements of the MSFD have been transposed into UK law under the *Marine Strategy Regulations 2010* (hereafter, the Regulations).⁴⁹ The Regulations place a statutory duty on the UK Secretary of State to make an assessment of marine waters and determines the characteristics and targets for GES by 15 July 2012. The UK Secretary of State is also required to develop a marine strategy applying an ecosystem approach in cooperation with the devolved administrations.⁵⁰

The Regulations place an obligation on the devolved administrations to provide the Secretary of State with proposals for:

- Monitoring programmes for the devolved marine area by 15 July 2014;
- Programme of measures for the devolved marine area by 31 December 2015; and
- Reviews or updates of such monitoring programmes or programme of measures.

The devolved administrations are also required to provide information to support the assessment of marine waters and the development of characteristics and targets for GES.

Defra states that the MSFD's aims are consistent with the UK's vision for seas and that together the Regulations and existing policies such as *The Marine Act*, form a package of policies that will enable the UK's vision to be achieved⁵¹.

4.3. *Marine Policy Statement*

In line with the MSFD implementation timetable the UK administrations jointly prepared and adopted the *Marine Policy Statement* in March 2011 after an 8 week consultation period. This sets out the framework for marine planning and the preparation of marine plans. It aims to ensure a consistent approach throughout the UK.⁵² It states that the UK and devolved administrations are seeking to achieve 'clean, healthy, safe, productive and biologically diverse oceans and seas.'

In addition to the *Marine Policy Statement* the Welsh Government published its approach to marine planning which was open for consultation between 16

⁴⁹ Defra, [Marine Strategy Framework Directive](#), [accessed 9 May 2012]

⁵⁰ [The Marine Strategy Regulations 2010](#) SI 2010/1627

⁵¹ Defra, [Marine Strategy Framework Directive](#), [accessed 9 May 2012]

⁵² HM Government, Northern Ireland Executive, The Scottish Government, Welsh Assembly Government [Our Seas – a Shared Resource: High level Marine Objectives](#), 2009 [accessed 27 April 2012]

February 2011 and 11 May 2011.⁵³ The consultation included a map of existing and planned features and activities of marine environments, along with ideas on how sub-national and national plans will be linked, how joined up land and marine planning can be achieved, and on the principles of cross boundary cooperation and engagement.

4.4. *Initial Environmental Status Assessment and Proposals for Good Environmental Status*

On the 27 March 2012 a joint consultation was launched on *The UK initial assessment and proposals for good environmental status*.⁵⁴ The consultation ran until 18 June 2012 and consults on a number of aspects of initial implementation of the MSFD.

The first aspect of the consultation is the draft assessment of the state of the seas, which was compiled by a range of stakeholders working in the UK Marine Monitoring and Assessment Strategy (UKMMAS) framework. The assessment is based primarily on peer reviewed evidence from *Charting Progress 2*⁵⁵ and its associated feeder reports. This provides an assessment of the environmental status of UK seas and their uses by different sectors.⁵⁶ *Charting Progress 2* was supplemented by Scotland's Marine Atlas⁵⁷ and the Northern Ireland State of the Seas Report.⁵⁸ An additional assessment of the costs of degradation of the UK marine environment has also been carried out. This was done by comparing the value of societal benefits if GES is achieved to the expected status without the MSFD.

The second part of the consultation considers proposals for UK characteristics of GES which have been developed by policy makers in consultation with experts and key stakeholders. The characteristics proposed aims to reflect the MSFD's definition and descriptors of good environmental status. The characteristics have also been developed using the advice from the EU working group on Good Status.⁵⁹ This states the principles that characteristics should take into account, including; be mainly qualitative, be comparable with existing national, EU and

⁵³ Welsh Government, *Sustainable Development for Welsh Seas; Our Approach to Marine Planning in Wales*, 2011 [accessed 9 May 2012]

⁵⁴ HM Government, Northern Ireland Executive, The Scottish Government & Welsh Government, *Marine Strategy Framework Directive Consultation: UK Initial Assessment and Proposals for Good Environmental Status*, 27 April 2012 [accessed 8 May 2012]

⁵⁵ *Charting progress 2* is a peer reviewed report on the key findings from UK marine research and monitoring published by the UK Marine Monitoring and Assessment community.

⁵⁶ Defra, *Charting Progress 2: The State of UK Seas*, [accessed 9 May 2012]

⁵⁷ The Scottish Government *Scotland's Marine Atlas: Information for The National Marine Plan*, March 2010 [accessed 25 May 2012]

⁵⁸ Department of Environment Northern Ireland, *The State of the Seas Report*, 2011 [accessed 25 May 2012]

⁵⁹ HM Government, Northern Ireland Executive, The Scottish Government & Welsh Government, *Marine Strategy Framework Directive Consultation: UK Initial Assessment and Proposals for Good Environmental Status*, 27 April 2012 [accessed 8 May 2012]

international objectives, be transparent about uncertainty, and be coordinated with other Member States in the North-east Atlantic region.⁶⁰

The final part of the consultation considered proposals for the more detailed targets and indicators of GES required for the UK, these have been developed with advice from Centre for Environment, Fisheries & Aquaculture Science (Cefas), Joint Nature Conservation Committee (JNCC) and a large range of other experts, including those involved in the UKMMAS.⁶¹

4.5. *Marine Conservation Zones Consultation*

Under *The Marine Act* the Welsh Government has responsibility to contribute to the ecologically coherent network of marine protection areas required under the MSFD and international conventions. The Welsh Government's responsibility only includes the inshore region.

The current Welsh network of marine protected areas consists of pre-existing SAC, SPAs, intertidal Sites of Special Interest (SSSIs), intertidal Ramsar sites and the marine nature reserve at Skomer. Pre-existing sites cover 75 per cent of the Welsh coastline and 36 per cent of territorial seas.⁶² However, as only 17% of SACs (both marine and terrestrial) have been found to be in favourable condition⁶³ the Countryside Council for Wales states that there should now be an emphasis on securing good conservation management of marine protected areas in Wales.⁶⁴

The Welsh Government has chosen to supplement this existing network with a limited number of highly protected sites.⁶⁵ Guidance on site selection states that these sites should be selected on their ability to contribute to ecosystem resilience and recovery and the ability to deliver a number of ecosystem services.⁶⁶ Sites will also be selected on their habitat heterogeneity so as to maximise the number of habitats protected.⁶⁷ Sites will be managed in a way that allows them to 'function as naturally as possible'. Therefore the extraction or deposition of living and non-living resources and all other damaging activities will be prohibited in the MCZs.

A number of focus sites were initially identified by the Countryside Council for Wales based on the ecological guidelines. These were then refined by a technical advisory group to produce a list of potential sites. These sites were then further refined by the technical advisory group and a steering group in light of social,

⁶⁰ *ibid*

⁶¹ *ibid*

⁶² Welsh Government, [Marine Conservation Zones \(MCZs\)-Potential Site Options for Welsh Waters](#), 19 April 2012 [accessed 8 May 2012]

⁶³ CCW, *Special areas of conservation in Wales current state of knowledge*, 2011 [accessed 15 June 2012]

⁶⁴ CCW, [Marine Protected Areas](#), 2012 [accessed 15 June 2012]

⁶⁵ Welsh Government, [Marine Conservation Zone-Project Wales](#), 2011 [accessed 23 May 2012]

⁶⁶ *ibid*

⁶⁷ *ibid*

economic and practical considerations.⁶⁸ Based on this a list of 10 potential sites was compiled. These are:

- Puffin Island;
- North East Menai Strait;
- North Lleyn Peninsula;
- Bardsey Island;
- St Tudwal's Island East and Llanbedrog;
- Mouth of the Dwyfor;
- New Quay offshore;
- South West of Strumble Head;
- Skomer; and
- Dale.

A consultation regarding the selection of 3-4 of these sites for MCZ designation took place between 19 April and will close on 31 July 2012.⁶⁹

⁶⁸ Welsh Government, [*Marine Conservation Zones \(MCZs\)-Potential Site Options for Welsh Waters*](#), 19 April 2012 [accessed 8 May 2012]

⁶⁹ *ibid*

5. Future Requirements

5.1. *Designation of Marine Conservation Zones*

Once the consultation period on the MCZs has been completed the information gathered will be used for a second iteration of potential sites. This refined list will then be subjected to a further consultation which will be used to make the final recommendation to Ministers. Subject to Ministers' approval a 9-12 week period of formal consultation will then follow,⁷⁰ with the Welsh Government aiming to add the designated MCZs to the existing network of protected areas during 2014⁷¹.

5.2. *Monitoring Programmes*

Once descriptions and targets for GES have been established, Member States are required to establish monitoring programmes to ensure progress. The MSFD requires that these are in place by 15th July 2014.

The UK initial assessment and proposals for good environmental status consultation document, proposes that where possible targets and monitoring networks for other statutory requirements be used. This includes OSPAR, The Habitats Directive, The Birds Directive and The WFD.⁷² However, there are a number of characteristics and targets where existing legislation does not provide sufficient monitoring, these include benthic sediment habitats, pelagic habitats, commercial shellfish populations, plankton related eutrophication and contaminants in shellfish for some regions.⁷³ For others there is currently insufficient baseline data to develop targets. These descriptors include distribution of non-indigenous species in areas not of high concern, litter on the seas floor, animal ingestion of litter and ambient noise. For these descriptors, surveillance monitoring is proposed in order to improve understanding and with the aim of developing targets in 2018.⁷⁴

5.3. *Development of Plans to Achieve Good Environmental Status*

Actions that will ensure the achievement of GES in all marine waters need to be drawn up by 2015 and in operation by 2016. The overall achievement of GES is required in all marine waters by 2020.

The identification of actions should be based on the initial assessments and integrate the actions required under other European Community legislation.

⁷⁰ *ibid*

⁷¹ National Assembly for Wales, [OAQ\(4\)01269\(ESD\)](#), Christine Chapman to John Griffiths, RoP p7-8, 16 May 2012, [Accessed 31 May 2012]

⁷² HM Government, Northern Ireland Executive, The Scottish Government & Welsh Government, [Marine Strategy Framework Directive Consultation: UK Initial Assessment and Proposals for Good Environmental Status](#), 27 April 2012 [accessed 8 May 2012]

⁷³ *ibid*

⁷⁴ *ibid*

Actions should also take into account principles of sustainable development, in particular the social and economic impacts of measures envisaged.⁷⁵ All interested parties should be given early and effective opportunities to participate in the design of actions, therefore effective collaboration with stakeholders will be necessary.

Member States are required to submit an interim report on the progress of actions three years after their publication. Member States will also be required to review the assessment of environmental status, environmental targets, monitoring programmes and the programme of measures, every 6 years after 2020.⁷⁶

The actions that are required by each Member State and the dates that these are required by are provided in

Table 1: Summary of the future requirements of the MSFD.⁷⁷

| Key date | Action required |
|-----------------------------------|---|
| 15 July 2012 | Assessment of initial environmental status and establishment of targets and indicators of good status |
| 2013 | Establishment of a network of marine protected areas |
| 15 July 2014 | Establishment of monitoring programmes for the on-going assessment of targets |
| 2015 | The development of actions that will achieve or maintain good status |
| 2016 | Actions that will achieve or maintain good status to enter into operation |
| 2019 | Report on the progress of actions |
| 2020 | The achievement of good environmental status for all marine waters |
| 2026 and then every 6 years after | Review the assessment and determination of good status, the environmental targets, the monitoring programmes and the actions required to active or maintain good status |

⁷⁵ [OJL 164, 25.06.2008](#) [accessed 27 April 2012]

⁷⁶ *ibid*

⁷⁷ *ibid*

6. Implementation Progress Comparisons With the Rest of the UK

The Marine Strategy Regulations 2010 transposed the MSFD for the whole of the UK. Due to the differences in the legislative powers of the devolved administrations *The Marine Act* applies in different ways across the UK. *The Marine Act* sets out the appropriate authorities for marine planning and nature conservation, which includes MCZ designation, in the different regions of the UK (Table 2). No authority is identified by *The Marine Act* for Scottish inshore waters and Northern Ireland inshore waters. This is because Scotland and Ireland can make their own legislative provisions for marine planning under their devolved powers.

Table 2: The appropriate authorities under *The Marine Act* for marine planning and nature conservation.⁷⁸

| Marine Region | Appropriate authority for marine plans | Appropriate authority for nature conservation |
|---------------------------|---|---|
| England inshore | Secretary of State | Secretary of State |
| England offshore | Secretary of State | Secretary of State |
| Wales inshore | Welsh Ministers | Welsh Ministers |
| Wales offshore | Welsh Ministers | Secretary of State |
| Northern Ireland inshore | Not covered by the Act | Not covered by the Act |
| Northern Ireland offshore | Department of the Environment in Northern Ireland | Secretary of State |
| Scotland inshore | Not covered by the Act | Not covered by the Act |
| Scotland offshore | Scottish Ministers | Scottish Ministers |

Despite the differences in responsibilities, the UK and devolved administrations worked together to publish *The Marine Policy Statement*. This therefore applies to all regions of the UK. The UK and devolved administrations also jointly published the initial environmental status assessment and proposals for good environmental status. However, there have been different approaches from the different countries to meeting the MSFD's objectives, in particular the creation and management of marine protected areas.

⁷⁸ [The Marine and Coastal Act 2009](#) (chapter 23), [accessed 27 April 2012]; [Marine and Coastal Access Act 2009: Explanatory Notes](#) [accessed 22 May 2012]

6.1. *England and the offshore region of Wales and Northern Ireland*

Defra has set up the Marine Conservation Zone Project (MCZP) in order to provide recommendations for the designation of MCZs in the English inshore and offshore regions, along with the designation of MCZs in the offshore waters for Wales and Northern Ireland. The MCZP is being jointly delivered by Natural England and the Joint Nature Conservation Committee (JNCC).⁷⁹

Unlike in the Welsh MCZs the level of restriction of activities in the English MCZs will vary from site to site and will be dependent on the features of the site, the activities undertaken and the conservation objectives set for the site.⁸⁰ Defra has stated that the most appropriate measures will be those that enable the achievement of conservation objectives whilst resulting in minimal disruption of users' activities.⁸¹ In addition to MCZs, reference areas will also be designated. These are highly protected sites where no extraction, deposition or other damaging activities are allowed.⁸² They are equivalent to the MCZs currently being consulted on by the Welsh Government. It is hoped that these sites will achieve as natural a state as possible so that the condition of other zones can be compared to them.⁸³

Under the MCZP four regional projects were set up, covering the south-west seas, the Irish Sea, the North Sea and the south-east seas. For each regional project a group of stakeholders representing the users and interest groups was formed.⁸⁴ These discussed the locations of the MCZs and the management that would be required in them. This collaborative approach was taken to increase support for the location and objectives of the MCZ recommendations from all stakeholders wherever possible.⁸⁵

The MCZP recommendations have now been submitted. These include 127 MCZs and 65 reference sites.⁸⁶ The Irish Seas project recommended eight MCZs; these include three which are in the Welsh off shore region.⁸⁷ The first of these, known as recommended MCZ three, is 25km north-west of Anglesey and covers 1,388km². The second, known as recommended MCZ four, covers 761 km² and is situated in mid St. George's channel off the Llyn Peninsula. The third recommendation, known as MCZ five, is North of the Celtic Deep and covers an area of 656 km² north-east of St. David's Head. Three reference areas have also

⁷⁹ Defra, [Guidance on selection and designation of Marine Conservation Zones \(note1\)](#), September 2010 [accessed 21 May 2012]

⁸⁰ Defra, [Marine Conservation Zones: Management Measures](#), January 2012 [accessed 21 May 2012]

⁸¹ *ibid*

⁸² *ibid*

⁸³ Irish Seas Conservations Zone Project, [Final Recommendations Summary](#), August 2011 [accessed 21 May 2012]

⁸⁴ Natural England, [Marine Conservation Zones](#), [accessed 21 May 2012]

⁸⁵ Natural England, [Further Information on the MCZ project](#), [accessed 21 May 2012]

⁸⁶ Natural England, [Further Information on the MCZ project](#), [accessed 21 May 2012]

⁸⁷ Irish Seas Conservations Zone Project [Final Recommendations Summary](#), August 2011 [accessed 21 May 2012]

been identified in Welsh waters by the Irish Seas project. Two of these are within MCZ three and one within MCZ four. The Finding Sanctuary project recommended 58 MCZs in the south-west of the UK.⁸⁸ One of these, East of Celtic Deep, is 84km from the Pembrokeshire coast and covers 348 km².

The final recommendations of all 4 regional projects have been independently reviewed by a science advisory panel, who submitted their formal advice to the UK Government on 30 October 2011.⁸⁹ The Panel's report found a number of deficiencies, omissions and uncertainties in the reports.⁹⁰ The report stated that the identification process relied too heavily on socio-economic considerations, with biodiversity not given enough attention throughout the decision making process. Due to this, it was stated, that there was a risk that the recommended MCZs and reference areas, along with the conservation objectives, would fail to deliver levels of protection required to mitigate damaging pressures and facilitate the recovery of habitats and species.⁹¹

In response to the findings of the scientific advisory panel the UK Government's Environment Minister, Richard Benyon, released a statement on 15 November 2011.⁹² This recognised the importance of the collaborative work of stakeholders but stated that there are a number of gaps and limitations in the scientific basis for the recommendations. As a result Defra will be commissioning additional work and review of the recommendations.⁹³ Natural England and JNCC will be providing an impact assessment of the recommended MCZs and will provide formal advice by July 2012. It is anticipated that the public consultation of these will be undertaken at the end of 2012.⁹⁴

6.2. Northern Ireland

The Northern Ireland *Draft Marine Bill* is currently at the committee stage in the Northern Ireland Assembly.⁹⁵ Similarly to the UK *Marine Act*, the Draft Bill aims to set out a new framework for marine management in the Northern Ireland inshore region. Under the *Draft Marine Bill* the Northern Ireland Department for Environment will be able to designate MCZs and prepare marine plans for all or part of the inshore region.⁹⁶

⁸⁸ Finding Sanctuary, *Final Recommendations, Summary Summer 2011*, August 2011 [accessed 21 May 2012]

⁸⁹ Defra, *Marine Conservation Zones*, [accessed 22 May 2012]

⁹⁰ Defra, *Science Advisory Panel Assessment of the Marine Conservation Zone Regional Projects Final Recommendations*, November 2011 [accessed 22 May 2012]

⁹¹ *Ibid*

⁹² UK Government, Richard Benyon (Environment Minister), *Written Statement on Marine Conservation Zones*, 15 November 2011 [accessed 22 May 2012]

⁹³ *Ibid*

⁹⁴ Defra, *Marine Conservation Zones*, [accessed 22 May 2012]

⁹⁵ Northern Ireland Assembly, *The Marine Bill*, [accessed 22 May 2012]

⁹⁶ DOE, *Northern Ireland Marine Bill*, [accessed 22 May 2012]

6.3. Scotland

The Marine (Scotland) Act 2010 came into effect on 10 March 2010, applying to the inshore region of Scottish waters.⁹⁷ Similarly to the UK *Marine Act*, *the Marine (Scotland) Act* aims to safeguard the future of the seas, introducing a framework that aims to balance the demands on Scottish seas. It also introduces measures to boost economic investment in areas such as renewable energy.⁹⁸ Prior to the introduction of *the Marine (Scotland) Act* a consultation period ran in order to engage interested parties with the shaping of *the Marine (Scotland) Act*.⁹⁹ A strategic environment assessment of the proposed Scottish Marine Bill was also conducted¹⁰⁰, along with a regulatory impact assessment.¹⁰¹

The Marine (Scotland) Act requires the establishment of three types of Marine Protected Areas (MPAs) for the inshore region. These are:

- Nature Conservation MPAs to protect biodiversity and geodiversity;
- Demonstration and Research MPAs to demonstrate or research new approaches to sustainable management of marine resources; and
- Historic MPAs to protect historic assets of national importance (e.g. historic wrecks).

The Marine Act provides executive powers to Scottish Ministers for marine planning and conservation measures in the Scottish offshore region. A joint agreement between Scottish and UK Ministers sets out the responsibilities of both parties and how marine planning will be carried out in a coherent and coordinated way.¹⁰²

The inshore Nature Conservation MPAs, SACs, SPAs and Ramsar sites, along with the offshore MPAs required under *The Marine Act*, will contribute to the coherent network of marine protected areas required under the MSFD.

The Scottish MPA project was set up to provide advice to Scottish Ministers on the selection of MPAs. The project is led by Marine Scotland, the Scottish Government directorate responsible for the management of Scottish seas, and run in partnership with Scottish Natural Heritage (SNH) and JNCC.¹⁰³ Site selection will be based on science using the guidelines provided to ensure an ecologically coherent

⁹⁷ [Marine \(Scotland\) Act](#), [accessed 22 May 2012]

⁹⁸ The Scottish Government, [Marine \(Scotland\) Act](#), 2012 [accessed 22 May 2012]

⁹⁹ The Scottish Government, [Consultation](#), 2012 [accessed 22 May 2012]

¹⁰⁰ The Scottish Government, [Scottish Marine Bill Strategic Environmental Assessment \(SEA\): Environmental Report \(ER\)](#), December 2008 [accessed 22 May 2012]

¹⁰¹ The Scottish Government, [The Marine \(Scotland\) Bill: Final Regulatory Impact Assessment](#), May 2009 [accessed 22 May 2012]

¹⁰² The Scottish Government [UK Agreement](#), 2009 [accessed 24 May 2012]

¹⁰³ *ibid*

network is established. Third parties were also permitted to make suggestions for Nature Conservation MPAs and Demonstration and Research MPAs.¹⁰⁴

Guidelines for the development of the MPA network state that the conservation objectives and the management of activities for each site should be determined on a case by case basis. There will be a default presumption for use by all marine users in each MPA. There will only be management of an activity in the MPAs if it is known that an activity will, or is likely to, damage the protected features of the MPA and therefore endangering the sites contribution to the MPA network.¹⁰⁵

A 5 stage process for site selection has been outlined. This involves:

- Identification of search locations based on presence of MPA search features;
- Prioritisation of search locations according to the qualities of the MPA search features and other features identified.
- Assessment of the scale of the search location in relation to the MPA search features;
- Assessment of the ability to manage features effectively within a search location as part of a Nature Conservation MPA; and
- Prioritisation of potential areas according to their contribution to the Scottish MPA network;

The search features to be used in the identification of potential Nature Conservation MPAs were developed by SNH and JNCC. These are based on four categories:

- Seabed habitats e.g. blue and horse mussel beds;
- Low or limited mobility species e.g. burrowing sea anemone aggregations;
- Mobile species e.g. black guillemots and basking sharks; and
- Large scale feature of functional importance e.g. continental slopes and sea mounts.¹⁰⁶

Since March 2011 a number of workshops have been held to engage stakeholders in the selection of Nature Conservation MPAs.¹⁰⁷ These workshops reviewed data regarding search features and identified least damaged/most natural locations¹⁰⁸. The workshops then went on to explore the contribution of these locations and existing protected sites to the MPA network and how their ecological value could be increased. Search features that are not fully covered by existing protection

¹⁰⁴ Marine Scotland, [Marine Protected Areas in Scotland's Seas Guidelines on the selection of MPAs and development of the MPA network](#), 2011 [accessed 22 May 2012]

¹⁰⁵ *ibid*

¹⁰⁶ *ibid*

¹⁰⁷ The Scottish Government, [Stakeholder Engagement](#), 2012 [accessed 23 May 2012]

¹⁰⁸ *ibid*

sites were discussed.¹⁰⁹ Statements for each of these priority search feature were issued, along with proposed locations to address them. There were 15 MPAs suggested with a further 12 recommended for further assessment.¹¹⁰ The workshop following on from this then introduced a matrix tool that displays interactions between pressures and search features. This tool, along with stakeholder input, is currently being used to develop a MPA management toolkit. The toolkit will then be used to propose management measures for each proposed location.¹¹¹ It is hoped that this method will give clarity to stakeholders over what designation means and will allow more precise socio-economic assessments.

A fifth workshop is to be conducted in June 2012. The final recommendations for the MPAs are expected to be presented to the Scottish Parliament by the end of 2012. Scottish Ministers will then decide which options should be formally consulted on. Site proposal documents and impact assessments will then be completed and consulted on in 2013.¹¹²

¹⁰⁹ The Scottish Government [*Identification of additional MPA search locations and discussion of search feature sensitivities: A guide to the 4th national MPA stakeholder workshop*](#), 2012 [accessed 24 May 2012]

¹¹⁰ *ibid*

¹¹¹ *ibid*

¹¹² Scottish Natural Heritage [*Marine Protected Areas - Frequently Asked Questions*](#), [accessed 24 May 2012]