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Consultation on the National Marine Plan 2 Planning Position Statement

1. Environmental Standards Scotland (ESS) welcomes the opportunity to respond to the Scottish Government's consultation on its Planning Position Statement (PPS) detailing its policy proposals for the National Marine Plan 2 (NMP2). ESS has responded to specific questions of this consultation that are set out below.
2. ESS is a non-ministerial office directly accountable to Scottish Parliament. Since 1 October 2021, it has been a component of the system of environmental governance in Scotland following the UK's exit from the European Union and the end of oversight of implementation of European Union environmental law by the European Commission and the European Court of Justice. ESS' remit is to:
 - ensure public authorities, including the Scottish Government, public bodies and local authorities, comply with environmental law
 - monitor and take action to improve the effectiveness of environmental law and its implementation.

Question 1 - Do you agree with the updated wording for the high-level objectives (HLOs) and the focus they set out for policies in the NMP2? Please state which HLO(s) you are referring to in your response.

3. Yes. Overall, ESS agrees with the updated wording of the HLOs and recognises the use of clearer and more active language enabling HLOs to be more aspirational and deliverable - as reflected in stakeholder feedback. As such, HLOs are now better aligned and consistent with wider Scottish Government policies, including 'a Just Transition' and 'A Blue Economy Vision for Scotland'. The refined HLOs better reflect the urgency of the climate and nature crises as well as the role of ecosystem condition and resilience in contributing to climate mitigation and adaptation. The HLOs also provide a clearer, longer-term ambition regarding the important position of marine planning in addressing such matters through its decision-making framework.
4. ESS agrees with the need for a standalone HLO for Climate Change Mitigation and Adaptation, however, it is important that this should also be considered as part of other HLOs policies where relevant. For the HLO to 'enable safe and fair access to Scotland's coast and seas, whilst protecting and promoting valuable cultural assets', the PPS does not include a definition for 'fair access'. As this policy develops, greater clarification is needed for what 'fair access' looks like for islands and coastal communities within a marine planning context.

Question 2 - Please add any additional comments on the HLOs in the space provided below.

5. No additional comments.

Question 3 - What are your views on the policy ideas proposed under the Climate Change Mitigation and Adaptation section?

6. ESS supports the greater emphasis on the climate and nature crisis within the NMP2. Greater clarity is needed on what 'giving significant weight to the climate and nature crisis' means in practice and how it translates into a marine planning and decision-making context. For example, clear guidance on how this will be evidenced by the developer and weighted in the decision-making process. Similarly, ESS acknowledges and reiterates the need for the proposed 'Climate Change Mitigation and Adaptation' policies to be proportionate to the type and size of decisions and sectors. They should also recognise the different challenges in implementing these across the different sectors and size of developments.
7. As highlighted in the stakeholder feedback, ESS agrees that consideration of the global climate and nature crises under one policy may lead to competing priorities and require

trade-offs between climate change and biodiversity loss. This will require a robust and clear approach setting out how possible trade-offs will be considered in the decision-making process. For example, how will such an approach interact with development decisions that may provide greater economic benefit but invariably have a greater contribution to emissions? Guidance should also include how sectoral and local planning priorities will be considered alongside such trade-offs.

Question 4 - What are your views on the policy ideas proposed under the Nature section?

8. ESS supports the alignment of the NMP2 and the proposed policy for 'Marine Protection and Enhancement' with wider policy concerning marine restoration and emphasising the opportunities for marine planning to facilitate the delivery of marine enhancement and restoration. This also reiterates the importance of ecosystem resilience and how it underpins climate mitigation and adaptation. As stated in the PPS, this will rely on ongoing work to produce a marine restoration plan for Scotland and the streamlining of the current licensing and consenting process required for marine restoration projects. ESS encourages exploration of how development of the NMP2 and policy development in this area can support and contribute to both these outcomes.
9. ESS supports the retention of NMP2 policy focused on the protection of Priority Marine Features (PMFs) and emphasises the need for all available data on PMF condition and extent to be used when assessing PMF sensitivity in a planning context. The proposal also includes a possible mitigation hierarchy that will a) avoid, b) minimise, or c) mitigate adverse impacts on PMFs and the protected site network so that they no longer are significant. For option c, this will need to be accompanied with clear guidance over what spatial scale is to be considered to assess if adverse impacts 'no longer are significant'. For example, determining the adverse impacts on a PMF population within a sea loch is different from determining the adverse impacts across a regional sea or the West Coast.
10. As reflected in stakeholder feedback, ESS supports the move to nature positive marine development, but greater clarity is needed regarding its application to marine planning. This includes a clear definition of nature positive that is understood by, and can translate across, marine sectors. Greater clarity and understanding are also needed regarding what constitutes nature positive outcomes for the marine environment and how these outcomes can be achieved, e.g. through a sector-wide basis measured and monitored to ensure nature positive is achieved. Despite this, development of a clear definition should

not lead to significant delays in moving to nature positive marine development. As highlighted above, any assessment of nature positive for PMFs will require the use of the best available evidence that enables sufficient assessment of PMF extent and condition, including the impacts of management measures on PMFs. This will help to determine nature positive outcomes from developments and any assessments will require appropriate timescales to determine the impact of any development.

Question 5 - Considering the definition of 'Nature Positive' included in the Scottish Biodiversity Strategy (SBS), what are your views on how this could be implemented by different sectors and types of development and use? (Definition of 'Nature Positive' - "reversing the downward curve of biodiversity loss so that levels of biodiversity are once again increasing, bending the curve of biodiversity loss".)

11. As stated in our response to Question 4, any definition of Nature Positive needs to be accompanied with clear guidance of Nature Positive outcomes for the marine environment and how these could be achieved across different sectors before it can be implemented in planning. For example, if multiple developments are considered in one area or habitat, will there be any cumulative assessment of impacts and the option for strategic nature positive measures akin to compensatory measures to be delivered through strategic compensation? Clear guidance is also needed on what level of nature positive is acceptable for development, a minimum threshold of nature positive outcomes should be considered as well as considering how this will impact the decision-making process.

Question 6 - What are your views on both the cross-sector, and sector-specific policy ideas proposed under the Sustainable Marine Economy section?

12. It is essential to better support and facilitate co-existence across sectors in the NMP2 given the demand for, and pressures on, marine space. The implementation of NMP2 policies for strategic compensation needs to ensure that they deliver with regards to nature positive outcomes and Net Gain. For example, most strategic compensation for marine development will likely need to occur away from the area of development and will need a strategic approach for delivering this. Any strategic compensation measures should also be underpinned and designed to support ecosystem resilience which will also need a strategic approach. This will better ensure that compensatory measures deliver nature positive outcomes and support climate adaptation and mitigation.

Question 7 - What are your views on the definitions being proposed for ‘co-existence’ and ‘co-location’ as set out below: Co-existence: “co-existence is where multiple developments, activities or uses can exist alongside or close to each other in the same place and/or at the same time.” Co-location: “Co-location is a subset of co-existence and is where multiple developments, activities or uses coexist in the same place by sharing the same footprint or area or infrastructure.

13. As highlighted above, it is important that the NMP2 facilitates the co-existence and co-location of development within the marine space. A planning framework that incentivises that multi-use of the marine space and enables an overall smaller ‘footprint’ is likely to ensure the best outcome for marine ecosystem resilience.
14. The PPS proposes for the continuation of a sectoral planning approach and for the NMP2 to provide clarity on the planning framework and how national, regional and sectoral plans fit together and are used in decision-making. Given the limited progress in the development of regional marine plans (RMPs) (3 out of 11 plans drafted), ESS highlights the need for greater direction from the Scottish Government on the role RMPs will play in marine spatial planning. These are analogous to Local Development Plans in terrestrial planning, and should be used by developers and decision makers. This must be accompanied by more effective governance to ensure regional and local planning and decision-making is coordinated to deliver the national outcomes.

Question 8 - Do you think the policies relating to the Management of Pressures should be updated, retained or accompanied by clearer implementation guidance? Please include any suggestions and/or changes, stating which policy you are referring to.

15. ESS supports the retention of specific policies on pressures from the first NMP, however, NMP2 policies relating to the management of pressures should be updated and reflect the best available evidence where relevant. As policies relating to a specific pressure are reviewed and updated, it would be beneficial to provide supporting information detailing how the understanding of such pressures has changed since the NMP and what evidence has been used to support an update to policy. This is likely to provide greater clarity to developers of how specific policies for pressure management interlink with wider policies, such as climate mitigation and adaptation, as set out in the PPS.
16. The NMP2 must align and facilitate the Scottish Government’s duty to contribute to the achievement of Good Environmental Status for the various descriptors under the UK Marine Strategy Regulations 2010. The NMP contains an objective for Descriptor 7,

'Permanent alteration of hydrographical conditions does not adversely affect marine ecosystems' which is not listed as a pressure within the PPS for the NMP2. Clarity should be provided on the inclusion of this pressure within the NMP2 and ESS would direct the Scottish Government to the emerging scientific evidence regarding offshore wind relevant to this pressure.

17. ESS will shortly publish a summary of responses it received from stakeholders in 2024 to its Call for Evidence on invasive non-native species (INNS), which may be helpful in the development and update of INNS policy for the NMP2.
18. Responses to ESS' Call for Evidence highlight that climate change may exacerbate INNS pressures by altering species distributions and enabling the establishment of new pathways of introduction. ESS would emphasise the importance of providing clear linkages between INNS pressures and wider policies on climate mitigation and adaptation and emphasise the need for adaptive biosecurity strategies as this will be a key challenge going forward. Similarly, responses highlighted significant gaps in early detection and rapid response, particularly in marine and freshwater environments. Respondents indicated that current efforts are hindered by insufficient funding and support.
19. NMP GEN 10 regarding INNS needs to be accompanied with biosecurity guidance, this should clearly define good biosecurity practice or reference existing guidance where this is outlined. Sector-specific guidance should also be considered for industries such as aquaculture, shipping and tourism/recreation to ensure biosecurity measures are appropriately tailored to specific needs.
20. For marine litter, (NMP GEN 11) one of the key findings of [ESS' analytical project examining marine litter in Scotland](#) was the need for greater coherence and coordination across the current policy frameworks controlling land-derived sources of marine litter, calling for a 'source-to-sea' approach to enhance the effectiveness of current and future policy. This aligns with the need for 'source-to-sea' considerations for marine litter, alongside water quality, as highlighted by stakeholder feedback in the PPS.
21. For marine noise, NMP GEN 13 presents an ambitious objective for, "Development and use in the marine environment should avoid significant adverse effects of man-made noise and vibration, especially on species sensitive to such effects". As highlighted in stakeholder feedback, if this objective is to be attainable, improvements to the monitoring of underwater noise are needed. This will increase the availability of underwater noise

data required to robustly inform the spatial mapping of noise and inform the decision-making process for marine planning.

Question 9 - What are your views on the policy ideas proposed under the Accessibility and Wellbeing section?

22. ESS supports the inclusion and updating of policies concerning accessibility and wellbeing. The PPS details the importance of local planning considerations to consider community needs, wellbeing and local priorities and assess the potential socio-economic impacts for local economies within the decision-making framework. ESS highlights the key role RMPs could play in providing certainty and direction to decision-making processes to achieve such policies. However, greater development of the RMPs is needed if they are to play a role in the marine planning and used in the decision-making process. As highlighted in ESS' response to Question 7, greater guidance is needed to support the effective development of RMPs and how these will work alongside the NMP2 and sectoral plans. This will provide a clear spatial strategy to developers and communities to provide certainty as to what (if any), and where, development is appropriate and how environmental and socio-economic impacts and outcomes are to be considered and balanced.

Question 10 - What are your views on the proposed policy ideas under the Implementation section? Please consider the role of the decisionmaker and the potential introduction of prioritisation when responding.

23. ESS welcomes the proposed NMP2 approach that emphasises the need for decision-making to be informed by the best available evidence and reiterates the importance of incorporating spatial data on sensitivities and pressures, the contribution of ecosystem services and land-sea interactions. These considerations will be critical to ensuring nature positive outcomes and ecosystem integrity are achieved and maintained through marine development. It is encouraging that the PPS proposes to improve the understanding of cumulative effects that will inform the decision-making process. As part of ESS' analytical work, a key issue highlighted by stakeholders was the lack of consideration for cumulative effects within the marine planning process. ESS highlights the importance of developing this in the NMP2.

24. ESS also supports the integration of Natural Capital within the decision-making process and the development of a Natural Capital asset and risk register. Natural England's ['State of Natural Capital Report for England 2024'](#) used this approach to provide

decision-makers with a risk register and evidence of risk consequences, which details how the risks to the benefits from nature affect other policy areas, such as net zero, climate adaptation and food security. A key finding of the report highlights the need for such risks to be tackled by decision-makers as many unrelated decisions impact nature when the environment is not central to decision-making.

25. As acknowledged in the PPS, currently insufficient data inhibits the ability for comprehensive spatial mapping and considering such impacts within the decision-making process. It is important that sufficient data is available, with new data being incorporated regularly, to ensure that appropriate and robust assessments of such impacts can be carried out and that the precautionary principle is applied where evidence is not sufficient. From a developer or communities' aspect, clear guidance will be needed regarding what, and how, evidence will be considered within the decision-making process. This includes guidance on any prioritisation regarding the use of marine space and achieving outcomes for nature.

Question 11 - If you agree that NMP2 should include prioritisation, which outcome do you prefer i.e. space for a specific use given priority, space for nature given priority? Should additional outcomes also be considered? Please include any supporting information in your response.

26. ESS acknowledges the pressure on marine space and the approach to prioritise marine space to ease the decision-making process in the PPS. Any national approach to prioritisation should provide clarity and certainty to a developer or community regarding what (if any), and where, a development, activity or outcome will be prioritised. This process should be supported by, and align with, spatial and constraint mapping within sectoral plans and RMPs to provide greater granularity for sectoral and local prioritisation of marine space, respectively.
27. Any policy development regarding prioritisation of marine space for nature will need to carefully consider the nuances of what prioritising the marine space for nature might look like. It would also need to ensure appropriate checks are built into any prioritisation decision-making framework prioritises space to ensure that its use is balanced while fulfilling wider Scottish commitments. For example, only prioritising sufficient marine space for offshore wind development needed to achieve Scotland's Net Zero target and ensuring any prioritisation framework aligns with the Scottish Government's Just Transition.

28. This is also addressed in our response to Question 8 and reiterates the importance of the marine planning decision-process contributing to Scottish Government's duty to contribute to the achievement of Good Environmental Status for the marine environment. This includes the target for less than 15% of the seafloor predicted to be subjected to higher levels of disturbance, which has not yet been achieved for the Greater North Sea or Celtic Seas.

Question 12 - What are your views on policy ideas suggested in relation to community informed decision-making?

29. Scotland, as part of the UK, is party to the United Nations Convention on Access to Information, public participation in Decision making and Access to Justice in environmental matters (the Aarhus Convention) and has specific obligations under it. Access to justice in environmental matters is critical and can empower individuals and organisations to protect and improve the environment. ESS welcomes a focus on the importance of engaging local communities within the decision-making framework for marine planning. This aligns with the Scottish Government's commitment to ensuring compliance with the terms of the Aarhus Convention.

30. Clear guidance will need to be developed that sets out what community-informed decision-making will look like and be considered as part of the wider considerations within the marine planning framework. ESS supports the need for this approach to be appropriate and proportionate to the size and type of decision.

Question 13 - In responding to the questions below it may be helpful to consider the potential implications on international or national competitiveness and Scotland as a destination for global investment. Do you think the policy ideas in the NMP2 will impact, either positively or negatively on any of the following: Marine sectors/businesses, consenting authorities, local authorities or any other planning decision makers? Please provide details.

31. No response.