

SNH Guidance : Advice Note

Subject : Development management and Nature Conservation
Marine Protected Areas

Name : Development management and Nature Conservation
Marine Protected Areas

Custodian Unit : Coastal and Marine Ecosystems Unit

Internal Audience : All staff involved in Nature Conservation Marine Protected
Area casework

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Notice Sub-Types

1. Instruction Note.

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Summary of key information sources within this guidance for staff who are already familiar with NC MPA casework:

- Site details on [Sitelink](#) and [geo.View](#), page 9
- NC MPA appraisal proforma in [Annex 1](#), page 16
- Flow chart summarising the process for assessing proposals affecting NC MPAs in [Annex 2](#), page 20
- Model wording for responses in [Annex 3](#), pages 21-28

1. INTRODUCTION

This note provides SNH staff with guidance on handling casework affecting Nature Conservation Marine Protected Areas¹ (NC MPAs). It does not apply to Demonstration and Research MPAs or European Marine Sites (EMS).

The guidance should be used by all case officers dealing with NC MPA casework. CMEU advice should be sought in cases where the case officer is uncertain about the possible effects of a proposal or the sensitivities of protected features which might be affected. Staff experienced in handling marine casework will be able to use this guidance to deal with most routine NC MPA casework without advice from the Coastal and Marine Ecosystems Unit (CMEU).

In most NC MPA casework SNH will be providing advice to regulators and developers. Usually the regulator will be Marine Scotland Licensing Operations Team (MS LOT), but we may also provide advice to other regulators including SEPA, Planning Authorities and Transport Scotland.

Clarification on the main differences and similarities between European Marine Sites (Special Areas of Conservation (SACs) and Special Protection Areas (SPAs)) and NC MPAs is provided in [Annex 4](#) and may be useful for staff who have previously been involved with marine Natura casework.

2. BACKGROUND

2.1 Policy Approach

Areas designated as NC MPAs receive legal protection as set out in the Marine (Scotland) Act 2010. Sites that are the subject of public consultation are called 'possible MPAs' (pMPAs). These pMPAs are given policy protection meaning that they should be treated like a designated NC MPA by public authorities while the consultation and decision-making processes are underway.

Designated NC MPAs and pMPAs are "protected areas of national importance for their natural heritage" as described in SNH's Guidance – [Identifying Natural Heritage issues of National Interest in Development Proposals](#). **An SNH objection on grounds of impact on an NC MPA requires sign off by a director.**

Other sites which have not progressed to public consultation are termed 'MPA proposals' (if they have been formally recommended to Scottish Government by SNH and/or JNCC) and 'MPA search locations' (for sites still under assessment but on which SNH and/or JNCC have not yet provided a formal recommendation). These do not have the full policy protection given to pMPAs, but Marine Scotland has advised that they should be taken into account in Environmental Statements (ES) and other licensing decisions. When we advise on casework involving MPA proposals or MPA search locations we should highlight the status of the sites and identify the features for which they are being considered; we should provide advice on potential impacts on these features, but highlight

¹ An area may also be designated by a designation order as a Demonstration and Research MPA if the Scottish Ministers consider it desirable to do so for any of the following purposes - demonstration of sustainable methods or marine management or exploitation or research into such matters.

any particular data limitations in these considerations. Our responses to MPA proposals or MPA search locations should generally be in the form of advice only. If there is a risk that impacts associated with a proposal may render the feature no longer suitable for designation within that site we should highlight this in our advice (and copy that advice to MS if they are not the regulator). However, it must be noted that if the proposal could potentially result in nationally significant impacts on Priority Marine Features (PMFs) then our response may be in the form of an objection. The PMF casework guidance will provide further information on this.

Our handling of casework affecting MPAs should be guided by the approach set out in the SNH Guidance – [Development Management and the Natural Heritage](#).

Details of Nature Conservation MPAs and pMPAs are available on [Sitelink](#) and [geo.View](#). Contact specialist CMEU staff for further information on MPA proposals and MPA search locations in Scottish waters.

Marine Scotland has drafted a management handbook for NC MPAs which includes guidance on the duties of public authorities in assessing their own functions and in relation to certain decisions (as described in sections 82-83 of the Marine (Scotland) Act 2010). The latest version of the draft guidance is available on the Scottish Government website.

We expect this guidance to be read in conjunction with the [Marine Protected Areas Management Handbook](#).

3. GENERAL DUTIES OF PUBLIC AUTHORITIES

The Marine (Scotland) Act 2010 Act states that public authorities must exercise their own functions in a way, where possible, that furthers the conservation objectives of a NC MPA. If this is not possible, then they should exercise that function in a manner that least hinders the achievement of the conservation objectives. If the public authority believes that the exercise of a function could significantly hinder the achievement of the conservation objectives of a NC MPA then they must inform Scottish Ministers and the relevant statutory nature conservation body.

Also, where a public authority has the function of determining an application (whenever made) for the authorisation of the doing of any act and it believes that the act could significantly hinder the achievement of the conservation objectives of a NC MPA then they must notify the Scottish Ministers and (if appropriate) Scottish Natural Heritage.

4. ASSESSING PROPOSALS AFFECTING MPAS

The 2010 Act sets out the process for public authorities with regulatory functions to follow when they are making licensing and consenting decisions affecting NC MPAs – for example when Marine Scotland is considering a Marine Licence application. The process is set out in the Marine Protected Areas Management Handbook.

- The first test, the initial screening, is for the regulator to decide whether the proposed activity and/or development is capable of affecting, other than insignificantly, the protected features of a NC MPA. There is only one test in the initial screening within the legislation. However, we have divided the requirements of the initial screening into two steps to enhance understanding of the requirements and to follow a logical process. This can be viewed as an initial screen to remove remote or inconsequential activities/developments from the need for further consideration. For example, if there is no connectivity between a proposal and the NC MPA or the proposal does not exert any pressures that the protected features can be sensitive to, it can be screened out from the need for further consideration.
- If the proposal is not screened out at this first test, the regulator must consider the second test, i.e. whether there will be a significant risk of the activity hindering the achievement of the conservation objectives for the NC MPA. The regulator can grant authorisation if it is satisfied that there will not be a significant risk. If the regulator can't determine that there will be no significant risk of the activity hindering the achievement of the conservation objectives, authorisation can still be granted if the regulator is satisfied that:
 - there is no alternative that would have a lesser impact on the COs of the NC MPA; and
 - the public benefit outweighs the environmental impact; and
 - the applicant will arrange for measures of equivalent environmental benefit to offset the anticipated damage.

The full NC MPA process, including points at which Scottish Ministers and Scottish Natural Heritage need to be notified is set out in the [MPA Management Handbook](#).

The process for assessing proposals affecting NC MPAs is summarised in [Annex 2](#).

5. THE ROLE OF SNH

SNH is most likely to become involved in MPA casework when a proposed activity or development requires a licence or other consent from a public authority acting as a regulator such as MS LOT. We should provide the regulator with clear advice on:

- whether the proposed activity and/or development is capable of affecting, other than insignificantly, the protected features of a NC MPA; and if so
- whether there will be a significant risk of the activity hindering the achievement of the conservation objectives for the NC MPA.

In a small number of cases we might be consulted where the regulator is considering issuing a licence or consent despite there being a significant risk of the activity hindering the achievement of the conservation objectives for the NC MPA. SNH might also be asked to advise another public authority in relation to the impact of the authority's own functions or activities on a Nature Conservation MPA, or the adequacy of any equivalent environmental benefits put forward. We will consider whether this needs to be covered in future guidance.

JNCC has responsibility for providing advice on NC MPAs beyond 12 nautical miles (nm) from the shore. Where we are consulted on a proposal which could affect NC MPAs beyond 12 nm we should make sure that JNCC is also consulted and copy them into relevant correspondence.

6. PRE-APPLICATION ENGAGEMENT

6.1 Introduction

This section provides advice on how to ensure that potential impacts on NC MPAs are considered by developers and others at an early stage in the planning of a development. This pre-application consideration can help to speed up later stages of the consenting process and provides us with an opportunity to influence the outcome to the benefit of the natural heritage.

Pre-application engagement is an increasingly important stage in our involvement with development management in the marine environment. The pre-application consultation section of the [Guidance Notice no 328: Development Management & the Natural Heritage](#) outlines our approach to pre-application engagement and it is strongly recommended that staff involved with NC MPA casework consult this.

When we are contacted by developers at the pre-application stage we should check that they have also contacted the appropriate determining authority/authorities (MS LOT, SEPA, Planning Authorities, Transport Scotland, as relevant) – if not we should encourage them to make contact. If it is not possible for the authority/authorities to attend meetings with developers we should copy significant correspondence to them. If a

proposal could affect the marine environment outwith territorial waters we should ensure that JNCC are involved in pre-application discussions.

The pre-application stages we might be involved in include the following:

1. Initial contact from developer with very limited information on the proposal.
2. Informal consultation from developer with some information regarding the proposal, seeking advice on constraints, potential impacts, survey methodology and SNH's likely view.
3. More formal EIA screening and scoping.
4. Discussion of survey methods, results, assessment of impacts and mitigation
5. Request for comments on draft ES prior to application.

Where one exists, our level of engagement in these stages should be in accordance with our service level statement. It will also depend on SNH staff resources and should be prioritised according to the significance of likely impacts. We should focus our effort on those cases where a formal consultation with us will be likely at the application stage.

6.2 What pre-application advice should/can we provide?

Our ability to provide advice on impacts on NC MPAs will depend on the level of detail provided by the developer on their proposed development. It is also limited by scientific understanding of some impact mechanisms and feature sensitivity, and the degree to which existing data on the protected features of the site are sufficient to facilitate a clear view on the potential impacts. For example, broad scale mapping of marine habitats is frequently at too coarse a scale to allow detailed advice from us, and so more detailed survey is required by the developer. Usually, more detail will become available as the proposal progresses through various pre-application stages, at which point, our advice can become more detailed and firmer. It is suggested that we provide the following levels of advice, where relevant:

1. Information sources on NC MPAs, including boundaries, protected features, conservation objectives and sensitivities (see later section on [sources of information](#)).
2. Which NC MPAs could be affected and need to be considered further in the assessment process. This is a very quick, spatial check, e.g. If the proposal is in Orkney waters, we don't need to consider NC MPAs on the west coast.
3. Preliminary advice on whether the proposal is capable of affecting any protected features, other than insignificantly.
4. Whether specific survey is required and, if so, appropriate survey methodology.
5. Preliminary advice on whether there is a significant risk of hindering the conservation objectives, including advice on potential cumulative impacts that should be assessed.
6. Any mitigation that could avoid a significant risk of hindering the conservation objectives.
7. SNH's likely position, including potential objections.

8. The [‘Sources of information’](#) section of this guidance has been designed to be printed as a one-page sheet which we can offer to developers.

As SNH’s pre-application input becomes more detailed through these stages it is more likely that you will require advice from specialist advisers from CMEU. The process of working through the tests of whether the proposal is capable of affecting any protected features, other than insignificantly, and whether there is a significant risk of hindering the conservation objectives can be found in [Annex 2](#) of this guidance. The standard responses in [Annex 3](#) of this guidance may be used for reference in the pre-application stage but the formal wording must not be used at this stage. Advice that SNH might object to a proposal should be discussed in advance with your Casework, Operations or Area Manager or equivalent in CMEU for CMEU-led cases.

We should agree with the developer and/or regulator on the written record of the key issues and points of discussion, and any requirement for further information and/or mitigation. We should also explain the need for carrying out the required assessments.

6.3 Sources of information

There are many publicly accessible sources of information, guidance and good practice which we should refer developers to.

- SNHi includes: [SiteLink](#) - SiteLink provides easy access to information on NC MPAs. Information on the protected features and the conservation objectives are also available through SiteLink; and [geo.View](#) - Provides the boundaries of NC MPAs.
- [NMPi](#) and [MSi](#) - Data on marine habitats and species - Marine Scotland currently have two data portals: National Marine Plan Interactive (NMPi) and Marine Science interactive (MSi). NMPi is Scottish Government's interactive marine planning tool which has been designed to support development of the National Marine Plan and forthcoming work on regional marine planning. It contains downloadable data layers on NC MPA boundaries and it is possible to view data on marine habitats and species. MSi contains environmental data in a number of themes relating to on-going work in Scotland's seas including monitoring and planning for renewables.
- **Marine Reporting Tool** – In 2014/2015 the Marine Reporting Tool, which is an internal tool used by SNH staff, will make available details of records of the distribution and abundance of species and biotopes in Scotland's seas. It will include data that come from JNCC's Marine Recorder database as well as data from SNH Commissioned Surveys. As data are standardised, they will also be passed into MEDIN accredited Data Archive Centres and therefore will be available for use by marine developers and regulatory authorities.
- **Marine Registry** is an internal tool used by SNH staff. It provides an import mechanism for records from Marine Recorder to the SNH Oracle Marine Registry Database. It also acts as a viewer for Marine Recorder data that have been imported to an SNH Oracle database and effectively gives wider access to the material.
- **Feature Activity Sensitivity Tool (FEAST)** - FEAST is an online sensitivity tool which is useful for determining the sensitivity of protected features to various pressures. It may be useful for developers as a tool for exploring information about NC MPA protected feature sensitivities in the vicinity of their proposed development/activity. More information regarding FEAST is available on the Marine Scotland website at www.marine.scotland.gov.uk/FEAST/Index.aspx
- [Regional Marine Plans](#) - When available, Regional Marine Plans should provide an additional source of information, guidance and policy direction on sustainable development priorities at that regional level, with the Marine Planning Partnerships providing a forum for liaison between marine users/developers and environmental interests.
- **MPA management plans** - Marine Scotland intends to have agreed management plans for each NC MPA. These will be developed following designation.

7. HANDLING NC MPA CASEWORK

7.1 Conservation objectives

The main assessment (what we refer to as test two) is to consider whether a proposal will have a significant risk of hindering the achievement of the conservation objectives. Therefore, the conservation objectives should form the basis of this part of the assessment.

Conservation objectives for NC MPAs are developed to reflect the purpose defined in the Marine Acts as being for the conservation of marine flora or fauna, or for the conservation of marine habitats or geological/geomorphological features. Conservation objectives form part of the designation order for NC MPAs and will therefore be in place at the time that a site is formally designated. There are two categories of conservation objectives: 'conserve' and 'recover'.

Where evidence exists that a protected feature of a NC MPA is in good condition or where limited evidence exists and therefore there is uncertainty about the condition of protected features, then the conservation objective will be to '**conserve**'.

Where evidence exists that a protected feature in a NC MPA is deteriorating, and/or has been adversely modified, then the conservation objective will be to '**recover**' the feature. All assessments will take account of our understanding of natural change.

Conservation objectives will be available through SiteLink. Please see SiteLink for further information on these or contact a CMEU adviser.

7.2 Assessing the sensitivity of features to pressures (FEAST - Feature Activity Sensitivity Tool)

FEAST is the online sensitivity tool which helps us to determine the sensitivity of protected features to pressures based on the sensitivity of marine features of conservation interest to physical, chemical and biological pressure. The sensitivity assessments were made against a defined pressure, where possible, (referred to as a benchmark) to provide consistency in the assessment across the range of the different features. FEAST enables users to explore what is known about NC MPA protected feature sensitivities to pressures, and the marine activities that can cause them.

FEAST is a starting point for determining potential management requirements for Nature Conservation MPAs and highlights where further discussion with users of the marine environment may be required. It does not take into account the intensity, frequency or cumulative impacts from activities taking place at specific locations.

The information within FEAST is also provided as generic guidance regarding matters which are capable of affecting the protected feature(s) of a NC MPA as described in the Marine (Scotland) Act 2010. It must be noted that if a feature is described as sensitive to a pressure that is likely to be caused by a proposed activity or development, it does not automatically mean that the conservation objectives will be compromised.

Please also note that some of the names of the offshore features have been changed. To correctly identify the feature, there is a glossary within FEAST with descriptions of the features and their corresponding, updated names. There is also a 'Translation table' on the Scottish Government webpage (www.scotland.gov.uk/Topics/marine/marine-environment/FEAST-Intro/OffshoreSediments). The FEAST online sensitivity tool is available on the Scottish Government website at:

<http://www.scotland.gov.uk/Topics/marine/marine-environment/FEAST-Intro> and a public user guide is available at: www.marine.scotland.gov.uk/FEAST/Help.aspx.

8. BALANCING DUTIES

We must apply our balancing duties when offering advice on a proposal which affects a NC MPA. Further clarification on the application of balancing duties is available in the [Guidance Note 046 – “Applying SNH’s Balancing Duties”](#). Remember, if your conclusion is that our position should be an outright objection due to NC MPA impacts you must complete a balancing duty [proforma](#) to document that we have taken balancing duties into account when reaching our conclusion.

9. MITIGATION AND EQUIVALENT ENVIRONMENTAL BENEFIT

Further guidance may be produced to assist staff in providing advice on mitigation and on measures of equivalent environmental benefit to offset the anticipated damage which the proposed activity or development will or is likely to have.

10. ENVIRONMENTAL ASSESSMENT REQUIREMENTS

Where an EIA is required, the information compiled by the developer for the EIA may also be used to inform the NC MPA appraisal. In general, the test of 'capable of affecting, other than insignificantly' is broadly equivalent to the test of 'significance' in the EIA process (See section C8 of the [Handbook on Environmental Impact Assessment](#)). In all cases the public authority must reach its own conclusions.

Developer - Developers will be required to assess possible impacts of proposed licensed activities on protected features of NC MPAs through existing processes such as Environmental Impact Assessment (EIA).

Regulator - If it can be established that the act is not capable of affecting (other than insignificantly) the NC MPA protected features then no further assessment will be necessary in terms of considering effects on the NC MPAs. If this cannot be established then assessment against the NC MPA conservation objectives must also be undertaken.

11. USING THE NC MPA PROFORMA

When we are consulted by a regulator on a proposal that could affect a NC MPA we will have to consider and advise on the tests set out in the Marine (Scotland) Act 2010. A proforma is available ([Annex 1](#)) to help you consider the tests and decide on the advice to provide. The proforma will also ensure that a structured audit trail is kept. It is strongly recommended that you complete the proforma for all casework affecting NC MPAs. **It is also a requirement that any request for advice on impacts on NC MPAs from specialist PAD advisers must be accompanied by a partially completed proforma. Furthermore, advice from PAD advisers may be requested through CMS.**

Any advice provided to other SNH staff must be clear, simple to use, focussed on significant issues and proportionate. Further advice on providing casework advice to other SNH staff is available in [Guidance Note 025 – Providing Casework Advice](#).

The following sections of this guidance will help you to complete the proforma, complete your assessment and decide on SNH's response. **Numbering refers to the section and sub-sections in the proforma.**

1: SITE DETAILS

Purpose

This is to establish that the site details, including the status and conservation objectives of the relevant NC MPA are correctly identified. Information on all of the relevant NC MPAs and their current statuses is available through SiteLink.

1a. Current status – The four possible statuses of MPAs are; **Nature Conservation Marine Protected Areas (NC MPAs), possible Marine Protected Areas (pMPAs), MPA proposals and MPA search locations.**

- NC MPAs have full legal protection.
- pMPAs have policy protection from the point at which public consultation on a site is announced until Scottish Ministers make a decision on whether or not to designate.
- MPA proposals are sites which have been formally recommended to Scottish Government by SNH and/or JNCC but have not yet progressed to public consultation. MPA search locations are still under assessment by SNH and/or JNCC but a formal recommendation has not yet been made. Marine Scotland advises that both MPA proposals and MPA search locations should be taken into account through any licensing or consenting process.

1b. List the protected features as shown in SiteLink.

2: PROPOSAL DETAILS

Purpose

This is to establish that the proposal is clearly defined in terms of the work to be carried out, its location, its extent and timing, and any associated actions. If necessary, seek additional information in order to be able clearly to determine the questions laid out in the flowchart in [Annex 2](#).

Definitions

“Case type, sub type and legislation as entered in CMS” –Use the same categories that have been entered into the Casework Management System.

3. Test 1: INITIAL SCREENING

In summary, there is only one test in the initial screening within the legislation. However, we have divided the requirements of the initial screening into two steps to enhance understanding of the requirements and to follow a logical process.

3a.Step 1 – Consideration of ‘Capable of affecting’

3a.i Purpose

This is to determine whether the proposed work is of a type that is capable of affecting the protected features of the NC MPA. This step is conducted to identify and remove from further assessment those activities which are not capable of affecting the protected features of the NC MPA. If it is concluded that an activity is not capable of affecting protected features, no further assessment is required.

3a.ii Points to Note

Further information on the online sensitivity tool is available in the section on [FEAST](#), the online sensitivity tool.

3b: Step 2 – ‘Consideration of ‘other than insignificantly’.

3b.i Purpose

The purpose of this section is to attempt to quantify the effects of any pressures. This step is to be done when we have concluded that a development is capable of affecting the protected features of a NC MPA. If it is concluded that an activity is capable of affecting protected features but the effects are insignificant then no further assessment is required.

3b.ii Definitions

‘Consider the degree of pressure that could be exerted by the activity on a spatial basis’ – This requires consideration of the scale, extent, intensity, patchiness and timing of the impacts.

Cumulative impacts -This refers to occasions where multiple projects, which may or may not interact with each other, could have an impact on the same protected feature(s).

Also, cumulative impacts may have a temporal and/or spatial element:

- Spatial: For example, benthic impacts from a wind farm construction would be a patchwork of widely distributed impacts, but not an even spread across the entire development site.
- Temporal: For example, a single wind farm development may involve multiple bouts of pile driving.

Stage 4: Test 2: MAIN ASSESSMENT - Is there a significant risk of hindering the achievement of the conservation objectives?

4a Points to note

Providing that this assessment concludes no, then the activity can be authorised. conservation objectives are available through [SiteLink](#).

Stage 5: CONDITIONS, MODIFICATIONS OR RECOMMENDATIONS.

Indicate conditions/modifications required to ensure that the proposal will either not be capable of affecting protected features, other than insignificantly, or will not result in a significant risk of hindering the achievement of the conservation objectives & reasons for these.

Also, if we are making recommendations, please record these under this section.

Stage 6: RESPONSE

[Annex 2](#) summarises the process for assessing proposals affecting NC MPAs and may be helpful at this stage.

[Annex 3](#) should be referred to when recording your response. The conclusions and positions in the annex are consistent with those set out in the SNH guidance - Development Management and the Natural Heritage.

6a Conclusion of assessment

[Annex 3](#) sets out the eight possible conclusions (conclusions are numbered 1-8 and are highlighted in pink boxes) and the standard response wording.

6b SNH Position

[Annex 3](#) also lists the four possible positions (positions are lettered A-D and are highlighted in blue boxes).

ANNEXES

ANNEX 1 – MPA APPRAISAL PROFORMA

Any advice provided to other SNH staff must be clear, simple to use, focussed on significant issues and be proportionate. Further advice on providing casework advice to other SNH staff is available in [Guidance Note 025 – Providing Casework Advice](#).

Casework Management System Ref.

File Ref.

1. SITE DETAILS

(Please contact a CMEU adviser if it is a search location or proposal)

1a. Name of relevant MPA(s) and current status

(Delete text after reading)

Please note that there are four different statuses of NC MPA: NC MPA, possible MPA, MPA proposal and MPA search location.

- NC MPAs have full legal protection.*
 - pMPAs have policy protection from the point at which public consultation on a site is announced until Scottish Ministers make a decision on whether or not to designate.*
 - MPA proposals are sites which have been formally recommended to Scottish Government by SNH and/or JNCC but have not yet progressed to public consultation.*
- MPA search locations are still under assessment by SNH and/or JNCC but a formal recommendation has not yet been made. Marine Scotland advises that both MPA proposals and MPA search locations should be taken into account through any licensing or consenting process.*

1b. MPA protected features

1c. Conservation objectives for protected feature(s)

Protected feature(s)	Conservation objective(s)

2. PROPOSAL DETAILS

2a. Proposal title:	
2b. Date consultation sent:	
2c. Date consultation received:	

2d. Name of body that has consulted SNH:	
2e. Case type, sub type and legislation as entered in CMS:	
2f. Details of proposed operation (inc. location, timing, methods):	

3. Test 1: INITIAL SCREENING: Is the activity and/or development capable of affecting, other than insignificantly, the protected features of a Nature Conservation Marine Protected Area?

Please note that there is only one test in the initial screening within the legislation. However, we have divided the requirements of the initial screening into two steps to enhance understanding of the requirements and to follow a logical process

3a. Step 1: Appraisal of ‘capable of affecting’.

- i) Consider activities within the site which could affect the conservation objectives of the protected features when they are within the site, including indirect effects upon ecological or geomorphological processes upon which the protected features are dependent.*
- ii) Consider whether the proposal will exert any pressures which the protected features are sensitive to. Generic guidance and evidence on activities which exert pressures on the protected features is available through the online sensitivity tool.*
- iii) Give Yes/No conclusion for each feature.*

If no for all features, an advice only response can be given and recorded under 6.

If yes, or in cases of doubt, proceed to 3b.

Anything which has been screened out in step 1 need not be considered in step 2.

3b. Step 2: Appraisal of ‘other than insignificantly’.

Consideration is only required for activities which were not screened out in step 1.

- i) Consider scale, timing and duration of the proposed activity or development.*
- ii) Consider the degree of pressure that could be exerted by the activity on a spatial basis (Scale, extent, intensity, patchiness and timing of impact).*
- iii) Consider whether the proposed development or activity contributes to cumulative impacts with other projects completed, underway or proposed.*
- iv) Give Yes/No conclusion for each feature.*

If **no** for **all** features an advice only response can be given and recorded under 6.

If conditions could allow the proposal to proceed in a way that ensures it will not be capable of affecting protected features, other than insignificantly, proceed to 5.

If **yes**, or in cases of **doubt**, proceed to 4

4. Test 2: MAIN ASSESSMENT: Is there a significant risk of hindering the achievement of the conservation objectives

4a) Advice received.

Include here details of or clear reference to advice received from PAD, colleagues etc. during either the initial or main assessments. Include an eRDMS link to the advice. If no advice sought give brief reasons/justification.

4b) Appraisal of whether there is a significant risk of hindering the achievement of the conservation objectives

i) Describe for each NC MPA feature the potential impacts of the proposed activity detailing which aspects of the proposal could impact upon them and their conservation objectives

ii) Consider whether the proposed development or activity contributes to cumulative or incremental impacts with other projects completed, underway or proposed

iii) Evaluate the significance of the potential impacts, e.g. whether short/long term, reversible or irreversible, and in relation to the proportion/importance of the feature affected, and the overall effect on the site's conservation objectives.

iv Record if additional survey information has been obtained.

v) In the light of the assessment, state whether there is a significant risk of hindering the achievement of the conservation objectives. If conditions or modifications are required, proceed to 5.

Briefly state what our advice to MS LOT is – e.g. “SNH considers that there is no significant risk of hindering the conservation objectives of the site”

5. Conditions, modifications or recommendations.

Indicate conditions/modifications required to ensure that the proposal will either not be capable of affecting protected features, other than insignificantly, or, will not result in a significant risk of hindering the achievement of the conservation objectives & reasons for these. Recommendations should also be recorded here.

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6. RESPONSE (as entered in SNH Casework Management System)

6a. MPA Conclusion. *Record the conclusion of either the initial screening or the main assessment in line with the model responses in [Annex 3](#). Therefore, one of the eight options (the text in the pink boxes) should be recorded here.*

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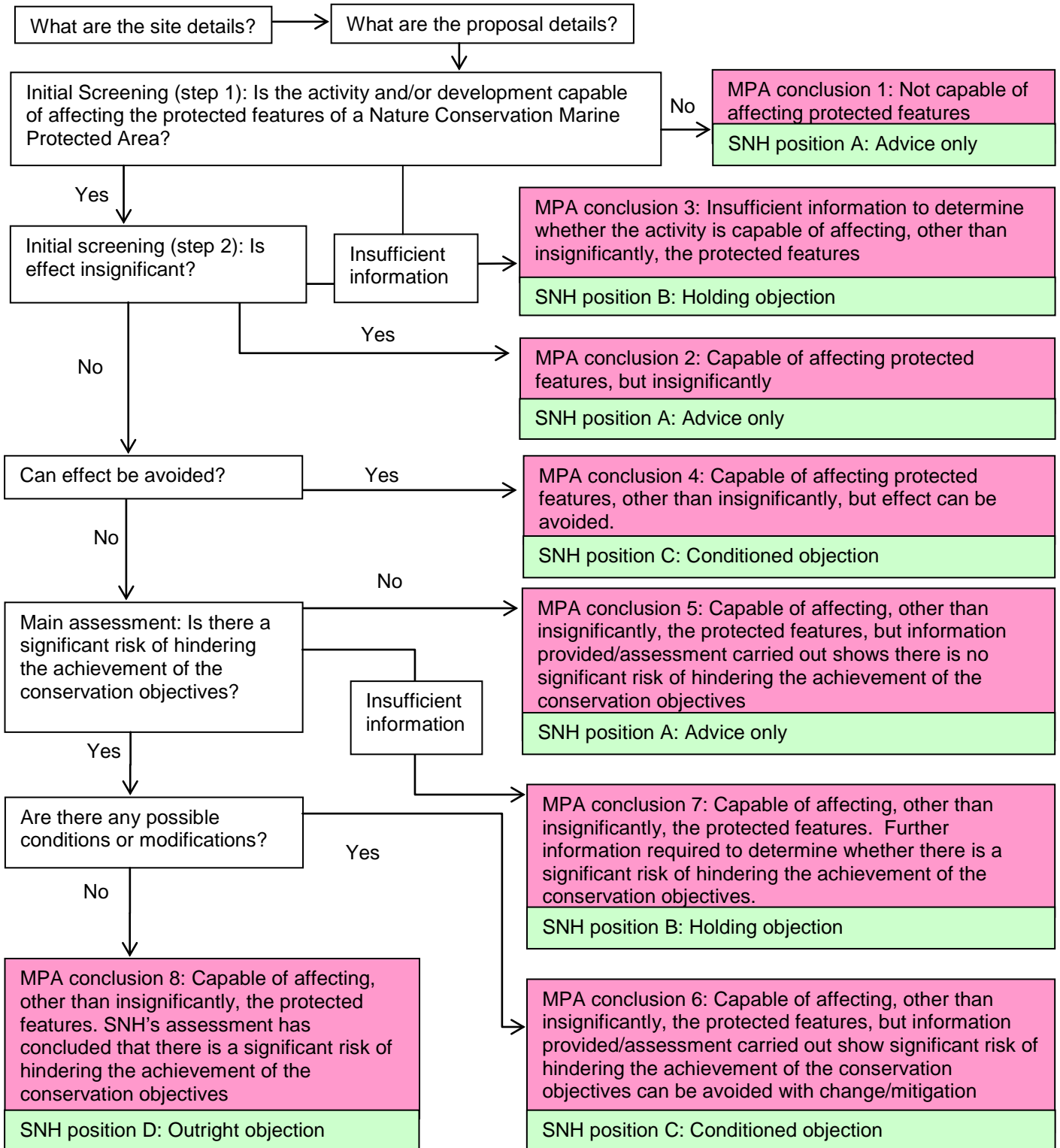
6b. SNH Position, i.e. advice only, conditioned objection or objection. *Note that in instances where our position should be an outright objection due to MPA impacts you may need to complete a balancing duties proforma. Record the SNH position in line with the model responses in [Annex 3](#). Therefore, one of the four positions (the text in the blue boxes) should be recorded here.*

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Appraised by	
Date	
Checked by	
Date	

ANNEX 2 – SUMMARY OF PROCESS FOR ASSESSING PROPOSALS AFFECTING NC MPAS

(Model wording for SNH responses is shown in [Annex 3](#))



ANNEX 3 - MODEL AND SUGGESTED WORDING FOR CASES AFFECTING NC MPAS

The following pages set out the model wording to be used in SNH responses. The key below explains the shading used for the different parts of these responses.

KEY
Conclusion of assessment
SNH position
Model wording indicates the wording you should use in the summary and/or appraisal section of your letter.
Suggested wording regarding the ‘status’ of the response is provided to help you to explain to the regulatory authority any implications for them in terms of how the application is determined. The aim is to ensure they understand the circumstances in which they may need to notify Scottish Government. This should usually go somewhere towards the front of the letter and/or in the conclusion. It should not be used in responses to MS LOT or Transport Scotland.

Introduction of Appraisal

Use this wording in all responses to introduce your appraisal of effects on a designated Nature Conservation MPA. These sites have legislative protection .
Model wording - Appraisal “The proposal [<i>lies within/is close to</i>] Name of site Nature Conservation Marine Protected Area (NC MPA) selected for its List protected feature(s) . The site’s status means that the requirements of the Marine (Scotland) Act 2010 apply. Consequently, Name of regulatory authority is required to consider the effect of the proposal on the NC MPA before it can be consented.

Use this wording in all responses to introduce your appraisal of effects on a possible MPA. These sites have **policy protection**.

Model wording - Appraisal

“The proposal [*lies within/is close to*] **Name of site** possible Marine Protected Area (pMPA) selected for its **List protected feature(s)**.

The Scottish Government has a policy of protecting such sites as if they were designated as set out in the *Marine Protected Areas Management Handbook*. The legal protection afforded to designated NC MPAs is set out in the Marine (Scotland) Act 2010. Consequently, **Name of regulatory authority** is required to consider the effect of the proposal on the possible MPA before it can be consented.

1. Not capable of affecting protected features

A. Advice only

Model Wording NC MPA response 1 – Appraisal

“In our view, the proposal is not capable of affecting the protected features of [**Insert name of the possible MPA/MPA**] either directly or indirectly. Further assessment is therefore not required.”

[Provide brief reasons to support this decision – this is particularly important for proposals within sites and for large-scale activities/proposals adjacent to sites]

2. Capable of affecting protected features, but insignificantly

A. Advice only

Model Wording NC MPA response 2 - Appraisal

“In our view, the proposal is capable of affecting the protected features of [**Insert name of the possible MPA/MPA**]. However, these effects are insignificant. Further assessment is therefore not required.”

[Provide brief reasons to support this decision – this is particularly important for proposals within sites and for large-scale activities/proposals adjacent to sites]

3. Insufficient information to determine whether the activity is capable of affecting, other than insignificantly, the protected features

B. Holding objection

Model Wording NC MPA response 3 – Summary

“The proposal could affect nationally important natural heritage interests and **we therefore object to this proposal until further information is obtained from the applicant**. This is set out in our appraisal below [*and Annex X*]. Once this information has been provided we will be able to give this proposal further consideration.”

Model Wording NC MPA response 3 – Appraisal

Model Wording –“In our view, there is insufficient information to determine whether the proposal is capable of affecting, other than insignificantly, the protected features of [*Insert name of the possible MPA/MPA*]. In order for this to be determined, we recommend that the following additional information is obtained:”

Provide details or summary of the information required.

Suggested wording regarding the ‘status’ of the response (Planning applications only)

“If the regulatory authority intends to grant planning permission against this advice without the requested information, you must notify Scottish Ministers.”

Do not include where the regulatory authority is Marine Scotland or Transport Scotland.

4. Capable of affecting protected features, other than insignificantly, but effect can be avoided

C. Conditioned objection

Model Wording NC MPA response 4 – Summary

“This proposal could be progressed with appropriate [*changes/mitigation*]. However, because it could affect nationally important natural heritage interests, **we object to this proposal unless it is [*amended/made subject to conditions*] so that the works are done strictly in accordance with the [*changes/mitigation*] detailed in our appraisal below [*and Annex X*].**”

Model Wording NC MPA response 4 – Appraisal

“In our view, this proposal is capable of affecting, other than insignificantly, [*Name protected features*] of [*Insert name of the possible MPA/MPA*]. Consequently, [*Insert name of regulatory authority*] is required to carry out an assessment to determine if there is a significant risk of hindering the achievement of the conservation objectives. If the proposal is undertaken strictly in accordance with the following [*changes / mitigation*], it will no longer be capable of affecting, other than insignificantly, the protected features and no further assessment of impacts on the MPA is required.”

Provide details or summary of the changes/mitigation needed

[if required] “*Annex X* contains full details and reasoning of these recommendations.”

Suggested wording regarding the ‘status’ of the response (Planning applications)

only)

“If the regulatory authority intends to grant planning permission against this advice without the suggested [changes/mitigation], you must notify Scottish Ministers”

Do **not** include where the regulatory authority is Marine Scotland or Transport Scotland.

5. Capable of affecting, other than insignificantly, the protected features, but information provided/assessment carried out shows there is no significant risk of hindering the achievement of the conservation objectives

A. Advice only

Model Wording NC MPA response 5 – Summary

“There are natural heritage interests of national importance on the site which could be affected by this proposal, but in our view, there is no significant risk of hindering the achievement of the conservation objectives.

Model Wording MPA response 5 – Appraisal

“In our view, this proposal is capable of affecting, other than insignificantly, [Name protected features] of [Insert name of the possible MPA/MPA]. Consequently, [Insert name of regulatory authority] is required to carry out an assessment to determine if there is a significant risk of hindering the achievement of the conservation objectives.

To help you do this we advise that, in our view, based on the [*information provided/ appraisal carried out to date*], the proposal will not result in a significant risk of hindering the achievement of the conservation objectives of the MPA. The appraisal we carried out considered the impact of the proposals on the following factors:

Give sufficient details of the main issues to allow the regulatory authority to decide whether or not they can agree with our appraisal: this should be based on the details in the proforma

You may wish to carry out further appraisal before completing your assessment.”

6. Capable of affecting, other than insignificantly, the protected features, but information provided/assessment carried out shows significant risk of hindering the achievement the conservation objectives can be avoided with changes/mitigation

C. Conditioned objection

Model Wording NC MPA response 6 – Summary

“This proposal could be progressed with appropriate [*changes/mitigation*]. However, because it could affect nationally important natural heritage interests, **we object to this proposal unless it is [*amended/made subject to conditions*] so that the works are done strictly in accordance with the [*changes/mitigation*] detailed in our appraisal below [*and Annex X*].**

Model Wording NC MPA response 6 – Appraisal

“In our view this proposal is capable of affecting, other than insignificantly, [*Name protected Features*] of [*Insert name of the possible MPA/MPA*]. Consequently, [*Name of regulatory authority*] is required to carry out an assessment to determine if there is a significant risk of hindering the achievement of the conservation objectives.

We advise that, in our view and on the basis of the [*information provided/ appraisal carried out to date*], if the proposal is undertaken strictly in accordance with the following [*changes/mitigation*], then the proposal will not result in a significant risk of hindering the achievement of the conservation objectives of the MPA.

Provide detail or summary of the changes/ mitigation needed.

[if required] “*Annex X* contains full details and reasoning of these recommendations.

The appraisal we carried out considered the impact of the proposals on the following factors:

Give sufficient details of the main issues to allow the competent authority to decide whether or not they can agree with our appraisal: this should be based on the details in the proforma

You may wish to carry out further appraisal before completing your assessment.”

Suggested wording regarding the ‘status’ of the response (Planning applications only)

“If the regulatory authority intends to grant planning permission against this advice without the suggested [*changes/mitigation*], you must notify Scottish Ministers”

Do not include where the regulatory authority is Marine Scotland or Transport Scotland.

7. Capable of affecting, other than insignificantly, the protected features. Further information required to determine whether there is a significant risk of hindering the achievement the conservation objectives

B. Holding objection

Model Wording NC MPA response 7 - Summary

“The proposal could affect nationally important natural heritage interests and **we therefore object to this proposal until further information is obtained from the applicant.** This is set out in our appraisal below [and Annex X]. Once this information has been provided we will be able to give this proposal further consideration.”

Model Wording MPA response 7 – Appraisal

“In our view this proposal is capable of affecting, other than insignificantly, [Name protected features] of [Insert name of the possible MPA/MPA]. Consequently, [Name of regulatory authority] is required to carry out an assessment to determine if there is a significant risk of hindering the achievement of the conservation objectives.

In our view, there is insufficient information to determine whether the proposal will result in a significant risk of hindering the achievement of the conservation objectives of [Insert name of the MPA] In order for this to be determined, we recommend that the following additional information is obtained:”

Provide details or summary of the information required.

Suggested wording regarding the ‘status’ of the response (Planning applications only)

“If the regulatory authority intends to grant planning permission against this advice without the requested information, you must notify Scottish Ministers”

*Do **not** include where the regulatory authority is Marine Scotland or Transport Scotland.*

8. Capable of affecting, other than insignificantly, the protected features. SNH's assessment has concluded that there is a significant risk of hindering the achievement the conservation objectives

D. Outright objection

Model Wording NC MPA response 8 – Summary

“The proposal could affect nationally important natural heritage interests and **we therefore object to this proposal.**”

Model Wording NC MPA response 8 – Appraisal

“In our view, this proposal is capable of affecting, other than insignificantly, [Name protected features] of [Insert name of possible MPA/MPA]. Consequently, [Name of regulatory authority] is required to carry out an assessment to determine if there is a significant risk of hindering the achievement of the conservation objectives.

We advise that, in our view and on the basis of the [*information provided/ appraisal carried out to date*], the proposal will result in a significant risk of hindering the achievement of the conservation objectives of the MPA. The appraisal we carried out considered the impact of the proposals on the following factors:

Give specific details of factors covered highlighting where there is a significant risk of hindering the achievement of the conservation objectives.

Suggested wording regarding the ‘status’ of the response (Planning applications only)

“If the regulatory authority intends to grant planning permission against this advice you must notify Scottish Ministers”

*Do **not** include where the regulatory authority is Marine Scotland or Transport Scotland.*

ANNEX 4 - KEY DIFFERENCES BETWEEN SPECIAL AREAS OF CONSERVATION/SPECIAL PROTECTION AREAS AND NATURE CONSERVATION MARINE PROTECTED AREAS

Special Areas of Conservation and Special Protection Areas in comparison to NC Marine Protected Areas		
Comparison	Natura - Special Areas of Conservation and Special Protection Areas	Nature Conservation Marine Protected Area
Legislation	Designated under European legislation. SACs are designated under the Habitats Directive which is transposed into law in Scotland by the Conservation (Natural Habitats, &c.) Regulations 1994 as amended (commonly known as the Habitats Regulations). SPAs are designated under Directive 2009/147/EC of the European Parliament and of the Council on the conservation of wild birds, commonly known as the Birds Directive, which is transposed into law in Scotland largely through the Wildlife and Countryside Act 1981 (as amended by the Nature Conservation (Scotland) Act 2004) and also by elements of the Habitats Regulations .	Designated under Scottish legislation. The Marine (Scotland) Act 2010 gave Scottish Ministers powers to designate any part of the Scottish marine protection area (as defined in the Marine (Scotland) Act) as a Nature Conservation Marine Protected Area.
What is the aim of the site?	The Habitats Directive requires member states of the European Union to designate SACs for natural habitat types listed in Annex I and species listed in Annex II of that Directive to enable the natural habitat types and species concerned to be maintained or, where appropriate, restored at a favourable conservation status in their natural range. The Birds Directive requires member states of the European Union to classify SPAs for species listed in Annex I of that Directive and for regularly occurring migratory species in order to ensure their survival and reproduction in their area of distribution.	An area may be designated by a designation order as a Nature Conservation MPA if the Scottish ministers consider it desirable to do so for any of the following purposes- (a) Conserving marine flora or fauna (b) Conserving – (i) Marine habitats or types of such habitat, (ii) Features of geological or geomorphological interest.
Assessment	Before a competent authority can consent or carry out a plan or	A public authority must decide whether a proposed activity

Special Areas of Conservation and Special Protection Areas in comparison to NC Marine Protected Areas

Comparison	Natura - Special Areas of Conservation and Special Protection Areas	Nature Conservation Marine Protected Area
	<p>project that could negatively affect a Natura site there are certain considerations that are needed (the three tests detailed below). This process is commonly known as Habitats Regulations Appraisal (HRA).</p> <p>If a plan or project is likely to have a significant effect on the qualifying interests of a Natura site, an appropriate assessment must be carried out in view of the conservation objectives for the qualifying interests of that site. The plan or project can only be consented if it can be ascertained that it would not adversely affect the integrity of the site. (A plan or project may be allowed to proceed, despite a negative assessment, in exceptional circumstances if there are no alternative solutions and imperative reasons of overriding public interest for doing so).</p>	<p>poses a significant risk of hindering the achievement of the site's conservation objectives when determining an application for permission, consent etc. The applicant must also be able to satisfy the public authority that there is no significant risk of the proposed activity hindering the achievement of the conservation objectives. This could be done via an environmental impact assessment where this is required by other legislation. Public authorities must assess the effects of their own activities on achieving the conservation objectives so that they can comply with their duties under section 82 of the Marine (Scotland) Act 2010.</p>
<p>The 'tests'</p>	<p>The three HRA tests are:</p> <ol style="list-style-type: none"> 1. Is the proposal directly connected with or necessary to site management for nature conservation? 2. Is the proposal (either alone or in combination with other plans or projects) likely to have a significant effect on the site? 3. Can it be ascertained that the proposal will not adversely affect the integrity of the site? 	<p>The two tests are:</p> <ol style="list-style-type: none"> 1. Is the activity and/or development capable of affecting, other than insignificantly, the protected features of a Nature Conservation Marine Protected Area? <i>In this guidance, we have divided the first test into two steps: Appraisal of 'Capable of affecting' and appraisal of 'Other than insignificantly' to follow a logical process.</i> 2. Is there a significant risk of hindering the achievement of the conservation

Special Areas of Conservation and Special Protection Areas in comparison to NC Marine Protected Areas		
Comparison	Natura - Special Areas of Conservation and Special Protection Areas	Nature Conservation Marine Protected Area
		objectives?
Level of precaution required in decision making processes.	In Natura cases, it must be determined that a proposal will have no adverse effect on site integrity.	In the case of NC MPAs, proposals must look to avoid a significant risk of hindering the achievement of the conservation objectives of the protected features.
The role of SNH	SNH can have the role of competent authority and also the role of advisor depending on the case; and sometimes both. There is a legal requirement to consult SNH and have regard to our advice for the purpose of carrying out an appropriate assessment.	SNH may give advice and guidance as to the matters which are capable of damaging or otherwise affecting any protected feature(s) of a NC MPA. Advice may also be given as to how any stated conservation objectives may be furthered or how they may be hindered and how the effect of any activity upon a NC MPA may be mitigated. Public authorities must have regard for any advice or guidance given by Scottish Ministers, SNH or JNCC under s80 or 81 of the Marine (Scotland) Act 2010.
Policy protection	The Scottish government accords the same level of protection to proposed SACs and SPAs as designated sites.	MPA search locations and MPA proposals should be taken into account in Environmental Statements and through relevant licensing/consenting decisions. Possible MPAs (At point of consultation – pMPA) will be awarded policy protection to the same level as a designated MPA until a decision on designation is taken. Nature Conservation Marine Protected Areas (from point of designation) will have full legal protection.
Are the protected features/ qualifying interests (mobile species) also protected when they move outwith the site	Yes – The qualifying interests (such as mobile species) are protected both within and outwith the site boundaries wherever they occur. Where there is connectivity between the qualifying interests and a plan or project while the interest is outside the Natura site, the HRA tests must	No – Features are only protected when they are within the boundaries of the NC MPA.

Special Areas of Conservation and Special Protection Areas in comparison to NC Marine Protected Areas		
Comparison	Natura - Special Areas of Conservation and Special Protection Areas	Nature Conservation Marine Protected Area
boundaries?	be applied. However the consideration of the potential impacts against the conservation objectives is done differently in this situation. (Please see the Natura Casework Guidance for more information).”	
Does the designation aim to protect the protected features / qualifying interests from plans and projects occurring <u>outwith</u> the site?	Yes – The qualifying interests of a site are protected no matter where the proposal occurs. There is no fixed range beyond which a proposal can be discounted from an HRA based only on its distance from a Natura site. Therefore, the potential impacts of plans or projects located outwith the site, upon the qualifying interests must be considered against the HRA tests.	Yes – The features are not protected when they move outwith the MPA. However, the potential impacts of activities occurring outwith the site upon the protected features may be considered if the potential impact will happen within the site boundary.
Guidance	Natura Casework Guidance	Development Management and Nature Conservation Marine Protected Areas Guidance

Note: This table is intended as a summary. The relevant legislation should be consulted for precise wording.