1. SUMMARY

The draft Marine (Scotland) Bill was introduced to the Scottish Parliament on 29 April. The Rural Affairs and Environment Committee are currently scrutinising the Bill and are seeking comments from interested parties. In addition, the Parliament’s Finance Committee has consulted the Council, seeking views on the financial implications of the Bill for local authorities. The draft response to the Rural Affairs and Environment Committee and the response forwarded to the Finance Committee on 26 May 2009 are set out in Annexes 1 and 2 respectively.

In September 2008, the Council responded to the Scottish Government consultation ‘Sustainable Seas for All’, which sought views on what should be included in a Marine Bill for Scotland. The views set out in Annex 1 take account of this response.


2. RECOMMENDATIONS

It is recommended that the Committee:

(i) Members note the contents of this report.
(ii) Approve the comments in Annex 1 as the Council’s representation to the Rural Affairs and Environment Committee on the draft Marine (Scotland) Bill.
(iii) Consider the response forwarded to the Finance Committee in Annex 2 and make any additional comment that can be added to the response to the Rural Affairs and Environment Committee.

3. DETAIL

The draft Marine (Scotland) Bill creates a new legislative and management framework for the marine environment. The Bill creates a new system of marine planning to manage the competing demands of the use of the sea whilst protecting the marine environment, creates a system of licensing with the aim of reducing the regulatory burden for key sectors, and includes powers to establish marine protected areas to protect natural and cultural marine features. The Bill also introduces a new regime for the conservation of seals and gives powers for Scottish marine enforcement officers to ensure compliance with the new licensing and conservation measures.
3.1 Marine Planning
The Bill proposes a statutory marine planning system to manage the resource needs of different sectors for marine space.

National Marine Plan
A national marine plan will set out strategic objectives for the marine environment in Scottish Waters. The plan will be developed to cover 0 to 200 nautical miles and will guide regional planning.

Regional plans
Marine planning at the regional level will be carried out within Scottish Marine Regions. Marine plans for each region will provide certainty about Scottish Ministers’ policy intentions as well as bringing together the characteristics, opportunities and constraints of the marine environment and will inform developers on where they are likely to be able to carry out activities or where conditions or restrictions may be placed on what they do.

The Scottish Ministers’ policy is for regional marine planning functions to be delegated locally. The bodies responsible for local marine planning will be known as Marine Planning Partnerships and may either be led by a lead public authority such as a local authority or by an unincorporated group of people.

Decision making
Once the marine plans come into effect, the Scottish Ministers and other public authorities must act in accordance with the marine plans when taking any authorisation or enforcement decision.

Integration with other plans
Regional marine plans are to be compatible with adjacent regional marine plans and similarly with adjacent terrestrial plans. This requirement provides a mechanism for delivering ICZM. Scottish Ministers intend to introduce a similar provision for terrestrial plans to be compatible with marine plans by way of planning regulations. Where required, Scottish Ministers may also use their power of direction in the Bill to ensure ICZM is delivered by those carrying out regional marine planning functions.

3.2 Licensing
The main change to the existing licensing regime is the consolidation and modernisation of Coast Protection Act and FEPA into one single licence.

The Bill also seeks to provide a mechanism to reduce the regulatory burden faced by the aquaculture industry. The Bill provides Scottish local authorities with the ability to give up the development consent for marine fish farming. Where a local authority chose to give up the development consent for fish farming, then fish farming would become a licensable activity within their area.

3.3 Marine Protected Areas (MPAs)
New powers allow MPAs to be designated for the purpose of nature conservation, demonstration and research purposes or for historic interests.

In recognition of the social and economic benefits the marine environment offers, Scottish Ministers have adopted a policy of presumption of use within MPAs.
However, the Bill makes provision for restriction of activities in and around MPAs should it be necessary to protect the key features or objectives of the site.

4. CONCLUSION

The draft Marine (Scotland) Bill has recently been introduced to the Scottish Parliament and the Rural Affairs and Environment Committee are currently seeking comments from interested parties to assist in their scrutiny of the Bill.

Overall the Bill is to be welcomed, in particular the creation of a more streamlined licensing system and the new system of statutory marine planning, which should allow local stakeholders to have a say in the management of their local marine area.

It is important that as a Council we give consideration to the issues being raised by the Bill, in particular the delivery and financial implications of marine planning and licensing, to ensure that our marine environment will be managed in a sustainable manner for future generations.

5. IMPLICATIONS

5.1 **Legal** – None

5.2 **Financial** – There are potential financial implications for the Council but it is difficult to quantify likely costs at present. Should the Council take on the role of lead body for regional marine planning for one or more Marine Planning Partnerships, we would require the full funding to be transferred from the Scottish Government. Specific views on the Financial Memorandum for the draft Marine (Scotland) Bill are laid out in Annex 2.

5.3 **Personnel** – None

5.4 **Equal Opportunities** – None

5.5 **Policy** – The Council seeks through its Corporate policy, Structure Plan and new emerging Argyll and Bute Local Plan to support the sustainable management of our marine and coastal area. The Argyll and Bute Structure Plan 2002 outlines the Council’s objectives for coastal planning and emphasises the necessity of working with all the relevant sectors to fully harness the productive capacity of the marine and coastal areas whilst safeguarding its unique environmental qualities through sustainable development. In addition policy PL AQUA 1 of the emerging Local Plan recognises the potential of the Councils evolving Integrated Coastal Zone Management (ICZM) process to further inform and direct the assessment of aquaculture development within our area.
Annex 1 - Draft response to Rural Affairs and Environment Committee

1. Background

Argyll and Bute Council welcomes the opportunity to make representation to the Rural Affairs and Environment Committee on the draft Marine (Scotland) Bill. Argyll and Bute Council represents the second largest local authority area in Scotland. Located on the West Coast of Scotland and covering a land area of 690,000 ha we have an incredible indented coastline in excess of 4,500 km and a total of 25 inhabited islands. Our six main settlements are located on the coast and the majority of our population live within a relatively short distance from the coast. Our marine and coastal environment is of great importance to our communities from a social, cultural and economic perspective.

The Council recognises that the quality and diversity of the coastal and inshore waters is one of our prime assets which requires protection and wise management and is critical to our economic success. We realise the complexity of the issues being faced within the marine environment, the significant number of stakeholders involved and the need to secure a modern and streamlined management system in order to secure the sustainable management of our Seas for future generations.

2. Specific comments on the draft Marine (Scotland) Bill

2.1 Aquaculture

Argyll and Bute Council do not currently have the resources for the monitoring and enforcement of marine aquaculture consents. With the ongoing transfer of existing consents from The Crown Estate to local authorities, the Council will take on the role of monitoring and enforcement of these sites in addition to any new sites. There is also a requirement for resources to provide specialised training for planning officers that determine aquaculture applications.

Argyll and Bute Council note the mechanism in the draft Bill to give up the development consent function for aquaculture and in the meantime are happy to continue the delivery of this function subject to our own analysis of the resource requirements needed to deliver monitoring and enforcement and training of planning officers.

The Council has concerns about the possible situation of some parts of Scotland requiring development consent from a local authority and other areas a marine licence from Marine Scotland. This situation has the potential to lack consistency in terms of decision making, length of time to determine applications and cost to the industry.

The Council recommends that the Scottish Government consider the potential for streamlining the existing development consent process. There may be an opportunity for the marine licence to cover aspects that are more within the experience and knowledge of Marine Scotland than local authority planners. This might include the effects of salmon farming on wild fish populations or impacts on seabed habitats and species. If a number of environmental impacts were managed by this consent then it may be more appropriate for the competent authority for the Environmental Impact Assessment process to be Marine Scotland rather than the Local Authority.

The Council also recognises that if local authorities retained the development consent function then the Marine Bill proposals are not streamlining the existing consent
requirements for aquaculture development, still leaving a requirement for three consents/licences for finfish development and two for shellfish development.

Section 27(1) of the Bill outlines the provision for applications under section 36 of the Electricity Act 1989 and an application for a marine licence to be considered together. It would be sensible to consider a similar provision for aquaculture consents/licences, to allow a more streamlined and effective consultation and Environmental Impact Assessment process.

It is not clear from the draft Bill or associated documents whether the culture of seaweed and other marine invertebrates would require a marine licence for any development. The Council considers that to maintain consistency in the determination of applications for similar types of developments, culture of marine species not currently covered by planning legislation should be considered under planning.

2.2. Regional planning

The Council considers that Argyll and Bute may be best served by two Scottish Marine Regions, one covering the Firth of Clyde and the other, the rest of our administrative area, north of the Mull of Kintyre. We consider that some form of partnership would be most suitable to take the lead on regional planning in the Firth of Clyde and for the other area, the Council would be interested in taking on the role as lead body, subject to appropriate resources being transferred from the Scottish Government.

The Council has concerns about the Scottish Government’s current thinking on how Marine Planning Partnerships would be set up. We believe the current view is that anyone who wants to be involved could be and that each marine region would be left to set up their partnership however they pleased. It is considered that if there is not clear guidance to assist the establishment of Marine Planning Partnerships then there is likely to be difficulties in terms of representation, size and management of the partnership, decision making and integration with other partnerships of adjacent marine regions.

The financial memorandum for the draft Bill does not detail the expected number of staff that would be required to take forward marine spatial planning for an individual region. Looking at experience in terrestrial planning and existing marine projects, the Council considers that any regional team should be made up of at least four full-time professional officers covering a range of disciplines. This team should also have administrative and technical support, in particular GIS support.

It is considered that the estimate of two years to prepare a regional plan appears optimistic if meaningful stakeholder consultation is to be carried out. The experience of the SSMEI pilots suggests that this will take longer, particularly if this period includes the setting up of the Marine Planning Partnership, gathering information and data, development of the plan and full public consultation. Ensuring that the national marine plan provides a framework for regional planning and sets out clearly what should be included in a regional marine plan, should help to streamline this process.

2.3. ICZM

The Policy Memorandum for the draft Bill states that, where required, Scottish Ministers may also use their power of direction in the Bill to ensure ICZM is being delivered by those carrying or regional marine planning functions. There is no breakdown in the Financial Memorandum of the costs involved in delivering ICZM as part of the regional planning process or in the development of more localised ICZM plans.
2.4 Financial implications
Argyll and Bute Council provided views on the financial implications of the draft Marine (Scotland) Bill, to the Scottish Parliaments Finance Committee on 26 May 2009. This response is outlined in Annex 2. It is clear that there will be significant financial costs involved in taking forward regional marine planning and that there are likely to be further costs relating to other implementation aspects of the Bill that result from secondary legislation.

In addition to our comments in Annex 2, the Council would like to make clear that it cannot meet these potential financial costs. Should the Council take on the role of lead body for one or more Marine Planning Partnerships, full funding would need to be made available from either additional Revenue Support Grant from the Scottish Government or applicants/licence holders.

3. Overall comments

Looking at the draft Bill as a whole the Council is concerned at the potential number of plans that may be developed in the future. This could include the national marine plan, regional marine plans, a regional seas conservation plan, seal management plans, management schemes for MPAs, in addition to the plans that will be developed under River Basin Planning and Inshore Fisheries Groups. This seems to be at odds with changes in terrestrial planning, which are looking to reduce the number of plans, and is likely to be difficult for stakeholders to find the time to engage in the development of this number of plans.
Annex 2 - Response to Scottish Parliament's Finance Committee

QUESTIONNAIRE

Consultation
1. Did you take part in the consultation exercise for the Bill, if applicable, and if so did you comment on the financial assumptions made?

Yes, Argyll and Bute Council responded to the consultation ‘Sustainable Seas for All’. We made no comments on financial assumptions made as part of this consultation as no financial information was provided.

2. Do you believe your comments on the financial assumptions have been accurately reflected in the Financial Memorandum?

Not relevant.

3. Did you have sufficient time to contribute to the consultation exercise?

Yes.

Costs
4. If the Bill has any financial implications for your organisation, do you believe that these have been accurately reflected in the Financial Memorandum? If not, please provide details.

Aquaculture
Argyll and Bute Council do not currently have the resources for the monitoring and enforcement of marine aquaculture consents. With the ongoing transfer of existing consents from The Crown Estate to local authorities, the Council will take on the role of monitoring and enforcement of these sites in addition to any new sites. There is also a requirement for resources to provide specialised training for planning officers that determine aquaculture applications and enforce consents, which we have estimated to be in the region of £5,000.

Regional marine planning
The financial memorandum for the draft Bill does not detail the expected number of staff that would be required to take forward marine spatial planning for an individual region. Looking at experience in terrestrial planning and existing marine projects, the Council considers that any regional team should be made up of at least four full-time professional officers covering a range of disciplines. This team should also have administrative and technical support, in particular GIS support. An estimated cost for four planning officers is £168,400 per annum.

Marine Protected Areas
The Bill identifies that management schemes can be prepared for marine protected areas. The costs set out in the Financial Memorandum (Table 5) identify an estimated cost of £23,000 against a management scheme. This figure appears very low if it is to include stakeholder involvement and consultation. It is not clear whether other costs identified in Table 5, such as £50,000 for consultation cover the costs of consulting on a management scheme.
Examples of costs for existing marine management projects in Argyll and Bute

**ICZM project** – development of two Integrated Coastal Zone Management plans (Loch Etive & Loch Fyne)
Total budget - £100,000 (Council led partnership project)

**Sound of Mull SSMEI project** – development of a marine spatial plan & implementation
Total budget - £180,000

**Argyll Marine SAC** - development of one plan covering two marine Special Areas of Conservation
Total budget - £160,000 (Council led partnership project)

**Clyde SSMEI** – development of a marine spatial plan for the Firth of Clyde
Total budget – in excess of £360,000

The projects listed above have been funded by groups of partners and various European funding streams. The estimated costs are the full project costs, and include setting up stakeholder groups, administration, consultancy fees, marketing, equipment, staffing and travel. It is also important to note that the only project that has planned at the likely scale of a marine region is the Clyde project. The other projects have planned for much smaller areas but possibly planned in greater detail.

5. Are you content that your organisation can meet the financial costs associated with the Bill? If not, how do you think these costs should be met?

The organisation cannot meet the costs associated with the Bill. The funding should come from either applicants/licence holders or as additional Revenue Support Grant from the Scottish Government.

6. Does the Financial Memorandum accurately reflect the margins of uncertainty associated with the estimates and the timescales over which such costs would be expected to arise?

See comments under questions 4.

**Wider Issues**

7. If the Bill is part of a wider policy initiative, do you believe that these associated costs are accurately reflected in the Financial Memorandum?

No comments

8. Do you believe that there may be future costs associated with the Bill, for example through subordinate legislation or more developed guidance? If so, is it possible to quantify these costs?

It is likely that there will be future costs associated with the Bill but it may not be possible to quantify these costs at this stage.