This briefing is written for the benefit of both new MSPs and those returning to the Parliament. It provides an overview of the main issues related to marine and fisheries. It highlights the main legislation and policy developments in previous parliamentary sessions, and potential future developments. More detailed briefings on related topics will be produced throughout the parliamentary session.
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### KEY POINTS

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<th>Issue</th>
<th>Key policy action / legislation</th>
<th>Future developments</th>
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<tr>
<td>National Performance Framework</td>
<td>The target (for 2015) to improve the state of Scotland's marine environment has not been met, due to the mackerel dispute with the Faroe Islands and Iceland.</td>
<td>The mackerel dispute has now ended and a renewed target may be set.</td>
</tr>
<tr>
<td>National Marine Plan (NMP)</td>
<td>The NMP, published in March 2015, sets out general and sector specific objectives and policies in order to jointly achieve the sustainable use of the seas.</td>
<td>The general and sector specific policies set out in the NMP now need to be implemented in order for objectives to be met. A report reviewing the NMP will be published by March 2018.</td>
</tr>
<tr>
<td>Regional Marine Plans</td>
<td>Scottish Marine Regions were created in May 2015. Regional Marine Plans will be developed by Marine Planning Partnerships to take account of local circumstances and smaller ecosystem units.</td>
<td>Marine Planning Partnerships for Clyde and Shetland Isles are in place. They are in the process of developing regional marine plans. Marine Planning Partnerships for other Scottish Marine Regions will now be developed.</td>
</tr>
<tr>
<td>Marine Protected Areas (MPAs)</td>
<td>30 nature conservation MPAs have been designated. Management measures for 16 MPAs have been laid in the Scottish Parliament and have taken effect.</td>
<td>Some issues need to be resolved before management measures can be laid for the Small Isles MPA. Management measures for a second batch of MPAs will be proposed in the new session of parliament.</td>
</tr>
<tr>
<td>Common Fisheries Policy (CFP)</td>
<td>A reformed CFP came into effect in January 2014. It forms the basis of the rules under which EU fisheries are managed. Its main features include quotas managed on the basis of maximum sustainable yield, a landing obligation to reduce discards, and regionalisation for more localised management.</td>
<td>New policies of the CFP will continue to be implemented in Scottish waters.</td>
</tr>
<tr>
<td>Aquaculture</td>
<td>In Scotland, Atlantic salmon is the most commonly produced fish in aquaculture, with a farm gate value of £677 million. Scottish Government has set sustainable growth targets for marine finfish production and farmed shellfish production.</td>
<td>Scottish Government may have to address concerns that the impacts of sea lice parasites produced by Scottish salmon farms threatening west coast wild salmon and sea trout, potentially breach the Marine Strategy Framework Directive.</td>
</tr>
<tr>
<td>Inshore Fisheries (up to 12 nm)</td>
<td>Two-thirds of the Scottish fleet –1,400 vessels – fish mainly in inshore waters, regulated through the Inshore Fishing (Scotland) Act 1984. In 2015 a new Inshore Fisheries Strategy was</td>
<td>The SNP manifesto said inshore fisheries legislation would be updated through an Inshore Fisheries Bill to support sound</td>
</tr>
<tr>
<td><strong>Freshwater Fisheries</strong></td>
<td>A number of ongoing initiatives aim to modernise the freshwater fisheries management framework. This included the passing of the Aquaculture &amp; Fisheries (Scotland) Act 2013, the Wild Fisheries Review, and an order banning the killing of wild salmon in certain categories of river year round.</td>
<td>Given controversy about the order banning the killing of wild salmon in certain rivers, the previous Cabinet Secretary committed to more work on the process and to bring it back to committee. The Wild Fisheries Bill and Wild Fisheries Strategy, currently out in draft form, will be introduced and laid respectively.</td>
</tr>
<tr>
<td><strong>The Crown Estate</strong></td>
<td>The Crown Estate in Scotland consists of the rights, interests and property in Scotland that are managed, but not owned, by the Crown Estate Commissioners (CEC) as part of the UK wide Crown Estate. Marine-related assets include the seabed of Scottish Territorial Waters (including gas storage, and certain energy and mineral rights), aquaculture and mooring rights, and considerable swathes of the Scottish foreshore.</td>
<td>Under the Scotland Act 2016, the management of Crown Estate assets in Scotland is to be devolved to Scotland – firstly to an interim body, with further consultation on longer term arrangements. The processes for this to happen are expected through 2016 and 2017.</td>
</tr>
<tr>
<td><strong>Marine Scotland</strong></td>
<td>Marine Scotland is the Directorate of the Scottish Government responsible for the integrated management of Scotland's seas.</td>
<td>It is responsible for implementation of many of the issues described in this paper.</td>
</tr>
<tr>
<td><strong>Marine and Fisheries Budget</strong></td>
<td>In 2016-17 the budget for Marine and Fisheries is £53.2 million. The budget has been declining in recent years. The budget includes income from the European Maritime and Fisheries Fund.</td>
<td></td>
</tr>
</tbody>
</table>
SCOTLAND’S SEAS AND BOUNDARIES

Scotland’s seas and boundaries are shown in Map 1. Different areas of the seas are governed by different regulations.

- 6 nautical miles - UK vessels have exclusive rights to fish within six nautical miles of territorial baselines

- 6-12 nautical miles - fishing by non-UK vessels is restricted to those with historic rights relating to specific fisheries and specific countries

- Up to 12 nautical miles – Scottish Territorial Seas Boundary, also known as inshore waters

- 12-200 nautical miles – Scottish Fisheries Limits and subject to Common Fisheries Policy regulations.

Figure 1 – Scotland’s Seas and Boundaries

Source: Scottish Government, undated.

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1 Usually the coastline, but to the West of Scotland territorial baselines run to the west of the Hebridean islands.
Scotland's Marine Atlas was first published in 2011. It is an assessment of the condition of Scotland's seas. It provides baseline information from which marine planning has developed. The data sets that were used to inform the Atlas are being continuously updated and added to National Marine Plan interactive (NMPI).

NATIONAL PERFORMANCE FRAMEWORK

The main indicator relating to Scotland's seas under the national performance framework is to “Improve the state of Scotland's marine environment” (Scottish Government, undated). This is measured by the proportion of key Scottish commercial species landed by Scottish fishing vessels where the TAC (total allowable catch) limit is consistent with the scientific guidance, calculated over a centred three year average. The target for this has been to ensure 70% of key commercial fish stocks are at full reproductive capacity and harvested sustainably by 2015.

In 2015, the three-year average of Scotland's key commercial fish stocks where the quota TAC was set in line with scientific guidance was 57% per cent. This has improved from previous years, but misses the 2015 target of 70%. The Scottish Government argue that the reason for missing the target was due to the mackerel dispute with the Faroe Isles and Iceland 2010-2014, where those two countries unilaterally declared substantial additional quota for their share of the mackerel fishery. Due to the formula used to calculate the indicator, mackerel has a significant bearing upon its performance. The mackerel TAC has not been set in line with scientific advice since 2011. However, if it had been during this period, the indicator would be at 88%.

MARINE (SCOTLAND) ACT 2010


The Marine (Scotland) Act 2010 introduced a duty to protect and enhance the marine environment. The Act included a requirement to introduce a new statutory marine planning system, which has led to the national marine plan and regional marine plans (to be developed by marine planning partnerships). It also included a requirement for improved marine nature and historic conservation. This has led to the designation of Marine Protected Areas (MPAs) and associated management measures within them.

Marine Planning in Scottish waters consists of the national marine plan and regional marine plans.

NATIONAL MARINE PLAN

Scotland's National Marine Plan was published in March 2015. It covers both Scottish inshore waters (out to 12 nautical miles) and offshore waters (12 to 200 nautical miles). As agreed by the Scottish and UK Governments, it applies to both reserved and devolved functions. It is required to be compatible with the UK Marine Policy Statement. The Scottish Government have stated that the first report reviewing the NMP will be published within three years of adoption (therefore by March 2018). For a range of sectors, the plan sets out background issues, objectives and policies, in order to jointly achieve the sustainable use of the seas.

2 The Scottish Pelagic Fishermen’s Association produced a useful Q and A sheet about this dispute. http://www.sff.co.uk/sites/default/files/Mackerel%20QAv%204.pdf
REGIONAL MARINE PLANS

Regional Marine Planning requires the creation of Scottish Marine Regions. The Scottish Marine Regions Order 2015 came into force on 13 May 2015 and a map of the regions is available online. Within these regions, Regional Marine Plans will be developed by Marine Planning Partnerships to take account of local circumstances and smaller ecosystem units (Scottish Government, 2015).

Marine Planning Partnerships will be made up of marine stakeholders that reflect marine interests in that region. The partnerships will vary in size and composition depending on the area, issues to be dealt with and the existing groups. Local Authorities, Inshore Fisheries Groups, Local Coastal Partnerships and their umbrella body, the Scottish Coastal Forum, will play a role in the development of regional plans.

Regional marine planning powers will be delegated to the Partnerships by Scottish Ministers. These powers will not include licensing or consenting as these will remain the responsibility of consenting bodies such as Marine Scotland and Local Authorities.

The first Marine Planning Partnerships cover the Clyde and Shetland Isles, and lessons learned from these two regions will be shared with the other emerging Marine Planning Partnerships (Scottish Government, undated). Marine Planning Partnership are in the process of being developed for other regions. More information will be available on the Scottish Government Marine Planning Partnership website in due course.

SCOTTISH MARINE PROTECTED AREAS NETWORK

The Marine (Scotland) Act 2010 included a requirement to improved marine nature and historic conservation. New Marine Protected Areas (MPAs) have therefore been designated, adding to existing designations to form the Scottish MPA network. The Scottish MPA network covers approximately 20% of Scotland’s seas, and is comprised of:

- 30 nature conservation MPAs to protect benthic species and habitats (i.e. species that live on the sea bottom).
- 47 Special Areas of Conservation (SACs) to protected species and habitats such as bottle nose dolphin, cold-water coral reefs and seals.
- 45 Special Protection Areas (SPAs) for colonies of seabirds such as puffins and kittiwakes.
- 61 Sites of Specific Scientific Interest (SSSI) for the further protection of species from seabirds and seals to habitats from sea caves and rocky shores (Scottish Government, undated).

Management Measures in the Scottish MPA network

Following designation of the MPA network the next step has been to develop management measures at each site to conserve the protected features. This included considering management measures for existing SACs. A total of 17 MPAs and 22 Special Areas of Conservation (SACs) in inshore waters were identified as requiring management measures in 2014. Management measures may include such things as restricting fishing in certain areas. New measures were consulted on for the most vulnerable sites in winter 2014.

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3 A review of the management measures in UK SACs was carried out by DEFRA. It indicated that management may not have been sufficient to meet the requirements of Article 6 of the Habitats Directive. New measures were therefore considered necessary (Marine Scotland, pers comm, 2016 and Marine Scotland 2014).
The management measures proposed by the Scottish Government proved controversial for some of the MPAs. For example, the Scottish Fishermen’s Federation reported “widespread dismay among West coast fishing communities over initial Scottish Government measures on some West coast MPAs in June 2015, which threatened the viability of the fishing fleet.” (SFF, 26 January 2016). To date management measures for 16 environmentally sensitive locations have been laid in the Scottish Parliament and have taken effect.

There were some “issues to be resolved” with the measures proposed for the Small Isles MPA and a new draft Order should be ready for consultation in June 2016, and will be laid in Parliament at the end of summer recess (Letter from Richard Lochhead to RACCE Committee, 5 Feb 2016). Management measures for a second batch of MPAs / SACs will be proposed in the new session of parliament.

In their FAQ on MPAs the Scottish Government state that management measures in MPAs will be monitored and policed by the promotion of a “culture of compliance. Stakeholders have been able to contribute to the process of identifying MPAs and we are confident they support protection of these features. In addition … we will apply an effective, on-going monitoring regime to marine protected areas. This will involve routine assessment of fishing activities in and around the sites and a bespoke, site specific approach where such measures are necessary.”

**SEA FISHERIES**

Whilst at a national level, fishing makes a small contribution to GDP, in the locations where wild capture fishing is based, there is a very significant local economic and social impact. Examples are: Shetland, Fraserburgh, Peterhead, and Stornoway. Scotland’s fishing industry accounts for approximately 60% of the total UK catch, and around 7.5% of the EU total volume (European Commission, 2014). The total value of fish landed by Scottish vessels in 2014 was £514 million. A total of 481,000 tonnes of fish was landed in 2014, an increase of 31 per cent from 2013 and the highest level since 2005. Around 4,800 people are employed as fishermen either regularly or irregularly, not including those employed in aquaculture or the processing sector (Scottish Government 2015).

The Scottish fleet is diverse with respect to the size of the vessels, the stocks targeted, the type of fishing gear\(^4\) used, and the size and profitability of individual businesses. Target species can be broadly categorised as:

- **Benthic** – those that live on the sea bottom (e.g. flatfish, *Nephrops*– the Norway lobster)
- **Demersal** – those living close to the sea bottom (e.g. cod, haddock, whiting) and
- **Pelagic** – species living in the mid water (e.g. herring, mackerel).

The nature of each stock largely determines the fishing methods used, as well as the sizes and capabilities of the vessels required to capture them.

In terms of **numbers**, there were 2,030 active vessels registered in Scotland at the end of 2014. The fleet is dominated by vessels of 10 metres in length and under (1,447 vessels or 71%), however the remaining larger vessels account for 80% of the total engine power. The majority of small vessels are used for creel fishing for shellfish such as crabs and lobsters. Shellfish (with the exception of the Norway Lobster, *Nephrops*) are not covered by quotas set down by the EU. Of the 583 vessels larger than 10m, 60% are shellfish vessels, and a further 36% demersal.

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\(^4\) For example, pots and creels, beam trawls, or seine nets.
Only 21 vessels exclusively target pelagic species, however each is in excess of 40m in length and may catch up to 1,000 tonnes in a single haul; as a result pelagic catches make up a large proportion of Scotland’s total catch by weight and approximately one third of total value (Scottish Government 2015).

**COMMON FISHERIES POLICY**

The Common Fisheries Policy (CFP) forms the basis of the rules under which EU fisheries are managed. The CFP is intended to ensure the sustainability of the EU’s fishing industry by managing fish stocks as a shared resource. Total Allowable Catches (TACs) are set specifying the maximum quantities of each fish species that may be caught, which are then shared out in quotas between Member States on the basis of historic fishing activity. The CFP also provides measures intended to manage the catching capacity of the EU fishing fleet, and engages in market interventions to foster economic stability for those involved in the industry.

The CFP reform came into effect in January 2014. The main features of the reform are summarised below (Donnelly, 2014).

**Maximum Sustainable Yield (MSY).** MSY is the largest catch that can be taken year on year indefinitely without depleting a fish stock. In principle, managing fish stocks in accordance with MSY should enable larger catches and greater sustainability over the longer-term. Accordingly, all quota species are managed on the basis of MSY from 2015, unless this results in serious social or economic disruption; in such cases the deadline may be extended to 2020.

**Landing Obligation.** In the past, in order to comply with quota rules, fishermen had been obliged to discard fish (throw back unwanted, often dead fish) that would otherwise be fit for human consumption. The landing obligation in the reformed CFP is intended to reduce discarding, via the introduction of quota flexibility, promotion of increased selectivity, and funding for compliance measures. The landing obligation is being phased in on a fishery-by-fishery basis beginning in 2015, and incorporating all EU fisheries by 2019.

**Regionalisation.** EU fisheries management under the CFP has been subject to centralised management from Brussels. As waters under EU control have enlarged considerably, this ‘one size fits all’ solution has become ineffective. In the reformed CFP conservation measures are set at EU level, but Member States are able to submit joint recommendations to the Commission on how these obligations should be met within their shared regions.

**Addressing Overcapacity.** Fleet overcapacity is recognised as a major problem in the EU, however the extent of overcapacity varies among Member States. All Member States are now required to report annually to the Commission, describing the capacity of their fleets set against the fishing opportunities available. Should fishing capacity be in excess, action plans are to be produced, detailing how and when capacity will be reduced.

**External Policy.** A number of EU fishing fleets operate in waters outwith the EU under agreements with non-EU countries which are negotiated by the Commission. All fishing activities by EU vessels outside the EU are to be regulated in a manner that is consistent with the principles of the CFP.

**Aquaculture.** Aquaculture is included in the CFP for the first time, but in a series of non-binding guidelines. These are intended to promote growth by reducing the administrative burden on the industry, and encouraging the sharing of best practice between Member States.

**Science and Data Collection.** Provisions have been made to enhance data collection on fish stocks and the performance of the fisheries and aquaculture. Member States are required to
submit an annual report to the Commission on their data collection programmes, which should be coordinated with other countries operating within the same region.

**Structural Support.** Funding to support the objectives of the CFP is provided via the European Maritime and Fisheries Fund (EMFF) from 2014 to 2020\(^5\). The EMFF will provide funding to improve data collection, modernise fishing fleets, and help fishermen implement the landing obligation through investment in more selective gear and new equipment. Scotland will receive 46% of the UK allocation - around €111m over the 7 year period (Donnelly 2014).

**AQUACULTURE**

Aquaculture is the farming of aquatic animals and plants in fresh, brackish or marine water environments. The predicted increase in world population and environmental pressures on land and wild fisheries mean that there is likely to be an ever increasing demand for farmed fish.

In Scotland, finfish\(^6\) aquaculture dominates with Atlantic salmon the most commonly produced fish. Scotland is the largest producer of farmed Atlantic salmon in the EU and one of the top three producers globally, producing 179,000 tonnes in 2014. The industry has developed in west coast sea lochs and inshore waters since the late 1970s. Scotland also *produces* around 8,000 tonnes of shellfish per year (mostly blue mussel), and around 6,000 tonnes of rainbow trout (Marine Scotland Science 2015 a & b).

- **Farm-gate**\(^7\) value of Scottish farmed salmon production in 2013 was estimated at £677 million (SSPO 2015). Salmon farming employed 1,435 full-time and 199 part-time workers in 2014, mainly in the Highlands and Islands, and supports further jobs in processing and downstream activities (Marine Scotland 2015a).

- Farmgate production of shellfish was worth £10.5 million in 2014, and employed 175 full-time and 170 part-time and casual workers (Marine Scotland 2015b).

Concerns have been raised about salmon farming’s environmental impacts. On 11 May 2016, the Salmon & Trout Conservation Scotland (2016) made a formal complaint to European Commission on what they consider to be the Scottish Government’s failure to address the impacts of sea lice parasites produced by Scottish salmon farms threatening west coast wild salmon and sea trout. Consequently, they argue that the Scottish Government is in breach of the Marine Strategy Framework Directive.

The Parliament has passed two Acts which apply to aquaculture. Part 1 of the Aquaculture and Fisheries (Scotland) Act 2007 (asp 12) contains powers to control sea lice and escapes from fish farms, and gives a statutory underpinning to codes of good fish farming practice. Enforcement of the Act is the responsibility of the Fish Health Inspectorate of Marine Scotland.

Part 1 of the Aquaculture and Fisheries (Scotland) Act 2013 (asp 7) is concerned with fish farm management. It amends the 2007 Act to make farm management agreements or statements (which set out management requirements on the farm) compulsory. It introduced new rules on fish farm equipment and boats used to move and treat fish. It also includes measures to deal with commercially damaging species. There was considerable debate over whether the Act should include a requirement for the salmon farms to publish data on sea lice (Scottish Parliament Rural Affairs, Climate Change and Environment Committee 2013). In the end, a

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\(^6\) Finfish is the term used to describe true fish to distinguish them from shellfish

\(^7\) The price of a product at which it is sold by the producer
requirement was not included in the Act, and the industry has been self-reporting on sea lice levels (SSPO 2016).

The Scottish Government has set sustainable growth targets for the industry, which are to increase:

- Marine finfish production sustainably to 210,000 tonnes by 2020
- Farmed shellfish production to 13,000 tonnes by 2020

The Scottish Government’s (2009) strategy for aquaculture was published in 2009. Building on the framework outlined in the strategy, the Ministerial Group for Sustainable Aquaculture was established to support Scotland’s aquaculture industry to achieve these targets.

INSHORE FISHERIES

Two-thirds of the Scottish fleet – over 1,400 vessels – fish primarily in inshore waters. These are typically smaller boats which are 8 to 10 metres in length and have a one or two-man crew, often working part-time. The majority of their catch is shellfish – brown and velvet crab, lobster, scallops and nephrops (langoustines). The inshore fishing industry lands up to £90 million on average each year, helping to sustain employment in many of Scotland’s coastal communities (Marine Scotland, 2015).

Scottish Ministers are responsible for the regulation of inshore fishing around Scotland, and can implement conservation measures, provided that the EU has not already legislated in this area.

Inshore fisheries in Scotland have been regulated primarily through the Inshore Fishing (Scotland) Act 1984. This Act enables Ministers to regulate fishing in inshore waters by prohibiting combinations of the following:

- all fishing for sea fish
- fishing for a specified description of sea fish
- fishing by a specified method
- fishing from a specified description of fishing boat
- fishing from or by means of any vehicle, or any vehicle of a specific description
- fishing by means of a specified description of equipment

Ministers may also specify the period during which prohibitions apply, and any exceptions to any prohibition. (Scottish Government undated)

In 2015 Marine Scotland published a new Inshore Fisheries Strategy which focuses on:

- Improving the evidence base on which fisheries management decisions are made
- Streamlining fisheries governance, and promoting stakeholder participation
- Embedding inshore fisheries management into wider marine planning (Marine Scotland 2015).

A number of organisations are active in the management of Scotland’s inshore fisheries at a local and national level. The Inshore Fisheries Management and Conservation group (IFMAC) is made up of industry, environmental NGO and government representatives, and is responsible for resolving issues and developing policies that are of national importance to the sector. Inshore Fisheries Groups (IFGs) are six non-statutory bodies that have been set up around the coast giving local fishermen a role and voice in inshore fisheries management and wider marine planning developments. The Shetland Shellfish Management Organisation (SSMO) directly
manages and regulates Shetland’s inshore shellfish fisheries through a **Regulating Order**, giving it the powers to introduce its own regulations and control entry via license permits.

### FRESHWATER FISHERIES

In contrast to sea fishing, freshwater fishing in Scotland is almost entirely a recreational activity, with the exception of a limited number of artisanal salmon net fishermen using traditional techniques. There are two main types of freshwater fishing: coarse fishing and game fishing. The term coarse fish refers to any freshwater fish apart from those of the salmon and trout family.

The most important game fish in Scotland are salmon, sea trout and brown trout. Fishing rights for all species of game and coarse fish are private. It is not the fish but the right to fish for them that is owned. Salmon fishing rights are heritable titles, which may be held with or separate from the land, and carry with them the subsidiary right to fish for trout and other freshwater fish. It is a criminal offence to fish for salmon without the legal right or without written permission from the owner of the right. Rights to fish for species other than salmon and sea trout belong to the owner of the land contiguous to the river, stream or loch in which the fish are found. Protection of this fishing right generally depends on the common law of trespass.

Prior to session 4 the Scottish Government made a commitment to support and protect Scotland’s salmon and freshwater fisheries and to modernise the management framework. Progress towards this commitment has involved a number of ongoing stages. First, the Aquaculture & Fisheries (Scotland) Act 2013 was passed. Its purpose is to ensure that farmed and wild fisheries - and their interactions with each other - are managed effectively. Second, the report of the Wild Fisheries Review panel was published ([Thin et al. 2014](#)). It made 53 recommendations many of which will be taken forwards in the forthcoming Wild Fisheries (Scotland) Bill.

Third, the Scottish Government decided to expedite the recommendation from the Wild Fisheries Review Panel relating to the decline of salmon in Scotland. Salmon is a protected species, for which Special Areas of Conservation (SACs) have been designated under the EU Habitats Directive. As debated in the **RACCE meeting on 9 March 2016**, the European Commission has expressed concerns that Scotland has not been sufficiently protecting the conservation status of salmon in these SACs. The Government brought forward regulations banning the killing of wild salmon in certain fishery districts in Scotland all year round. These regulations will be reviewed in the first year of the new parliament.

Finally, the Wild Fisheries (Scotland) Bill will be introduced in the new parliamentary session. A consultation on draft provisions for a **Wild Fisheries (Scotland) Bill and draft Wild Fisheries Strategy** ran between February and May 2016 ([Scottish Government 2016](#)). The draft includes provision on administration and management of wild fisheries, regulation of wild fishing and fisheries, and enforcement.

### THE CROWN ESTATE

The Crown Estate in Scotland consists of the rights, interests and property in Scotland that are managed, but not owned, by the Crown Estate Commissioners (CEC) as part of the UK wide Crown Estate. The CEC itself belongs to the reigning monarch ‘in right of The Crown’, that is owned by the monarch for the duration of their reign, but it is not their private property in that Crown Estate assets cannot be sold by the monarch nor do revenues from it belong to the monarch. Assets can be sold, with any capital revenue requiring to be reinvested in the Crown Estate. Revenues flow to HM Treasury. The CEC is a statutory corporation operating under the
Crown Estate Act 1961 and managed by a Board of publicly appointed Commissioners. One of these is a Scottish Commissioner. There can sometimes be confusion between the Crown Estate and the organisation managing it, as the CEC brands itself as The Crown Estate.

Marine-related assets in Scotland include the seabed of Scottish Territorial Waters (including gas storage, and certain energy and mineral rights), aquaculture and mooring rights, and considerable swathes of the Scottish foreshore. A list of assets in Scotland is reproduced below:

**Figure 2 - Crown Estate Assets in Scotland**

<table>
<thead>
<tr>
<th>Asset</th>
<th>Definition</th>
</tr>
</thead>
<tbody>
<tr>
<td>George Street</td>
<td>the land owned by Her Majesty(^8) known as 39 to 41 George Street, Edinburgh</td>
</tr>
<tr>
<td>Seabed</td>
<td>the land owned by Her Majesty forming the seabed of Scottish Territorial Waters</td>
</tr>
<tr>
<td>Storage Rights (Seabed)</td>
<td>the rights of: (1) Unloading gas to installations and pipelines; (2) Storing gas for any purpose and recovering stored gas; and (3) Exploration with a view to use for (1) and (2)</td>
</tr>
<tr>
<td>Energy rights (Seabed)</td>
<td>the rights of exploitation, exploration and connected purposes for the production of energy from wind or water</td>
</tr>
<tr>
<td>Mineral Rights (Seabed)</td>
<td>the right to exploit the Seabed and its subsoil other than for hydrocarbons</td>
</tr>
<tr>
<td>Cables (including interconnectors)</td>
<td>the right to install all or part of a distribution or transmission system on or under the Seabed</td>
</tr>
<tr>
<td>Pipelines</td>
<td>the right to install pipelines</td>
</tr>
<tr>
<td>Whitehill</td>
<td>the Whitehill estate in the County of Midlothian owned by Her Majesty;</td>
</tr>
<tr>
<td>Glenlivet</td>
<td>the Glenlivet estate in the County of Moray owned by Her Majesty</td>
</tr>
<tr>
<td>Applegirth</td>
<td>the Applegirth estate in the County of Dumfries and Galloway owned by Her Majesty</td>
</tr>
<tr>
<td>Fochabers</td>
<td>the Fochabers estate in the County of Moray owned by Her Majesty</td>
</tr>
<tr>
<td>Aquaculture Rights (Seabed)</td>
<td>the right to farm aquatic organisms;</td>
</tr>
<tr>
<td>Mooring Rights (Seabed)</td>
<td>the right to lay and use permanent moorings</td>
</tr>
<tr>
<td>Foreshore</td>
<td>the land that is owned by Her Majesty: (1) In Orkney and Shetland, lying between mean high water springs and lowest ebb tide; and (2) In the rest of Scotland, lying between mean high and low water springs</td>
</tr>
<tr>
<td>Internal Waters</td>
<td>the land owned by Her Majesty forming the internal waters of Scotland</td>
</tr>
<tr>
<td>Salmon Fishing</td>
<td>the right to fish for salmon in rivers and coastal waters where the right belongs to Her Majesty</td>
</tr>
<tr>
<td>Gold and Silver (onshore minerals)</td>
<td>the right to all naturally occurring gold and silver except where the right is vested in some person other than Her Majesty</td>
</tr>
<tr>
<td>Reserved Minerals</td>
<td>all the reserved mineral rights owned by Her Majesty in Scotland other than on the Seabed</td>
</tr>
</tbody>
</table>

Source: Prepared January 2015 by the Crown Estate, following a request from SPICe

\(^8\) See note above which explains that assets are owned by the monarch for the duration of their reign, but are not their private property
The Smith Commission agreed that responsibility for the management of the CEC economic assets in Scotland, and the revenue generated from these assets, should be transferred to the Scottish Parliament. The Commission also agreed that, following this transfer, responsibility for the management of those assets will be further devolved to local authority areas such as Orkney, Shetland, Na h-Eilean Siar or other areas who seek such responsibilities.

The Scotland Act (2016) provides for the devolution to Scotland of the functions of managing the Crown Estate’s wholly-owned assets in Scotland ("the Scottish assets"), the revenue arising from those assets and competence to legislate about those functions. This devolution is achieved by modifying Part 1 of Schedule 5 to the Scotland Act and consequential amendments to the Crown Estate Act 1961. This definition means that the shopping complex at Fort Kinnaird in Edinburgh is not considered such an asset as it is owned under a joint agreement known as a limited partnership. Some of the functions cannot be amended by the Scottish Parliament and there is limited legislative competence over revenue.

Transfer of management functions is to be delivered through a Transfer Scheme which is to be made by HM Treasury, with the agreement of the Scottish Ministers. The Scheme will take the form of a UK statutory instrument subject to the affirmative procedure in the House of Commons and House of Lords, and will not be subject to any formal scrutiny by the Scottish Parliament. The Scheme is expected to contain legally enforceable restrictions on the management of the Scottish Assets, including rights which can be claimed with regard to the Scottish assets by the Secretary of State for Defence in the interests of national security, and also relating to, as set out in the Explanatory Notes to the Scotland Act (2016):

“such provision as the Treasury consider necessary or expedient in relation to defence or national security, telecommunications, oil and gas, and the interests of consumers in relation to electricity networks”.

It is understood that HM Treasury is currently in the process of drafting the Scheme, and associated Memorandum of Understanding between the Scottish Government and the UK Government.

Alongside this process, the Scottish Government is to establish an interim body to take on the management functions. The formation of this body will require an Order in Council\(^9\), whilst provisions for a chair and members will be made through a Scottish Statutory Instrument. Arrangements for the longer term management - including options relating to further devolution - of the Crown Estate assets in Scotland will be subject to public consultation, and will be followed by primary legislation. The Scottish Government has committed to further consultation before final decisions are taken on the long-term management of assets.

As the Explanatory Notes to the Scotland Act (2016) state:

“The Commissioners currently have a duty under the Crown Estate Act 1961 (c.55) to manage the Crown Estate on a commercial basis. Depending on any future legislation passed by the Scottish Parliament, the Scottish Ministers may be able to take a different approach to managing the Scottish assets (for example, to adopt a less commercial approach to some aspects of management, including widening the role of social

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\(^9\) Orders in Council are used when an ordinary statutory instrument would be inappropriate, such as for transferring responsibilities between government departments. They are issued by and with the advice of Her Majesty's Privy Council and are approved in person by the monarch – they are thought, spoken to in Parliament by Government Ministers. Orders in Council were used to transfer the powers from Ministers of the UK Government to the devolved governments.
enterprise). To ensure both that the Scottish Ministers can manage the Scottish assets as they see fit, whilst at the same time ensuring that the Commissioners continue to meet their existing commercial management obligations under the Crown Estate Act 1961, section 36 effects devolution by means of a transfer of functions”.

Revenues from the assets in Scotland will flow to the Scottish Government. Related to this, the Fiscal Framework Agreement between the UK and Scottish Governments (2016) states that:

“The managers of Crown Estate assets in Scotland will continue to receive the same benefits as the Crown Estate Commissioners in terms of exemption from corporation tax, income tax, capital gains tax and other HMT finance rules”.

The CEC itself states that it “is working closely with both the Scottish and UK Governments to enable the transfer of The Crown Estate’s management duties in Scotland to Scottish Government, as recommended by the Smith Commission and reflected in the Scotland Act 2016. We will work to inform the process to ensure a swift and smooth transfer. We have a clear commitment to protect the interests of our staff, tenants, customers and the communities with whom we work throughout the process”.

The arrangements for the transfer of management functions were examined during Session 4 of the Scottish Parliament by the Rural Affairs, Climate Change and Environment Committee and the Devolution (Further Powers) Committee.

MARINE AND FISHERIES BUDGET

Marine Scotland is a Directorate of the Scottish Government and is responsible for the integrated management of Scotland's seas.

The Marine and Fisheries budget is included within the Rural Affairs Food and the Environment portfolio. The table below shows the budget for marine and fisheries for 2015-2017.

Table 1 - Marine and Fisheries budget (2015-2017)

<table>
<thead>
<tr>
<th></th>
<th>2015-16 Budget £m</th>
<th>2016-17 Draft Budget £m</th>
</tr>
</thead>
<tbody>
<tr>
<td>Marine Scotland</td>
<td>47.9</td>
<td>45.8</td>
</tr>
<tr>
<td>Fisheries Grants</td>
<td>15.2</td>
<td>15.2</td>
</tr>
<tr>
<td>Fisheries Harbour Grants</td>
<td>0.4</td>
<td>0.4</td>
</tr>
<tr>
<td>Less Retained Income/Capital Receipts</td>
<td>(8.2)</td>
<td>(8.2)</td>
</tr>
<tr>
<td>Total</td>
<td>55.3</td>
<td>53.2</td>
</tr>
</tbody>
</table>
SOURCES

Scotland’s Seas and Boundaries


National Performance Framework


Scottish Pelagic Fishermen’s Association (Undated) *Mackerel dispute Q &A*. Available at: [http://www.sff.co.uk/sites/default/files/Mackerel%20QAv%204.pdf](http://www.sff.co.uk/sites/default/files/Mackerel%20QAv%204.pdf) [Accessed 23 May 2016]

Marine (Scotland) Act 2010


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Scottish Marine Protected Areas Network


Scottish Fishermen’s Federation (26 January 2016) SFF calls on MSPs to support local communities over Marine Protected Area proposals. Available at: http://www.sff.co.uk/node/1074 [Accessed 24 May 2016]


Cabinet Secretary for Rural Affairs and the Environment (5 February 2016) Letter from Richard Lochhead to RACCE Committee about further new conservation measures proposed for the Scottish marine environment in relation to existing Marine Protected Areas (MPAs) Available at: http://www.scottish.parliament.uk/S4_RuralAffairsClimateChangeandEnvironmentCommittee/General%20Documents/20160205_Cab_Sec_to_Committee_on_MPA_SSIs.pdf [Accessed 24 May 2016]

Sea Fisheries


Common Fisheries Policy


Aquaculture

Aquaculture and Fisheries (Scotland) Act 2007(asp 12)

Aquaculture and Fisheries (Scotland) Act 2013 (asp 7)


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The Shetland Shellfish Management Organisation (SSMO) Available at: http://www.ssmo.co.uk/. [Accessed 24 May 2016]

The Shetland Islands Regulated Fishery (Scotland) Order 2012. No. 348
Freshwater Fisheries


Crown Estate


Scotland Act 2016 (c.11)


RELATED BRIEFINGS

SB 16-42 Environment: Subject Profile
SB 16-43 Rural Affairs: Subject Profile

Briefings on Rural Affairs and Fisheries produced during Session 4 are available from this link: http://www.scottish.parliament.uk/business/research/subject/RurAff.htm

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