PURPOSE OF REPORT  
To agree a Comhairle response to Historic Scotland consultation on Scottish Historic Environment Policy (SHEP) - The Marine Environment.

COMPETENCE  
1.1 There are no legal, financial or other constraints to the recommendations being implemented.

SUMMARY  
2.1 Historic Scotland is preparing a set of revised policy documents on all aspects of the historic environment and is consulting widely on the drafts.

2.2 The SHEP on the Marine Historic Environment is the policy statement which will determine the Scottish approach to all historic assets below the waterline, including wrecks of both vessels and airplanes, inundated sites, and all other man-made historic assets in the marine environment. It comes in advance of new legislation, but may influence that legislation and hence determine how these issues are dealt with in future.

2.3 The consultation can be viewed in full at http://www.historicscotland.gov.uk/index/consultations/currentconsultations.htm A hard copy will be available in the Members’ lounge prior to Committee. Responses to the consultation are requested by 30 May 2008.

RECOMMENDATION  
3.1 It is recommended that answers to questions in paragraph 5.1 of this Report form the basis of the Comhairle’s response to the consultation.

BACKGROUND PAPERS: NONE

Contact Officer: Mary MacLeod Tel 01851 860783
4.1 The Comhairle welcomes the proposal of a more integrated approach to marine historic environment policy, and the proposed legislation to bring practice into line across the United Kingdom.

4.2 It is not clear why the policy is being proposed in advance of the new legislation, though the opportunity to influence the historic environment aspects of the legislation is welcome.

4.3 The policy covers Scotland’s marine zone, i.e. the 12 nautical miles (22 km) from the mean high water mark, including estuaries, sea lochs, tidal rivers, and both inshore and offshore waters. Large parts of these areas were, within the last 10,000 years, dry land; this is particularly the case in the waters off the Outer Hebrides. These areas therefore contain not only the wrecks and dropped cargo one might expect, but also extensive inundated prehistoric landscapes, with houses, fields, and all the remains of prehistoric life. This resource is little understood or recorded.

4.4 The document proposes a systematic approach to the management of the marine historic environment, encompassing a new system of designation and new policies, in line with the European Commission’s Integrated Maritime Policy for the European Union. This would supercede the present situation, where the marine historic environment is covered by three pieces of legislation, all with different prescriptions and restrictions: The Protection of Wrecks Act 1973, the Ancient Monuments and Archaeological Areas Act 1979, and the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997.

4.5 Despite the welcome rationalisations proposed in the SHEP consultation, there are a number of general concerns with the policy as outlined.

4.6 The document is presented as a general marine historic environment policy (para. 2.5). However, it is very much focused on issues of ‘designation’ and the management and protection of designated monuments, particularly in the policies outlined in section 4. There is little about non-designated monuments, which form the vast proportion of the marine historic environment, and are at present most vulnerable. The proposed policies do not increase their level of protection.

4.7 In two places (Annex C para. 4 & 5.2, and main text para. 5.3), the text says that there is no intention to designate more sites. However, it is likely that if more is learnt about the marine historic environment, it may be necessary to designate more sites.

4.8 Although the definition of the marine historic environment is broadly drawn (paras. 2.6-2.8) there is insufficiently explicit discussion of issues relating to sites and deposits, as opposed to wrecks, throughout the text. I would, therefore, particularly recommend the inclusion of ‘archaeological deposits’ in the discussion of the proposed new legislation at para. 5.2a.
In response to the specific questions raised in the consultation paper:

**Question 1:**
*Do you agree with Scottish Ministers' proposed policies for the marine historic environment?*
Although the policy document purports to discuss the entire marine historic environment, it is almost exclusively focused on designation and designated assets. As far as the policies go, they are acceptable.

**Question 2:**
*Is anything missing?*
There is insufficient consideration of policy in relation to the undesignated marine historic environment. The designated component of the marine historic environment is extremely small; the vast proportion of the marine historic environment is either undesignated, unknown, or both. It is essential that this policy document should propose policy for dealing with the undesignated and unknown, as that will contain sites of national and international importance. It may be useful to consider the inclusion of a principle of preservation in situ, analogous to that in place for sites, monuments and landscapes on dry land.

There is no consideration of the limited nature of Local Authority planning powers in relation to the marine environment.

**Question 3:**
*Is ‘national importance’ as defined in Annex A the appropriate criterion for designating marine historic assets?*
Yes. However, it would have been encouraging to see the proposal of a sliding scale of designation analogous to that of Listing, which would allow different levels of protection to be applied to designated sites of varying importance and significance.

**Question 4:**
*Are the guidance and criteria for determining national importance set out in Annex A those which should be applied? If not, what would you suggest?*
It is good to see the criteria for designation brought into line with those in use on land, as it introduces comparability across the two data sets.

**Question 5:**
*Do you agree with proposals for new legislation in this area?*
Yes. However, the Comhairle would suggest the inclusion of archaeological deposits in the list of types of asset at para. 5.2a., and would refer to omissions under question 7 below.

**Question 6:**
*Do you have any views as to how duties in relation to the marine historic environment might be split between Historic Scotland and any Marine Management Organisation?*
Historic Scotland should have a curatorial responsibility for the designated Marine Historic Environment. Local Planning Authorities should be resourced by Scottish Government to provide curatorial duties for the undesignated Marine Historic Environment, analogous to the relationship on land. The MMO should have a general duty of care to the Historic Environment.

**Question 7:**
*Do you consider that anything is missing? In your response, please note that matters relating to salvage are the concern of international maritime law and regulation of shipping. Such matters are reserved to the Westminster Parliament under the terms of the Scotland Act 1998.*
There is no consideration of the fact that the introduction of the criterion of 'national importance' could lead to an increase in the number of designated sites. Indeed at para. 5.3 of the consultation it is stated that it is not the intention to increase the number of designations. However, the number of maritime designations may not reflect the importance and wealth of the Historic Environment in this area and the implications of the proposed legislation should be made explicit.

There is little consideration of the problems caused by the limited nature of Local Authority planning powers in relation to the marine environment, and the lack of clarity in decision making that this causes.

**Question 8:**
What do you think might be the role of the local authorities and their historic environment advisors in relation to the marine historic environment and what are the key issues that need to be overcome?

As discussed above (question 6), the Comhairle would recommend that Local Authorities have curatorial responsibility for non-designated Marine Historic Environment, analogous to the situation on land. The main obstacles to overcome on this front are: lack of resources, lack of access to the marine historic environment, lack of planning powers in relation to the marine environment, and lack of technical expertise. However, these are offset by the expertise that Local Authority Archaeological Services (whether in house or out sourced) can offer in the archaeology of their own particular region.

**Question 9:**
What new mechanisms and procedures might be required to provide for the management of change in relation to planning matters in connection with Scotland’s marine historic environment?

In order to implement effective development management of the marine historic environment, it will be essential to address the issue of lack of resources. Such regions as have coastal waters, including the Western Isles, are not sufficiently well resourced or staffed at present to deal with the historic environment issues of vastly larger areas than their present responsibilities cover. Neither do they have the technical expertise or access facilities necessary to carry out the advice and monitoring that would be required as a part of such work. However, their invaluable local skills and knowledge, and relationships with user groups and local interest groups make them an appropriate body to be considered for taking responsibility for the development management of the undesignated marine historic environment.

The Comhairle would argue that, with increased resources to Local Authority Archaeology Services to address the local skills and access issues, the issue of high level technical expertise could be dealt with by establishing a centre of excellence for advice and support within Historic Scotland, to which the planning authority could refer, and from which it could receive practical and technical support.

**Question 10:**
Given that science and recording has a major role to play in improving knowledge about sites and monuments on the seabed, how can Scottish Ministers and agencies charged with relevant responsibilities best assist in progressing knowledge about Scotland’s marine historic environment?

There is a need for proactive commissioned research to define possible high risk areas on the seabed, and to test and refine our knowledge and understanding of these. This would be most sensibly commissioned by Historic Scotland, to provide a baseline level of information, to inform national and local policy, and plans.
There is also a need (as referred to above, question 9) for the establishment of a centre of excellence, at a national level. Local planning authorities, and other bodies, do not have the resources available to provide such expertise, nor is it necessary for individual areas to have such, but a central group of individuals could advise, support, carry out and commission research, and maintain a level of excellence sufficient to provide a national service. Logically, this should be housed within Historic Scotland.

It would also be wise to establish a grants budget, dedicated to the marine historic environment, which would allow independent bodies, local authorities, and researchers access to resources to pursue research in this area. The more active and disparate the research, the more likely it is that innovative and productive approaches to the marine historic environment will ease the practical difficulties of its management in the future.