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The Marine Wildlife Conservation Bill

[Bill 8 of 2001-02]

The second reading of this Private Member's Bill will be debated on Friday 26 October 2001. The Bill was second in the ballot and introduced by John Randall at its first reading on 18 July 2001.

There has been some pressure in recent years for legislative protection for various parts of UK wildlife and Habitats. The *Countryside and Rights of Way Act 2000* addressed some of these concerns but had little impact on the marine environment. The Government has been reviewing the conservation of the marine environment but has not yet proposed legislation for the marine environment.

This Bill would establish a system of protection (called Marine Sites of Special Interest, MSSIs) for marine environments. The Bill would provide a duty for nature conservation bodies to identify sites of interest and draw up management agreements for the conservation of those features that make the site of special interest.

The Bill extends to only England and Wales.

Stephen McGinness

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Summary of main points

Nature Conservation has been the subject of much lobby group pressure over the past decade. There has been pressure from a range of nature groups to update the *Wildlife and Countryside Act 1981* and from WWF and the Wildlife Trusts to introduce an Oceans Bill. The former desire has been partially fulfilled through the *Countryside and Rights of Way Act 2000*.

Marine sites are more difficult to identify and manage than terrestrial sites due to their more dynamic nature and the natural variation in conditions within the aquatic environment. It is important to note that the access and planning system is also more complicated. The management of these sites will require a co-ordinated effort of all users of that environment to conserve wildlife. Pollution in the aquatic environment is more readily dispersed widely relative to terrestrial environments.

This Bill would introduce a system of identifying sites of interest and organising the management and conservation of those sites. The Bill would address sites of national interest and underpin international and European commitments to habitat conservation and biodiversity.

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I Introduction

The “tragedy of the commons” was originally stated to refer to the degradation of a common environment when each person had a greater personal incentive to exploit that environment rather than conserve it. As population and agricultural technology increase and desire for leisure space for activities the degradation of the environment also increases. Historically legislation has protected the environment by providing financial incentives to conserve rather than exploit the environment.

Both UK and EU legislation exists that seeks to conserve the natural environment and the wildlife dependent upon that environment. There has been a raft of European and international agreements and pieces of legislation which have, in conjunction with national legislation, provided us with the following list of sites:

- World Heritage Sites
- Biosphere Reserves
- Biogenetic Reserves
- Wetlands of international importance (Ramsar sites)
- Special Protection Areas
- Special Areas of Conservation
- Environmentally Sensitive Areas
- Sites of Special Scientific Interest (SSSIs) and Areas of Special Scientific Interest (ASSIs)
- National Nature Reserves
- Marine Nature Reserves
- Areas of Special Protection
- Areas of Outstanding Natural Beauty
- National Parks
- National Scenic Areas
- Natural Heritage Areas
- Country Parks
- Local Nature Reserves
- Limestone Pavement Orders
- And various agri-environment measures such as set-aside

There is also species specific legislation, rather than environmental and habitat protection such as the Wildlife and Countryside Act 1981, CITES, and the Biodiversity Convention which are mentioned later in the paper. The International Whaling Commission makes rules that essentially protect those species from exploitation.

Despite this collection of nature conservation areas the RSPB believe that further protection is necessary:

Why is marine legislation so important?

Many marine wildlife habitats and species are under threat but receive less protection than those on land. With the Countryside and Rights of Way Act 2000 now in effect, the imbalance between land-based and marine wildlife is even greater.

We have international commitments to protect marine wildlife through the Habitats and Birds Directives and the OSPAR Convention. However, there is currently no domestic legislation to underpin these obligations. The Government established the 'Review of Marine Nature Conservation' Working Group in 1999 to look at these issues. An interim report was published in May this year but this does not propose any specific measures for increasing the protection of marine wildlife.

Protected marine sites are needed to allow sensitive species (including many species of dolphins and porpoises, and seabirds like puffins and gannets) to breed, feed or over-winter safely, without disturbance. Better enforcement of wildlife protection measures is also essential. The small but significant changes proposed here would help level the playing field, giving marine sites and species similar protection to those on land.¹

The Wildlife Trusts provide details on the threats to marine wildlife:

- Over 2000 harbour porpoise are caught each year in fishing nets in the Celtic Sea
- Three out of four of the world's biggest oil spills have threatened the British coast and waters
- Many commercial species such as cod are being overexploited and are outside safe biological limits
- Over 75% of salt marsh has been lost over the last 100 years due to land claim and erosion
- An area the size of Cambridgeshire has been measurably contaminated by exploitation for oil and gas
- 50% of deaths of the endangered northern right whale (now extinct in British waters) are due to being hit by ships²

and highlight the inadequacy of current protection for marine wildlife:

- less than 0.5% of UK water are designated
- no marine protected areas exist for British whales and dolphins
- only around 60% of our habitats and species identified in the UK Biodiversity Action Plans can be afforded any protection by the Habitats Directive
- there is currently no protection for offshore habitats and species³

¹ *RSPB Parliamentary Briefing*, October 2001

² *Wildlife Trusts Parliamentary Briefing*, October 2001

³ *Wildlife Trusts Parliamentary Briefing*, October 2001

More detail on earlier nature conservation legislation is available in earlier Library Research Papers: *The Countryside and Rights of Way Bill - Wildlife and Conservation [Bill 78 of 1999-2000]*⁴, *The Habitats Directive and the UK conservation framework and SSSI system*,⁵ *Are we fishing the seas dry?*⁶ 93/94 *Biodiversity* 26.10.93⁷ and more general nature conservation information in 98/70 *Agriculture and the Environment* 20.06.98⁸ and 95/85 *Global Warming: Environmental and Economic effects* 07.07.95.⁹

II Marine Wildlife Legislation

A. UK Legislation

A number of Acts require marine conservation to be taken into account. In the 1990s various policies, in response to events and international obligations, provided some redress including: the *Water Resources Act 1991*; the *Water Industry Act 1991*; the *Transport and Works Act 1992*; various Merchant Shipping regulations; offshore regulations and the *Sea Fisheries (Wildlife Conservation) Act 1992*.¹⁰ All these place varying degrees of environmental responsibility on relevant bodies to take account of nature conservation when carrying out their functions.

The *National Parks and Access to the Countryside Act 1949* provided the beginnings of many of the bodies and mechanisms used today.

The National Parks Commission set up under the 1949 Act became first the Countryside Commission (1968) and then the Countryside Agency (1999). Between 1951 and 1957 ten national parks were established under this Act. A special case, The Broads, was added in 1989. The Broads are not legally a national park; they were set up under the *Norfolk and Suffolk Broads Act 1988* rather than the *National Parks and Access to the Countryside Act 1949*. They are, however, usually considered part of the national parks group and are reported on within the Association of National Park Authorities Annual

⁴ Library Research Paper 00/30, *The Countryside and Rights of Way Bill - Wildlife and Conservation [Bill 78 of 1999-2000]*, 16 March 2000
<http://www.parliament.uk/commons/lib/research/rp2000/rp00-030.pdf>

⁵ Library Research Paper 94/90, *The Habitats Directive and the UK conservation framework and SSSI system*, 15 July 1994
<http://hcl1.hclibrary.parliament.uk/rp94/rp94-090.pdf>

⁶ Library Research Paper 94/112, *Are we fishing the seas dry?*, 07 November 1994
<http://hcl1.hclibrary.parliament.uk/rp94/rp94-112.pdf>

⁷ Library Research Paper 93/94, *Biodiversity*, 26 October 1993
<http://hcl1.hclibrary.parliament.uk/rp93/rp93-094.pdf>

⁸ Library Research Paper 98/70, *Agriculture and the Environment*, 20 June 1998
<http://www.parliament.uk/commons/lib/research/rp98/rp98-070.pdf>

⁹ Library Research Paper 95/85, *Global Warming: Environmental and Economic effects*, 07 July 1995
<http://hcl1.hclibrary.parliament.uk/rp95/rp95-085.pdf>

¹⁰ *Marine Update 45*, WWF, April 2001

Reviews. There have been repeated calls for the New Forest and the South Downs to be added to the list of national parks. After receiving advice from the Countryside Commission, *Protecting our Finest Countryside*,¹¹ both are being considered for national park designation.¹²

The next major piece of countryside legislation was the *Countryside Act 1968* which established the Countryside Commission and provided new powers for local authorities to establish country parks. The Act also made provision (section 11) that:

In the exercise of their functions relating to land under any enactment every Minister, governing department and public body shall have regard to the desirability of conserving the natural beauty and amenity of the countryside.¹³

The 1968 Act also made provision for the establishment of management agreements between conservation agencies and the owners of SSSIs. These agreements were, however, to forgo development rights rather than to positively manage the site.

Following this was the *Wildlife and Countryside Act 1981* that provided extensive protection for a whole range of wildlife species and habitats. The Act extended protection given to wildlife sites to provide control over damaging activities by the owners, or occupiers, of sites. The motivation for this legislation was the perceived damage caused by agricultural activity on, or near, the sites of interest.¹⁴

Though there have been subsequent changes to the way in which conservation has been managed through Government, there has been little change to the national legislative basis of nature and wildlife conservation.

The patchwork of protection for wildlife and nature conservation sites in the UK can appear confusing and some wildlife organisations felt frustrated that sites could be recognised as important but receive no statutory protection. The *Countryside and Rights of Way Act 2000* went some way to addressing some of the latter concerns.

Biodiversity conservation and areas of outstanding natural beauty were both put on a statutory basis. The Act required government departments to pay greater regard to biodiversity in carrying out their functions and they were also required to actively promote the conservation of listed species and habitats. For Areas of Outstanding Natural Beauty (AONBs), local authorities were given a duty to prepare and publish management plans. Existing plans were to be reviewed then either adopted or replaced with a new

¹¹ Department of the Environment Transport and the Regions 953/ENV, *First steps to create new national parks*, 29 September 1999

¹² <http://www.cnp.org.uk/>

¹³ Section 11; *Countryside Act 1968*

¹⁴ M Shoard, *The Theft of the Countryside*, 1981

plan. Plans must be adopted by 31 March 2004 and then reviewed every five years thereafter.

All government bodies and agencies and any person holding public office have, in the course of fulfilling their functions, a duty to pay regard to conserving and enhancing the natural beauty of an AONB. If an AONB should cross the jurisdiction of more than one local authority area, provision has been made for the creation of Conservation Boards that would manage the site. The funding for these boards would come from a combination of places, including the Secretary of State, the Countryside Agency and the constituent local authorities.

In addition, the Act strengthened protection provided to Sites of Special Scientific Interest (SSSIs). Greater power was granted to English Nature in negotiating management agreements, refusing consent for damaging operations, and taking action where damage is being caused through neglect or inappropriate management. A statutory duty was placed on Local Authorities to further the conservation and enhancement of SSSIs both in carrying out their operations, and in exercising their decision making functions.

B. European and International Legislation

Natura 2000 is the umbrella term used for the network of areas created under EU nature conservation legislation.

EU Nature conservation policy is based on two main pieces of legislation - the Birds directive and the Habitats directive - and benefits from a specific financial instrument - the LIFE-Nature fund. Its priorities are to create the European ecological network (of special areas of conservation), called NATURA 2000, and to integrate nature protection requirements into other EU policies such as agriculture, regional development and transport.¹⁵

The 1992 UN Conference on Environment and Development, often known as the Earth Summit, concluded that biodiversity was a global resource that required some effort to conserve and provided the Convention on Biological Diversity, introduced below by the International Institute on Sustainable Development.

The Convention on Biological Diversity was negotiated under the auspices of the United Nations Environment Programme (UNEP). It was opened for signature at the June 1992 UN Conference on Environment and Development (UNCED) and entered into force on 29 December 1993, ninety days after the 30th ratification. As of October 1998, more than 170 countries had become Parties. The three goals of the CBD are to promote the conservation of biodiversity, the sustainable use of

¹⁵ <http://europa.eu.int/comm/environment/nature/home.htm>

its components, and the fair and equitable sharing of benefits arising out of the utilization of genetic resources.¹⁶

Though less well reported in the press than the Climate Change Convention which arose from the same conference, the Biodiversity Convention requires the UK to tend to its biological resources. The UK Biodiversity Action Plan¹⁷ laid out mechanisms by which such biodiversity might be sustained and the Countryside and Rights of Way Act 2000 gave local biodiversity action plans a statutory authority. To achieve this there needs to be an active effort to identify where the Government can balance the needs of its commercial activity with those of its wildlife.

Private companies, landowners, fishermen, and farmers take most of the actions that affect biodiversity. Governments need to provide the critical role of leadership, particularly by setting rules that guide the use of natural resources, and by protecting biodiversity where they have direct control over the land and water. Under the Convention, governments undertake to conserve and sustainably use biodiversity. They are required to develop national biodiversity strategies and action plans, and to integrate these into broader national plans for environment and development. This is particularly important for such sectors as forestry, agriculture, fisheries, energy, transportation and urban planning. Other treaty commitments include:

- Identifying and monitoring the important components of biological diversity that need to be conserved and used sustainably.
- Establishing protected areas to conserve biological diversity while promoting environmentally sound development around these areas.
- Rehabilitating and restoring degraded ecosystems and promoting the recovery of threatened species in collaboration with local residents.
- Respecting, preserving and maintaining traditional knowledge of the sustainable use of biological diversity with the involvement of indigenous peoples and local communities.
- Preventing the introduction of, controlling, and eradicating alien species that could threaten ecosystems, habitats or species.
- Controlling the risks posed by organisms modified by biotechnology.
- Promoting public participation, particularly when it comes to assessing the environmental impacts of development projects that threaten biological diversity.
- Educating people and raising awareness about the importance of biological diversity and the need to conserve it.
- Reporting on how each country is meeting its biodiversity goals.¹⁸

¹⁶ <http://www.iisd.ca/linkages/biodiv/cbdintro.html>

¹⁷ <http://www.ukbap.org.uk/>

¹⁸ <http://www.biodiv.org/doc/publications/guide.asp?id=action-nat>

This Convention not only requires the sustenance of native species but of the support networks necessary to conserve biodiversity of migrant species. The requirements of the Convention are not legal requirements in the UK but do gain some authority when biodiversity action plans are drawn up with strategies and targets for conserving biodiversity. Some species are highlighted in action plans for conserving biodiversity including conservation of marine species such as *Cetorhinus maximus*, the Basking Shark. The RSPB said:

Every year, over seven million seabirds such as puffins and gannets, come to the shores of the British Isles to breed, often in spectacular colonies. Millions more waders, gulls and sea-ducks, winter on our coasts. The UK supports a large part of the world population of many seabirds and we have an international duty to conserve them.¹⁹

C. Background to Marine Conservation Legislation

The *Wildlife and Countryside Act 1981* established a system of conservation sites, called Marine Nature Reserves, which were supposed to provide a measure of protection for marine wildlife. The Habitats Directive²⁰ and Birds Directive²¹ have both provided specific wildlife oriented legislation that can address wildlife concerns. Each of these have their own specific aims and areas where they are more, or less, applicable. The Convention for the Protection of the Marine Environment of the North-East Atlantic (OSPAR Convention)²² indirectly addresses some wildlife concerns by limiting marine pollution that has a detrimental impact on marine wildlife.

The United Nations Convention on the Law of the Sea and the conservation of natural resources provides obligations coastal states to conserve fishing stocks. The International Whaling Commission²³ essentially work to conserve whale populations and the Convention on Migratory Species²⁴ addresses the conservation of species that cross national and other regulatory boundaries.

Nature conservation groups, for example the Wildlife Trusts, do not believe that this legislation has resulted in a sufficient level of protection for marine habitats or marine species (dolphins, fish and birds). The Habitats Directive, for example, is intentionally directed towards the conservation of habitats that are rare in Europe. It does not provide direct protection for species though it does list priority species which are conserved through preservation of habitats. As detailed elsewhere in the paper, there has been some pressure for UK legislation that addresses the problems of UK marine wildlife.

¹⁹ RSPB Parliamentary Briefing, October 1998

²⁰ <http://europa.eu.int/comm/environment/nature/habdir.htm>

²¹ <http://europa.eu.int/comm/environment/nature/en.pdf>

²² <http://www.ospar.org/eng/html/welcome.html>

²³ <http://ourworld.compuserve.com/homepages/iwcoffice/>

²⁴ <http://www.wcmc.org.uk/cms/>

In 1998, the Government consulted on Sites of Special Scientific Interest (SSSIs) and had the following to say with regard to marine sites:

The Government accepts that the concept of Marine Nature Reserves established under the 1981 Act has not been as successful as had been hoped, and only 3 have been designated to date. Procedures are regarded as complex and unwieldy, and in need of administrative overhaul. Nevertheless the arrangements for marine SACs and SPAs for Birds in the future, should prove significant in protecting areas of international importance and it is arguable whether further changes are practicable or desirable. The Government proposes however to set up a working party to consider and report back within 12 months on the options for improving protection for marine sites and species.²⁵

The Working Group was referred to by Lord Whitty in a debate in October 2000:

Several noble Lords raised the issue of marine conservation. The noble Lord, Lord Walpole, my noble friend Lord Judd and the noble Lord, Lord Glentoran, raised the issue in various ways. The Government acknowledge that the system of marine nature reserves, put in place by the 1981 Act, has not been in some respects as successful as we had hoped it would. However, the application of a habitats directive has created a series of marine special areas of conservation and is developing management schemes for those sites. In drawing on those experiences we set up a review of marine nature conservation the year before last. The group has representatives from all interest groups and we hope to report by the end of this year. The focus is on inshore waters between the low water mark and 12 miles. But they will be taking note of developments beyond that, including changes to the SSSI which are proposed by the Countryside and Rights of Way Bill.²⁶

Since then, several Parliamentary Questions sought details of the review:

Mrs. Brinton: To ask the Secretary of State for the Environment, Transport and the Regions if he will make a statement on the geographic extent of the review of Marine Nature Conservation with regards to (a) distance offshore and (b) marine nature conservation in Wales, Scotland and Northern Ireland.

Mr. Mullin: The original Terms of Reference for the Review of Marine Nature Conservation were to consider issues to the limit of UK Territorial Waters. However, since then the Review's Terms of Reference have been extended to allow consideration to issues up to the limit of UK jurisdiction, that is the UK Continental Shelf and superjacent waters to a limit of 200 nautical miles from baselines.

²⁵ *Sites of Special Scientific Interest: Better Protection and Management*, DETR Consultation 1999
<http://www.defra.gov.uk/wildlife-countryside/consult/ssi/10.htm#marine%20sites>

²⁶ HL Deb 13 Oct 2000 c 654

The devolved Administrations have responsibility for marine nature conservation up to the limit of Territorial Waters, subject to the requirements to meet international and European obligations.

Mrs. Brinton: To ask the Secretary of State for the Environment, Transport and the Regions what the timetable is for his Department's review of marine nature conservation.

Mr. Mullin: The Working Group of the Review of Marine Nature Conservation was originally due to report its findings to Ministers by the end of this year. However, since that timetable was agreed the Review's Terms of Reference have been extended to include consideration of issues beyond UK Territorial Waters to the limit of UK jurisdiction. In view of this, the timetable for reporting on the outcome of the Review has been extended and the Working Group is now expected to report on its consideration of issues to the extent of UK Territorial Waters during the first quarter of next year. The Working Group's final report, taking into account issues to the limit of UK jurisdiction, will be presented to Ministers by the end of summer next year.²⁷

Mr. Pickthall: To ask the Secretary of State for the Environment, Transport and the Regions what discussions he has had with organisations about the Wide Fund for Nature's proposals for an oceans statute.

Mr. Meacher: I understand that the WWF, in discussions in the Working Group of the Review of Marine Nature Conservation, have put forward proposals on the need for further legislation to protect the marine environment. This Working Group was established by the Government to review the options for improving the protection available for the marine environment. An interim report is due to be presented to Ministers soon. This will set out a range of options on possible ways forward and highlight where strategic decisions may be necessary.²⁸

In March 2001, the interim report was produced. It accepted that there was a problem:

The consultation document recognised that the creation of a network of Marine Nature Reserves (MNRs), as established under the 1981 Act, had not been as successful as hoped. It also acknowledged that other developments, especially the designation of marine sites under the European Union's Birds and Habitats Directives, had focused attention on these matters. The time was ripe to consider whether further changes were necessary.²⁹

The interim report summarised the current situation for marine wildlife conservation:

²⁷ HC Deb 30 November 2000 cc 780-1W

²⁸ HC Deb 28 Feb 2001 c 688W

²⁹ *Review of Marine Nature Conservation - Interim Report*, DEFRA, March 2001
<http://www.defra.gov.uk/wildlife-countryside/ewd/rrrpac/marine/index.htm>

61. The marine environment contains some of the most important elements in the UK's biodiversity. Yet, even after half a century of research effort, its components remain relatively unknown and unmapped. Research into marine habitats and species has been extensive but we still lack comprehensive picture of the incidence and distribution throughout the territorial seas over which the UK has jurisdiction of those elements of marine nature conservation to which the greatest priority ought to be afforded. At the same time, we have become more and more aware of the pressures acting upon the marine environment. Whilst some may challenge the extent of human impacts, few seriously doubt that these are considerable and that evidence strongly suggests that their effects are growing.

62. However, the relationship between the growing realisation of the value of the marine environment and the accelerating pressures upon it has not produced a coherent response. The marine environment certainly does not lack environmental policies and regulation but these can be characterised as generally being haphazard responses to specific issues or particular stimuli (often deriving from outside the UK). Despite the considerable number of measures promoted in the last two decades, the general approach to marine conservation has been one of non-intervention in comparison to the active management framework for conservation increasingly promoted on land.

63. There is little to warrant this difference. Both terrestrial and marine conservation require legal and policy frameworks in which to work, involving a mix of site-based habitat and species protection and wider measures. This could be achieved by a combination of stronger legislation, partnerships and placing existing sectoral approaches in a clearer common context. A particular priority is the development of a common approach to the identification of vulnerable and/or nationally important, marine habitats and species.

64. But perhaps the key is the need for an integrating framework for national marine conservation measures within UK waters. The benefits of such an approach relate to consistency, co-ordination of action, application at the most appropriate scale and previous experience. There are also international obligations that may be better delivered through such an integrated approach. Many elements that could contribute to an integrated approach to marine nature conservation already exist, or are in the course of development. However, they lack an overall coherence which can provide an effective implementation framework to carry them out.

65. Nor would such an approach be solely for the benefit of the conservation interest. The present piecemeal approach to policy and regulation provides duplication, wasted effort and, sometimes, contradictory signals to those who legitimately operate within the marine environment. Frequently it has failed to promote either effective conservation or any guarantee of the sustainable continuation of other activities. Only with more effective management and protection, can the marine environment continue to flourish in support of marine industries, fisheries and recreation.

66. There is therefore a demonstrable case for a strategic, marine nature conservation framework. The current reactive approach, with its lack of any effective, cohesive supporting legislative or policy base, could be developed into a strategic, co-ordinated, proactive approach that provides practical mechanisms to manage marine biodiversity. Such challenges, particularly as applied to implementation in offshore areas, have already been encountered elsewhere in the world, notably in Canada and the United States, and similar issues are now starting to be considered in a European context by OSPAR, ICES³⁰ and the European Environment Agency.

67. However, it is equally important that the development of such a national marine conservation framework be aware of, and integrate with, wider environmental concerns. It must be squarely placed within the wider agenda of sustainable development. Within the marine environment, conservation issues are often impossible to isolate from wider environmental concerns and their protection and management requires the co-operation of other sea users. Any new framework for marine conservation must have at its heart, a clear understanding of its relationship to the strategic environmental management of the sea, and the active participation and co-operation of other marine regulators and sea users.

68. The remainder of this report therefore considers the principles which might underlie an integrated marine conservation framework for the UK, outlines the elements which such a framework would need to include, the major problems it would have to resolve, and discusses how it could be developed.³¹

With this situation identified the Working group presented the following conclusion:

150. This report illustrates the complex and wide ranging character of the issues that affect marine nature conservation. Not only does this subject range across a geography from the beach to the deepest oceans but it interacts with a cross section of other environmental issues which are equally complex and touches upon a spectrum of sea users whose impacts upon it vary enormously. The current system for regulating and managing marine conservation is complicated, has evolved in a somewhat haphazard manner, and involves players from the smallest local authority to global conventions. Constructing a framework within which all these elements can be satisfactorily accommodated is challenging. There is a need to establish a basic architecture without which detailed proposals will flounder without context.

151. This report attempts to identify the issues that need to be resolved if that architecture is to be provided. It does not promote the details of any particular framework though it tries to demonstrate where advantages and disadvantages of particular approaches might lie. Depending on the fundamental assumptions adopted, a series of principles are put forward that could form the basis for the

³⁰ International Council for the Exploration of the Sea, <http://www.ices.dk/>

³¹ *Review of Marine Nature Conservation - Interim Report*, DEFRA, March 2001
<http://www.defra.gov.uk/wildlife-countryside/ewd/rrrpac/marine/07.htm>

design of a comprehensive framework within which a new system could be placed.

152. The report recognises the importance of maintaining momentum. It therefore concludes that not only should early decisions be sought on the strategic assumptions that should underpin a framework for marine nature conservation, but that a number of areas of work should be carried forward at the first opportunity. Those initiatives, identified above, must be useful to almost any conceivable structure that is adopted and are likely to be essential as a precursor both to any radical changes in the administration of marine nature conservation and/or any legislation that is thereby necessary. This report therefore recommends that these initiatives are adopted and the Working Group remains in existence to manage them. The Working Group could also continue to play an important role in managing the process of moving towards a new framework, though its membership and terms of reference may have to be amended.

153. The one option that the report cannot recommend is the retention of the status quo. At the very least, the continuing evolution of marine conservation regulation threatens to make an already complex situation even more confusing: some rationalisation – even if only at the level of the adoption of more common objectives – is essential. On this matter, there is consensus between conservationists, regulators and regulated.³²

It would appear that there is an identified need for legislation to protect marine wildlife and habitats. This is, however, still an interim report and the RSPB, in a Parliamentary briefing,³³ point out that the interim report contains no specific measures for increasing the protection of marine wildlife. The full report is yet to be published.

D. Campaigning for Marine Legislation

The nature conservation organisations have been busy lobbying for marine wildlife legislation.

The Wildlife Trusts have been calling for sometime for a significant improvement in the management of the marine environment and for the delivery of an ecosystem-wide approach. One aspect of this approach is strong legislation to protect our marine wildlife and the habitats on which they are dependent. It will also be important to integrate this with improved legislation for the management of the wider marine environment that ensures that the seas themselves are healthy and clean. To this end, we are calling on the Government to commit to the publication of a White Paper and introduction of an Oceans Act.³⁴

³² *Review of Marine Nature Conservation - Interim Report*, DEFRA, March 2001

<http://www.defra.gov.uk/wildlife-countryside/ewd/rrrpac/marine/11.htm>

³³ *RSPB Parliamentary Briefing*, October 2001

³⁴ <http://www.quiet-storm.net/wildlifetrusts/mainframe.php?section=ourwork&page=campaigning>

The Worldwide Fund for Nature is currently conducting a campaign called ORCA, an Oceans Recovery Campaign. ORCA seeks:

- An increase in the number of Marine Protected Areas to cover at least 10 per cent of our seas to help protect marine wildlife.
- The introduction of Fishing-Free Zones to help fish stocks recover.

In the longer term, WWF wants to see the introduction of an Oceans Act to provide the best legislative support for protecting the marine environment for wildlife and people.³⁵

Fishing free zones is an enormously complicated issue that cannot simply be addressed through conservation legislation and potentially can only be properly addressed through an amended Common Fisheries Policy.³⁶

The Worldwide Fund for Nature claim that

The UK's marine environment is in crisis! Our seas have been treated as a rubbish and chemical dump, our coastal habitats have been ripped up and reclaimed for development, and many of our fish stocks are over-exploited and heading towards commercial extinction. Yet, despite the high-level of threat facing our marine life, little information is publicly available about the health of our seas.

They published a report late in 2000 that reviewed the state of the marine environment. This document looked at ten selected species and six selected habitats from UK waters and concluded:

The damage and threats to these species and habitats indicate that the health of the UK's marine environment is deteriorating. Rapid action is needed to help our marine life recover. Because the number of threats facing these species and habitats is so vast, it is not possible in this report to discuss all the solutions that are needed to address them. However, as part of WWF's Oceans Recovery Campaign (ORCA), WWF is pointing to a number of solutions that will help to kick-start this recovery. Hundreds of different laws and policies govern our seas - but they frequently conflict with each other. WWF wants the Westminster government, the Scottish parliament, and the National assemblies of Wales and Northern Ireland, to introduce an 'eco-system' approach to the management of the oceans. This will require co-ordinated legislation - an Oceans Act - in order to provide the best legislative support for protecting and managing our precious marine environment, for the benefit of wildlife and coastal communities.³⁷

³⁵ <http://www.wwf.org.uk/orca/>

³⁶ <http://hcl1.hclibrary.parliament.uk/Notes/ses/Fisheries/CFP2002.pdf>

³⁷ WWF, *Marine Health Check*, September 2000

The WWF, in conjunction with the Wildlife Trusts, have detailed what they want from an Oceans Bill:

An Oceans Act should include

1. General Principles including the need for wider management of the marine environment, the ecosystem approach, the precautionary principle, the pollution [sic] pays principle³⁸ and a duty of care for the marine environment.
2. A framework for the delivery of marine management and conservation: i.e. the governmental infrastructure. This might be a marine department or agency or an interdepartmental policy group.
3. Assessment tools such as the Strategic Environmental Assessment (SEA), the Environmental Impact Assessment (EIA), and risk assessment.
4. Delivery tools including, for example, marine protected areas, no take zones or fishing-free zones, biodiversity action plans, pollution management measures, shipping designations, management controls on licensing of extractive industries or offshore development.
5. Restoration tools such as fish regeneration areas, pollution reduction measures and wetland restoration.
6. The structure for the management of the marine environment: i.e. the wider marine environment, regional seas, landscapes.
7. Research – government research programmes should be integrated with policy and management needs.
8. Enforcement – including policing, including possibly integration of marine and coastal policing such as Customs and Excise, fisheries protection, shipping inspection, coastguard and enforcement provisions such as prosecution and fines.
9. Fiscal measures to promote recovery and sustainable use of the marine environment.³⁹

The RSPB also campaign for improvements in legislative protection for marine sites:

Protected marine sites are needed to allow sensitive species (including many species of dolphins and porpoises and seabirds like puffins and gannets) to breed, feed or over-winter safely without disturbance. Better enforcement of wildlife protection measures is also essential.⁴⁰

The importance of many marine sites is not always obvious, estuarine and coastal mudflats and saltmarshes are often overlooked in their importance with respect to biodiversity and habitat provision to a range of marine wildlife, especially birds.

The Marine Conservation Society⁴¹ are also concerned that marine wildlife and habitats receive better protection:

³⁸ more likely to mean the *polluter pays principle*

³⁹ *Marine Update 45*, WWF, April 2001

⁴⁰ Personal communication with RSPB Parliamentary Officer

⁴¹ <http://www.mcsuk.mcmail.com/>

In the UK only a minute proportion of the marine environment, especially beyond 1 nautical mile is protected due to its nature conservation importance. There are only three National Marine Nature Reserves (Lundy, Skomer and Strangford Lough) designated under the current Wildlife and Countryside Act, and yet many areas have been identified as being important with the establishment of several Voluntary Marine Nature Reserves and identification of Marine Sites of Nature Conservation Interest in Sussex. But these sites are reliant on voluntary co-operation of users to ensure that their features of interest are protected and there are no powers to enforce the protection measures needed to maintain these sites for future generations.

The current provisions for the protection of marine biodiversity under the EC Habitats Directive are extremely restricted in the marine environment, as they afford protection for just a handful of UK marine species and habitats of *European importance* (i.e. common and grey seals, harbour porpoises, bottlenose dolphins and reefs). The Habitats Directive does not allow for the protection of areas that support species and habitats of *UK importance*, such as the priority species and habitats identified under the UK Biodiversity Action Plan (e.g. pink sea fan, sunset cup coral, basking sharks, fan shell, horse mussel beds), or for areas that support a high natural diversity of species, or ecologically important habitats.⁴²

The Marine Conservation Society supports the proposed Marine Wildlife Conservation Bill as an important contribution towards the protection of the UK's marine biodiversity.

III The Marine Wildlife Conservation Bill

The Marine Wildlife Conservation Bill⁴³ is a Private Members Bill introduced by John Randall who came second in the Private members ballot. The text of the Bill is available on the Internet⁴⁴ as are explanatory notes.⁴⁵ The following is a brief guide to the Bill which extends only to England and Wales.

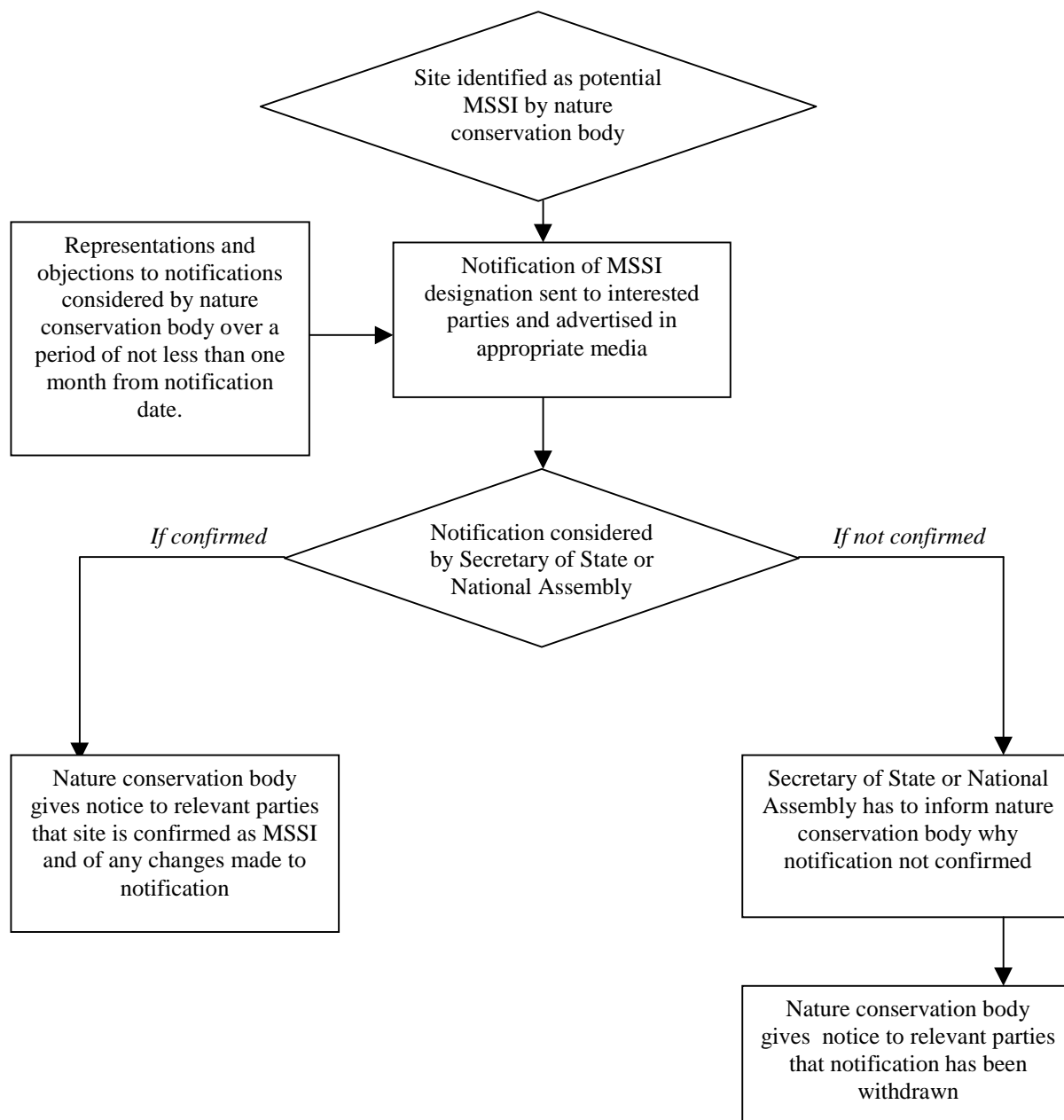
⁴² Personal Communication with the Marine Conservation Society

⁴³ <http://pubs1.tso.parliament.uk/pa/cm200102/cmbills/008/2002008.htm>

⁴⁴ <http://pubs1.tso.parliament.uk/pa/cm200102/cmbills/008/2002008.htm>

⁴⁵ <http://pubs1.tso.parliament.uk/pa/cm200102/cmbills/008/en/02008x--.htm>

Clause 1 will establish a new kind of conservation area, the Marine Site of Special Interest (MSSI). This designation is intended to complement the Habitats Directive and an MSSI could lie within a SAC or SPA. If an MSSI is to be established then everyone with either rights or duties related to the site will have to be notified as far as practicable.



When a site is notified as a MSSI interested parties will have a specified time to make representations to the appropriate nature conservation body.⁴⁶ The notification will contain the reasons for the site being considered as a MSSI and a statement on how the site should be managed to conserve the features of interest. If notification of a MSSI has

⁴⁶ *English Nature in England, Countryside Council for Wales in Wales*

not been confirmed by either the Secretary of State, for English sites, or the National Assembly, for Welsh sites, then the notification will cease to have effect and the nature conservation body will receive information from the appropriate authority why the notification was not confirmed.

The Bill does not require that a notified MSSSI be subject to the conservation statement from the moment of notification as occurs with other conservation areas. This has the potential for sites to be degraded while waiting for notification to be confirmed by the relevant authority. The timescale, however, is stipulated and notifications, if suitable, should take no longer than six months to receive confirmation.

After an MSSSI has been confirmed it will be possible to vary the conditions within the notification, subject to approval by the appropriate authority. It will also be possible for nature conservation bodies to denotify a site if it is considered no longer worthy of special interest.

Clause 2 will establish a duty for nature conservation bodies to monitor the existence of MSSSIs and to make the information compiled available to the public.

Clause 3 puts a duty on competent marine authorities⁴⁷ to have consideration for MSSSI conservation when carrying out their required functions. It will be possible for such authorities to agree a management scheme (detailed in **Clause 4**) with the nature conservation body so that their core functions might be better carried out without constant reference back to the nature conservation body. Activity outside their core functions is likely to require consultation with the nature conservation body and to demonstrate that such advice has been considered.

Reports made by nature conservation bodies to the Secretary of State will have to include reference to their functions and duties with respect to MSSSIs.

Clause 5 provides the Secretary of State and National Assembly with the power to direct *relevant marine authorities*⁴⁸ with regard to management schemes. This means, for example, that the Secretary of State could instruct that particular conservation measures would have to be taken in the management scheme and that those steps would have a time limit within which they would have to be accomplished.

Clause 6 extends the powers of Section 37 of the Wildlife and Countryside Act 1981 to MSSSIs, thereby providing nature conservation bodies to make by-laws to protect such sites: previously such by-laws were only for marine nature reserves.

⁴⁷ a range of public bodies including local authorities as identified in clause 7 of the Bill

⁴⁸ Those marine authorities that are not a Minister of the Crown or a Government department or the National Assembly for Wales

The Bill, if enacted, will require an order by the Secretary of State for it to come into force in England and an order by the National Assembly for it to come into force in Wales.

A. Governmental Organisations

The main governmental organisations will be the nature conservation bodies that have to notify sites and maintain a register of the MSSIs. These nature conservation bodies are English Nature and the Countryside Council for Wales, as established under the *Environment Protection Act 1990*.

English Nature is the governments statutory advisor on nature conservation in England with jurisdiction out to the 12 mile territorial limit.

Currently there are three principle statutory measures available that have been designed in whole or in part to deliver marine conservation in the UK. English Nature has a key statutory role in the implementation of each :

- Marine Nature Reserves (MNRs), which offer limited protection to habitats and species in a few areas – there is one in England, Lundy Island in the Bristol Channel.
- The Habitats and Birds Directives, which provide for the establishment of a European network of sites that offer protection for wide ranging species and important habitats - Special Areas of Conservation (SACs) and Special Protection Areas (SPAs) respectively. There are 64 of these European marine sites in England.
- Schedule 5 of the Wildlife and Countryside Act, provides a mechanism to protect specified marine species such as Basking shark and all species of dolphins, porpoises and whales.

English Nature also has a statutory role in notifying Sites of Special Scientific Interest (SSSIs). SSSIs can extend to mean low water which affords protection of inter tidal species and habitats. Beyond this boundary there is no protection to marine species or habitats unless they fall under the provision of the above.

English Nature has a duty to safeguard these international and national sites and has legal measure under the Conservation (Natural Habitats &c.) Regulations 1994 and the Wildlife and Countryside Act as amended by the Countryside Rights of Way Act 2000.⁴⁹

⁴⁹ Personal Communication with English Nature Parliamentary Officer

English Nature states⁵⁰ that marine wildlife receives less protection than terrestrial wildlife. In addition, the marine environment is under greater threat than ever from pollution and resource exploitation. They recommend protected sites to allow the variety of functions necessary for the life-cycle of marine wildlife.

The Countryside Council for Wales also welcomed the Bill:

1. The Countryside Council for Wales is the statutory adviser to government on sustaining natural beauty, wildlife and the opportunity for outdoor enjoyment throughout Wales and its inshore waters. With English Nature and Scottish Natural Heritage, CCW delivers its statutory responsibilities for Great Britain as a whole, and internationally, through the Joint Nature Conservation Committee.
2. CCW welcomes this Bill, which seeks to improve the conservation of wildlife in the marine environment around Wales.
3. In particular CCW supports the proposal for a mechanism to designate sea areas of Wales, which are of national importance for their marine habitats and species. This would for the first time establish a site network for territorial waters to compliment the network of Sites of Special Scientific Interest (SSSIs) on land. We are pleased to note however, that the Bill recognises that there is no need to apply a further designation to those areas, which have already been designated as part of the Natura 2000 network, or have been identified as candidate Special Areas of Conservation under the Habitats Directive.
4. We also urge that the opportunity is taken through this Bill to rectify what CCW recognises as an anomaly within the current SSSI mechanism where it is generally accepted that the seaward limit of intertidal sites is taken as Mean Low Water Mark of Ordinary Tides. As the attached annex demonstrates this is ecologically unsound and we urge that the boundary between SSSIs and Marine Sites of Special Scientific Interest is taken at the level of the Lowest Astronomical Tide (or Chart Datum to which it closely equates).
5. CCW welcomes the proposals within the Bill, which combine some of the more valuable elements of both the current SSSI legislation and the Habitat Regulations. However as with any piece of innovative legislation there are points of detail that are of concern to CCW and we will address these separately with the promoters of the Bill.

Along with the other UK conservation agencies, CCW has promoted the need for a strategic approach to the conservation of our marine environment – working together with all stakeholders on the management of our seas. Whilst the Bill will play its part in this, there is still an urgent need to plan the future use of our seas

⁵⁰ Personal Communication with English Nature Parliamentary Officer

in a way that is environmentally sustainable and for a more comprehensive approach to marine conservation.⁵¹

There is currently no effective British legislation to protect nationally important wildlife sites. The Habitats Directive works on the terrestrial environment alongside the SSSI framework, international and national legislation complementing one another. There is no such effective national legislation for the marine environment. English Nature supports the Bill:

These measures would both safeguard our national areas outside European Marine Sites as well as ensuring that within such areas previously unprotected national wildlife interests are afforded national protection.

This support comes with a recognition that further measures would be necessary to fully

...take account of the special characteristics of the marine environment including its three-dimensional and dynamic nature.

Also identified was a need for ensuring that the legislation, if enacted, would need to be effective:

The selection, designation and management processes would need to ensure a cost effective approach and would need to ensure that all competent authorities made an appropriate contribution. Clear Government policy guidance is essential to support any system of protection.

B. Non-Governmental Organisations

The *RSPB* believes that there is a pressing need for specific marine wildlife protection as the protection for terrestrial wildlife has progressed while protection for marine wildlife has not.

The small but significant changes proposed here would help level the playing field, giving marine sites and species similar protection to those on land.

The *RSPB* briefing paper expands on the benefits that the Bill would bring to marine wildlife conservation:

A Marine Wildlife Conservation Bill would address two urgently required measures:

Protecting nationally important marine sites & species

Too few protected sites have been designated in the marine environment. Of the 6500 or so Sites of Special Scientific Interest (SSSIs) in the UK, only 5% are

⁵¹ Personal Communication with Countryside Council for Wales Marine Wildlife Officers

estuarine and virtually none extend below low water. There is an urgent need for a new designation to protect and manage nationally important wildlife sites in the marine environment, sites which do not or will not benefit from European designations. The Bill would cover English and Welsh territorial waters out to 12 nautical miles (responsibility for Scottish and Northern Irish territorial waters has been devolved).

Enforcing marine conservation

Protection and enhancement of nationally important marine sites will need proper enforcement. To this end, the statutory nature conservation agencies would be expected to seek assistance from existing authorities operating in the marine environment (e.g. Sea Fisheries Committees, the Environment Agency). Public bodies already have a range of powers to manage activities in the marine environment, powers which they will be expected to exercise to conserve and enhance sites. However, in some situations these bodies may not be able to act, and the byelaw making powers of the statutory nature conservation agencies will therefore be extended, allowing them to act where no-one else can.⁵²

The *Worldwide Fund for Nature* would like to see ten percent of the United Kingdom's seas to be protected by 2010. This legislation would provide a stepping stone to that target but they feel that more extensive legislation will be required to achieve the substantial improvement in the conservation of marine wildlife that is required. There are perceived problems with fisheries and the EU Common Fisheries Policy as they do not believe it provides enough weight to the conservation needs of fisheries.

WWF is calling on the governments of the UK to support UK fishermen in piloting potential solutions to poor fisheries management such as a system of Fishing-Free Zones in the south-western approaches. Time is not only running out for some of our UK fish stocks, but also for some of our fishermen. Fishing-Free Zones, in combination with other management measures, actually offer a chance of improving fish stocks.⁵³

It is unlikely such a system would be established under the current Bill.

The *Crown Estate*, the largest owner of estuarial and tidal riverbed and territorial seabed between baseline and 12 mile limits, has a significant interest in the marine environment. As such, they are participants in the Marine Nature Conservation Review Group and subscribe to the view of the interim report that the system of regulation and protection in the marine environment is in need of an overhaul. They have the opinion that there should be two important principles that such regulation and protection should follow:

That the new regulation needs to be designed to fit the context of the marine environment and not simply be an extension of terrestrial systems.

⁵² *RSPB Parliamentary Briefing*, October 2001

⁵³ *Marine Update 41*, WWF, June 2000

That, so far as possible, the regulations should apply to the whole of the territorial seabed and continental shelf in a coherent and consistent manner.

While supportive of the principles behind the Bill they believe that the complexity in balancing seabed ownership and proprietary interests with nature protection and conservation might be too difficult to be addressed via Private Members' legislation. More comprehensive legislation may be required to fully address the issue.

The *National Federation of Fisherman's Organisations* (NFFO) believe that the

Common property characteristics of most fisheries is an important difference with terrestrial sites and it is difficult to see how marine sites could be managed and costs associated with such management reimbursed.

The dynamic nature of the marine environment, especially the exploitation of its resources, means that careful thought has to be given regarding the provision of incentives to conserve the common resources rather than exploit them. Commercial fishermen depend on the marine environment to replenish fish stocks and the NFFO are concerned that their interests are represented in such discussions. The question of fishing is a much more complex situation however and rolled up with the imminent reform of the Common Fisheries Policy that this paper cannot properly address. More detail on the issue can be found in a Library Standard Note entitled, *The Common Fisheries Policy after 2002*.⁵⁴

There may be some implications for other industries such as the oil industry but, as yet, there has been no comment available.

⁵⁴ <http://hcl1.hclibrary.parliament.uk/Notes/ses/Fisheries/CFP2002.pdf>