

Good governance and the role of the public in Scotland's marine spatial planning system

Glen Smith

Norwegian College of Fishery Science, UiT The Arctic University of Norway, 31 Ambrose Avenue, Colchester CO34JY, UK

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ABSTRACT

Marine spatial planning (MSP) is designed partly to implement the ecosystem-based approach to the management of marine resources worldwide. This article focuses on the principles of good governance to which MSP is tied: principles of transparency and participation. With increasing efforts to analyse the impact of MSP, it is timely to explore its commitment to these principles of good governance. Guided by governance theory this paper explores the opportunities that exist in Scotland's MSP system for communities to voice their opinions in decision-making processes. Whilst authorities in Scotland are doing a good job of transferring the National Marine Plan to local planning regions, there are some issues relating to planning partnerships in these regions and the activities of the Crown Estate. Further analysis is offered by considering terrestrial planning in Scotland, where communities often feel excluded and are challenging the status quo in planning processes through alternative, informal governance arrangements. The roles and rights of communities have taken centre stage in land reform debates, which has not been the case in MSP. By looking outward (and inland) it might be possible to design a more adaptable and inclusive MSP system.

1. Introduction

Marine ecosystems are highly complex and humans are a part of them. By pursuing activities such as oil and gas extraction, fishing, marine renewable energy development, aquaculture, recreation, transport, etc. we become part of an intricate socio-ecological system. When attempting to manage marine resource access and use we have to take this into account [1]. Consequently there has been a shift from sector-based and species-based natural resource management towards ecosystem-based management (EBM) [2]. EBM “seeks to broaden the scope of traditional resource management so that it considers a wider range of ecological, environmental and human factors in the exploitation of resources” [3:821].

One relatively new tool developed as part of the EBM is marine spatial planning (MSP). MSP is intended as a move beyond the disjointed, sectoral planning approaches to marine resource management that struggle to fully take into account the interactions, synergies, and conflicts between resource users, as well as their cumulative impacts on the natural environment [4–7]. In its simplest form MSP is a map-based effort to collate wide-ranging data on marine and coastal socio-ecological systems with the aim of better informing the distribution of human activities. It is also intended to provide a more streamlined approach to licensing for marine developments [8,9]. This is occurring in an era of dramatic change for many coastal and marine environments

as they face ‘blue growth’ pressures. In Europe blue growth refers to the maritime contribution to the Europe 2020 strategy, which is aimed at achieving smart, sustainable and inclusive growth [10]. The targeted maritime industries are aquaculture, coastal tourism, marine biotechnology, ocean energy, and seabed mining. One challenge faced by MSP practitioners is to reconcile these emerging pressures with existing uses of marine space and resources, and with the preservation of vulnerable ecosystems. What is emerging is an increasingly complex marine management scenario.

MSP is, in theory, a participatory process: being based on the strong foundations of stakeholder and public engagement [11]. It has been described as “a public process of analysing and allocating the spatial and temporal distribution of human activities in marine areas to achieve ecological, economic, and social objectives that are usually specified through a political process” [12: 18]. If MSP is a ‘public process’ then it follows that the supporting governance system would allow ample opportunity for a wide range of actors to contribute in some way to the planning process. This ties MSP to principles of good governance, in particular those of participation and transparency [13]. These principles are rooted in classical ideas of democracy, most fundamental among which is that people have the right to be heard when the decisions being made concern them [14]. Nevertheless, some reports suggest that MSP does not always follow these principles in practice. For example, Jones, Lieberknecht and Qiu [15] have suggested that in

E-mail address: glen.smith.mi@gmail.com.

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many European MSP systems “[t]op-down processes tend to dominate, [with] more participative platforms tending to be ‘disconnected by design’ from executive decision-making” (p. 256). This raises questions over the roles played by the actors making the decisions (or those operating in close proximity to the decision-making process), the transparency of their activities, and where this arrangement leaves actors who hold no executive powers. In short, it raises questions over how ‘public’ MSP processes really are.

It seems that the act of planning marine and coastal areas – and indeed of planning more generally – often presents a dichotomy between democratic, broad participation – including the benefits of this for planning legitimacy [13,16] – on the one hand, and, on the other hand, the need to arrive quickly and efficiently at planning solutions and allow capable actors to seize, or facilitate, (sustainable) development opportunities. MSP promotes open debate but, as Ehler and Douvère (2009) point out, it also relies on strong leadership and clarity over which actors will carry decision-making authority [12]. This a fine balance to strike. By asking what opportunities members of the public have for making some form of contribution to the decision-making process, and what the barriers are to this, this paper focuses on the way MSP systems are governed; as it is through governing systems that that these opportunities and barriers will have been institutionalised. Discussions around this question can further attempts to analyse the performance of MSP systems in practice, or ‘MSP-ing’ [15].

A useful case for exploring these issues is that of MSP in Scotland’s inshore waters: an area defined as extending to 12 nautical miles from the Mean High Water Springs (MHWS). This area is under considerable blue growth pressures, such as from the aquaculture industry, but most notably from marine renewable energy generation. It is hoped that generating energy from wind, tidal and wave devices can help contribute to the Scottish Government’s pioneering ambition to supply the equivalent of 50% of Scotland’s heat, transport and electricity consumption from renewable sources by 2030 [17]. These uses compete for space with a range of other marine activities, including fishing, recreational pursuits, oil and gas infrastructures, tourism, shipping, etc. Blue growth pressures must be reconciled with these existing industries and also with efforts to conserve inshore marine habitats and achieve ‘Good Environmental Status’ under the EU Marine Framework Strategy Directive.

Given the momentum building behind MSP in Scotland it is important to scrutinise the supporting governance system and the way it facilitates public participation in decision making. This paper examines the channels through which the public is invited to participate in marine planning activities in Scotland. It considers factors such as when this participation takes place and which barriers exist. Participatory processes are viewed in the context of the role played by key players in a centralised marine planning system in Scotland, such as the Crown Estate, which is described in more detail below. The paper mobilises theories on modern forms of governance and the re-politicisation of society, which both demand greater public input into decision making, as well as a description of the levels of citizen participation. The central question is, with MSP processes in Scotland purporting to encourage public participation, what are the practical barriers or limits to this? The analysis is extended by re-visiting the relationship between marine and terrestrial planning. Despite being a well-established practice, land use planning in Scotland often faces criticism for excluding the public in key decision-making processes. Consequently, there are pressures to reform the system and the role of communities within it is regularly scrutinised. The paper concludes with a suggestion for how more public debate on marine management issues might be integrated in Scotland’s MSP system.

2. Methods

This research is based on a combination of document analysis, interviews, and participant observation and builds on previous work

[13,18,19]. The first task was to gain a good understanding of stakeholder engagement in MSP from the existing literature [for example: 4, 6, 7, 9, 11, 12, 15]. It became clear from the reading that stakeholder engagement is a vital element of MSP but that in practice it is being conducted to varying degrees. This observation formed the basis of this research but the aim was not to prove or disprove a general theory or hypothesis of stakeholder engagement in MSP, but instead to conduct an inductive study whereby this practice would be observed, interpreted and re-interpreted [20] to uncover “the meaning for several individuals of their lived experiences of a concept or phenomenon” [21:58].

A case study approach was chosen to make the observations. A case study is appropriate for asking ‘how’ or ‘why’ questions about a “contemporary set of events over which the researcher has little or no control” [22:13]. It enables the study of a phenomenon “within its real-life context and addresses a situation in which the boundaries between phenomenon and context are not clearly evident.” [23:59]. Key policy documents for MSP in Scotland were analysed but not subjected to a full content analysis, which involves a compression of the text based on explicit rules of coding [24]. Instead main themes were identified to build up a greater understanding of if and how the governance system for MSP in Scotland is tailored to include the views of stakeholders and the public when making decisions on the use and non-use of marine and coastal space through MSP. Document analysis was a cost-effective and efficient way to further develop the case study [25].

The research was supplemented by extensive fieldwork in Scotland. This provided a thicker narrative and more nuanced view of reality [26]. The fieldwork was conducted in three clusters in 2013, 2014 and 2015, and comprised 21 formal, semi-structured interviews. A limited number of questions were prepared for each interview [27]. Some of these questions sought to uncover how and when stakeholders would be engaged in MSP, and others were more general and intended to provide further understanding of the roles of various actors in MSP, and how the governance system was structured. On occasions not all of the prepared questions were posed as they were either anticipated or more relevant lines of investigation emerged in situ. This is a strength of the semi-structured interview method [28]. All interviews were recorded and followed up where necessary via phone or email to clarify any outstanding points. Interviewees came from a broad range of organisations and bodies including The Crown Estate, The Highland Council, The Orkney Islands Council, the Orkney Fishermen’s Society, the European Marine Energy Centre, Marine Scotland, the Marine Scotland Licensing and Operations Team, the Moray Firth Coastal Partnership, Community Land Scotland, The Development Trust Association, The University of Edinburgh, Heriot Watt University, The Cairngorms National Park Authority, The East Neuk Estates, the Community of Arran Seabed Trust, the Knoydart Foundation, and the Scottish Parliament. One interviewee extended an invitation to two consultation events for on the *Planning Issues and Options* for the Pentland Firth and Orkney Waters (PFOW) ‘Pilot Plan’. These were held in Kirkwall, Orkney and in Thurso in July 2014 and provided an excellent opportunity to witness stakeholder and public engagement at first hand. As a non-stakeholder the care was taken to vary the level of participation between passive, to moderate, or active depending on the topic and context, so as not to influence proceedings too strongly [29]. Mostly the events were an opportunity for passive observation and to conduct impromptu, informal interviews with participants during the coffee breaks and at the end of formal proceedings.

3. Theoretical basis

Public participation requires a redistribution of power in a governance system [30]. Without this redistribution of power citizens cannot help mould decision outcomes, and participatory practices can amount to little more than ‘therapy’ or even ‘manipulation’ [30]. Arnstein conceptualises levels of citizen participation – and the powers

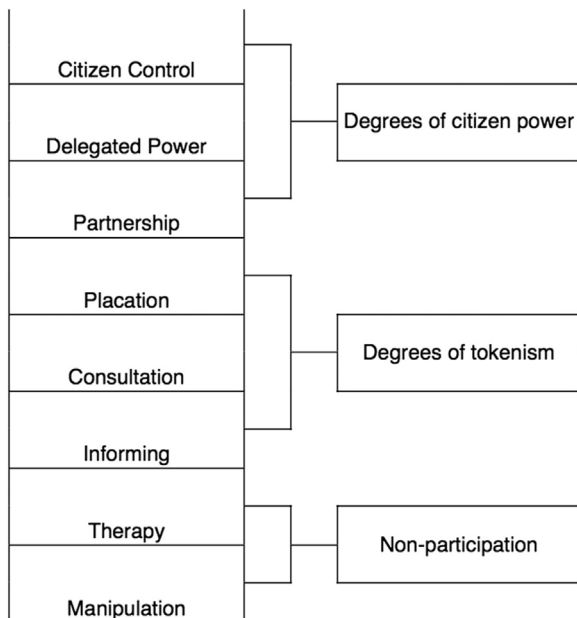


Fig. 1. The levels of citizen participation according to Arnstein [30:217].

these receive – as a spectrum ranging from manipulation of citizens in a process, to control by citizens of that process. This is presented in the model in Fig. 1. In the model the levels of public participation increase as you move up the spectrum – or ladder – and these are grouped into degrees of non-participation, degrees of tokenism, and degrees of citizen power. The model is admittedly simplistic and does not consider, for example, the timing and the context of public participation. In terms of the timing, for example, Painter [in [31]] notes that there is also an assumption that policy or planning decisions are made in one single, pre-determined moment, perhaps at the end of deliberations, which would seem logical. However, “decisive events and contributions might come at any point” [31:24], even in the early stages whilst agendas or planning priorities are being set (i.e. at step zero). As for the context, there is a danger that power is often oversimplified, and to view public participation as no more than tokenistic is to prioritise the *actual* power of decision-making authorities and undermine the *potential* power of participatory processes [31].

Whilst acknowledging these criticisms, the view taken in this paper is that Arnstein's model still holds value for generating discussion on the levels and forms of public participation in MSP processes. It is interesting to note that consultations appear in the bottom half of Arnstein's scale, as a form of tokenism. It is of course possible to refute this claim and point to examples of consultations that are well organised, occur early, and allow for broad participation. But the objective here is not to disregard consultations as an engagement technique. Instead, the low ranking of consultations encourages us to ask the question of how tokenistic they are in their current form for MSP in Scotland. Furthermore, we are encouraged to consider the potential to introduce some of the higher levels of public participation through which citizens gain some genuine power. In MSP this power should not be final decision-making authority as marine management addresses issues with large-scale, often international dimensions. But the increased power might include influence over aspects – or stages – of the process that leads towards a final decision, as is inherent in the more highly ranked concepts of ‘partnership’ and ‘delegated power’. In democratic terms, partnership and delegated power might be regarded as indicators of good governance for MSP. However, the nature of these partnerships and delegated powers must also be examined because they do not necessarily translate directly to fair and open public participation. The devil is in the detail here: which powers are delegated? When are they delegated? Are partnerships equal? Who can join the partnerships?

Levels of public participation are also influenced by modern governance structures. As noted by Van Driesche and Lane [32], the “new political culture no longer places much faith in solutions imposed from above, increasingly relying instead on a network of decision-making relationships that link government and civil society across many scales” (p. 283). Consequently, “changes have taken place in the forms and mechanisms of governance, the location of governance, governing capacities and styles of governance” [33:143]. Governance levels that were once regarded as ‘lower’ have emerged as arenas for innovative forms of organising society, often involving informal governance institutions, which include conventional practice, beliefs, social networks and cultures that rest alongside, challenge, or reinforce more formal structures such as laws, written contracts, and codified artefacts [34]. Contributing factors in this change include the re-politicisation of society [35], a move towards participatory practices, the idea that the public is not a pre-defined group but one that emerges in situ through issue-based political engagement [36], and the notion that “competition about the right to represent the people is no longer restricted to parliamentary elections...[but instead] takes place every time an actor—public or private—claims that s/he represents someone” [37:699]. It seems that acknowledging these changes might help us better understand how MSP is governed.

3.1. Participation in planning

Stakeholder engagement is a key component of MSP [4,12,38]. It is recommended that stakeholders are brought to the table early [11] and that they are continuously engaged throughout the process of design, implementation and evaluation of marine plans [39]. Stakeholder engagement is seen to have both functional and inherent value [13]. The functional value lies in the simple logic that people who are familiar with a particular topic, area, species, industry, ecosystem, etc., will likely have the necessary experience and expertise to inform the decisions being made about these things. Even if early stakeholder engagement appears time consuming, it is often seen to reduce so-called ‘transaction costs’ that might appear at a later stage, such as in plan implementation [16,40]. The inherent value of stakeholder engagement stems from the democratic principle of granting people a voice in the decision-making process, even if they do not have ultimate authority. “As a “good governance” principle, stakeholder participation adds a normative prescription to MSP in line with classical ideas of democracy” [13: 34]. Benefits of stakeholder engagement can include improved accuracy of data through the incorporation of local ecological and traditional knowledge, improved legitimacy of the planning process, and, in some cases, community empowerment in decision making [41].

In this paper members of the public are regarded as stakeholders to be included at some stage in MSP processes by virtue of it being a ‘public process’, and by virtue of their inclusion in the socio-ecological system in question. Public participation is understood as “the practice of consulting and involving members of the public in the agenda-setting, decision-making, and policy-forming activities of organisations or institutions responsible for policy development” [42:512]. In the case of planning marine protected areas in the U.S., for example, including the public is said to “produce decisions that are more likely to be supported by stakeholders, meet management objectives, and fulfil conservation goals” [43:1392]. These factors can also contribute greatly to the legitimacy and acceptance of MSP [13]. There are various methods for including stakeholders in MSP processes, such as through participatory geographic information systems (GIS) activities [41,44]. This can be done as a joint research venture whereby data is collected with the help of stakeholders – often with more direct users of the marine space, such as fishers – or as a means of verifying the validity of pre-collected data. Stakeholder or public consultations are the most common technique, whereby meetings are held and attendees are given information about a given agenda-setting, decision-making, or policy-forming task. Their

views are sought on the matter, often through informed debates. Consultations are widely used by the Scottish Government on a range of issues. It states: “The Scottish Government wants to make it as easy as possible for those who wish to express their opinions on a proposed area of work to do so in ways which will inform and enhance that work.” [45].

Despite the apparent benefits, facilitating fair and meaningful public participation is by no means straightforward, or without its pitfalls [46]. Criticisms of participatory processes and how much they actually affect decision making certainly pre-date MSP [47,48]. Obvious problems include the means by which stakeholders are identified, with definitions often appearing to favour those with vested interests in maintaining direct access to a space and/or resource [49]. Such narrow definitions only serve to sharpen the debates around the role of the public, and also other actors such as environmental organisations, municipal authorities and consumer advocacy groups (Ibid.) Another concern is that of engagement timing. Stakeholders are sometimes seen to be involved at a relatively late stage in the decision-making or planning process. As a result, participatory practices are sometimes seen to amount to an “unrepresentative, reactive one-way flow of information” [50:708], prompting the question of when ‘step-zero’ occurs, i.e. who is involved in conceiving a plan or framing a problem [51]? The manner in which these questions were addressed during previous engagements might affect perceptions of upcoming participatory practices. Process efficiency is another factor that can result in ‘consultation fatigue’ [52].

Although well established in many countries, land use planning systems also face regular criticisms regarding the level of public participation in decision making. There is often strong suspicion that land use planning systems serve the interests of powerful actors and do little to enhance public trust in processes [53]. Similar problems occur around stakeholders’ representativeness and transparency [54]. The difficulties plague many land use planning systems and can even occur in areas with a strong history of public participation [46]. The persistence of these problems continue to motivate civil society pressure for reform, and researchers are exploring innovative means of improving participatory processes in planning [55].

4. Marine spatial planning in Scotland

The new planning system for Scotland’s inshore waters is intended to help manage the increase in marine and coastal activities. This has been referred to in the UK context as the ‘marine problem’ [50]. The system is also linked to a number of European Directives on marine planning. The stages towards marine spatial planning in Scotland have been described in more detail elsewhere [see for example 18], but it is important here to introduce the framework through which the system will be implemented.

The Marine (Scotland) Act 2010 paved the way for a statutory marine planning system in the country. The resulting National Marine Plan (NMP), published in March 2015, gives overall guidance to managing the country’s coastal and marine environments. The NMP will be implemented by creating tailored marine plans in each of the eleven Scottish Marine Regions (SMRs), which were chosen based on physical characteristics [56]. The selected areas were Argyll, Clyde, Forth and Tay, Moray Firth, North Coast, North East, Outer Hebrides, Orkney Islands, Shetland Islands, Solway, and West Highlands (see Fig. 2 below). At the time of writing, only two regional plans have been prepared, namely for Shetland and the Clyde. These are at different stages of their development but both originated from a 2006 initiative in five regions (including the Berwickshire Coast and Sound of Mull) to “test and trial different approaches to marine management and to share any data and stakeholder engagement concerns” [57: 518], known as the Scottish Sustainable Marine Environment Initiative (SSMEI). Arguably the most advanced of the projects, the Shetland Marine Spatial Plan is now in its fourth edition (the ‘Shetland Islands Marine Spatial

Plan 2015 - SIMSP’) and is the only one to have been made statutory, meaning that it must be consulted as ‘Supplementary Guidance’ to the Shetland Local Development Plan, which “sets out the policies and criteria against which planning applications and works licences submitted in Shetland will be considered.” [58]. This is the target status for all regional marine plans in Scotland. The Firth of Clyde Marine Spatial Plan (2010) was a pilot project used to recommend a series of further actions and projects aimed at producing a more comprehensive plan for the region, with a stronger spatial element. This voluntary pilot project was produced in close collaboration with key stakeholder groups, and included a public consultation in 2009. In March 2017 powers were delegated to the newly formed Clyde Marine Planning Partnership for developing the full Regional Marine Plan (more details on marine planning partnerships follow below).

A ‘Pilot Plan’ for the Pentland Firth and Orkney Waters (PFOW) region was published in March 2016. This plan was prepared partly as a result of the rapid development of marine renewable energy sites in that region. The exercise was intended to inform future statutory marine planning there. As a non-statutory pilot, “it will complement and support existing ambitions and responsibilities rather than replace them” [59:V]. It is worth noting that marine planning is a continuous process and when a plan reaches ‘completion’ it is still subject to monitoring, review and amendments [39].

Within each SMR, Scottish Ministers (members of the Scottish Government) have the right – but not the duty – under the Marine (Scotland) Act 2010 to appoint a ‘delegate’ to oversee the drafting of regional marine plans [57]. These delegates are now commonly referred to as marine planning partnerships (MPPs). MPPs are comprised of people who provide the relevant expertise, skills and knowledge to tailor the plans to the needs and challenges of their region. The Marine (Scotland) Act 2010 stipulates that they must be comprised of a person nominated by Scottish Ministers, and either a public authority or “a person nominated by a public authority with an interest in the Scottish marine region to which the regional marine plan applies as the Scottish Ministers consider appropriate” [60:6]. When Scottish Ministers designate delegable functions to a group or persons these must (“so far as reasonably practicable”) represent all interests in the area including its protection, its use for recreational purposes, and its use for commercial purposes [60].

The functions that Scottish Ministers may delegate to MPPs (delegable functions) relate to preparing regional plans, amending these plans, and keeping relevant matters under review. Importantly, there are key powers that cannot be delegated to MPPs (‘excepted functions’). These include: (a) deciding under paragraph 4 of schedule 1 whether to prepare and publish a statement of public participation, (b) deciding under paragraph 6 of that schedule whether to revise a statement of public participation, (c) deciding under paragraph 9 of that schedule whether to publish a consultation draft, (d) deciding under paragraph 14 of that schedule whether to publish a regional marine plan or any amendment of such a plan. So it can be said that the governance system for MSP in Scotland is strongly top-down and centralised, with government maintaining executive control over when and how to engage stakeholders, and over the drafting and publishing of regional plans. For example, although it is the responsibility of the delegate to prepare and publish the statement of public participation (the first step in preparing for consultation), the decision to do so comes from Scottish Ministers, and their approval of the statement is required.

5. The role of the Crown Estate

Despite the governmental control over MSP in Scotland, the Crown Estate also plays a significant role in influencing the use and non-use of inshore and coastal areas of the U.K.¹ The Crown Estate is a statutory

¹ Technically, the Crown Estate refers to the portfolio of properties owned by the

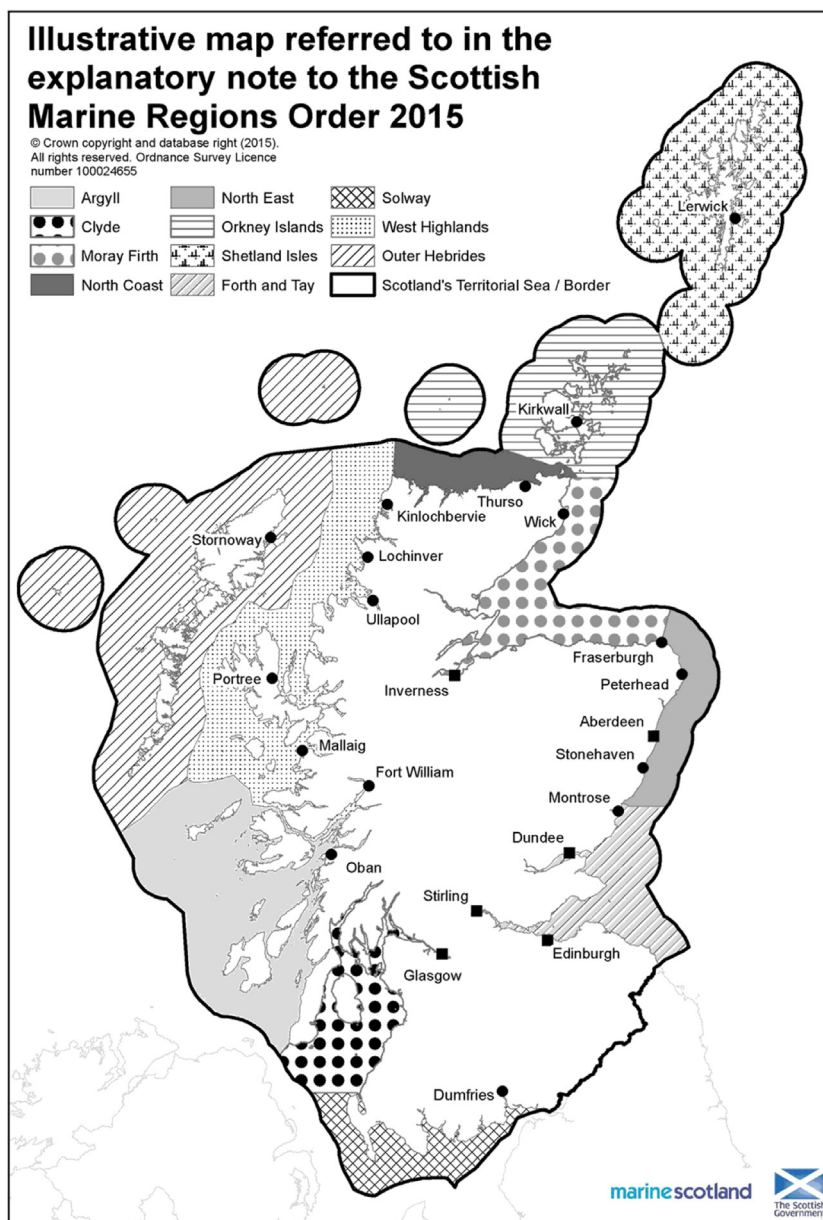


Fig. 2. Map of the Scottish Marine Regions. Adapted from the Scottish Marine Regions Order (2015) [56:23].

body that is run under the provisions of The Crown Estate Act (1961). It manages a property portfolio (the estate) across the UK worth £12.4 billion [61], and it is mandated by the Act to generate a profit on this portfolio. The reported profit stood at £328.8 million in 2016/17 [61] and these (along with any debts) accrue to the UK Treasury where they are made available for public spending. The distribution of this spending has been a contentious issue for a number of decades, with many in Scotland arguing for the management of Crown Estate assets in the country – including profits generated on these – to be devolved from HM Government. Following the Smith Commission Report in late 2014 these calls have now been heeded. The Scotland Act 2016 enabled HM Government to make a statutory Transfer Scheme, which came into force in April 2017, and marked the official transfer of powers over the revenue and management of Crown Estate resources in Scotland. The

(footnote continued)

organisation, whilst the Crown Estate Commissioners exercise the powers of this ownership. In keeping with common practice, however, ‘The Crown Estate’ is used here to refer to the business as a whole.

newly founded Crown Estate Scotland (Interim Management) body has been working in conjunction with the existing Crown Estate Commissioners and key stakeholder groups on the transition process.

Importantly, the Crown Estate also administers almost the entire inshore seabed in Scotland, along with 50% of the foreshore (the intertidal zone). Through the devolution process outlined above the Scottish Government has already “committed to providing the net revenue from marine activities out to 12 nautical miles to coastal and island councils.” [62] This is a significant breakthrough in Crown Estate reform. However, it remains to be seen how it will respond to doubts over its commitment to environmental protection, the transparency of its operations, its questionable proximity to planning, and the level of decision making input by local communities. One of the main functions of the Crown Estate in administering inshore waters is to negotiate the sale of seabed leases to developers for large marine projects. The lease sites are identified through scoping exercises conducted by a range of actors including Marine Scotland, research institutions, the Crown Estate itself, and collaborations between these. Comprehensive Strategic Environmental Assessments (SEAs) precede the designation of sites for

lease. When lease sites are announced developers can bid for an Agreement for Lease from the Crown Estate. This grants the successful bidder an 'option' over an area of seabed. With the option over the area the developer is also permitted to undertake minimal activities, such as surveys and deployment of anemometry (i.e. wind force measurement) equipment, and can initiate the statutory consenting process, which is processed by the Marine Scotland Licensing and Operations Team (MS-LOT). During the statutory consenting process any existing marine spatial plan is consulted as supplementary guidance and further Environmental Impact Assessments (EIAs) are conducted. If statutory consent is granted a lease is obtained for the Construction and Operation phase (The Crown Estate, 2016).

The route to construction and operation in inshore waters is strictly regulated and the leasing process is separate to the licensing process. It is important that the leases sold by a commercially operating body do not guarantee that a license for development will be granted. Nevertheless, the governance role played by the Crown Estate in Scotland's MSP system cannot be underestimated [18], and it can be argued that it helps set the tone for the development of inshore waters. In the past the Crown Estate has made clear commitments to marine industries such as renewables in line with the ambitions of HM Government and the Scottish Government. This is evident, for example, in £5.7 m Enabling Actions Fund, which "supports work that accelerates and de-risks the development of the wave and tidal projects in the Pentland Firth and Orkney Waters, to facilitate successful and timely construction and operation" [in 18: 138]. The terms 'accelerate, and 'de-risk' reflect a commitment to facilitating growth in this sector. The rate of marine energy project development in the PFOW region caused some public consternation. This was one of the main reasons to begin planning. Some of the concerns were raised at the public consultation events for the PFOW Pilot Plan. One local resident pointed out that there was little public say over "putting manmade things into the natural environment" (Kirkwall 01/07/2014) and another complained that "streamlining the planning process through MSP helps the Crown Estate to increase revenue more quickly" [18]. This occurs in a situation where "Marine Scotland had been too preoccupied with reacting to the steady release of renewable energy leases and licences by the Crown Estate and that the licensing system had been shaped by developers' needs" [57:519–520].

Although these criticisms apply to the specific case of the PFOW region where marine renewable projects were sanctioned before the creation of the Pilot Plan, criticisms of Crown Estate operations do exist more widely. One Member of Scottish Parliament suggested in an interview that when it came to the Crown Estate's involvement in marine resource management in Scotland, consultation was a "bolt-on" (25/10/2014), explaining that it was a bureaucratic check box that comes too late in the process to affect decisions in a meaningful way. This appears to be at odds with the recommendation, from MSP theory, that stakeholders be engaged early and often [11,39]. Interviewees from all sides also stressed that a problem with the Crown Estate is that the public does not have a very good understanding of it and what it does. It is indeed a unique organisation. A Crown Estate employee claimed that they were sometimes tasked to travel to conferences to clarify how it operates, and a professor in politics at The University of Edinburgh said of the Crown Estate that we "need to get it talked about" (29/10/2014). Expanding on this comment, they said that there was a need to improve public understanding of the Crown Estate, and to ensure that pressure remains to make its operations more transparent. It will be interesting to observe how the current Crown Estate reform will target these aspects of its role in marine resource management. There is also every reason to hope that the more comprehensive, collaborative and informed planning processes in areas such as the Clyde will address these issues. They will take a lot from their own previous experiences, and those in the PFOW case (the release of a Lessons Learned report from the PFOW will be of great value here). However, in order to achieve this, planners must remain aware of how the governance of MSP – and

the role of the Crown Estate – might affect public perceptions of MSP processes. As representatives of local interests and planning needs, it is important that MPPs gain and maintain public trust, and that their actions do not become too exclusive.

6. Early public engagement

In the interest of upholding the promise of making marine planning participatory, and of honouring the description of MSP as a 'public process', practitioners should scrutinise how marine plans in Scotland's regions are conceived. This includes the timing of stakeholder engagement by the marine planning partnerships. The Clyde MPP (CMPP) is a case in point here. The CMPP released a Statement of Public Participation on 9th January 2018 [63] in accordance with the requirements set out in the Marine (Scotland) Act 2010. The statement sets out the commitment to engaging with all stakeholders and members of the public (identified through their registered home address). Whilst adhering to MSP theory by allowing opportunities for broad debate on marine planning issues, it must be noted that the process has become highly institutionalised. By setting out clear opportunities for stakeholder and public engagement in MSP, the CMPP allocates plenty of time for closed meetings. These occurred at early planning stages, in March, May and June 2017, and helped set the framework for planning in the region. Previous research has found that planning priorities are commonly set at an early stage by a select group of stakeholder groups, and that public input in consultations seemingly had little impact on these when they were finally conducted [13]. The MPPs look set to adopt this pattern. Unfortunately, this makes it all too easy to level the criticism of 'tokenism' at the purpose of consultations and distinguishes the system quite clearly from a co-decision making one [52]. Whilst it is true that strong leadership is required in marine planning, thought must be given how this is balanced with democratic principles, as mentioned at the beginning of this paper. The institutionalisation of MSP processes renders this task both more important and more challenging.

With the institutionalisation of marine planning it might prove important to ensure that less formal channels of community engagement on marine and coastal issues remain open. The Scottish Coastal Forum was a good example of this. The Scottish Coastal Forum was established in 1996 to encourage national debate on coastal issues. It was comprised of seven Local Coastal Partnerships that were voluntary partnership groups of localised interests, mostly registered as charity organisations. These partnerships invited anybody in the region to debate marine and coastal management issues and also shared management ideas with the partnerships in other regions. The forum as a whole also took on the responsibility of delivering the Integrated Coastal Zone Management approach being implemented across Europe, and which was a precursor to MSP. Many of the Local Coastal Partnerships have formed the basis of the new MPPs. This appears to be a well-informed decision as the Local Coastal Partnerships have adapted well to change and new challenges in the past. However, the onus must be on maintaining an informal component that allows bottom-up action and awareness raising. MPPs must not fall into the trap of directing action too strongly and restricting engagement only to pre-scheduled consultations events on their terms and schedules. Communities cannot take full responsibility for marine planning, but they are likely to appreciate access to an open, informal mechanism for generating public debate. Experiences from from terrestrial planning processes in Scotland indicate that the public might come to demand greater inclusion.

7. Resistance

For most people in Scotland their understanding of the word 'planning' is likely to come from the well-established terrestrial – or 'land use' planning system. Although a comparative analysis of public participation in Scotland's land use and marine spatial planning systems

is beyond the scope of this paper (and such an analysis would have to account for the significant differences in the access, ownership and use rights between the two environments), the emergence of MSP has been heavily influenced by existing planning traditions, and scholars frequently explore the relationship between the two [64–66]. Land use planning in Scotland is decentralised, with municipal government (in the form of 32 democratically elected local councils), and the two the National Parks (the Cairngorms National Park and the Loch Lomond and the Trossachs National Park), assuming main responsibility as planning authorities. The public has an opportunity to contribute to development plans, which set out the vision for how the area should develop with regards to the use of land. And there is a requirement for public consultation on development proposals on a case-by-case basis, during which any member of the public can file objections to a plan within 21 days of the planning notice being publicised. The decentralised nature of land use planning in Scotland means that central authorities intervene in planning processes only as a last resort.

There are two main points worth mentioning about land use planning in Scotland. Firstly, where the land use planning system is perceived to be unfair, or to be excluding public opinions, spaces are opening up for local civic action. In some cases this has been quite radical, such as with community land buyouts. Hereby a locally formed community body – most commonly a company limited by guarantee with charitable status – is set up to oversee the purchase and management of land so as to use it in communally agreed ways, most commonly through locally-constituted committees. Whilst these local governance entities face tough challenges that they sometimes succumb to, they have been shown to incorporate more participatory practices and lead to more sustainable resource management outcomes [67]. Development Trusts are another example. With support from the Development Trust Association Scotland (DTAS) these trusts put together community-led projects to help Scotland's neighbourhoods flourish and tackle localised problems or seize opportunities. Development Trusts and community land buyouts have emerged partly due to dissatisfaction with the level of input that communities have in the land use planning system where “much of what happens is decided by the free market” (Ian Cooke, Director of DTAS 11/08/2015).

A review of the benefits and drawbacks of these initiatives is beyond the scope of this paper, and the suggestion here is not that land owned by communities is always more effectively or fairly managed. It is also important to emphasise that they do not replace the planning process. Any proposals that communities might put forward to construct or modify buildings, or to alter land use patterns still need to satisfy all requirements under the planning process. The difference is that they will have a majority local backing and be based on a vision agreed upon through local decision making institutions. As a result they are less likely to run into public opposition and can more closely reflect the will of the people. These arrangements have a lot in common with theories of modern governance systems. They represent a network of decision-making relationships and form new links between governance entities at different scales. Fuelled by the re-politicisation of society, the emergence of informal groups that affect a formal governance system – and bring to light flaws within that system – are examples of new governance mechanisms, locations, capacities and styles.

Further to this, an impressive feature of the (admittedly imperfect) land use system is that it is continuously changing and adapting to meet modern development pressures, public demands, and criticisms. An independent review of the Scottish planning system published in May 2016 found: “[t]he evidence shows that the planning system is not yet effective in engaging, let alone empowering, communities”; “the evidence overwhelmingly suggests that public trust in the system has declined rather than grown”; and “...communities are reporting consultation fatigue and have very limited resources for getting actively involved in the process.” [68:36]. Attempts to improve the land use planning system on the basis of such criticisms are normally included in ‘land reform’ processes. Land reform is about “how land is owned,

occupied, taxed, inherited, and used – from the centre of Glasgow to the island of Rockall in the north Atlantic” (speech by Andy Wightman 25/06/2015). In the most recent round of reforms Scottish communities took centre stage. Two key bits of legislation emerged from this round, namely the Community Empowerment (Scotland) Act 2015 and the Land Reform (Scotland) Act 2016. The Community Empowerment (Scotland) Act “will help to empower community bodies through the ownership of land and buildings, and by strengthening their voices in the decisions that matter to them” [69], and the Land Reform (Scotland) Act 2016 is partly a response to the notion that “[c]ommunities most affected by decisions about land must be fully engaged in those decisions” [70]. These changes are evidence of a planning system undergoing constant learning and adaptation due to changing land use patterns but also, crucially, unrest from Scotland's communities. The rhetoric of empowering communities and strengthening their voice is not as prominent in Scotland's approach to MSP.

8. Discussion - a new democratic space within MSP?

The regionalisation of Scotland's National Marine Plan is a difficult process, and attempts to achieve this have been innovative and are supported by a robust governance infrastructure. The government's commitment to public and stakeholder engagement is being met through the statements of public participation prepared by MPPs. However, one barrier to public participation might lie in the rigidity of the system, and the absence of public input into step zero of planning. Another might lie in the lack of transparency surrounding the actions of the Crown Estate, although the on-going reform process might effectively address this. Nevertheless, at this relatively early stage it seems beneficial to consider what consequences building a rigid, top-down governance system for MSP might have. There is every chance that “affected communities could rebel against a centrally driven process which allows national objectives to override local ones” [52:291].

The ability of Scotland's communities to rebel is being demonstrated in land use planning. By doing so they reveal several things that are in keeping with modern governance theory. For example, the ‘public’ can define itself through issue-based political engagement, and in modern governance systems competition about the right to represent people takes place every time a claim of representation is made. Bolstered by the re-politicisation of society, we are witnessing a host of new governance mechanisms, locations, capacities and styles that impact land use planning processes, and possibly threaten the integrity of the system itself. There is every chance that these might emerge in response to marine planning in the future. What is interesting about this form of community action is that it is driven by the will to expose instances where participatory practices do not result in a satisfactory level of power redistribution – as rated on Arnstein's scale – but it also incorporates Painter's more nuanced view of where power exists. This is firstly because community action in planning allows for the possibility of decisive events and contributions to occur at any point during policy or planning decision making, rather than just at the end of deliberations. This creates the *moments* for community groups to act and to intervene, including the possibility of a community-led step zero. Secondly, the system, as it is constituted at present, prioritises the actual power of decision-making authorities and undermines the potential power of more informally constituted participatory processes. This creates the *space* for community groups to act and to intervene. So a rigid governance system for MSP might motivate Scotland's communities to seize upon (through their own means) the moments and spaces to improve their say in marine management decisions.

But what if the governance system could be adapted pre-emptively to absorb this political energy? Smith (2015) suggests that MSP in Scotland creates a range of new spaces [18]. These include the map spaces that are used to define a planning scenario in spatial terms; images and visions of what these areas can be used for (imagined spaces) e.g. diagrams of seabed mounted tidal energy turbines; and

physical planning spaces (such as MPPs) where people convene to actually plan. Upon further analysis the spaces that MSP does *not* create appear equally important. It does not create a space for publically initiated and publically lead debate on marine planning issues: debate that exists independently of (and might even prompt) official consultations. One way to create this space might be to maintain an element of the Local Coastal Partnerships that is not amalgamated into the bureaucratic MSP machine. Research has already demonstrated that informal, multi-stakeholder, participatory platforms can find spaces to operate even in a rigid and highly structured administrative environment [71]. In this space broader questions about the value of Scotland's seas could be asked. Alternative questions about marine planning might emerge from this space as people are encouraged to talk openly. The debate could be prompted by changing the question from “these are the current and emerging sectors accessing and using marine resources, how do we manage their activities?” to “what vision do we have, as a nation or a region, of the future of our seas and coasts?” Under marine planning legislations there could be a statutory requirement for MPPs to consider and respond to summaries of these events. Further research could gauge support for this idea and how these spaces might be created.

9. Conclusion

There appears to be great value in scrutinising MSP from a governance perspective. This approach can prompt debate about the distribution of power and public perceptions of MSP, which are important topics. MSP is often viewed as a highly technical set of processes that is best left to marine experts. Essentially, though, it is about managing (the expectations of) people. Plenty of experience exists on how this is best done, and the pitfalls to avoid. It might be time to look outward (and inland) for guidance on how to build an adaptable, inclusive governance infrastructure.

The actual power of decision-making authorities in MSP in Scotland has yet to be fully tested. Also, the Crown Estate has only been held to account in a few individual instances [see [72]], and its role in the decision-making infrastructure has yet to be adequately scrutinised. In the land use planning system the actual power of decision-making authorities has been tested, and the actions of the Crown Estate are continuously scrutinised. The benefits of system adaptability were not lost on scholars working on the early development of MSP, who noted that “[m]any land use planning systems have evolved and improved over time, including the steps in the planning process and procedures for consultation and participation, and this should be expected of MSP” [4:788]. The evidence from Scotland suggests that this expectation has not been met.

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