

Scotland's First Marine Bill



marinescotland

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ISBN: 978-0-7559-5993-8

The Scottish Government
St Andrew's House
Edinburgh
EH1 3DG

Produced for the Scottish Government by RR Donnelley B59438 09/09

Published by the Scottish Government, September 2009

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Courtesy of Scottish Salmon Producers' Organisation

// FOREWORD



Richard Lochhead

Richard Lochhead

Cabinet Secretary
for Rural Affairs
and Environment

I was delighted to announce the introduction of the Scottish Marine Bill into the Scottish Parliament. This is Scotland's first Marine Bill and provides legislation to enhance the management and stewardship of Scotland's seas.

Scotland's seas are home to over 40,000 marine species including 6,500 animal and plant species. Our seas have an estimated potential for renewable energy of 46.5GW¹ with the potential to make a critical contribution to fighting climate change.

The Bill if enacted will allow us to manage Scotland's seas for the benefit of all. The agreement with the UK Government on executive devolution of marine planning, conservation, licensing and enforcement from 12-200 nm will allow us to develop an integrated approach to managing all of Scotland's seas.

Marine Scotland, the marine management organisation for Scotland, came into effect on 1 April 2009 and will be the champion of Scotland's seas.

I would like to thank all the stakeholders who helped make this Bill a reality and all the respondents to the consultation on *Sustainable Seas For All* who helped us reach important policy decisions.

I believe the Scottish Marine Bill, if approved by the Scottish Parliament, will ensure more sustainable management of the seas. This will deliver economic development alongside the protection of the marine environment, thus ensuring our seas will benefit future generations of Scots.

¹ Offshore wind 25GW, wave 14GW and tidal stream 7.5GW, Scotland's Renewable Resource, 2001, Garrad Hassan



// WHAT WILL THE SCOTTISH MARINE BILL DO?

- **Marine Planning:**
A new statutory marine planning framework to manage the competing demands for the use of the sea whilst protecting the marine environment. Making sure that marine energy, fishing, aquaculture, shipping, recreational and other sea users use marine resources wisely while maximising the benefit to Scotland.
- **Better Marine Licensing:**
A streamlined licensing system to improve and speed up the decision making for developments in the marine environment.
- **Marine Conservation:**
Better ways of protecting natural and cultural marine features, including marine species and habitats, wrecks and other submerged sites of interest.
- **More Protection for Seals:**
Improved protection for seals and a new comprehensive licence system to allow appropriate management when necessary.
- **Common Enforcement Powers:**
Better and more flexible enforcement powers for Scottish marine enforcement officers to allow them to monitor and enforce the marine licensing and conservation provisions.

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// HOW WILL THE SCOTTISH MARINE BILL FUNCTIONS FIT WITH WIDER RESPONSIBILITIES?

Two Bills, Divided Responsibilities, One Statement

The Scottish Marine Bill legislates for all activities in the marine environment out to 12nm except those reserved to the UK Government. Reserved activities include oil, gas, telecoms and shipping.

Under proposals in the **UK Marine and Coastal Access Bill**, Scottish Ministers will have executive devolution of marine planning, licensing, and nature conservation in the Scottish offshore region. This means that the Scottish Ministers will be able to carry out these activities from 12-200 nm.

UK Marine Policy Statement (MPS) – Better Joining Up Through Working Together

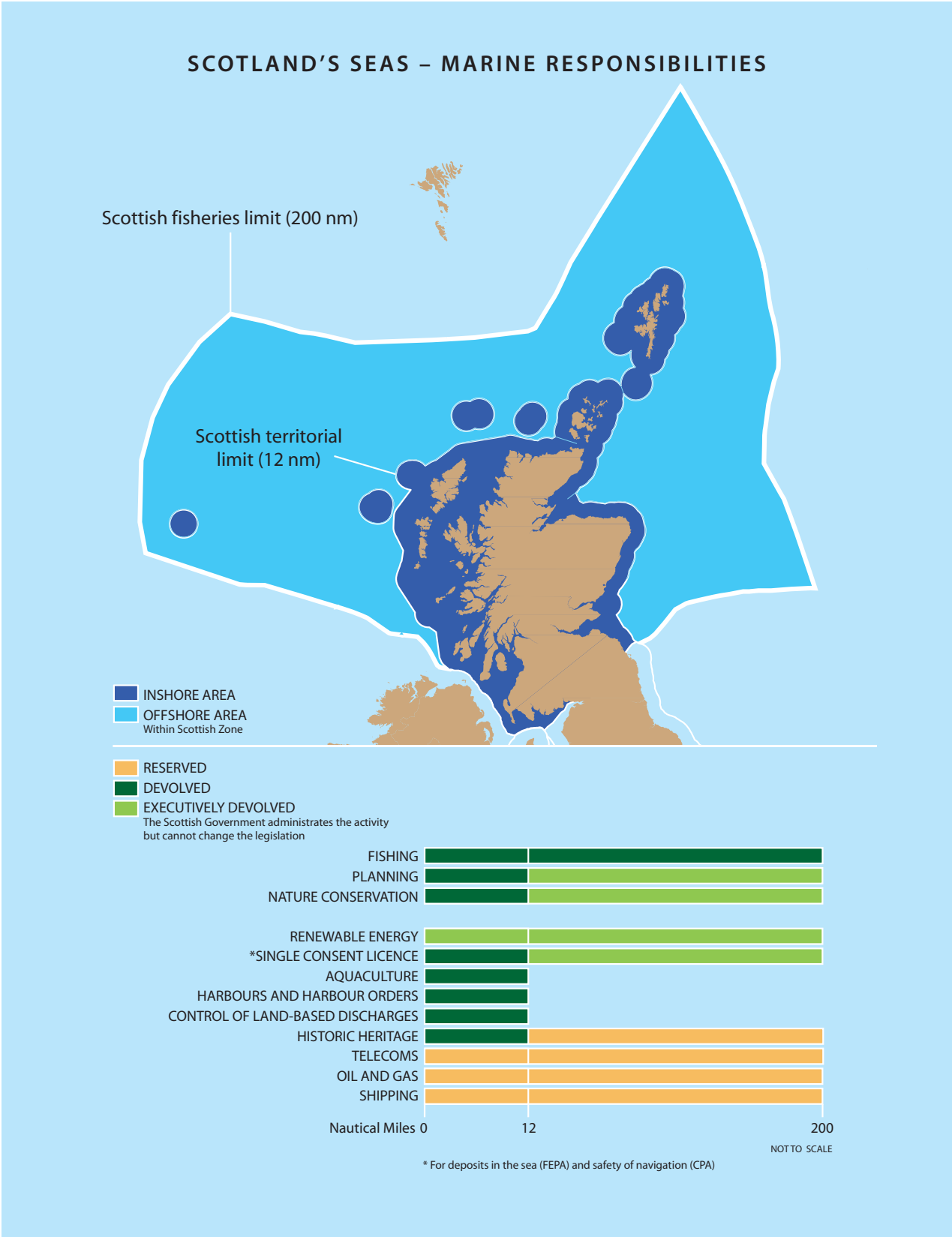
Scottish Ministers, along with other UK administrations, will prepare an overarching Marine Policy Statement.

The UK MPS will set out the high-level objectives and general policies for the Scottish and UK marine area.

Legislation will provide for Scotland to lead marine planning in all Scottish seas. This means Scottish marine plans will cover marine issues governed by the Scottish Parliament, and subject to their approval, the responsibilities of the UK government.

FIGURE 1 illustrates the prospective boundaries and responsibilities for Scotland's seas in the event of the enactment of the Marine Bills. The marine planning, licensing and conservation activities in the inshore area are legislated through the Scottish Bill while the offshore area is legislated for through the UK Bill.

FIGURE 1.





// MARINE PLANNING

Sustainable Seas For All

The Scottish Marine Bill proposes to introduce a statutory marine planning system for Scotland. This will allow us to take a more strategic approach to managing our seas to balance resource needs within marine space whilst protecting our marine environment. This will mean that all activities can be considered together, from wildlife tourism and recreational sea angling to energy and fishing.

National Marine Plan

The National Marine Plan will set out the strategic objectives for the Scottish marine area and will ensure that our international and EU commitments are met. It will identify national priorities within certain areas and provide clarity for decision-making. It will be guided by the UK Marine Policy Statement, as appropriate. For example, the Scottish Government will be able to state the importance attached to the development of aquaculture or life line services to island communities.

Regional Marine Plans

Local interests and accountability will be met through regional planning. The Bill enables the creation of Scottish Marine Regions which will provide the basis for regional planning. After consultation, boundaries of the Scottish Marine Regions will be established through secondary legislation.

The Bill allows Scottish Ministers to delegate regional planning to a lead organisation of a Scottish Marine Region such as a local authority or, where appropriate, a group of nominated stakeholders acting together. These will be known as Marine Planning Partnerships. The regional plans will be guided by the National Marine Plan and approved by Scottish Ministers.

- Regional Marine Plans will provide the context in which conflicts between different sectors can be resolved and by which key areas can be defined for key uses.



Copyright Laurie Campbell Photography

Integrated Coastal Zone Management

When producing plans Scottish Ministers and Marine Planning Partnerships must take into account adjacent marine plans and terrestrial plans. The requirement for marine plans to be compatible with terrestrial plans and the ability of the Scottish Ministers to direct Marine Planning Partnerships provides the mechanism to deliver Integrated Coastal Zone Management.

Consultation on Plans

The Scottish Ministers and the Marine Planning Partnerships will be required to consult on their respective plans. Plans, both national and regional, will come into effect once approved and published by the Scottish Ministers. Plans can be amended where necessary to reflect changing circumstances but only the Scottish Ministers can withdraw a plan.

Effectiveness of Plans

Scottish Ministers and the Marine Planning Partnerships will keep under review matters which could affect the achievement of sustainable development in the marine area. These would include the physical, environmental, social, cultural and economic characteristics of the marine area.

To measure the progress towards the objectives for which the plans have been made, Scottish Ministers and the Marine Planning Partnerships will be required to publish a report at least every 5 years. Depending on the outcome they could amend or replace the plan.

FIGURE 4 illustrates the planning process if the Scottish Ministers adopt the UK Marine Policy Statement.

FIGURES 2 & 3. DATA LAYERS FOR THE CLYDE MARINE SPATIAL PLAN DRAFT.
(Copyright SSMEI Firth of Clyde Marine Spatial Plan Draft.)

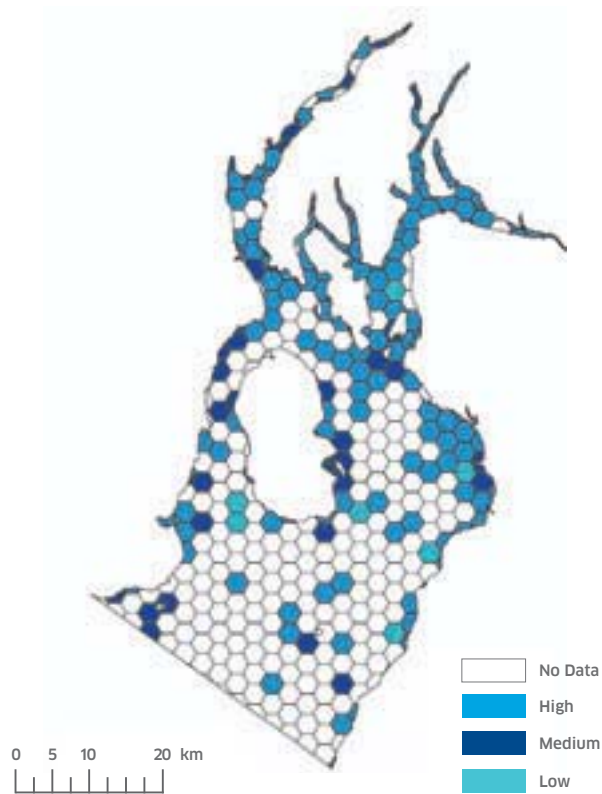


FIGURE 2. QUALITY OF SPECIES DATA

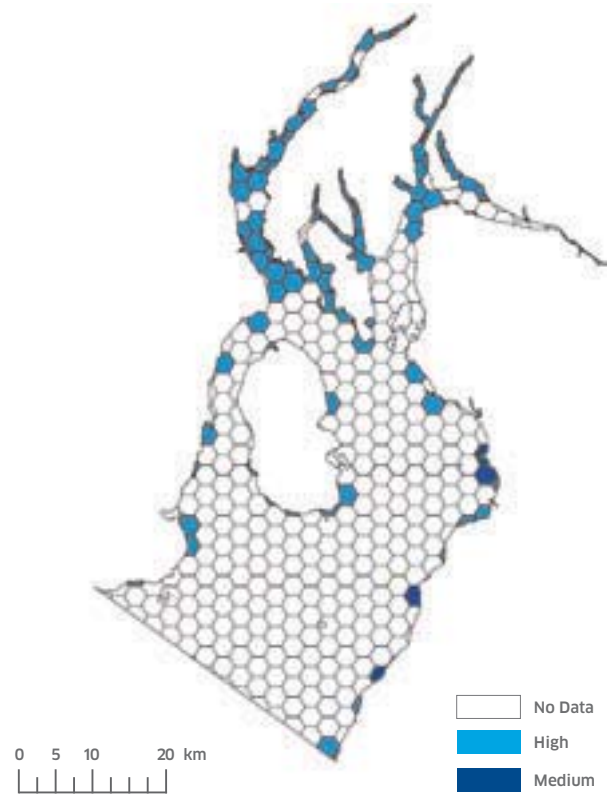


FIGURE 3. QUALITY OF HABITAT DATA

Data Required to Inform Plans

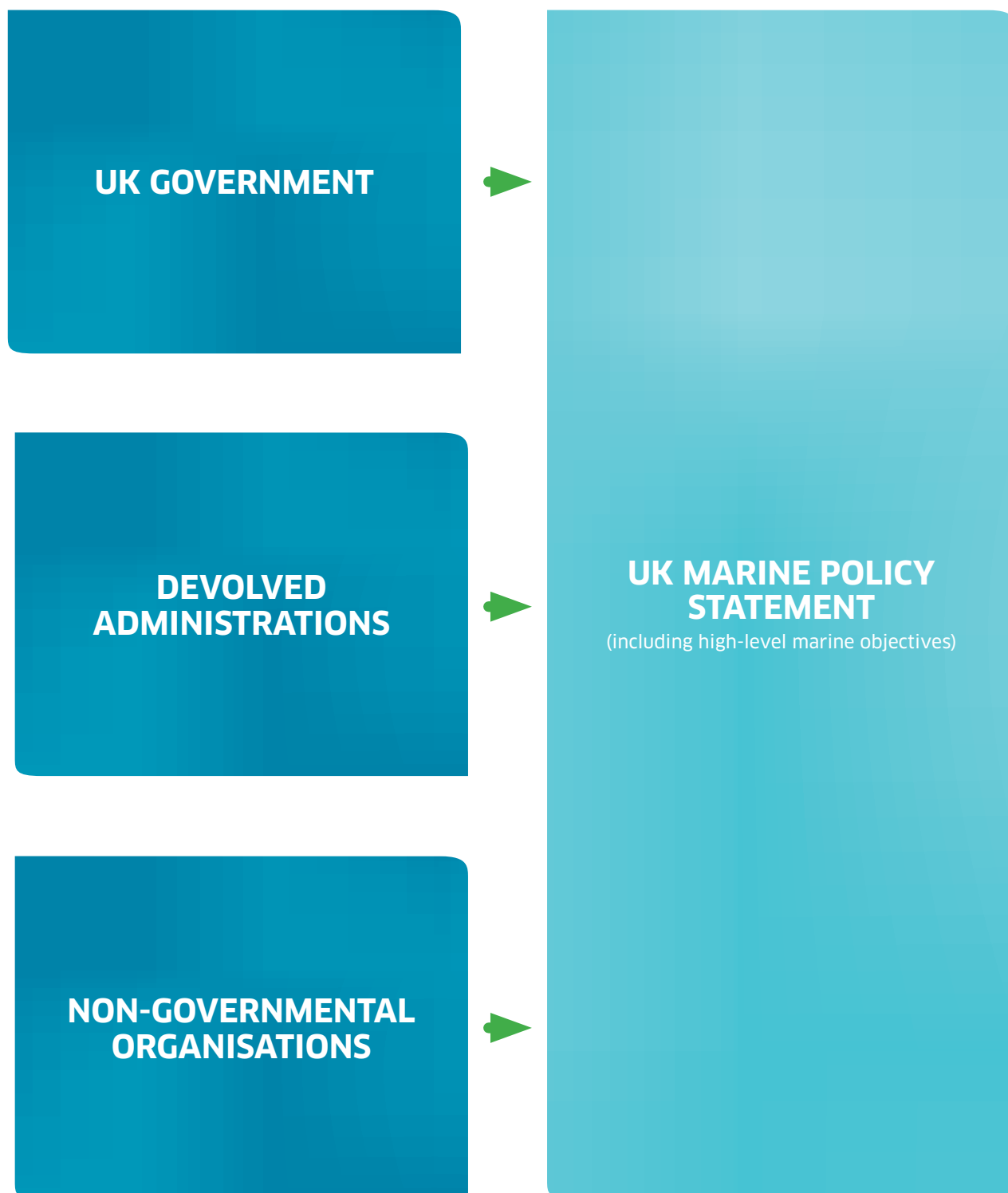
Data relating to activities, historic features, the natural environment and constraints within an area will be required to inform the marine planning process. Considerable work is already underway which will provide relevant data, as well as identify gaps in our knowledge, both in terms of spatial information and quality of data. FIGURES 2, 3 & 6.

The Scottish Sustainable Marine Environment Initiative (SSMEI), led by the Scottish Government, is an innovative approach to developing an overall marine planning framework. It aims to develop and test new approaches of delivering sustainable marine management and planning at a local level through a series of four pilot projects. Experiences learned as well as outcomes will be valuable to the development of the Scottish Marine Region model and marine planning practices. FIGURE 5



MARINE PLANNING PROCESS

FIGURE 4. MARINE PLANNING PROCESS



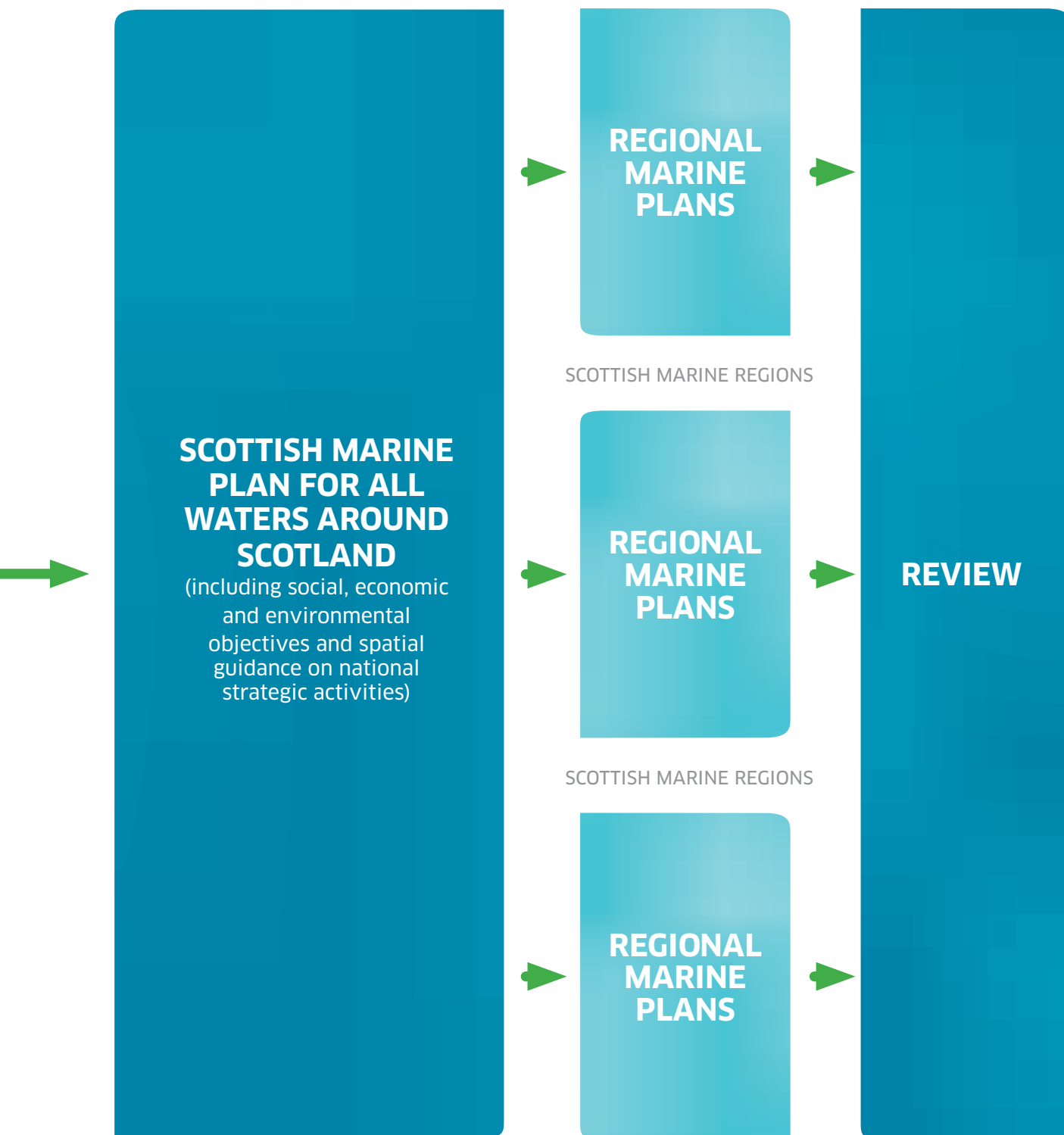


FIGURE 5. SPATIAL MAPPING OF VARIOUS MARINE AND COASTAL ACTIVITIES AND CONSTRAINTS AROUND SCALLOWAY COAST, SHETLAND. COURTESY OF SSMEI SHETLAND.

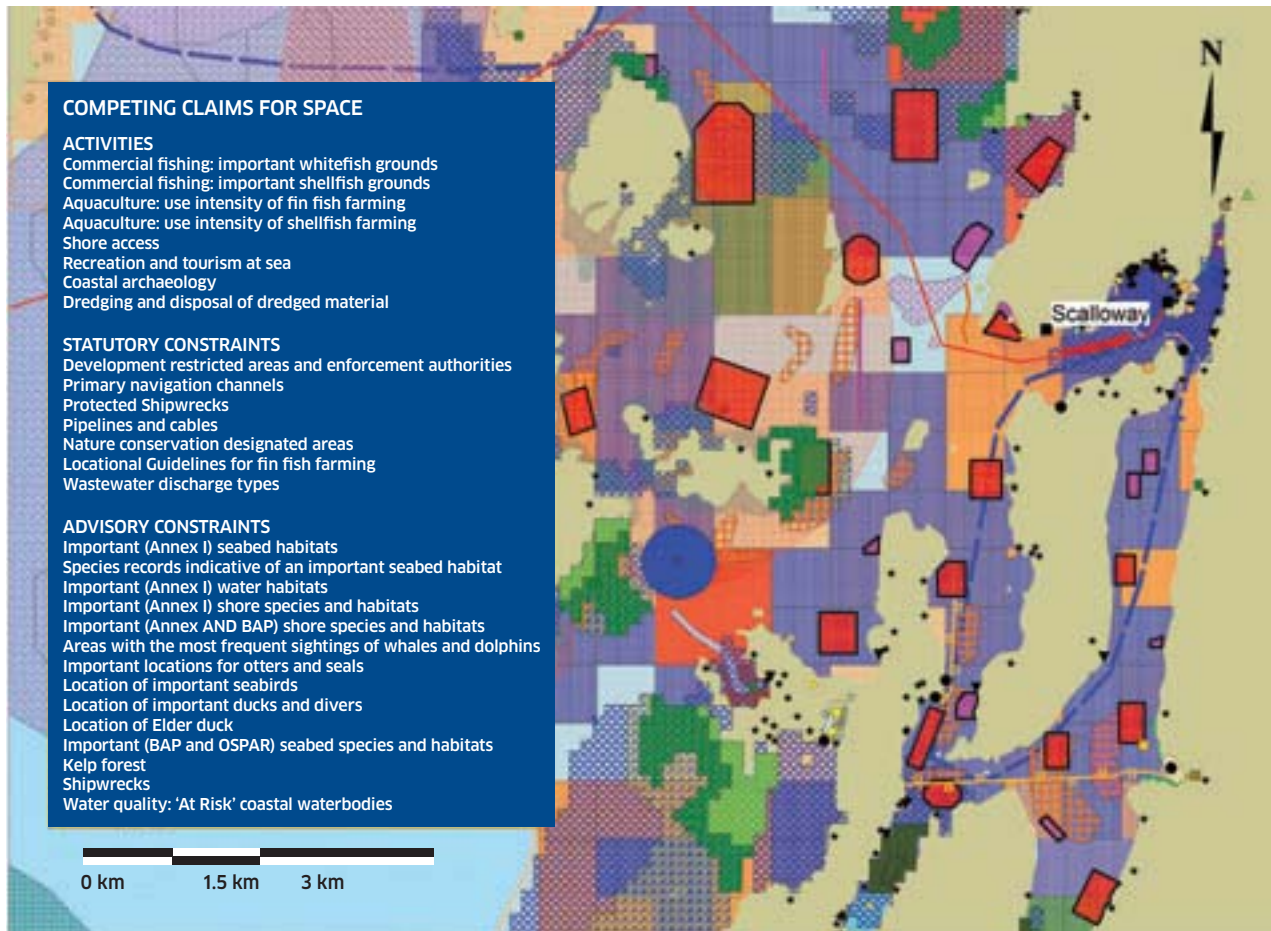
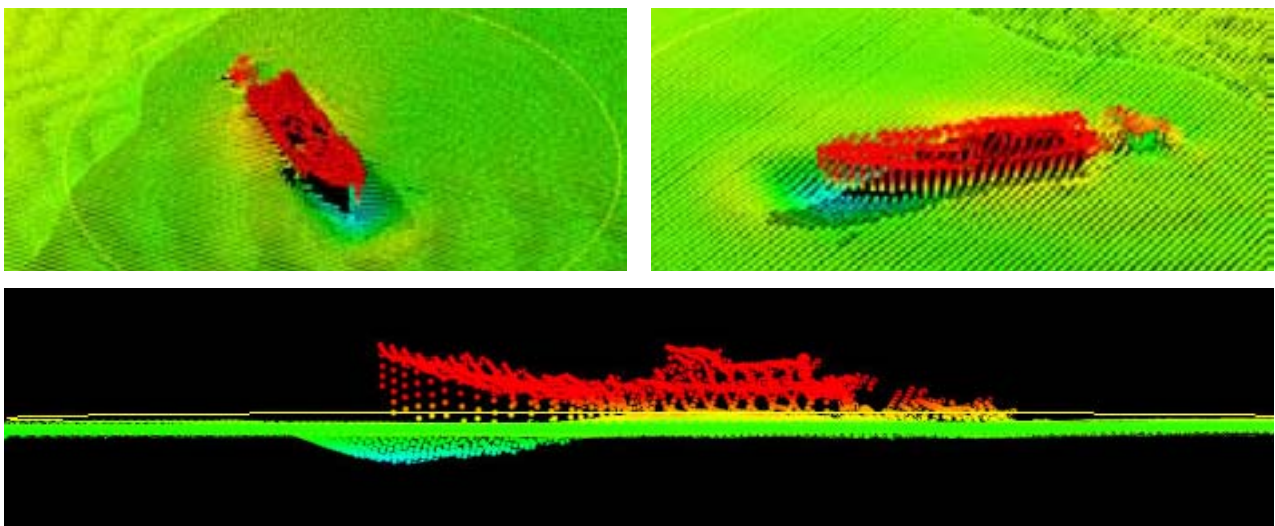


FIGURE 6. RECENT MARINE SCOTLAND SONAR DATA SHOWING WRECK MEASURING 35 METRES ON SEA BED SOUTH OF THE ISLE OF MAY. THIS TECHNOLOGY WILL BE USED TO MAP AREAS OF THE SEA BED TO INFORM MARINE PLANNING THE WRECK REMAINS UNIDENTIFIED. COPYRIGHT MARINE SCOTLAND.



// MARINE LICENSING

As far as possible there will be one point of contact for licensing within the marine environment through Marine Scotland.

Simplification of Marine Licensing

The main change to the marine licensing system is through the consolidation of two separate existing Acts: one concerned with safe navigation and one for putting things in the sea. A single consent licence will replace these.

The Bill also transfers the licensing authority functions for certain wildlife licences to Scottish Ministers. This will deliver a more streamlined application process for these licences.

Marine Renewables

The Bill provides a process for applications for consent under the Electricity Act 1989, and for a new Marine Bill licence for developments such as renewable energy projects, to be considered together.

FIGURE 7 illustrates the existing licensing requirements for renewable projects while FIGURE 8 illustrates the streamlined licensing requirements.

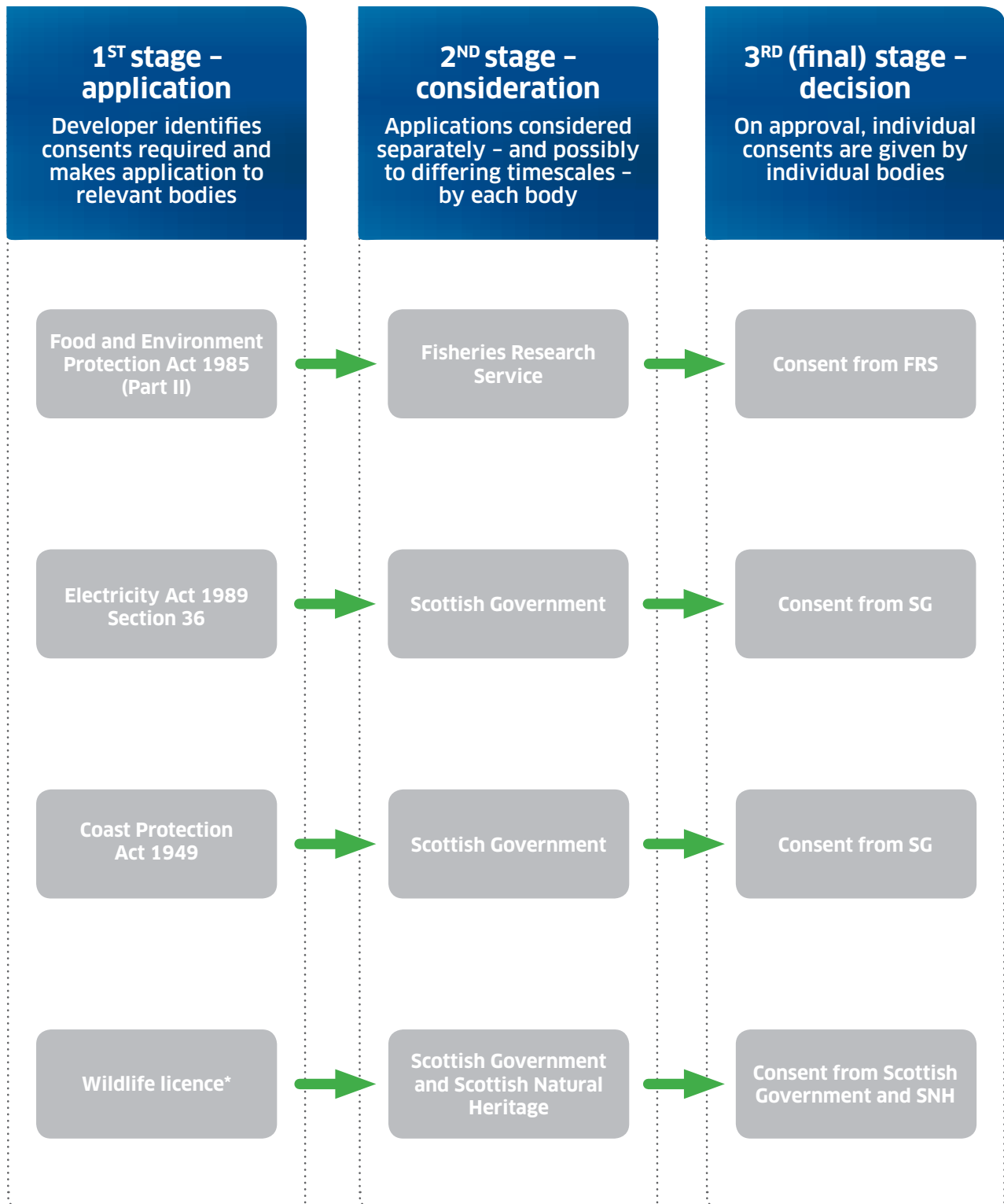
Marine Fish Farming

The Bill provides local authorities with an ability to give up the development consenting power for marine fish farming. In these circumstances fish farming will then become a licensable activity.



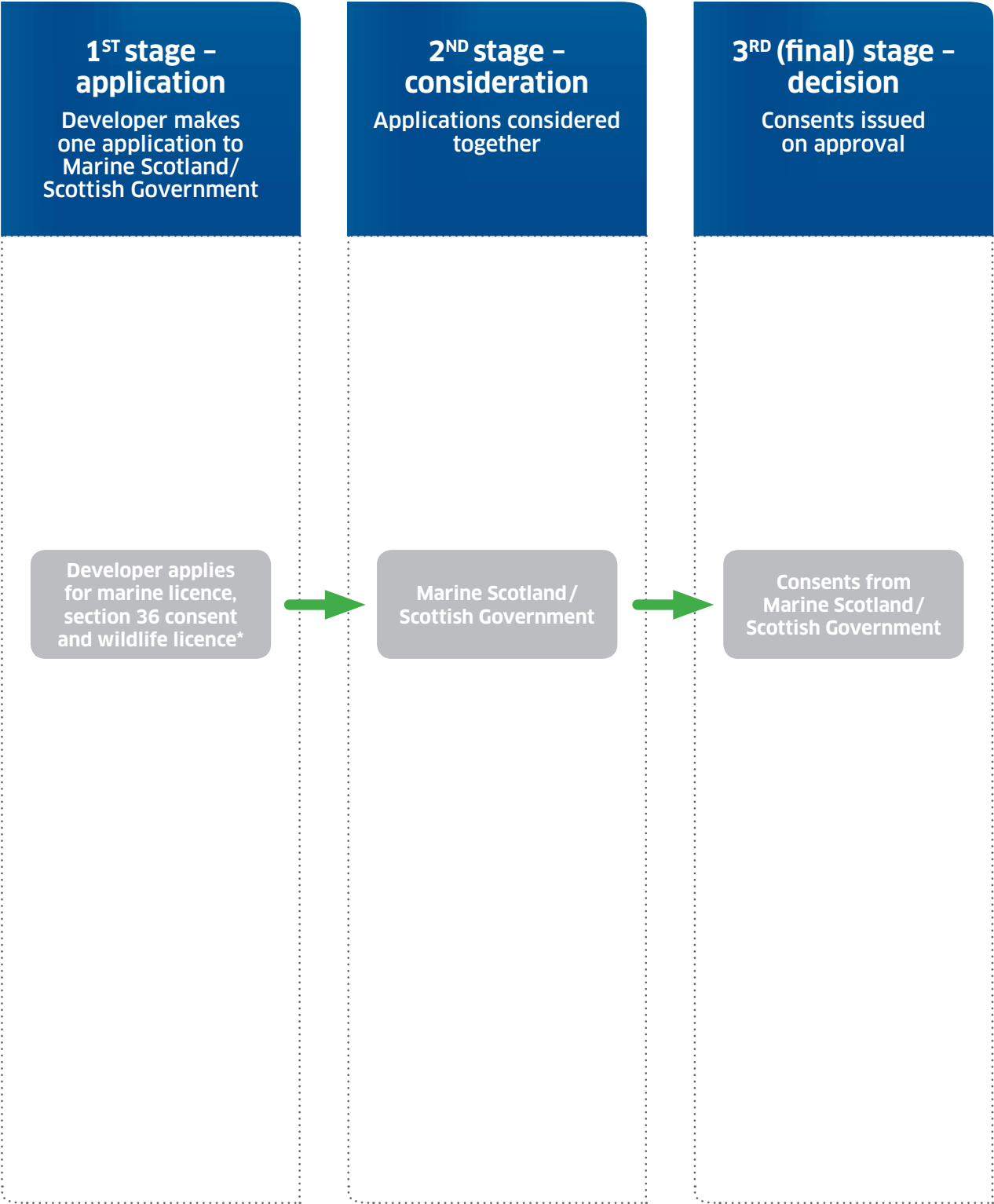
Courtesy of Scottish Salmon Producers' Organisation

FIGURE 7. CURRENT PROCESS TO OBTAIN CONSENTS FOR RENEWABLES IN SCOTLAND.



* where required

FIGURE 8. PROPOSED PROCESS TO OBTAIN CONSENTS FOR RENEWABLES IN SCOTLAND AS A RESULT OF MARINE BILL CHANGE.



* where required



Copyright Scottish Natural Heritage



Courtesy of Derek Moore

Dredging

One area in which licensing will expand is in the area of dredging. The non-excavation forms of dredging, i.e. water cutting, plough dredging or agitation dredging disturb the sea bed and re-suspend sediment in the water column, which can affect species that rely on good water quality, e.g. adjacent shellfish beds. Stakeholders had identified this as an area which should be added to the existing licensing regime.

Exemptions from Licensing

The Bill will provide for exemptions from the licensing requirements. Such exemptions are likely to include statutory maintenance dredging using established techniques. The Bill also allows the Scottish Ministers to make Regulations that will allow the registration instead of licensing of activities below a specified threshold of environmental impact.

Marine Licence Enforcement

The majority of marine activities are carried out in a responsible way but the right tools need to be available to deal with those operating without a licence or posing a risk to the environment, human health, or interfering with legitimate uses of the sea.

The Bill will modernise the enforcement powers to introduce a wider range of tools for enforcement including advice, statutory notices and monetary penalties through to prosecution. The changes will ensure that all offences can be addressed in a proportionate, flexible way and make operators responsible for any damage they cause.

Marine Licensing for all of Scotland's Seas

Under the UK Marine and Coastal Access Bill the Scottish Ministers are the licensing and enforcement authority for most activities in the Scottish offshore region from 12-200 nm. As the licensing arrangements are similar in the Scottish Marine Bill this will allow an integrated approach to licensing and enforcement not only within the Scottish marine area but across the UK.



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// MARINE CONSERVATION

The Scottish Marine Bill contains provisions that will improve our ability to conserve our marine biodiversity and historic environment. These improvements will better provide for targeted action over and above the marine planning powers that are aimed at wider management of our seas. The Bill contains powers for new marine protected areas, better protection for seals and improved enforcement powers.

Marine Protected Areas

The Bill contains a new power to designate Marine Protected Areas (MPAs). This will provide greater flexibility for Ministers to use area-based measures to conserve marine biodiversity as well as nationally important historic assets such as historic shipwrecks.

The Natural Environment

At present the only effective powers for habitat protection exist under EU legislation. The new MPA designation can be used to protect marine and coastal habitats and species of national importance. This will put Scotland in a better position to contribute to international action on marine biodiversity through networks of MPAs. There will also be provision for communities to recommend areas for designation.

The Historical Environment

The existing powers for protection of the marine historic environment are not considered to be flexible enough. The new power will broaden the scope of what types of historic asset can be protected if they are of national importance. This will allow Scottish Ministers to target protection and management according to the preservation objectives of each Historic MPA. As at present, third parties will continue to be able to nominate historic features that should be considered for protection.

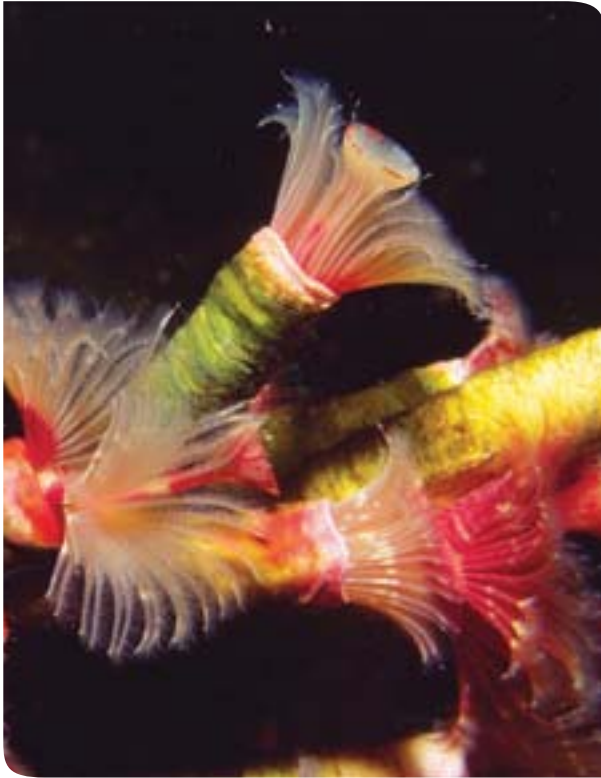
Other Potential Uses of the New Powers

The new powers may also be used to demonstrate or research new methods of managing our marine environment.

All MPA proposals will be based on science, or equivalent information for historic features. However, socio-economic impacts will be taken into account where two or more alternative sites meet the scientific criteria equally.

FIGURE 10. POSSIBLE PROCESS FOR IDENTIFICATION AND SELECTION OF NATIONALLY IMPORTANT MPAs AS PART OF THE MPA NETWORK IN SCOTTISH WATERS.





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Site Management

Socio-economic factors can be taken into account when making decisions on the management of sites.

We anticipate the new marine planning system will provide a sound basis for ensuring sites are managed well. There will also be specific powers to control activities that are damaging to sites where necessary, but we anticipate that most activities will be compatible with managing features within protected areas. These will add to existing powers to manage particular activities, e.g. powers to regulate fisheries through domestic or EU legislation.

Species Protection

Existing legislation is in place to protect certain marine species and there is flexibility to apply that to other species where necessary. We are working with Scottish Natural Heritage to review whether there are other species which merit additional protection through existing legislation or other mechanisms.

The Bill will improve the protection of seals, for which we have an international responsibility. The next part outlines the proposal in more detail.

Better Enforcement

For the first time there will be clarity on who is responsible for enforcing powers in the marine environment. There will also be considerably more powers to enforce marine conservation legislation. Marine Scotland will be responsible for the new joined enforcement regime.



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Courtesy of Callan Duck - Sea Mammal Research Unit



// CONSERVATION OF SEALS

The Bill will introduce improved protection for seals. This will be based on a comprehensive licensing system for all seal management, including monitoring of population impacts and improved welfare. The licensing regime will allow protection of fisheries and fish farms where necessary.

Seal Populations

There are large numbers of seals in Scottish waters (164,000 grey seals and a minimum of 20,000 common seals), many more than anywhere else in the EU and representing a significant conservation success. The reporting requirements in the Bill will provide vital information on the population impacts of seal management and will inform improved seal conservation.

Seal Management

With such large numbers of seals there are inevitable local conflicts between individual seals and fisheries or fish farms – such conflicts must be managed to balance seal conservation and sustainable fisheries and fish farming. The licensing arrangements in the Bill will provide the context for improving the balance between seal conservation and seal management.

Seal Licensing

Under the current system there are inconsistencies across various sectors with regards to the circumstances in which shooting is permissible. [FIGURE 11](#) demonstrates the variability in options available to different sectors undertaking seal management. [FIGURE 12](#) illustrates the new simplified licensing provisions, providing a level playing field across all sectors.

The Moray Firth Seal Management Pilot provides a good basis for the new seal licensing provisions. It successfully reduced seal shooting by 60% and focussed management on critical areas. The licensing arrangements will seek to replicate the benefits of this pilot in relation to fish farms and netting stations in a flexible and responsive way.



Courtesy of Callan Duck – Sea Mammal Research Unit (both images)

FIGURE 11. CURRENT COMPLEX SEAL LICENSING SYSTEM.

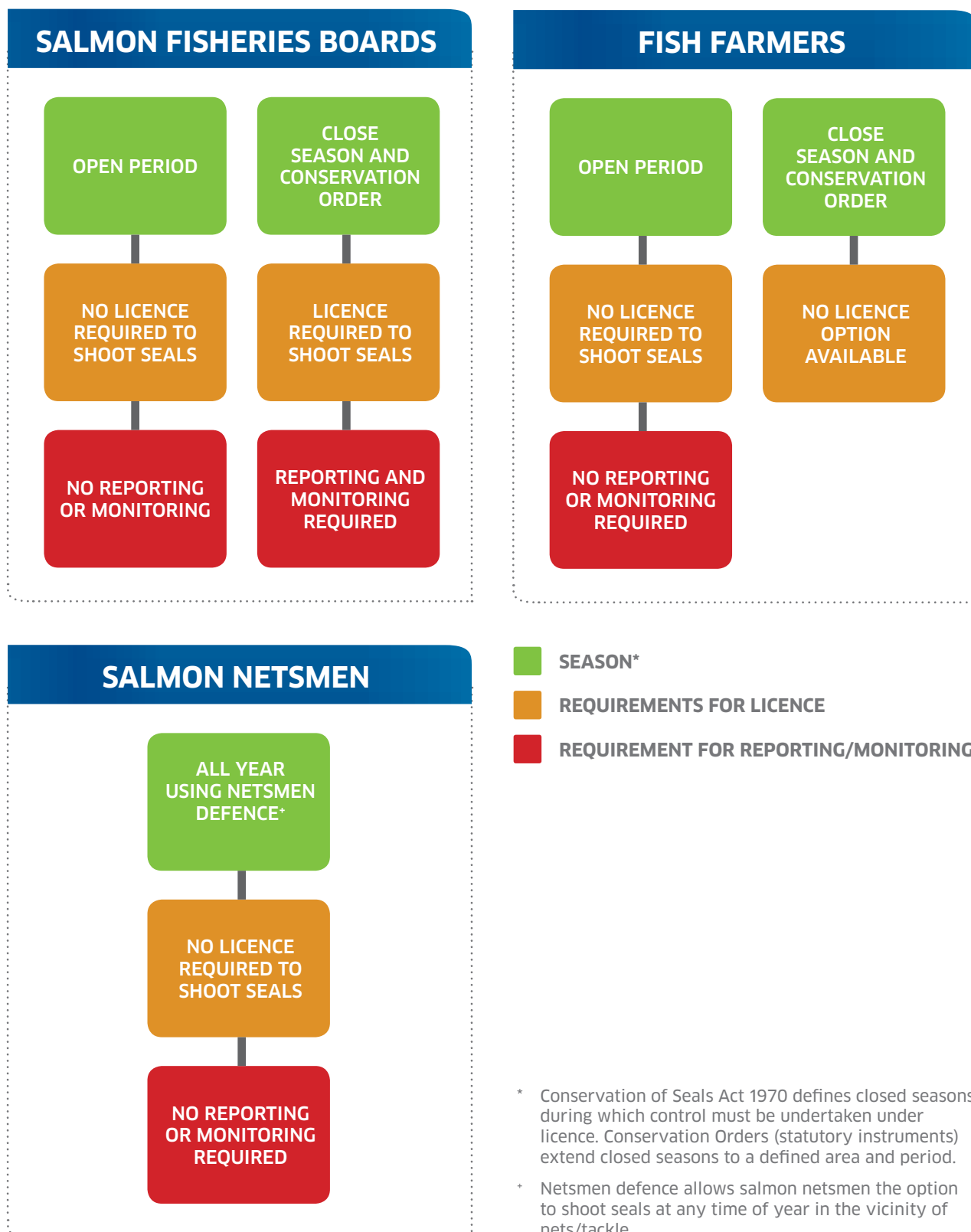
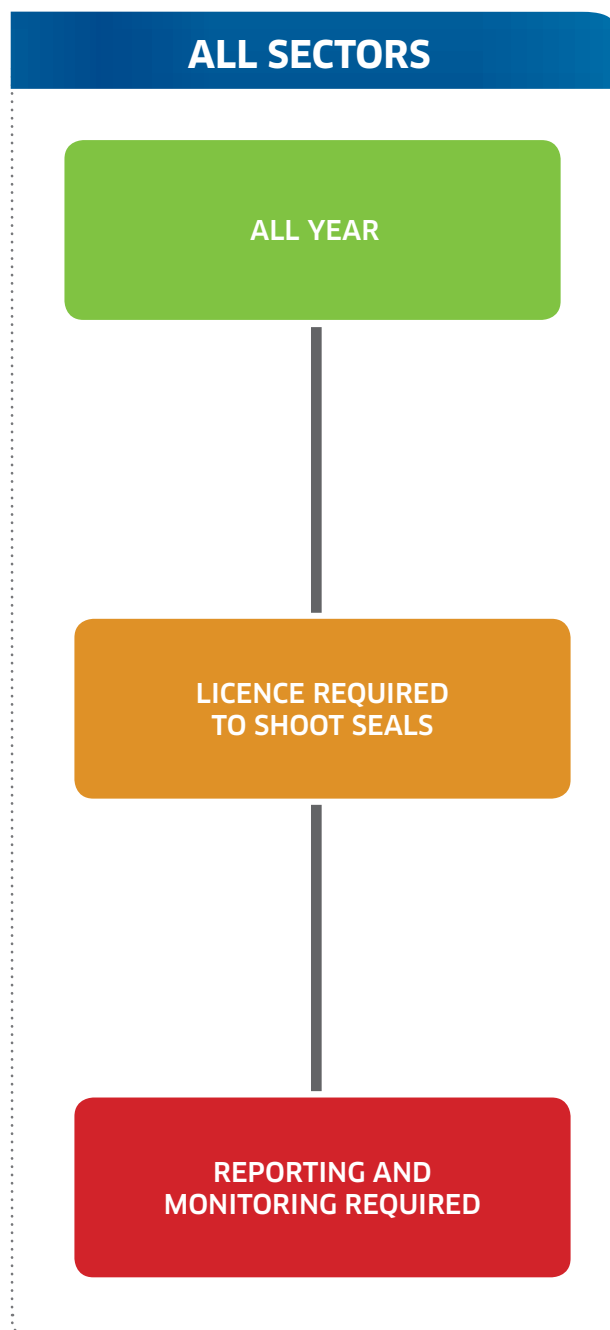


FIGURE 12. NEW SIMPLIFIED SEAL LICENSING SYSTEM.



// MARINE SCOTLAND

Marine Scotland is the marine management organisation for Scotland. It was established on 1 April 2009 as part of the Scottish Government, bringing together the functions and resources of Scottish Government's Marine Directorate, Fisheries Research Services (FRS) and Scottish Fisheries Protection Agency (SFPA).

Marine Scotland will deliver integrated marine management functions – science, policy development and delivery, compliance monitoring and enforcement – whether fully or executively devolved to Scottish Ministers, both inside and outside territorial waters. It will take on further responsibilities in the event of the Scottish Marine Bill being enacted.

Purpose and Mission

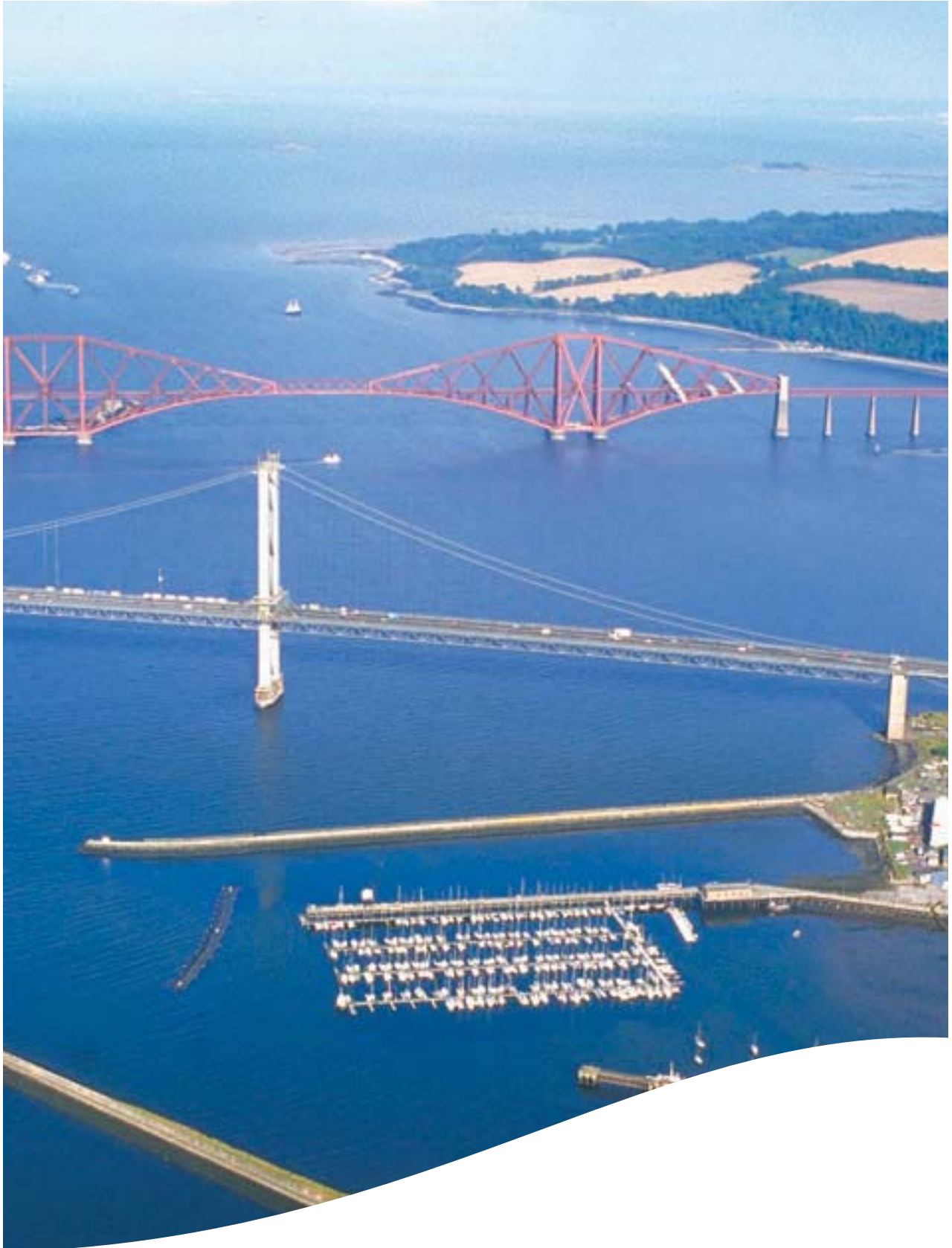
Marine Scotland's overall responsibility is to ensure delivery, in a marine context, of the Scottish Government's purpose of sustainable economic growth and our aims for our marine and coastal environments.

Its mission is, in carrying out its own functions and by working with others, to manage Scotland's seas for prosperity and environmental sustainability.

The Marine Scotland 2009 Strategy Statement gives more information on the Scottish Government's vision for Scotland's seas and how it will be achieved.

www.scotland.gov.uk/publications/2009/03/31091025





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// FUTURE WORK

If the Scottish Marine Bill successfully completes its parliamentary stages there will be more detailed legislation and guidance to be made. Further consultation is expected in late 2009/early 2010. This includes:

- Scottish Government contribution to the UK Marine Policy Statement
- Definition of Scottish Marine Regions
- Aspects of marine licensing, such as application and decision-making procedures, exemptions from licensing
- Marine Protected Area guidelines
- Appeals processes



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Further information on the Scottish Marine Bill, including background documents can be viewed on the Scottish Government website: www.scotland.gov.uk/marinebill



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RR Donnelley B59438 09/09

ISBN: 978-0-7559-5993-8

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