

**The Highland Council**  
**Planning, Development and Infrastructure Committee**  
**11 May 2016**

Agenda Item	24
Report No	PDI 38/16

**Proposed Inner Hebrides and the Minches Special Area of Conservation for Harbour Porpoise**

**Report by Director of Development and Infrastructure**

**Summary**

This report outlines the proposed consultation response to be sent to Scottish Natural Heritage regarding the proposed designation of a large section of the west Highland coast as a Special Area of Conservation for harbour porpoise interests.

It is recommended that members approve the response.

**1. Background**

- 1.1 The Highland Council was advised of the Scottish Natural Heritage consultation on harbour porpoise on 23rd March during a briefing session. On the same day a consultation on a proposed Inner Hebrides and the Minches Special Area of Conservation (SAC) went 'live' on the SNH website for eight weeks, ending 18 May 2016.
- 1.2 Of the three management units covering the UK - West of Scotland, Celtic and Irish Seas, and North Sea - the proposed SAC lies within the West of Scotland Management Unit (see Map 1 enclosed). The definition of the proposed site boundaries are based on a variety of scientific data, including modelling outputs, sightings and acoustic data; the selected area has 10% of porpoise density in the West of Scotland Management Unit.
- 1.3 The driver for designation comes from the European Union's requirement to designate a "sufficiency of sites under the Habitats Directive" (EU Natura 2000 newsletter, January 2016). There is a globally agreed target to conserve at least 10% of coastal and marine areas by the year 2020 consistent with national and international law and based on the best available scientific information (UN, <http://www.un.org/sustainabledevelopment/oceans/> - Sustainable Development Goal 14, Target 5).

**2. Potential considerations**

- 2.1 We are responding as we need to consider that there could be potentially significant implications for our environmental, social and economic assets.
- 2.2 We have very limited jurisdiction below Mean Low Water Springs (other than for aquaculture), but actively support integrated marine and land use planning as required by, among other things, the National Marine Plan.

2.3 The response set out in Appendix 1 raises the following issues relating to the consultation process undertaken:

- The very short 8 week consultation, with very limited publicity, is likely to limit effective engagement. For comparison, a similar recent consultation undertaken by the Joint Nature Conservation Committee included a 15 week consultation with numerous public events.
- The DRAFT SAC consultation stage appears to have been bypassed, and by advancing directly to a PROPOSED SAC stage the designation has legal protection straight away. In comparison, the consultation on the draft SPAs for Orkney are still at the draft stage some years after the process commenced. An information pack produced for the draft SPAs in July 2014 notes that “Early publication is designed to alert stakeholders..... it doesn’t constitute a consultation at this stage....”.
- The BRIA section on public consultation is vague and notes that Local Authorities have been a part of the pre-consultation process. For Highland, which has the greatest length of coastline adjoining the proposed SAC, this is not the case. The first the Highland Council were aware of the pSAC was the day the consultation went live. Given the Marine Act (Scotland) 2010, the National Marine Plan, Scottish Planning Policy and Circular 1/2015, this does not appear to be the most effective way of ensuring effective marine, coastal and land use planning integration, which require early effective engagement.

2.4 The suggested Council response on the document itself is summarised as follows:

- The exclusion of many sea lochs on the west Highland coast do not appear to be reasonable. The ‘Overview’ document states the consultation draws heavily on the JNCC report No 565, but has chosen to add sealochs to the boundary setting principles criteria. Given estuaries, by their very nature are a mix of fresh and seawater, and therefore less likely to contain porpoises, whilst sea lochs, by their very nature are not, this seems unreasonable. This is evidenced from an example shown in the information in Figures 1a-b and 9 of the overview document and are attached to this report below. Figure 1c below is also included for completeness which shows acoustic data.
- The area of coast covered by this proposed designation should provide a more balanced approach that acknowledges existing users/activities by concentrating on smaller clusters where the density of porpoise are more concentrated and therefore merit the higher level of protection sought. Also, the exclusion of appropriate sites on the east coast appears to be remiss, given all the previous work on this coast e.g. the wealth of Marine Scotland evidence in the ECOMMAS project, as outlined in the MS Topic Sheet entitled ‘*Harbour porpoises around the east coast of Scotland*’. This more balanced approach e.g. two smaller west coast sites complemented by some east coast sites, would appear to give a more balanced approach and enhance the ecologically coherent network effect required by the EU legislation.

- The BRIA, whilst acknowledging it has been provided for contextual purposes only, does provide useful guidance. It notes that '*according to EU case law the decision to designate SACs can only be on the basis of scientific evidence*'. The evidence appears to suggest that the major sea lochs should be included in the designation, other sections omitted from the west coast and further consideration should be given to some east coast sites.
- Prior to full designation, we would request the assessment provides further detail on the implications of this designation for existing marine and coastal users e.g. ferry operators, wildlife tourism, piers and harbours etc, in addition to those covered in the BRIA. We would greatly appreciate further discussion on this ahead of any future stages for this work.
- Prior to designation, we would also request that guidance is provided on the level of detail and methodology proposed to assess the existing marine fin fish sites within Highland, particularly in relation to cumulative impacts. This may have a significant resource implication for the Council, given the large number of sites affected.

### 3. Implications

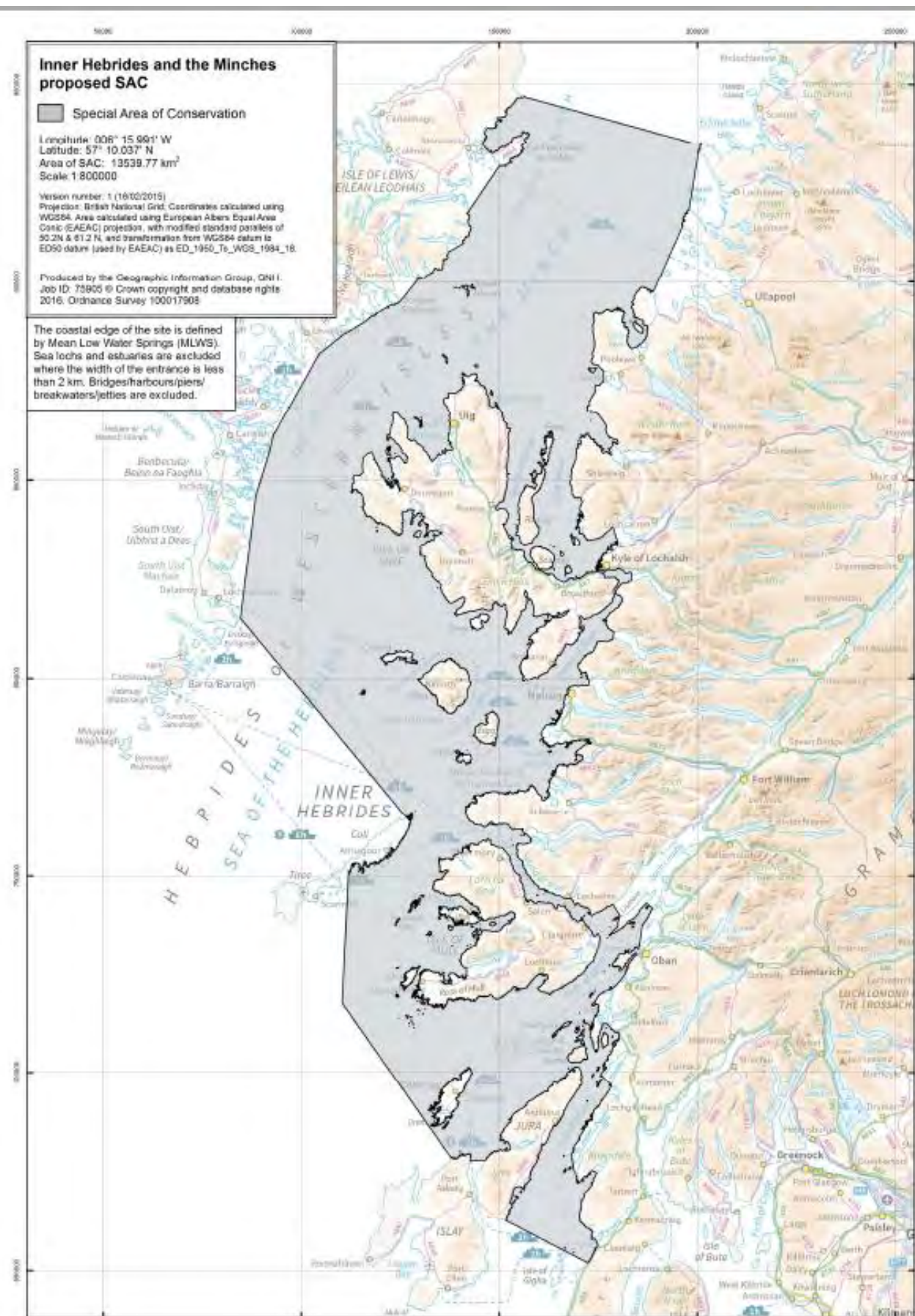
Legal, Resource, Equalities, Climate Change/Carbon Clever, Risk, Rural and Gaelic

3.1 There are no direct implications arising from this report for the above factors.

#### Recommendation

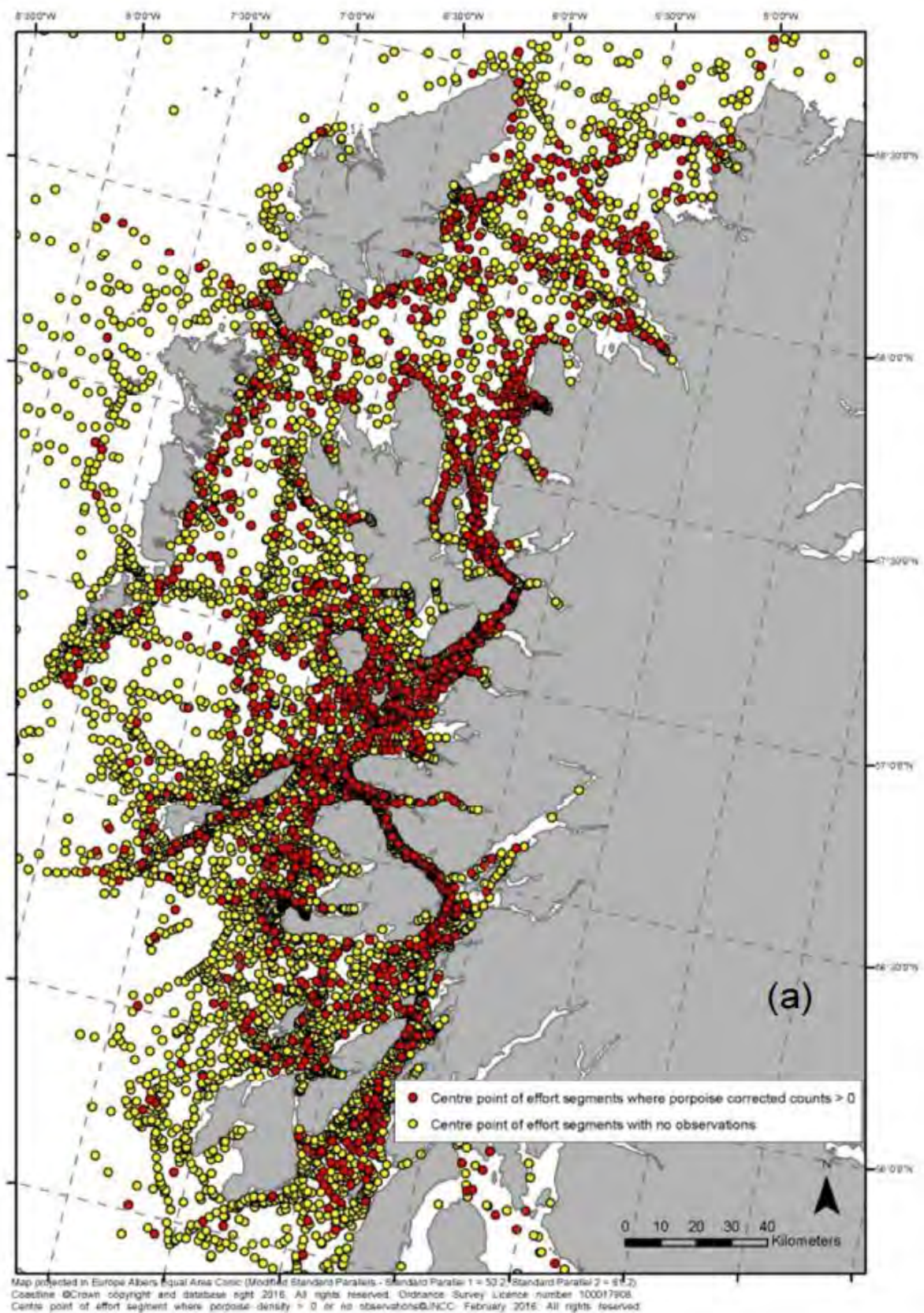
The Committee is invited to approve the response.

Designation:	Director of Development and Infrastructure
Date:	4 May 2016
Author:	Dr Shona Turnbull
Background Paper:	Appendix 1 – Response to SNH Porpoise SAC consultation



Map 1: Proposed west Highland Porpoise SAC

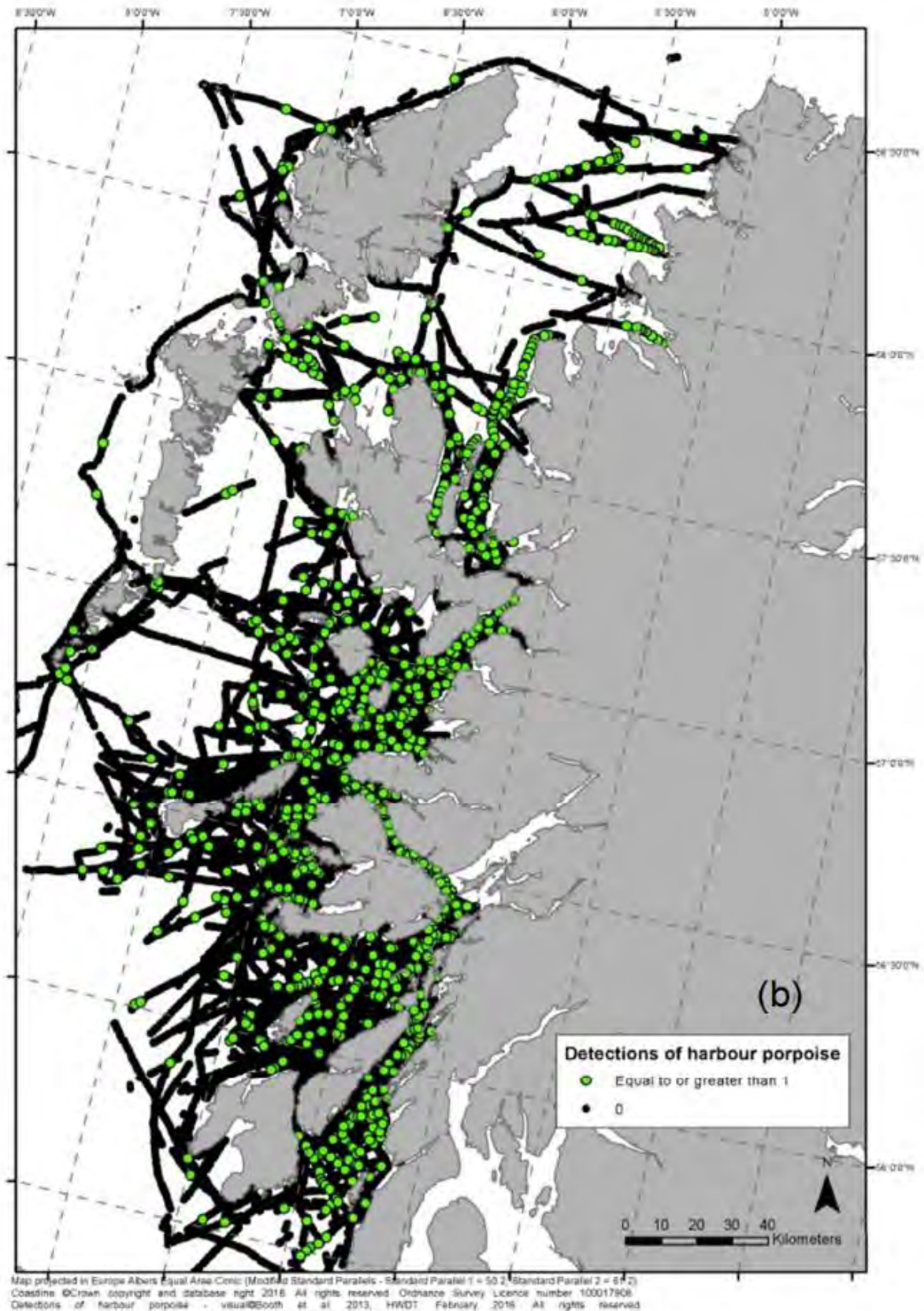




**Figure 1a-c.** Maps showing (a) Heinänen and Skov (2015a) 'sightings' data (effort segments with harbour porpoise corrected counts >0); (b) Booth *et al.* (2013) sightings of harbour porpoise during visual surveys (black dots indicate where no animals sighted, and green dots indicate where one or more animals were sighted); (c) Booth (2010) detections of harbour porpoise during acoustic surveys (black dots indicate where no animals were detected, and red dots indicate where one or more animals were detected).

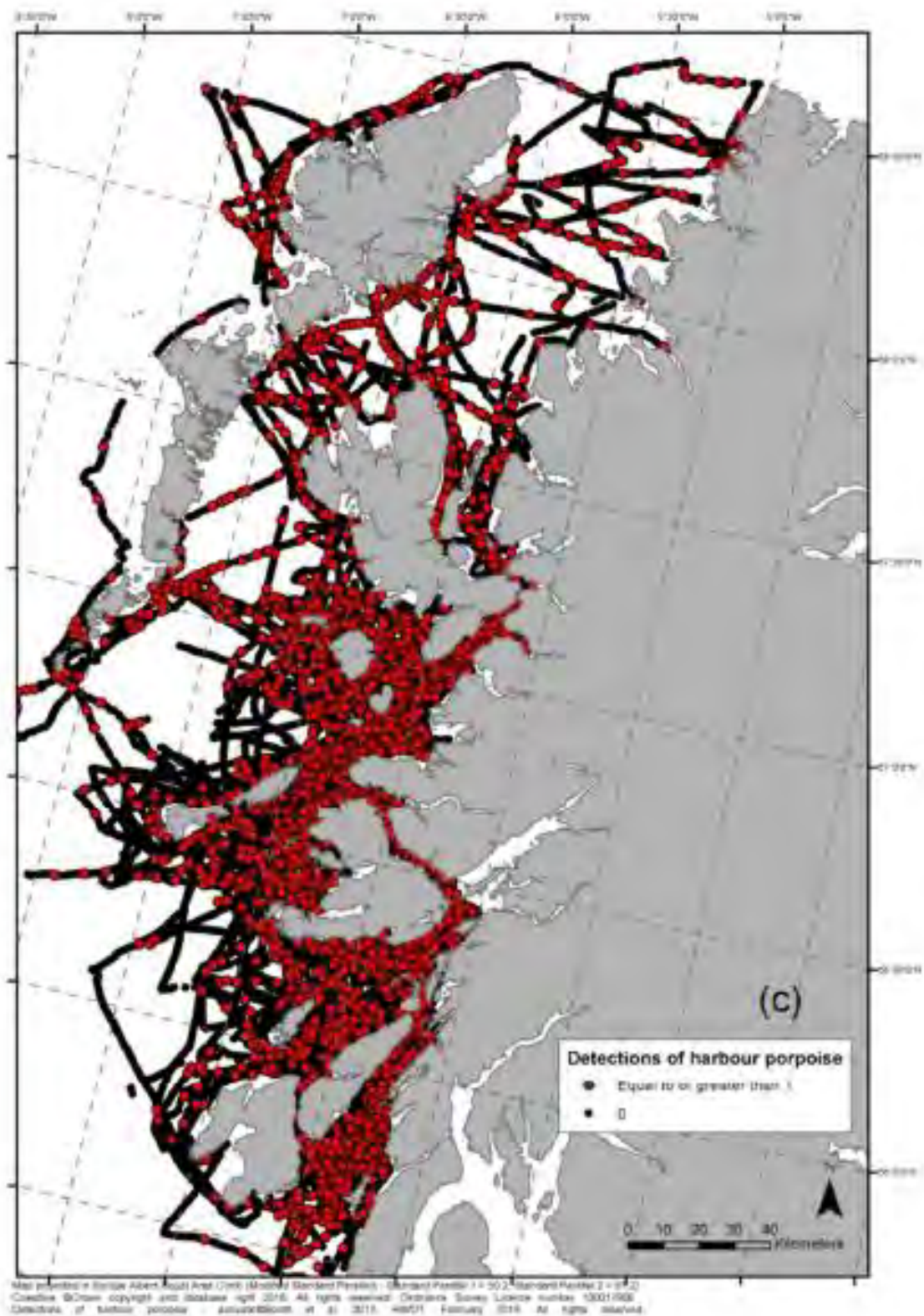
**Figure 1 a**





**Figure 1a-c.** Maps showing (a) Heinänen and Skov (2015a) 'sightings' data (effort segments with harbour porpoise corrected counts >0); (b) Booth *et al.* (2013) sightings of harbour porpoise during visual surveys (black dots indicate where no animals were sighted, and green dots indicate where one or more animals were sighted); (c) Booth (2010) detections of harbour porpoise during acoustic surveys (black dots indicate where no animals were detected, and red dots indicate where one or more animals were detected).

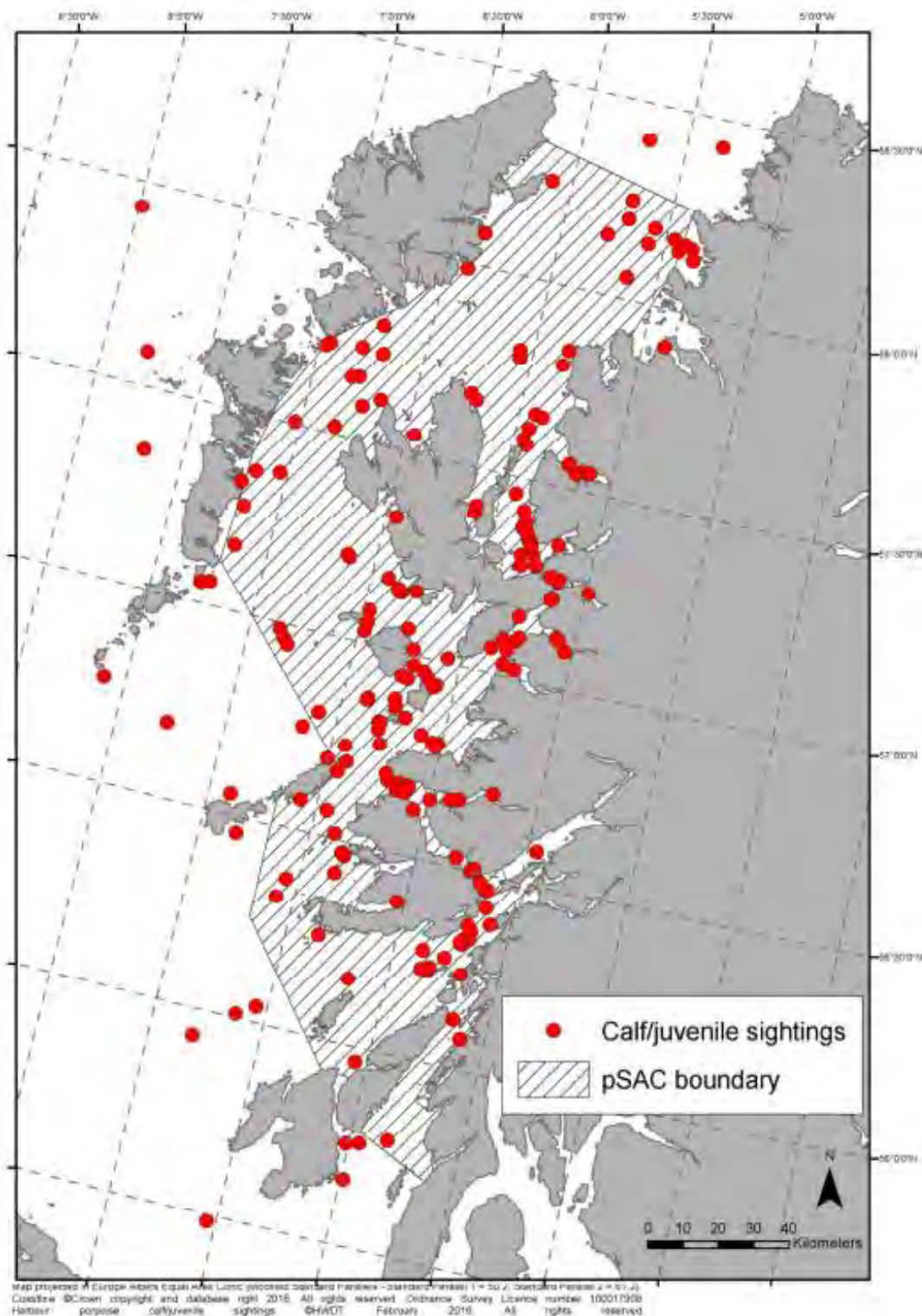
**Figure 1 b**



**Figure 1a-c.** Maps showing (a) Heinänen and Skov (2015a) 'sightings' data (effort segments with harbour porpoise corrected counts >0); (b) Booth *et al.* (2013) sightings of harbour porpoise during visual surveys (black dots indicate where no animals sighted, and green dots indicate where one or more animals were sighted); (c) Booth (2010) detections of harbour porpoise during acoustic surveys (black dots indicate where no animals were detected, and red dots indicate where one or more animals were detected).

**Figure 1c**





**Figure 9.** Map showing recorded sightings of calves and juveniles overlain on map of the site boundary. Note that these data show the locations at which harbour porpoise calves and juveniles were recorded as part of HWDT surveys. These data have not been corrected for effort.



## APPENDIX 1: Proposed response

### Proposal to designate the Inner Hebrides and the Minches as a Special Area of Conservation (SAC) for harbour porpoise: Highland Council response

The Highland Council welcomes the opportunity to comment on the harbour porpoise consultation and support the need for effective biodiversity protection. From a local authority perspective, whilst there is already protection in place for harbour porpoise, the presence of the SAC will increase awareness when identifying their presence, in particular where land based operations and aquaculture have the potential to impact on the water environment and will likely require additional Appropriate Assessments.

First of all, in terms of the consultation process undertaken the timing and time available for comment is not ideal, particularly given it was over the two week Easter break and announced the day before purdah. This makes for very limited effective public engagement, which is a concern given the very large size of the site proposed. Due to the former, there was virtually no publicity to allow reasonable consideration of the 8 documents, most of which contain complex data. This appears to be a very rushed consultation, with a number of areas of concern, as outlined below. In comparison, given it took many years to define the regional marine planning boundaries, 8 weeks would appear to be wholly inadequate for suitable, effective consultation.

In light of the above, it is also of concern that the consultation has bypassed a 'draft SAC' stage and advanced directly to 'proposed SAC' status and therefore carries very different weight in decision-making. Again, this does not appear to be best practice of open, transparent consultation. In comparison, the consultation on the draft SPAs for Orkney are still at the draft stage some years after the process commenced. An information pack produced for the draft SPAs in July 2014 notes that "Early publication is designed to alert stakeholders..... it doesn't constitute a consultation at this stage....".

The BRIA section on public consultation is vague and notes that Local Authorities have been a part of the pre-consultation process. For Highland, which has the greatest length of coastline adjoining the proposed SAC, this is certainly not the case. The first the Highland Council were aware of the pSAC was the day the consultation went live. Given the Marine Act (Scotland) 2010, the National Marine Plan, Scottish Planning Policy and Circular 1/2015, this does not appear to be the most effective way of ensuring effective marine, coastal and land use planning integration, which requires early effective engagement.

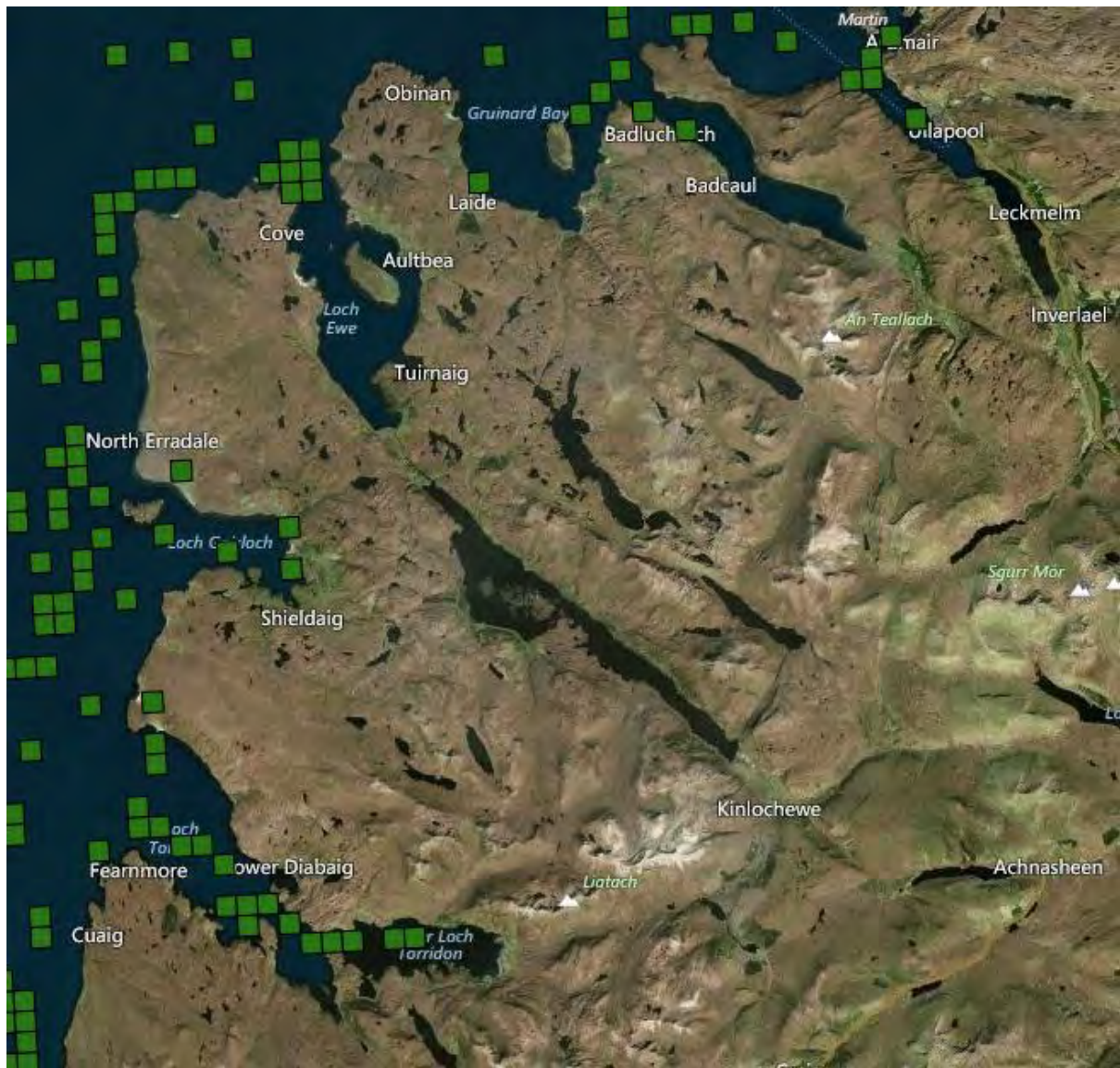
We offer the following comments on the document itself:

1. The exclusion of many sea lochs on the west Highland coast do not appear to be reasonable. The 'Overview' document states the consultation draws heavily on the JNCC report No 565, but has chosen to add sealochs to the boundary setting principles criteria. Given estuaries, by their very nature are a mix of fresh and seawater, therefore less likely to contain porpoises, whilst sea lochs, by their very nature are not, this seems unreasonable. This is evidenced an example shown in

the information provided in Figures 1a-b and 9 of the overview document. The modelling repeatedly shows, for example, that all of Loch Ewe is included in the pSAC, yet none of the siting data appear to support this (records for the mouth only), whilst parts of, for example, Loch Torridon are excluded despite there being numerous siting data (see map below). Aquaculture appears to co-exists with current porpoise populations (and the aquaculture industry should hold records of sightings that would be useful), so as per their CoGP, they may welcome opportunity to demonstrate best practice for example by using triggered ADDs.

2. The area of coast covered by this proposed designation should provide a more balanced approach that acknowledges existing users/activities by concentrating on smaller clusters where the density of porpoise are more concentrated and therefore merit the higher level of protection sought. Also, the exclusion of appropriate sites on the east coast appears to be remiss, given all the previous work on this coast e.g. the wealth of Marine Scotland evidence in the ECOMMAS project, as outlined in the MS Topic Sheet entitled '*Harbour porpoises around the east coast of Scotland*'. This more balanced approach e.g. two smaller west coast sites complemented by some east coast sites, would appear to give a more balanced approach and enhance the ecologically coherent network effect required by the EU legislation.
3. The BRIA, whilst acknowledging it has been provided for contextual purposes only, does provide useful guidance. It notes that '*according to EU case law the decision to designate SACs can only be on the basis of scientific evidence*'. Given points 3 and 4 above, the evidence appears to suggest that the major sea lochs should be included in the designation, other sections omitted from the west coast and further consideration should be given to some east coast sites.
4. Prior to full designation, we would request the assessment provides further detail on the implications of this designation for existing marine and coastal users e.g. ferry operators, wildlife tourism, piers and harbours etc, in addition to those covered in the BRIA. We would greatly appreciate further discussion on this ahead of any future stages for this work.
5. Prior to designation, we would also request that guidance is provided on the level of detail and methodology proposed to assess the existing marine fin fish sites within Highland, particularly in relation to cumulative impacts. This may have a significant resource implication for the Council, given the large number of sites affected.

Given the points above, we request the process is re-visited to ensure the boundaries set for the pSAC are most effective, based on sound scientific evidence but also adhering to effective engagement and fairness (NMP policies Gen 18 & 17).



Example NBN data showing porpoise records in Loch Torridon.