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Marine and Coastal Access Bill [HL]

Bill 108 of 2008-09

This briefing on the *Marine and Coastal Access Bill* has been prepared for the Second Reading debate on the Bill in the House of Commons. The Bill had its First Reading in the House of Lords on 4 December 2008 and its Second Reading on 15 December 2008. It completed its passage through the House of Lords on 8 June 2009.

The Bill covers a broad range of marine issues and would:

- set up a new Marine Management Organisation (MMO) under which many of the existing, diverse areas of marine regulation would be centralised;
- streamline the existing marine licensing system and provide powers to create a joined up marine planning policy;
- introduce new measures to reform fisheries management;
- provide a framework for establishing marine conservation zones; and,
- enable the creation of a route around the English coast.

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Summary

There has been growing pressure over a number of years for the introduction of legislation to help promote the effective management and protection of the UK's marine resources and environment. Select Committee scrutiny of proposals and pre-legislative scrutiny of Draft Bills have confirmed widespread support for change.

The Government introduced the *Marine and Coastal Access Bill* to reform the management and protection of the marine environment. The Bill would:

- create a Marine Management Organisation (MMO) to deliver planning, conservation, licensing, fisheries management and enforcement functions in the waters around England and in the UK offshore area (for matters that are not devolved);
- provide a framework for establishing Marine Conservation Zones to help protect important species and habitats;
- reform mechanisms for the management and enforcement of fisheries;
- streamline the law on licensing marine developments to provide a single process for consents where possible; and,
- place a duty on Natural England to establish a long-distance route around the coast of England, with an associated margin of land, for public access on foot for walking and other recreational activities.

Issues that have emerged as controversial include:

- concerns that the provisions will not deliver adequate protection and enhancement of the marine environment; and,
- concerns about the impact of coastal access provisions on land owners.

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I Marine policy from 2002

Since the demise of the *Marine Wildlife Conservation Bill* (Randall Bill) in July 2002, there has been increasing pressure on the Government to introduce new legislation to plug the gaps that may be hindering the planning, management and protection of coasts and seas. The Randall Bill received cross-party support but ran out of time when it entered the House of Lords. At the time the Wildlife Trusts described the situation in the marine environment as:

> [O]ur seas are dying. Rubbish and chemical dumping, drainage and 'reclamation' of the coast, over-fishing and pollution have brought Britain's seas to the edge of collapse. Species such as common skate are virtually extinct, haddock and cod could soon follow, leaving a once proud fishing industry derelict. A Cambridgeshire-sized area of seabed in the North Sea is now virtually devoid of life because of oil drilling.[1]

They called for 'comprehensive legislation to achieve better protection for marine wildlife and effective management of our seas, to benefit both the environment and sea users'.

They identified a number of key challenges for the Government:

- A clear policy statement - a White Paper - setting out the marine stewardship approach
- A Marine Act(s) that sets out the legislative and institutional framework required
- Reform of current institutional arrangements to bring the management of marine resources under one Ministry and/or agency
- The development of a toolkit of approaches to deliver integrated marine stewardship
- A monitoring framework and review process to assess marine recovery and put in place necessary actions should marine stewardship fail to meet the goal of a healthy marine environment

WWF-UK also stated that any Marine Bill must:

- conserve the UK's last living wilderness by protecting nationally important marine habitats and species;
- extend a similar "spatial" planning system on UK land to UK waters;
- aid the recovery of fish stocks and a sustainable future for the fishing industry; and,
- introduce an integrated marine management system with sufficient power to oversee all the pressures on the marine environment and arbitrate where necessary to prevent over exploitation of the UK's waters.[2]

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1 Marine Stewardship – meeting the challenge, The Wildlife Trusts, June 2002

2 WWF-UK, *Success for WWF's Marine Bill campaign*, 16 September 2004

A. Early reviews

A number of reviews[3] recommended that the Government consider the introduction of legislation and the setting up of new administrative arrangements to deliver improved management of marine resources. English Nature in its Maritime Strategy called for action to enable recovery and improved management of the marine and coastal environments.[4] The findings of a series of reviews and reports dating from the Government's Marine Stewardship report in 2002 and the "Seas of Change" Government response in 2003 suggested that a new approach to managing all marine activities was needed and legislation required to implement it.

The Royal Commission on Environmental Pollution's report on the impact of fisheries, published in December 2004, called for Marine Acts that:

- Set out the principle for managing human impacts on the marine environment, with the primary objective of the enhancement and long-term protection of the environment; and
- Establish a statutory basis for marine spatial planning and targets for marine protected areas.[5]

The Environment, Food and Rural Affairs (EFRA) Select Committee's sixth report, Marine Environment, echoed these sentiments:

> […] there is evidence that marine habitats and species are being damaged by human activities at sea.
>
> Protection of the marine environment has lagged behind that of the terrestrial environment. In view of the increasing demands we place on the seas, it is imperative that urgent action is taken to prevent further decline in the marine environment. The Government needs to show how it will in practice deliver its vision of marine stewardship.
>
> The current legislative and institutional framework governing marine environmental protection is too fragmented and complex, which is to the detriment of both economic development and environmental protection. The Government is reviewing arrangements both for marine nature conservation and for licensing for development, which we welcome. There is a pressing need to update and streamline both and it may be necessary to do so through a wide-ranging Marine Act. A marine spatial planning system may prove necessary in order to manage the wide array of activities at sea.[6]

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3 Cabinet Office, Prime Ministers Strategy Unit, *Marine Environment*, (2004).
Net Benefits: A sustainable and profitable future for UK fishing, Defra, 2004
Review of Marine Fisheries and Environmental Enforcement, Defra 2004
Review of Marine Nature Conservation. Environment Food and Rural Affairs Committee, 2004
Marine Environment: 6th report of Session 2003-2004, HC 76, Environment Audit Committee, 2004
Environmental Crime: Wildlife crime, 12th Report of Session 2003-04, HC 605, Environment Audit Committee, 2004

4 *Sustaining our coasts and seas: Making space for people, industry and wildlife*, English Nature, 2004

5 RECP, *Turning the Tide: Addressing the Impacts of Fisheries on the Marine Environment,* 25th Report, Cm6392, December 2004

6 *Marine Environment*; Sixth Report of Session 2003-2004, HC76 Environment, Food and Rural Affairs Select Committee, 10 March 2004

Defra's Marine Fisheries and Environmental Enforcement report:

> […] set out the current position and prospects for enforcement and related tasks in England and Wales and [made] recommendations for improving the organisational, legal and financial framework.[7]

The key recommendations of the report were:

- the combination of Sea Fisheries Inspectorate and Sea Fisheries Committees, on the grounds of improved effectiveness, perhaps as an intermediate step towards a wider agency.
- that a package of benefits for sea anglers should be offered accompanied by a licensing scheme.
- a charging scheme should be introduced for the in-shore commercial fishing industry to contribute to the costs of management.

The report also discussed the legislative procedure that might be required to enact the various recommendations including primary legislation in the form of a 'Marine Bill'.

The Marine Nature Conservation Working Group report, released on 26 July 2004, included the following recommendations:

- an overarching policy framework of strategic goals, objectives and targets for marine nature conservation
- a new management framework for marine nature conservation
- establishment of conservation objectives to guide the management of human activities and provide a benchmark for assessing the effectiveness of management measures
- new management measures, including possible roles for marine spatial planning and marine protected areas
- proposed changes to the current governance and enforcement systems
- recommendations on data management and information provision[8]

In response to the above reports the Government openly indicated its intention to draft legislation to deliver the objectives set out in the Marine Stewardship Report, including setting a "new direction" for management of the maritime environment.[9] In his speech on climate change on 14 September 2004, Tony Blair said that 'there are strong arguments for a new approach to managing our seas, including a new Marine Bill'.[10]

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7 *Review of Marine Fisheries and Environmental Enforcement*, Defra, 8 July 2004

8 *Review of Marine Nature Conservation*, Marine Nature Conservation Working Group, 26 July 2004

9 Safeguarding our Seas: A strategy for the conservation and sustainable development of our marine environment, *DEFRA*, 2002

10 PM Speech on Climate Change, 14 September 2004

B. First Marine Bill Consultation

On 29 March 2006 Defra published a consultation document on a Marine Bill. The underlying principles of the Bill were stated as being to help implement the Government's sustainable development strategy:

> It will create a fit-for-purpose framework founded on the principles of good regulation and modern government. Its purpose will be to improve the delivery of policies relating to marine activities operating in coastal and offshore waters and to marine natural resource protection, in particular by providing an integrated approach to sustainable management, enhancement and use of the marine natural environment for the benefit of current and future generations. It will enable us to deliver our economic, social and environmental objectives in a modernised, rational and more effective way.[11]

The consultation focused on five different areas for policy development for incorporation into the Bill:

1. Managing marine fisheries
2. Marine spatial planning
3. Licensing marine activities
4. Improving marine nature conservation
5. The potential for a new marine management organisation

Marine spatial planning was foreseen as being the principal function of the Bill, linking together the other elements. EDM 174, with 236 signatures as at 17 May 2006, related specifically to a Marine Bill:

> That this House welcomes the inclusion of a draft Marine Bill in the 2005 legislative programme; notes that, in the light of increasing degradation of the marine environment and decline in its wildlife, the United Kingdom urgently needs a strategic and co-ordinated approach for managing and protecting its marine resources; therefore believes that this Marine Bill must be based on a system of spatial planning which allows different activities in the marine environment to be developed in a coherent and rational way and seeks to reduce conflict between the many users of the seas; further believes that the Bill must include reform of inshore fisheries; further believes that, given that more than half of the UK's wildlife is found in the sea, the Bill must put protection of wildlife at the heart of marine policy through measures including the designation of a network of nationally important marine sites; and calls on the Government to introduce a comprehensive Marine Bill at the earliest opportunity.[12]

An amendment to the EDM, 174A1, inserted a line into the above calling for provisions for marine archeology to be included in the Bill.

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11 *A Marine Bill; a consultation document*, Department for Environment, Food and Rural Affairs, March 2006, p3

12 EDM 174, *Draft Marine Bill*, Paddy Tipping MP, 24 May 2005

In response, the Environmental Audit Committee announced an inquiry on the proposed Marine Bill in April 2006. Their report *Proposals for a Draft Marine Bill* was published in July 2006. Some of its main conclusions were as follows:

> - The Government is to be encouraged to establish a robust structure within the Bill for the resolution of conflicts between those who appear to favour the economic or social pillars of sustainable development over the environmental pillar, and vice-versa. However, it is clear to us that all users of the sea will have to observe environmental limits if the marine environment is not to be degraded still further. In that respect, environmental issues, including marine conservation, must be placed at the very heart of the Bill.
>
> - It is disappointing that the consultation issued by DEFRA in March does not suggest that the future Marine Bill will be as holistic a piece of legislation as so many hoped for, or as really appears to be needed. While a new consultation may lead to more areas than just the modernisation of Sea Fisheries Committees being brought from the domain of fisheries into the draft Bill, DEFRA needs seriously to consider how successful a Marine Act will be which fails to integrate something as central as fisheries into the rest of the marine environment.
>
> - A toothless, non-statutory system of marine spatial planning would not act to create integration, will not improve the current complexity, contradictions and clashes of interest in planning and the marine environment, and would therefore represent a wasted opportunity. We believe that the marine management organisation which results from the Marine Bill needs to have effective powers, beyond the deployment of advice, to develop and administer spatial planning at sea: this planning must be reasonably flexible, but also robust, so that industry, business, and leisure interests can all be accommodated and assisted within the proper environmental limits.[13]

In its conclusion the Committee highlighted the need for further consultation before a Bill was put before Parliament:

> DEFRA deserves credit for how it has conducted the consultation, and for its work in the stages which led up to it, and for how it has listened fairly to all the different interests involved. Given that some areas are missing from the consultation, and some other areas are fairly thin in terms of detail and/or substance, we have not sought to go into great detail, as clearly there is still work to be done in bringing forward more realised proposals for comment. It is to be hoped that there will indeed be another round of consultation before the draft Bill emerges, and that the content of that consultation, or of the draft Bill following, reflects at least some of the concerns raised in this Report, so that the eventual Marine Act will be as integrated and successful a measure as all those currently involved in discussions over it wish to see.[14]

In its response to the Committee's report the Government outlined the timetable for further consultation:

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13 Environmental Audit Committee, *Proposals for a Draft Marine Bill*, July 2006

14 ibid

> We are working to develop and agree proposals across UK Government and with the administrations in Wales, Scotland and Northern Ireland so that we can undertake a further round of consultation as early as possible in 2007. Whether we can progress to consult on a draft Bill or whether a further consultation on more detailed proposals is needed first depends on whether we have the evidence base that we need and if there is sufficient consensus about the direction we should be taking with our proposals.[15]

C. Second Marine Bill Consultation—A Marine White Paper

DEFRA published its second consultation *A Sea Change: A Marine Bill White Paper* in March 2007. The closing date for responses was 8 June 2007. The accompanying press release set out the main proposals included in the White Paper:

- A new UK-wide system of marine planning;
- A streamlined, transparent and consistent system for licensing marine developments;
- A new mechanism to protect marine biodiversity, including marine protected areas;
- Improvements to the management of marine fisheries;
- The creation of a Marine Management Organisation (MMO) to join up our approach to the marine environment.

The aims of the proposed Bill were expanded further in the 5th issue of the Marine Bill Newsletter published at the same time:

> **To create a strategic marine planning system** that will clarify our marine objectives and priorities for the future, and direct decision-makers and users towards more efficient, sustainable use and protection of our marine resources. We intend to adopt a straightforward two-stage approach to planning:
>
> • the creation of a UK wide marine policy statement, agreed by all UK Government Departments and the devolved administrations, which will articulate our joint vision and objectives for the marine environment and its uses; and
>
> • the creation of a series of marine plans using information about spatial uses and needs in those areas.
>
> **The changes that we propose to make to the marine licensing system** are intended to result in better, more consistent licensing decisions delivered more quickly and at less cost to all by a system that is proportionate and easier to understand and to use. We want to integrate delivery across a range of sectors and provide an effective link in the holistic management of the seas that starts with planning and continues through licensing to monitoring and enforcement.

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[15] Environmental Audit Committee, *Fifth Special Report Government Response to the Committee's Eighth Report of Session 2005-06 on Proposals for a draft Marine Bill*, 2 November 2006

To introduce new tools for conservation of marine wildlife to help halt the deterioration of biodiversity and promote recovery where practicable, to support healthy, functioning and resilient ecosystems, and provide mechanisms that can deliver current and future European and international conservation obligations. Proposals include new powers to designate Marine Conservation Zones using a flexible, objective-based site mechanism, new by-law-making powers to control currently unregulated damaging activities, and improved enforcement measures.

To strengthen fisheries and environmental management arrangements so that more effective action can be taken to conserve marine ecosystems and help achieve a sustainable and profitable fisheries sector. Our proposals include measures to modernise Sea Fisheries Committees in England; improve Several and Regulating Orders for shellfisheries; enable a more active approach to the development and management of recreational sea angling; strengthen fisheries enforcement powers; and to make changes to exiting fishing vessel licence charging powers.

To set up a new Marine Management Organisation (MMO) to act as a champion for the integrated management of our seas. This new organisation will make a unique contribution to sustainable development by combining and unifying the delivery of many of the marine functions of the UK Government and Northern Ireland administration within a single independent body. It will create a centre of marine expertise, improve coordination of information and data, and reduce administrative burdens.

The publication of the White Paper was welcomed by WWF—one of the original organisations campaigning for a Marine Act—and the British Wind Energy Association. At the same time they called for legislation to be brought forward as soon as possible:

> 1. WWF and BWEA today welcomed the Government's publication of the Marine Bill White Paper which is needed to reform how our seas are managed.
>
> 2. Both organisations recognise the need for marine spatial planning to provide a clear long-term framework for informing planning decisions at sea. Wildlife will benefit through a more comprehensive understanding of what activities are going on at sea and where protected areas can be established. Renewable energy will benefit through a clear framework that provides certainty in the planning process and gives confidence to developers.
>
> 3. WWF and BWEA believe there is a clear need for a Marine Bill to streamline the consents process. If the new Marine Management Organisation can bring all the stakeholders together, this should speed up authorisations for offshore renewables and so facilitate more renewable energy projects.
>
> 4. Both believe a Marine Bill is needed in the next Queen's Speech. A Marine Bill is required to meet the UK's biodiversity 2010 targets and could help the 2010 renewable electricity 10% target. Furthermore, a Marine Act would help meet the long-term targets in the recently published Climate Bill.[16]

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16 WWF and BWEA joint statement on Marine Bill White Paper, March 2007

Natural England also welcomed the publication of the White Paper, in particular the plan for marine protected areas and the benefit of these to fish stocks:

> While Marine Protected Areas can't necessarily help far ranging fish like cod, they do benefit many other species and can contribute to the recovery of damaged habitats. Divers monitoring the sea bed near Lundy have found lobsters seven times more in number, compared to surrounding waters since 2003. The scallop stock in an area closed to fishing off the Isle of Man is twenty times bigger than in fished areas nearby, and scallop catches have also increased around the closed area. A network of Marine Protected Areas could give habitats and species much needed time and space to recover from industrial scale fishing.[17]

It should be noted that the term Marine Protected Area can be used to refer to a range of protection mechanisms:

> The term Marine Protected Area (MPA) has been used to describe a wide range of marine areas which have some level of restriction to protect living, non-living, cultural, and/or historic resources.
>
> In the UK, MPAs have primarily been set up to help conserve marine biodiversity, in particular species and habitats of European and national importance. The main types of MPA in the UK are Special Areas of Conservation (SACs) for habitats of European importance, Special Protection Areas (SPAs) for birds, and Marine Nature Reserves (MNRs) for nationally important habitats and species. There are also a number of voluntary and non-statutory MPAs.[18]

D. Draft Bill

A Draft Marine Bill was published on 3 April 2008 for public consultation. This covered the key areas contained in the current Bill:[19]

- the creation of the Marine Management Organisation (MMO);
- planning in the marine area;
- licensing activities in the marine area;
- marine nature conservation;
- managing marine fisheries;
- reform of inland and migratory fisheries;
- modernisation and streamlining of enforcement powers;
- administrative penalties scheme for domestic fisheries offences; and,
- access to coastal land.

The Draft Bill was scrutinised in Parliament by a Joint Committee of both Houses, and the EFRA Committee examined the parts of the Bill dealing with coastal access. Recommendations of both these Committees and comment from other organizations are covered in the following sections of this paper.

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17 Natural England, *Plans For Marine Conservation Zones Welcome*, March 2007
18 Defra, *Marine Protected Areas* [on 16 June 2009]
19 Defra, Marine Bill Consultation, April 2008

E. The Marine and Coastal Access Bill

The *Marine and Coastal Access Bill* was introduced to the House of Lords on 4 December 2008.[20] It was accompanied by a Marine and Coastal Access Bill Policy Paper produced by Defra. The Policy Paper includes a summary of changes made since the Draft Bill:

> **More robust and clear through:**
>
> • Committing to ensure that the MMO is adequately resourced and has a clear and unambiguous general objective;
>
> • Introducing a requirement on policy authorities to periodically review the Marine Planning Statement (MPS);
>
> • Requiring marine plan authorities to do what they can to ensure compatibility with terrestrial plans;
>
> • Setting out the functions and responsibilities of various bodies in relation to marine nature conservation on the face of the Bill;
>
> • Setting out detailed transitional arrangements for the provisions on marine licensing and
>
> • Providing guidance that the maximum level of fixed monetary penalty will be capped at £5,000.
>
> **More transparent and accountable through:**
>
> • Making the MPS subject to a similar Parliamentary process as National Policy Statements;
>
> • Requiring each appropriate licensing authority to establish an appeals mechanism;
>
> • Providing a power to establish an appeals process for statutory notices under the licensing provisions;
>
> • Conferring a statutory duty on the Secretary of State to report to Parliament on progress towards designating a network of Marine Conservation Zones;
>
> • Requiring Natural England to conduct a review of early implementation of the coastal access Scheme;
>
> • Allowing Natural England to stop the route at any point between the mouth of the estuary and the first crossing point (rather than at one or other point), but setting out on the face of the Bill the criteria by which a decision will be made and
>
> • Including Local Authorities in the list of organisations which are able to make representations on Natural England's report and whose representations are forwarded in full to the Secretary of State.

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[20] Link to the Bill as brought to the House of Commons.

Consistent UK-wide implementation by:

• Introduction of Scottish Ministers as a 'policy authority', thus enabling them to jointly agree a UK wide Marine Policy Statement together with UK Government, Wales and Northern Ireland. This will enable us to set a coherent, UK wide policy for our seas;

• Enabling Scottish Ministers, as a marine plan authority, to prepare marine plans for the offshore area adjacent to Scotland, but to require that any such plans be agreed by UK Government before they are put in place;

• Enabling Scottish Ministers to designate Marine Conservation Zones in the offshore area adjacent to Scotland (i.e. the area beyond 12 nautical miles) but to require that any such designations are subject to the agreement of UK Government;

• Providing legislative competence, in the form of framework powers under the Government of Wales Act 2006, for coastal access for the National Assembly for Wales;

• Providing for the creation of a Welsh fisheries zone to bring Wales into line with Scotland and Northern Ireland;

• Enabling Welsh Ministers, as a marine plan authority, to prepare marine plans for the offshore area adjacent to Wales (i.e. the new fisheries zone beyond 12nm), but to require that any such plans be agreed by the UK Government before they are put in place;

• Putting in place arrangements for the offshore waters adjacent to Northern Ireland which enable NI Ministers, as a marine plan authority, to prepare marine plans for that area but that such plans be agreed by UK Government before they are put in place.

Contributing to the achievement of wider environmental targets by:

• Ensuring strategic fit between the Marine Bill and the Marine Strategy Framework Directive and

• Contributing to the achievement of the objective set out in that Directive (namely to achieve Good Environmental Status by 2020) through the range of measures to better protect and manage UK waters that are included in the Bill.[21]

F. Marine (Scotland) Bill

The Marine (Scotland) Bill was introduced in the Scottish Parliament on 30 April 2009. The Bill is complementary to the UK Government's Bill, and will create a new legislative and management framework for Scotland's marine environment. This includes "a new system of marine planning, a revised system of licensing marine activities, powers to establish marine protected areas, new legislation relating to seals, and new powers for

[21] Department for Environment, Food and Rural Affairs, *Marine and Coastal Access Bill Policy Document*, December 2008

marine enforcement officers".[22] For further information consult the SPICe Briefing, Marine (Scotland) Bill.

II Marine Management Organisation

Part one of the Bill will establish a new Marine Management Organisation as the Explanatory Notes set out:

> Part 1 establishes an independent body, the Marine Management Organisation (MMO). The MMO is to discharge a number of marine functions on behalf of UK Government. Its general objective is to do this in a manner which is consistent and co-ordinated, taking into account the effect that decisions in one area will have on any another area, and with the objective of making a contribution to the achievement of sustainable development. As a Non-Departmental Public Body (NDPB), the MMO will report formally to Parliament through the Secretary of State. It will draw up marine plans for the purposes of the new planning regime. It will also administer marine environmental licensing and harbours regimes, manage marine fisheries, undertake nature conservation functions and use enforcement powers set out in Part 8 of this Bill to enforce fisheries, licensing and nature conservation legislation.[23]

The new Marine Management Organisation (the MMO) would deliver many of the Government's objectives for the marine area. It would absorb the Marine and Fisheries Agency, which currently carries out many licensing and consents activities. The new organisation would be a centre of marine expertise whilst also providing a unified approach in delivering marine information and data and reducing administrative burdens. The integration of planning, licensing and environmental functions would provide benefits from joined up delivery and economies of scale.

Establishing a new MMO forms the backbone of the Bill. It would be the organisation with responsibility over most of the powers set out in other parts and will carry out various reporting functions on behalf of the UK, such as on EU marine policy. However, the extent of its powers in UK waters will depend on the views of the Northern Ireland Executive, Scottish Executive and Welsh Assembly Government, which are currently considering arrangements for the delivery of devolved marine functions that will work best for them. It may be that in future the MMO could deliver certain functions on their behalf.

An MMO for Scotland, known as Marine Scotland, has already been established. The Scottish Government said:

> Marine Scotland is being established from 1 April 2009 as a delivery Directorate within Scottish Government. The functions of the Scottish Fisheries Protection Agency, Fisheries Research Services and the core marine policy and regulatory functions of the Scottish Government will be drawn together within one body. The integration of science, policy development and delivery functions will enable holistic, coordinated implementation of the Scottish Government's priorities. The

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22 SPICe Briefing, *Marine (Scotland) Bill*, June 2009

23 Marine and Coastal Access Bill, Explanatory Notes

> resulting body of knowledge and expertise within the one organisation will place Marine Scotland at the leading edge of marine management. Our aim is that it will be a centre of excellence, ambitious about what can be achieved, and a catalyst for delivering our vision for the seas.
>
> Marine Scotland will have a clear identity and will champion better stewardship, delivering sustainable seas for all. It will be a strong voice for the Scottish Government and will play a leading role in the UK, Europe and internationally.[24]

A. Powers of the MMO

1. Planning

Clause 55 (formerly clause 53) of the Bill enables the Secretary of State to delegate the majority of the marine planning functions to any public body (with that body's consent)—for the waters around England this will be the MMO.

The MMO will be given responsibility for creating a series of marine plans to apply the Marine Policy Statement (see section III A below) in more detail to particular parts of the UK marine area.

2. Licensing

Part 4 of the Bill combines existing regulatory regimes for licensing and licensing enforcement, currently under the *Food and Environment Protection Act 1985*, the *Coast Protection Act 1949*, and *Telecommunications Act 1984* (Schedule 2 Electronic Communications Code).

Secondary legislation under this Part will further consolidate powers by incorporating the *Marine Works (Environmental Impact Assessment) Regulations 2007*, and the Marine Minerals Permissions under *The Environmental Impact Assessment and Natural Habitats (Extraction of Minerals by Marine Dredging) (England and Northern Ireland) Regulations 2007*.

The MMO will regulate these activities as the licensing authority for the new regime. It will control the environmental, navigational, human health and other impacts of constructions, deposits and removals in the marine area. Examples of activities the licensing regime will cover are port developments; tidal and wave power projects; jetties; moorings; coastal dredging; aggregate extraction; and the laying of submarine cables.

3. Fisheries

Fisheries management activities relating to the Common Fisheries Policy, currently carried out by the Marine and Fisheries Agency, will be transferred to the MMO by Part 1 of the Bill.

The Common Fisheries Policy is the EU instrument for the management of fisheries and aquaculture. It is the responsibility of EU Member States to make sure that the rules

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[24] The Scottish Government, *Marine Scotland: 2009 Strategy Statement*, April 2009

agreed under the Common Fisheries Policy are respected. Marine and Fisheries Agency responsibilities under the Common Fisheries Policy will transfer to the MMO when the Marine and Fisheries Agency is subsumed within it. Where the Common Fisheries Policy requires the UK to have a single competent authority, the MMO will fulfil that role.

4. Conservation

Natural England and the Joint Nature Conservation Committee (JNCC) are the Government's statutory nature conservation advisers in the English and UK offshore marine area. The Countryside Council for Wales is the Government's statutory nature conservation adviser in Wales and will, in certain circumstances, also have a role in advising and working with the MMO. However, the MMO, as the Government's key marine regulator, will itself have functions that contribute to nature conservation.

Natural England and the JNCC are establishing a programme of work, with involvement of stakeholders, to identify and recommend suitable areas for designation by the Secretary of State as Marine Conservation Zones (see section VI below). The MMO will work with Natural England, the JNCC and others by providing information on socioeconomic and enforcement issues acquired through its planning, licensing, enforcement and fisheries management roles. This will contribute to the site selection process.

As the MMO will be the Government's main regulator in the marine environment, a number of nature conservation functions will be transferred to the MMO from Natural England.

5. Enforcement

Part 8 of the Bill will enable the MMO to appoint Marine Enforcement Officers and make common enforcement powers available to them to enforce marine licensing, nature conservation and sea fisheries legislation. British Sea Fisheries Officers, who transfer to the MMO, are expected to be appointed as Marine Enforcement Officers because they already have many appropriate skills. This will also ensure a smooth transition when the new legislation comes into force, as the British Sea Fisheries Officers will receive training to enable them to carry out Bill functions effectively.

Marine Enforcement Officers will have access to enforcement powers to carry out routine inspections and follow-up investigations in relevant enforcement areas. These include powers to board and inspect vessels; enter and inspect premises, dwellings and vehicles; and require the production of documents. Although the Officers' powers to inspect and examine will be wide-ranging, they are mostly not new.

The bulk of the powers in the Bill (Part 8, chapter 2) have been taken from existing legislation and modernised where appropriate. In addition to the core powers, Marine Enforcement Officers will be given new powers to inspect fishing gear in the sea, and their powers to seize fish and gear and to detain fishing boats will be clarified and strengthened. The MMO will have the power to release seized fish and gear or a detained boat on payment of a bond.

6. Emergencies

The MMO will have a key role to play in the response to marine pollution emergencies, taking over this function from the Marine and Fisheries Agency. The Agency currently implements, on behalf of Defra, a Marine Pollution Contingency Plan which provides a mechanism to co-ordinate the Defra/Marine and Fisheries Agency role in major marine pollution incidents where the Maritime and Coastguard Agency leads in the response.

The MMO will also take over from the Marine and Fisheries Agency its licensing authority role for oil spill treatment products (e.g. dispersants, sorbents, surface cleaners and bioremediation products), which may only be used in UK waters if they have been formally approved for this purpose.

7. Marine science

The Marine and Fisheries Agency already has staff with skills in marine and fisheries science. The MMO will build on this and recruit new staff to support its range of responsibilities. Schedule 1 of the Bill gives the Board the flexibility to decide whether to establish a specific scientific advisory group and/or to include external scientific advisers on any committee(s) it might set up.

The Bill (Part 1, chapter 4) also requires the MMO to provide advice and assistance related to its work to the Secretary of State and to public bodies. It must specifically provide information to the Secretary of State relating to the performance of its duties, and must provide advice to Government and others on the sustainable development of the marine area.

B. Pre-legislative scrutiny

The Joint Committee thought the Draft Bill was too vague in defining the role of the MMO.

> 39. We have no doubt, from the weight of the evidence received, that the statement of purpose of the MMO is ambiguous both in terms of the draft Bill and in the policy framework which the Government envisages. We would like to assist in the resolution of that ambiguity. In our view the MMO should be, and be seen to be from the outset, the owner of the public interest in the UK marine environment.[25]

The Joint Committee took evidence from witnesses representing British ports, who felt that the Draft Bill was unclear how the MMO would function since:

- The Bill did not set out how the MMO would be funded;
- The Bill did not set out how the MMO would function under the new planning regime (as set out in the *Planning Bill* then passing through Parliament); and,

[25] Joint Committee on the Draft Marine Bill, Draft Marine Bill, 30 July 2008, HL 159-I/HC 552-I

- The Bill was unclear about the powers available to the MMO.[26]

Comment from environmental NGOs on the MMO was generally positive, if rather confused. Support existed for the streamlining of licensing and consents through one body, but organisations were unclear as to how the MMO will work.

The Government responded to feedback from the Draft Bill consultation and Joint Committee's recommendations by agreeing to provide clearer definitions of the MMO's objectives on the face of the Bill.

> 40. Beyond this high-level objective, we also consider that clear duties should be set out on the face of the Bill to ensure that the new organisation works to meet the aspirations which Parliament has set for it. We recommend that these include a duty to further sustainable development and we suggest that this be based on the ecosystem approach to managing the marine environment.[27]

C. Debate in the Lords

Concerns relating to the formation of the MMO and the make up of the governing board were raised in the Lords. In response to probing amendments and questioning the Minister, Lord Hunt of Kings Heath, set out how the MMO will be established:

> Because we wish to establish the MMO as quickly as possible after the legislation has been enacted, we plan to appoint what has been described as a skeleton body for the MMO consisting of a chairman, chief executive and board. That would allow it to focus on the preparation and establishment of the organisation, working with the Government to establish its framework including its structure, governance arrangements and financial systems, and agreeing objectives, targets, performance measures, resources and all the things that come with being a non-departmental public body. The hope would be to make appointments in autumn 2009. At the pace we are going today, that might prove to be a departmental autumn, but we must hope that that will not be the case. The aim is essentially that the skeleton body will have been in place for approximately six months before the vesting of the MMO in April 2010.
>
> We have had an interesting debate on the numbers of ordinary MMO board members to be appointed. As Members of the Committee will know, the Bill allows a range of five to eight members in addition to the chair. If I included all the various interests and considerations that noble Lords have expressed this afternoon, we would probably already have reached a board of 20 or more. On the other hand, the noble Baroness, Lady Carnegy, has put it very well. The calibre required of those who will have to exercise their judgment when faced with all the pressures and interests wishing to influence the MMO indicates that one would ideally have a small board. I am sure that those of us with experience of public bodies will have worked on both small and larger boards. I accept the point of the noble Baroness, Lady Young, but, in the main, smaller boards work more effectively. That is why we went for the range of five to eight. […]

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[26] On 5 June 2008 the Joint Committee on the Draft Marine Bill took evidence from witnesses from Mr David Whitehead, Director, British Ports Association, Mr Peter Barham, Sustainable Development Manager and Mr Richard Bird, Associated British Ports. Minutes of their evidence are available online

[27] Joint Committee on the Draft Marine Bill, Draft Marine Bill, 30 July 2008, HL 159-I/HC 552-I

> I listened with great interest to the argument that the Bill should specify that someone with experience in marine science or marine conservation be appointed to the board. I understand why noble Lords might support that. However, I have reservations about specifying a particular expertise which should be given priority over all other experience. We heard from the noble Lord, Lord Oxburgh, some of the potential technical difficulties of drafting an amendment capable of being put into practice. Of course, I fully accept that this organisation needs to have people with very good scientific knowledge and background. I refer noble Lords to the intervention of the noble Lord, Lord Greenway, in which he referred to the recommendation that a scientific advisory board should be established to advise the MMO board. That might well be the most appropriate way to ensure that the board has the scientific expertise that is required given that such a board—certainly the Government are strongly of the view that such a board should be established—would consist of representatives of major government and independent scientific bodies. There is no doubt whatever of the need for the organisation to have scientific expertise available to it.[28]

Further questions were asked about the ability of the MMO to co-operate with those bodies from the Devolved Administrations looking after marine matters that fall outside the MMO's jurisdiction. Lord Hunt of Kings Heath explained how the Government plan to make the process work.

> **Lord Hunt of Kings Heath**: I want to reassure noble Lords that we plan to make more information available later this year as we continue to work on the transition from existing systems to the new body. The noble Duke seeks to include provision in Clause 2 to require the MMO to consult any relevant body with functions in the areas adjacent to, affecting or near the MMO's area. I want to make it clear that, in the objectives set for the MMO, normal good practice on consultation will apply. This is already the case in relation to the existing Marine and Fisheries Agency whose functions will be subsumed by the MMO, and we will continue to expect consultation to take place with relevant bodies in adjacent areas as necessary. I am yet to be convinced that we have to make that a statutory part of the MMO's duties, though I am listening to the debate today. We want the MMO to develop strong and effective engagement with its key delivery partners as well as with the full range of coastal and marine industries and interests. As an example, the MMO will be required to consult relevant bodies when making licensing decisions.
>
> We plan to engage with stakeholders—if I can use that wretched term—including relevant regional and local bodies in the marine planning process. It is obviously vital that regulators, coastal communities and a range of individual organisations with an interest in the marine and coastal environment are all to be involved in developing marine plans. Those organisations need to work together to facilitate that process and to make it transparent. The MMO will publish a Statement, known as a Statement of Public Participation, when beginning to develop each plan, setting out how stakeholders will be involved at each stage. This will include consideration of the nature of the coastal community and marine users affected in each plan area.[29]

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[28] HL Deb 12 January 2009 cc1049-51
[29] HL Deb 21 Jan 2009 c1679

III Marine planning

A. Overview

Lord Hunt of Kings Heath gave an overview of the planning part of the Bill in the Lords Second Reading Debate:

> Part 3 and Schedules 5 and 6 introduce a new system of marine planning. This is a relatively new process, designed to address the challenges emerging from the growth in competing uses of the sea. It is designed to help public authorities and stakeholders to co-ordinate their policies and actions in the marine environment more holistically to achieve effective and long-term sustainable development.
>
> The planning provisions provide for the preparation of a marine policy statement which will be prepared and agreed by the UK Government and the devolved Administrations. The marine policy statement will set out the policies and priorities for the whole of the UK marine area and will take into consideration the different priorities of all the different UK Administrations.
>
> A series of marine plans will then be prepared throughout UK waters, in full consultation with stakeholders from all sectors, to translate the policies in the marine policy statement to the local level. The marine policy statement and marine plans will guide and direct decisions in the marine environment to ensure a strong link between national policy and individual developments.[30]

A Defra policy document explains the intention:

> 1. Marine planning is essentially a process that will help us to be proactive about the way we use and protect our marine resources, and the interactions between different activities which affect them. It will help us to bring together and clarify our policies relating to the marine area, then ensure that those policies are implemented through the decisions which affect what happens there. It will create a framework for consistent and evidence-based decision-making, and through extensive public involvement will afford anyone with an interest in our seas the chance to shape how their marine environment is managed.
>
> 2. Once our policy priorities have been set out in the Marine Policy Statement (MPS), we will create a series of marine plans, which will apply that policy in more detail within more specific parts of the UK's waters.[31]

B. Pre-legislative scrutiny

The Joint Committee on the Draft Marine Bill was generally sympathetic to the Government's proposals on marine planning:

> 74. A central aim of the draft Bill is to implement "a more strategic approach to managing marine activities and protecting marine resources in the future." There

30 HL Deb 15 December 2008 cc649-50
31 Defra, Marine and Coastal Access Bill Policy Document, December 2008, p25

> was general agreement that an important element in this approach will be a system of marine planning. (…)
>
> 75. We agree that there is a need for better integrated and strategic management of activities taking place in UK waters. We view the introduction of a framework for marine planning as an important and positive development, and welcome the intention to set an overall direction, provide a focus for intervention in the marine environment, and create greater clarity for marine stakeholders. All of this should aid decision making and is essential if the goal of sustainable use of the UK's marine area is to be established. The main policies proposed in the Bill to achieve this are the introduction of Marine Policy Statements and the designation of regional marine plans.[32]

Most of the Committee's recommendations concerned who should be consulted or the co-ordination of marine and coastal plans. Perhaps the most important recommendation – which the Government rejected – concerned renewable energy:

- The Government should revisit the proposals for renewable energy, where small projects would be decided by the MMO but larger ones would be decided by the Infrastructure Planning Commission.

That recommendation went to the heart of the planning regime proposed in the Bill. The problem with having two organisations deciding applications for wind farms was that they might both require expertise in the area. However, the MMO could hardly take on large wind farms without undoing the provisions of the *Planning Act 2008* that major infrastructure projects of national importance should be decided by the Infrastructure Planning Commission. Conversely, if the MMO gave up all responsibility for wind farms that might undermine the MMO's role, leaving it unable to decide the most important applications.

The Committee made some other recommendations:

- Marine Policy Statements should be subject to the same Parliamentary scrutiny as National Policy Statements made under what is now the *Planning Act 2008*
- the Bill should contain more detail about the proposed structure and content of the Marine Policy Statement, at least analogous to the Planning Act requirements for National Policy Statements;
- the Marine Policy Statement should be published within two years of Royal Assent;
- the Government should consider designating certain key bodies as statutory consultees;
- the Marine Policy Statement needed the active support of the Devolved Administrations;
- the Government should strengthen the duty on marine plan authorities to ensure that marine plans were compatible with other plans, both marine and terrestrial;

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[32] Joint Committee on the Draft Marine Bill, *First Report*, July 2008, HC 552-I, 2007-8

- the MMO should have a defined role on the face of the Bill as a statutory consultee within coastal planning processes;
- the Government should explain in detail how it envisages that integrated coastal management would be taken forward through the provisions in the Bill; and,
- the MMO should have a duty to work with coastal partnerships or estuary forums.[33]

The Government said in its Response:

> Devolution
> The Government has worked closely with Devolved Administrations and believes that it will be possible to achieve an effective approach to marine management throughout the UK's waters.
>
> Strengthening the commitment to achieve Sustainable Development, and the content of the MPS and plans
> Under consideration
>
> Relationship between MPS and National Policy Statements (NPSs)
> The Government is committed to consistency, but the matter is under review.
>
> Transitional arrangements and timetable for implementation
> The Government intends to produce an MPS within two years and will publish guidance about transitional arrangements.
>
> Parliamentary scrutiny of the MPS
> The Government will amend the Bill so to make the MPS subject to a similar Parliamentary process as the National Policy Statements, which involves laying the draft MPS before both Houses in the UK Parliament in draft form.
>
> Review of Marine Policy Statement
> 3.2.14 We will amend the draft Bill to include a new requirement on the policy authorities periodically to review the MPS to consider whether the policies it contains are contributing to the sustainable development of the UK marine area, at which point they can determine if changes are needed.
>
> Duties and timetables for preparation of MPS and plans
> 3.2.16 It remains our clear intention to create an MPS within two years of Royal Assent, followed by a series of marine plans, however we do not propose to create duties or place timetables on the face of the draft Bill.
>
> Sustainability appraisal
> 3.2.17 Several respondents expressed support for our intentions in relation to the appraisal of the sustainability of plans, but were concerned that the drafting of Schedule 5 paragraph 7 would not give effect to our policy because of the implication that plan authorities might balance the appraisal of economic, social and environmental impacts in a way that would not fulfil the obligations we have on strategic environmental assessment.

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[33] Joint Committee on the Draft Marine Bill, *First Report*, July 2008, HC 552-I, 2007-8

3.2.18 We will therefore amend this paragraph to clarify and avoid any confusion. We will produce guidance for the MMO on carrying out these appraisals to ensure that they meet the requirements of European legislation concerning strategic environmental assessment. Where a plan may affect an area designated under the Birds or Habitats Directives, an 'appropriate assessment' must also be carried out (separately and in addition to any provision in the draft Bill) which we will clarify in guidance.

Public involvement and consultation

3.2.23 We do not believe there is a need to designate statutory consultees in the draft Bill.

Independent investigation

3.2.26 We propose to amend the draft Bill to ensure that marine plan authorities are under an obligation to do what they can to ensure compatibility with terrestrial plans, as well as marine plans prepared by an adjacent marine plan authority.

Coastal integration and democratic accountability

The Government does not agree that its proposals lack democratic legitimacy.

Quality of early plans and effect on decisions

The Government does not agree that early plans should be non-binding, only intended to guide decisions-makers.

Compliance monitoring

The Government will amend the Bill to ensure that authorities making authorisation decisions give their reasons when they depart from the plan on the grounds of 'relevant considerations' and will also make amendments to require monitoring of compliance with the plan.

Challenges to marine plans

3.2.34 A number of respondents expressed concern that the provisions enabling challenges to be brought against marine plans are too restrictive. In particular, two respondents suggested longer time limits within which challenges may be brought. We are not minded to change the period during which challenges may be brought. The current draft reflects the current situation in relation to terrestrial development plans; marine plans will have been subject to extensive stakeholder involvement and consultation, and potentially contentious elements of plans will most likely have been considered during an independent investigation. In addition, before adopting a plan, the Secretary of State must consider the consultation responses and the report and recommendations of the independent investigator.[34]

The Government also responded in detail to the recommendations.[35]

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[34] Taking forward the Marine Bill: the Government response to pre-legislative scrutiny and public consultation, 25 September 2008, Cm 7422

[35] Taking forward the Marine Bill: the Government response to pre-legislative scrutiny and public consultation, 25 September 2008, Cm 7422

C. Some planning issues raised in the Lords

1. The MMO and the Infrastructure Planning Commission

Several Lords raised the question of how the MMO would interact with other bodies, notably the Infrastructure Planning Commission (IPC). The Minister, Lord Hunt of Kings Heath, explained how the Government saw the relationship between the MMO and the IPC:

> I shall now deal with the relationship that we envisage between the Infrastructure Planning Commission and the Marine Management Organisation and the interaction between the national policy statement and the marine policy statement. As well as various types of onshore infrastructure, the IPC will be responsible for issuing development consents for large offshore projects such as renewable energy installations over 100 megawatts and larger harbours. The MMO, as the specialist marine licensing authority, will license development projects in the marine area below the IPC threshold, including offshore renewable energy installations of 100 megawatts or less.
>
> The very legitimate question has been raised tonight of how the role of the MMO integrates with that position. (…) The MMO will be consulted on IPC marine decisions. It will provide its marine expertise and advise on conditions to be included in any IPC consents. This will be an important factor when the IPC is considering any application affecting the marine area. Details of how the IPC will receive advice from the MMO will be covered in guidance on the Planning Act. I also understand that a Memorandum of Understanding is likely to be agreed to formalise this relationship and it may well cover areas such as data sharing.
>
> Marine enforcement officers will use enforcement powers in this Bill to monitor and enforce marine licences from the MMO and deemed marine licences granted by the IPC. As part of its enforcement role, the MMO will be able to add conditions to these consents as new information comes to light and even revoke them if necessary. I am very happy to repeat what I said during the passage of the Planning Bill.
>
> To answer the question of why we propose this structure, it is simply that the scale, complexity and nature of nationally significant infrastructure and the number of people affected pose a number of unique challenges to any regulatory system—challenges which the old planning regime is widely acknowledged to have failed to overcome consistently.
>
> The Planning Act establishes a process specifically designed to tackle these challenges. Projects that are not nationally significant will be dealt with by the relevant local system. In the marine area, this will be marine licensing under the Marine and Coastal Access Bill, which will be a simplification of the existing marine licensing regime. It will be flexible enough to accommodate a range of project sizes, from the smallest jetty right up to the threshold of "nationally significant". For these smaller developments, we envisage this being a more appropriate route for developers than if they applied to the IPC.[36]

[36] HL Deb 21 January 2009 cc1721-2

In Committee, Baroness Young still wanted the MMO to have power of veto over an application to the IPC or a removal of the powers of the IPC in the marine environment. If not, she wanted the MMO to be a statutory consultee for the IPC.[37]

At Lords Third Reading, Lord Hunt of Kings Heath introduced some amendments in this area, explained in his speech:

> Noble Lords will recall that at the end of debate on Report I undertook, given the importance of the arguments made, to take the matter away to see whether we could come up with alternative amendments that would appropriately reflect the MMO's important role in making representations to the IPC. The amendments that we have brought forward today are designed to reflect the MMO's role at three stages in the Planning Act process: first, the pre-application stage when a developer is considering putting in an application for development consent to the IPC; secondly, notification that an application has been accepted by the IPC for examination; and lastly, the examination process itself. Since it is important that the MMO, as a key player in the marine regulatory environment, is made aware of all proposals which could impact on the marine area, we are amending Section 42 of the Planning Act so that developers must consult the MMO on any proposed development that would or would be likely to affect the marine area. The MMO will therefore be made aware of, and have the opportunity to input and comment on, such proposals at an early stage. Secondly, we are amending Section 56 of the Planning Act to ensure that the MMO is formally notified of any accepted applications in the marine area. Thirdly, we are amending Section 102 of the Planning Act to make the MMO an interested party where the IPC has accepted an application in the marine area.
>
> The amendment to Section 102 ensures that the MMO is involved throughout the examination of those applications and that therefore it will have a key role in advising on any necessary marine licences which the IPC will deem as part of any consent issues. A consequential minor amendment is made in my Amendment 22 to Schedule 8 so that the descriptions of the various marine areas we are inserting into the Planning Act are consistent with the existing language in that Act. In addition, the new clause we are inserting into Chapter 4 of Part 1 requires the Secretary of State to give guidance to the MMO on the kinds of representations it may make under Parts 5 and 6 of the Planning Act.
>
> Given that both the IPC and the MMO will be newly established bodies which must work closely together on marine related developments in order to carry out their respective roles, we consider it appropriate to place a duty on the Secretary of State to issue guidance to the MMO on its role in relation to development projects subject to IPC consent. This guidance will clarify how the MMO will need to use its marine expertise; for example, to inform licence conditions, make representations on the marine parts of coastal projects, and ensure that proper enforcement can take place. This is in addition to the general guidance which the Secretary of State can give to the MMO under Clause 37, such as on enforcement and planning.
>
> In our debates since Committee and on the Planning Bill there has been considerable interest in the respective roles of the MMO and the IPC. All noble

[37] HL Deb 21 January 2009 cc1716-7

> Lords have a desire to ensure that the two bodies should work together and be seen to do so. We are confident that these amendments are an appropriate reflection of the key role the MMO will have as a centre of marine expertise and the enforcement body for the majority of marine consents in advising both developers and the IPC on major infrastructure projects in the marine area. I beg to move.[38]

Earl Cathcart, for the Conservatives, raised a general concern before accepting the amendments:

> [W]e and noble Lords from all sides of this House have eagerly awaited the establishment of the MMO for a long time now. At Second Reading last year, we welcomed the Bill as the vehicle for delivering a champion of the sea. Unfortunately, as debates progressed, it became clear that our idea of a champion was rather different from that of the Government. The list of responsibilities that the Government intended to carve out from the MMO and either keep under direct government control or leave with alternative organisations grew to include some six or seven major areas. DECC keeps control over all the land gas installations at sea and Natural England sets up marine conservation zones, to name but two. I will not list them all, but the IPC keeping control over large energy installations was another example and the one we are discussing now.
>
> The amendments, therefore, do not go as far as we would have liked. We would prefer the MMO to have proper control over its waters. However, we appreciate that the Government will not shift their views on that and will accept the amendments as the best we can get for now.[39]

Lord Greaves, for the Liberal Democrats, welcomed the amendment.

2. Devolved Administrations

Devolution was another major issue. The Minister's explanation indicated, perhaps, just how difficult it will be to resolve:

> **Lord Hunt of Kings Heath:** Essentially, the marine policy statement will always apply to the whole UK marine area and can have regional content within it. If the devolved Administrations are not signed up, it will be limited in its scope and impact. I suppose that in theory a UK Government-only marine policy statement could cover devolved matters, but I am not sure that that would be wise. In any case, the devolved Administrations would not have to follow it. A UK Government-only marine policy statement would cover reserve matters, and for England it would cover the whole area of marine licensing and consents.
>
> It would be a huge disappointment to get to that position. We hope—the incentives to do so are in the Bill—for agreement to be reached. Again, I go back to the statement of intent by the four Administrations following the meeting last autumn setting out their determination to make this work. The Bill is constructed to make it possible, with incentives moving in the direction towards an agreed

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38 HL Deb 8 June 2009 cc422-3
39 HL Deb 8 June 2009 c424

> marine policy statement for the United Kingdom to which all the devolved Administrations are signed up, but in a sense there is a reserve position in order to deal with the matter if it is not possible.[40]

He returned to the theme on 23 February 2009:

> Scottish Ministers may exercise in any manner they deem appropriate the functions that they already have. That must include establishing Marine Scotland. Once the Bill has been enacted, Scottish Ministers will also have marine planning and the Bill's nature conservation functions in the offshore area, with the UK Government retaining functions on defence, oil, gas and shipping. Scottish Ministers do not have the competence to give those functions to Marine Scotland. As I understand it, Marine Scotland will, legally speaking, be a part of the Scottish Executive. Therefore, Scottish Ministers do not need any powers to set it up as they wish or to give it the functions that they wish it to exercise. Legally speaking, the actions of Marine Scotland will be those of the Scottish Ministers and, from my understanding of the Scottish Parliament, I believe that Scottish Ministers will of course be held accountable by the Scottish Parliament for the exercise of those powers.[41]

3. Climate change

Lord Taylor of Holbeach moved an amendment that, in determining the policies that are to be stated in a Marine Policy Statement, the policy authority must have particular regard to the need to contribute to the reduction of greenhouse gas emissions and the need to maintain a secure and safe supply of energy.[42] The Minister, Lord Hunt of Kings Heath, replied:

> I say to the noble Lord, Lord Taylor, that the Climate Change Act, with our commitment to an 80 per cent reduction of greenhouse gases by 2050, sets out this country's determination to play our part in reducing greenhouse gas emissions, in mitigating climate change and in giving international leadership, particularly as we move towards the critical talks in Copenhagen.[43]

The amendment was withdrawn.

IV Fisheries

A. Defra overview of inshore fisheries provisions

A Defra policy paper summarised the fisheries provisions:

> 1. The Bill modernises inshore fisheries and environmental management arrangements in England and Wales. In England, it replaces Sea Fisheries Committees with Inshore Fisheries and Conservation Authorities (IFC authorities)

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40 HL Deb 28 January 2009 c309
41 HL Deb 23 February 2009 c15
42 HL Deb 28 January 2009 c320
43 HL Deb 28 January 2009 cc324-5

> whose purpose will be to manage the exploitation of fisheries resources occurring in their districts in a sustainable way. In carrying out their functions IFC authorities will pay greater consideration to the wider environmental impacts of fishing activity and also consider the social and economic benefits of managing the exploitation of sea fisheries resources in certain ways. Whilst their focus will be sea fisheries management, IFC authorities will also carry out an important role in enforcing the full range of marine environmental legislation in the inshore zone.
>
> 2. IFC districts will extend around the entire coastline of England out to six nautical miles and in estuaries where IFC authorities will have responsibility for sea fisheries management previously carried out by the Environment Agency. The Environment Agency will maintain lead responsibility for the management of freshwater and migratory species. IFC authorities will lead on marine species management. IFC authorities will also have a duty to protect the marine environment; this includes, as now, the responsibility to introduce byelaws for the regulation of sea fisheries when necessary to ensure the protection of salmon. Overlap in geographical jurisdiction will be managed, as it is now, through close co-operation at an operational level, through the Environment Agency seat on each IFC authority, and through cross warranting of enforcement officers.
>
> 3. The new network of IFC districts will be established through secondary legislation. Defra will consult on proposals for the new districts in early 2009.[44]

The document contains further information on the detailed provisions.

B. Pre-legislative scrutiny on inshore fisheries

The Joint Committee welcomed the proposals but made some recommendations:

> 60. We welcome the creation of the Inshore Fisheries and Conservation Authorities and acknowledge the benefits of local level management such as local decision-making and participative management by people with detailed knowledge and experience. However, the Bill should contain an open and transparent mechanism by which the MMO will appoint the IFCA members and the qualifications required to be an IFCA member. (Paragraph 141)
>
> 61. We recommend that the Bill give the MMO a duty to ensure a strategic approach to inshore fisheries, and powers to require the IFCAs to work collaboratively to an agreed set of minimum standards, to monitor their performance and take steps to improve it where necessary. (Paragraph 143)
>
> 62. The Bill should be amended to give IFCAs a clearer commitment to the achievement of sustainable development and a duty to further the conservation of coastal and marine fauna and flora. (Paragraph 144)
>
> 63. We believe there is a strong case for the Environment Agency to manage the majority of fisheries in estuaries but we would, in addition, support the establishment of working boundaries between the Environment Agency and IFCAs on a case by case basis in consultation with the relevant estuary or coastal

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[44] Defra, Marine and Coastal Access Bill Policy Paper, December 2008

partnership where they exist. In general these boundaries should be based on the upstream limit of commercial fishing interest, with the Environment Agency managing all fisheries upstream of this boundary (set out in secondary legislation) and migratory fisheries interest below out to six nautical miles. However, the Bill should allow the Environment Agency to retain management of the whole of estuaries where they are already acting as the Sea Fisheries Committee (under cross-warranting procedures) if this is the optimal local arrangement. (Paragraph 147)

64. Clause 157 of the bill should be amended to give IFC officers the power to enforce salmon and freshwater fisheries legislation and Environment Agency byelaws relating to fisheries. Secondary legislation should require that IFCA byelaws be subject to approval by the Environment Agency, and equally that statutory approval for Environment Agency byelaws be subjected to approval by the relevant IFCAs. (Paragraph 148)

65. We recommend that Clause 149 should explicitly remove all existing exemptions in the form of 'grandfather rights' from Sea Fisheries Committees (SFC) byelaws to ensure that all fisheries management measures are universally applied. The MMO should be given the power to revoke any exemptions made to future byelaws by IFCAs to ensure that nature conservation measures are universally applied. (Paragraph 150)

66. Additional central funding to IFCAs should be ring-fenced. These funds should be used to meet measurable operational targets set by the MMO, with appropriate benchmarking to raise standards and consistency. (Paragraph 153)

67. A duty should be placed on IFCAs to ensure that an Environmental Impact Assessment is undertaken of any new fishing activity exploiting marine species for which there has not previously been a large scale commercial market or regulatory quotas, and a requirement for appropriate regulation thereafter. (Paragraph 156)

68. Controlling inshore fishing effort will be critical to maintaining sustainable fisheries and will become an essential tool in areas where fishers are excluded under IFCA byelaws from Marine Conservation Zones or in areas in which wind-farms are to be placed. We recommend that IFCAs should be given the power to limit the number of permits issued for a specific fishery. In addition, we consider that the Bill should give the Government the ability to vary commercial fishing licence conditions for marine environmental purposes, devolving this to IFCAs if necessary, to allow further control over the amount of fishing effort exerted in order to reduce environmental impacts. (Paragraph 157)

69. In the absence of detailed proposals on the structure and function of inshore fisheries management in Wales, the Bill should give the duties and powers of the IFCAs to the relevant management body in Wales to avoid a legislative vacuum following the repeal of the Sea Fisheries Regulation Act. (Paragraph 158)

70. A duty to protect Marine Conservation Zones should be conferred on any Welsh Assembly Government inshore fisheries body, to ensure a consistently regulated MCZ system throughout English and Welsh waters. (Paragraph 159)

The Government Response included the following (much abridged) points to the numbered recommendations[45]:

> 60 The mechanism for appointing IFCA members will be in secondary legislation. It will be open and transparent.
>
> 61 The IFCAs' strategic approach will be achieved through co-operation and local accountability. The Bill will provide for IFCAs to establish a body to co-ordinate their activities.
>
> 62 Sustainable development will be achieved by the IFCAs' main duty in the Bill to manage the exploitation of sea fisheries resources in order to realise the economic and social benefits of the resource in a way that is sustainable.
>
> 63 The Draft Bill has clear demarcation between IFCAs and the Environment Agency (EA). The EA will lead on freshwater and migratory species management, using strengthened powers through the Bill. IFCAs will lead on marine species management.
>
> 64 The secondary legislation and the guidance will require IFCAs and the EA to consult each other on any proposed byelaw and each organisation will be required to take into account any representations made by the other. They are expected to work closely together.
>
> 65 SFC byelaws will be transferred to IFCAs, who will need to review them. Any grandfather rights would require local consultation, but IFCAs would have powers to remove them where justified.
>
> 66 The Government has moved away from ring-fenced funding, which often required complex monitoring.
>
> 67 The Draft Bill already requires IFCAs to undertake assessments of the impact of fishing activity on fish stocks and the wider marine environment. That would include any new fisheries for species not previously subject to large scale commercial exploitation.
>
> 68 The Government agrees that IFCAs should be able to limit permits in a fishery.
>
> 69 The Welsh Assembly Government will take full responsibility for sea fisheries in Wales.
>
> 70 Any such orders would be made by Welsh Ministers, using powers in the Bill.

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[45] Taking forward the Marine Bill: the Government response to pre-legislative scrutiny and public consultation, 25 September 2008, Cm 7422

C. Inshore fisheries issues raised in the Lords

1. Marine conservation zones and fisheries management

The Minister, Lord Hunt of Kings Heath, explained the relation between Marine Conservation Zones (see section VI below) and fisheries management:

> Clearly, noble Lords are concerned about the depletion of fisheries and the need for conservation. The noble Lord, Lord Moran, and the noble Earl, Lord Shrewsbury, among other noble Lords, raised such questions. I know that some groups have requested that the marine conservation zone mechanism should be used as a fisheries management tool and as a way of creating large no-take zones in order to promote the recovery of fish stocks. I understand that we will be discussing that more fully, but our intention is to designate marine conservation zones for conservation purposes and not for fisheries management. We think that the level of protection for a marine conservation zone will depend on the site-specific conservation objective. There should be no presumption that designation of a marine conservation zone will result in closure to fisheries.[46]

2. Management of inshore fisheries

Lord Wallace of Tankerness tabled an amendment at Report Stage to increase the duties of inshore fisheries and conservation authorities:

> A reasonable consensus emerged on the importance of integrating environmental considerations alongside fisheries management. However, there is some wish to see these duties strengthened if we are to bring about a different culture than has been the case until now. The amendment's purpose is to enhance the current duty as set out in Clause 149 by also ensuring that the protection of the marine environment, particularly the promotion of its recovery, is not only from current exploitation of sea fisheries resources but also relates to past such exploitation. Moreover, it would introduce a duty to further the conservation and recovery of marine flora and fauna, taking the Bill beyond the more limited wording that is already there. It is also arguable that the reference to marine flora and fauna goes further than the definition of sea fisheries resources in Clause 149(6).
>
> However, the general thrust of the amendment is that fisheries management and environmental protection can go hand in hand…[47]

Lord Hunt of Kings Heath argued that the Bill already contained enough powers:

> The … amendment would require the duty of IFCAs to protect the marine environment from, and promote its recovery from, the effects of such exploitation, to include the effects of past exploitation. I can again reassure the noble Lord that that is our policy intent, and we are clear that IFCAs will be under a duty to do exactly that under the current wording in the Bill. We are clear from the reference to promoting recovery from the effects of exploitation that exploitation must include that which has already occurred. (…)

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46 HL Deb 15 December 2008 cc727-8

47 HL Deb 19 May 2009 c1334

> On the second part of the amendment, in relation to the recovery of marine flora and fauna, the Bill already requires IFCAs to do exactly that. The duty placed on them includes in Clause 149(2)(b) a duty to protect the marine environment from, or promote its recovery from, the effects of exploitation when managing sea fishery resources within their district.[48]

D. Pre-legislative scrutiny on migratory and freshwater fisheries

The Joint Committee welcomed the proposed changes to legislation on migratory and freshwater fisheries but made some recommendations, including:

> 81. Defra should give careful consideration to the practicalities of the offences involving the introduction and removal of fish, and the parties who would be liable. The Bill should ensure that any secondary legislation under the Bill will be proportionate to the risks—it should not be within the discretion of the Environment Agency (or any other body) to enforce regulations unreasonably or unfairly against individuals. Further, Defra must bear in mind that regulation of fisheries must not be so burdensome as to encourage non-compliance. (Paragraph 185)
>
> 83. Clause 185 of the Bill should be simplified in line with the original Salmon and Freshwater Fisheries Review recommendation. (Paragraph 188)
>
> 84. The Bill should amend section 212 of the Water Resources Act to provide that no compensation should be paid to fisheries owners if a byelaw is implemented for conservation reasons. (Paragraph 190)
>
> 85. The definitions in Clause 193 should include allis and twaite shad to ensure there is no split in the regulation of migratory species. (Paragraph 191)
>
> 86. Clause 198 on the fisheries duties of the Environment Agency should amend section 6(6) of the Environment Act 1995 using the wording set out in the recommendation made by the Salmon and Freshwater Fisheries Review, previously accepted by the Government. (Paragraph 193).[49]

The Government Response contained the following (much abridged) points:

> 81 Enabling powers to control keeping, introduction and removal of live fish had been welcomed by the Committee, but the scheme should not be disproportionate to the risks, a point that would be considered in drafting regulations.
>
> 83 The Government rejected the idea of a prohibition on the use of any fishing device for the taking of any fish in freshwater unless its use had been authorised by the Environment Agency. This would result in there being a single offence in relation to unlicensed fishing, which they saw as a major disadvantage.

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[48] HL Deb 19 May 2009 c1337

[49] Joint Committee on the Draft Marine Bill, *First Report*, July 2008, HC 552-I, 2007-8

84 The Government agreed with the Committee. The Environment Agency's duty to pay compensation to fishery owners where their interests have been adversely affected by the introduction of a byelaw would be changed to a discretionary power.

85 The inclusion of shad in the Bill's control regime would be considered, but the Government did not want to duplicate controls in the *Wildlife and Countryside Act 1981*.

86 The Government would consider whether to amend the Environment Agency's fisheries duty so as to reflect the wording in the Salmon and Freshwater Fisheries Review.[50]

E. Pre-legislative scrutiny on fisheries enforcement

Defra described what the Bill aims to achieve:

> At the moment, enforcement powers in the marine area come from a number of pieces of legislation across marine fisheries, marine licensing and nature conservation. Differences in powers can make it confusing for the person being inspected and for the enforcement officer, leading to inefficiencies and potential error. At worst, the regulations we have to protect the environment may be weakened by these complications.
>
> The Bill streamlines and modernises these powers so that enforcement officers have access to a single set of "common enforcement powers". The Bill will make powers for enforcement officers more coherent, with respect to their abilities:
>
> • To stop, board, inspect and disembark a vessel or marine installation;
> • To require a person to help them in carrying out their duties, such as opening a locked door on a vessel or providing a password to access documents on a computer;
> • To enter premises to carry out their functions, with a warrant if those premises are used only as a dwelling
> • To search, carry out investigations and seize objects (and containers for them);
> • To stop and detain someone who has been undertaking a regulated activity, require them to show a licence for it and search their containers (but not their person);
> • To require someone's name and address if they are suspected of committing an offence.
> 8. Offences against enforcement officers will include not complying with a reasonable requirement made by the officer, obstructing or assaulting them in their duties, providing false information to the officer or pretending to be an enforcement officer.[51]

The Joint Committee made the following recommendations on proposals in the Draft Bill:

> **71.** In principle, provisions creating criminal offences should be contained in primary legislation or subject to close definition by primary legislation. This

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50 Taking forward the Marine Bill: the Government response to pre-legislative scrutiny and public consultation, 25 September 2008, Cm 7422

51 Defra, Marine and Coastal Access Bill Policy Document, December 2008

principle is brought into question in the draft Bill and we recommend that when the substantive legislation is introduced, it provides much greater clarity and effective Parliamentary control of the offences which it is intended to create. (Paragraph 162)

72. We recommend that the Bill require transparent criteria on the training and regulation of Marine Enforcement Officers to be set out in secondary legislation or guidance, having due regard to the wide-ranging and significant powers of the role. (Paragraph 164)

73. Whilst we recognise that enforcement provisions are not finalised, and will in any event require coordination between bodies in practice, we recommend that the Government reviews the role of the Maritime and Coastguard Agency before the Bill is published and reflects its role explicitly in the Bill if appropriate. (Paragraph 165)

74. We would like the Government to provide further detail on the policy behind clause 28 and the consideration given to the use of non-legally qualified prosecutors and their regulation. (Paragraph 168)

75. The process of administrative penalties and the appeals mechanism is not sufficiently transparent—a clear appeals mechanism should be spelt out in the Bill and there must be published guidance on the proposed scheme as well as on the qualifications of those who will be empowered to make the relevant judgment and issue penalty notices. We question the need for fixed penalty notices to go up to £50,000. (Paragraph 172)

76. We recommend that the powers to enable enforcement authorities to issue fixed monetary penalties and accept undertakings regarding MCZ prohibitions and obligations be subject to the same draft affirmative procedure as the equivalent provisions relating to marine activities. (Paragraph 173)

77. We support the principle of compliance, remediation and stop notices as measures designed to deal expeditiously with marine licensing breaches. However, we recommend that the Bill define 'serious harm', 'serious interference' and 'legitimate uses of the sea' and that an appeal mechanism is included. (Paragraph 175).[52]

The Government Response contained the following (much abridged) points:

71 Accepted that provisions creating criminal offences should be in primary legislation.

72. Agreed that the training and regulation of Marine Enforcement Officers (MEOs) appointed by the MMO should be clear and transparent.

73. The importance of co-ordination between bodies was agreed.

74. Agreed to restrict the types of cases that non-legally qualified staff are able to prosecute on MMO's behalf.

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[52] Joint Committee on the Draft Marine Bill, *First Report*, July 2008, HC 552-I, 2007-8

75. The process of civil sanctions and the associated appeals mechanism in the draft Bill has been adapted from that set out in the Regulatory Enforcement and Sanctions Act 2008. Safeguards were built into the process to ensure that it was fair and transparent.

76. Agreed.

77. Agreed to amend the remediation provisions. [53]

V Marine licensing and enforcement

Part 4 of the Bill would replace the licensing and consent controls that currently exist under the *Food and Environment Protection Act 1985* and the *Coast Protection Act 1949*. It redefines the works and actions which need a licence.

Part 8 provides for a set of common enforcement powers and for the appointment of enforcement officers across licensing, nature conservation and fishing in the marine area.

A. Current regime

The Marine and Fisheries Agency has statutory powers to regulate marine works, including all construction, coastal defences, dredging and the disposal of waste materials at sea in waters around England and Wales. The *Coast Protection Act 1949* and the *Food and Environmental Protection Act 1985* provide that licences are required before certain works are carried out.

Under section 34 of the *Coast Protection Act 1949* (as amended by section 36 of the *Merchant Shipping Act 1988* and the *Energy Act 2004*) the consent of the Secretary of State for Environment, Food & Rural Affairs is required for the following operations:

> i. the construction, alteration or improvement of any works on, under or over any part of the seashore lying below the level of mean high water springs;
>
> ii. the deposit of any object or materials below the level of mean high water springs; and
>
> iii. the removal of any object or materials from the seashore below the level of mean low water springs (e.g. dredging).

a. The Food and Environment Protection Act (FEPA) 1985

The Secretary of State for Environment, Food and Rural Affairs, as the licensing authority (or the Welsh Assembly Government for activities within waters around Wales), has a statutory duty to control the deposit of articles or materials in the sea / tidal waters;

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[53] Taking forward the Marine Bill: the Government response to pre-legislative scrutiny and public consultation, 25 September 2008, Cm 7422

the primary objectives being to protect the marine ecosystem and human health, and minimising interference and nuisance to others

FEPA licences mainly permit construction within the marine environment, or the deposition of materials at sea.

Construction includes not only materials used during construction of, for example, new harbours, offshore structures, pontoons, jetties, land reclamation or sea walls but also their use in 'soft-engineered' sea defences, such as beach nourishment, and associated groynes and revetments. A separate licence may be required for the disposal of dredgings arising during such works.

The categories of waste for which a licence for disposal at sea may be granted have been progressively reduced in recent years: the vast majority of the disposal licences now issued relate to the deposit of maintenance or capital harbour dredgings. All industrial waste and fly ash disposal at sea was terminated in 1992 and colliery spoil in 1995. Similarly the dumping of sewage sludge was brought to an end in 1998 in compliance with the requirements of the Urban Waste Water Treatment Directive. Licences are, however, available for seabed injection of drill cuttings and 'produced waters' arising during the exploration or production of offshore hydrocarbons.

The Act also controls scuttling of vessels and incineration at sea and various other activities including the use of tracer dyes or marine biocides, rock dumping on certain pipelines and the burial at sea of human remains.

Under *The Telecommunications Act 1984* consent is required from the Secretary of State for Environment, Food and Rural Affairs for any proposal to install telecommunications cables at sea and in other tidal waters below the level of Mean High Water Springs (MHWS).

B. The Bill

The Bill sets out that anyone undertaking any of the activities described in clause 66 (formerly clause 63 of the Bill) will need to obtain a licence from the appropriate licensing authority. Clause 113 specifies the appropriate licensing authority for each part of the UK marine licensing area.

The list of licensable activities remains similar to those covered by FEPA. The major difference is that more forms of dredging will be licensable. Under FEPA only dredging that involved the removal and dumping of sediment elsewhere at sea required licensing; this did not include forms of dredging where sediment was relocated under the sea or where dredging was removed to be used on land.

The Explanatory Notes to the Bill set out the new list of licensable activities:

- All vessels, aircraft or structures, regardless of their country of origin, will need a licence to deposit, scuttle or incinerate any object or substance within the UK marine licensing area;

- All vessels, aircraft or structures, regardless of their country of origin, where it is their intention to engage in such an activity anywhere at sea, will need a licence to load or begin towing in the UK marine licensing area; and

- British vessels, aircraft or structures will need a licence to deposit, scuttle or incinerate any object or substance anywhere at sea. British vessels, aircraft or structures are defined in clause 112.[54]

All these works will require a Marine Licence from the MMO with the exception of the Scottish inshore area where FEPA will continue to apply. The Scottish Executive intends to replace the FEPA regime with a new licensing system under the Scottish Marine Bill.

Aggregate dredging will generally be carried out under a Marine Licence when appropriate, except where dredging is authorised by a local Harbour Act or a Harbour Order made under the *Harbours Act 1964*.

For smaller harbour projects, three principal consents will be required for creation of, or modification to, harbours: an order under section 14 or 16 of the *Harbours Act 1964*, a licence under the Marine and Costal Access Act, and planning consent under the *Town and Country Planning Act 1990* (TCPA).

As the Bill stands, there will be no direct role for the MMO in oil and gas licensing, renewable energy developments over 100MW, major port infrastructure (such as wharves), carbon capture and storage (CCS), bridges, tidal barrages and fishing by foreign national vessels beyond 6 nautical miles.

For smaller renewable energy installations two principal consents will be needed following the coming into force of the Marine and Costal Access Act: consent under section 36 of the *Electricity Act 1989*, and a Marine Licence.

C. Pre-legislative scrutiny

In examining the Draft Bill the Joint Committee heard evidence calling for a clearer appeals mechanism against licensing decisions to appear on the face of the Bill. The Government had planned to introduce an appeals procedure though it was unclear how this would work. The Committee concluded:

> The policy paper indicates that an appeals mechanism to an independent tribunal is expected, but this is not provided for in the Bill; if this situation were to continue, judicial review would be the only option. Several factors make the lack of appeal mechanism particularly significant: there are currently no statutory time limits proposed in the draft Bill on the MMO's licensing decisions, as for example are provided in the Planning Bill, and the 'catch-all' nature of clause 66(3)(d), which allows a licensing authority to revoke a licence for 'any other reason that appears relevant' which will have a detrimental effect on the confidence of investors in the marine renewable energy sector.

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[54] Marine Bill 2008-09 Explanatory Notes

> We recommend that the Bill provide a clear mechanism for appealing licensing decisions of the appropriate licensing authority, whether to the Secretary of State or the Marine Management Organisation, and that a timeframe for decision-making is set out in the Bill.[55]

In response to the Joint Committee's finding the Government included a new clause in the Bill describing the appeals process.

> We have included Clause 70 in response to recommendation 20 of the Joint Committee's report which recommends a clear mechanism for appealing licensing decisions of the appropriate licensing authority. We have agreed with Delegated Powers Committee's recommendations and introduced government amendments, or added my name to opposition amendments, to change some of the procedures for orders made under this part of the Bill from the negative procedure to the affirmative one.[56]

D. Enforcement

The Bill aims to streamline existing enforcement powers that come under a number of pieces of legislation across marine fisheries, marine licensing and nature conservation. The Bill provides common powers to new Marine Enforcement Officers including powers:

- To stop, board, inspect and disembark a vessel or marine installation;
- To require a person to help them in carrying out their duties, such as opening a locked door on a vessel or providing a password to access documents on a computer;
- To enter premises to carry out their functions, with a warrant if those premises are used only as a dwelling;
- To search, carry out investigations and seize objects (and containers for them);
- To stop and detain someone who has been undertaking a regulated activity, require them to show a licence for it and search their containers (but not their person);
- To require someone's name and address if they are suspected of committing an offence.

Responsibility for fisheries enforcement depends on the vessel's nationality as well as the area. Currently the Marine and Fisheries Agency (MFA) works closely with the Scottish Fisheries Protection Agency, the Welsh Assembly Government and Northern Ireland Department of Agriculture and Rural Development. The MFA also contracts out its sea surveillance responsibilities in the inshore and offshore area around England and Wales to the Royal Navy. Reciprocal arrangements exist under which the MFA enforces legislation in respect of Scottish and Northern Irish fishing boats in the UK offshore area

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55 Joint Committee on the Draft Marine Bill, Draft Marine Bill, HL 159-I/HC 552-I

56 Taking forward the Marine Bill: the Government response to pre-legislative scrutiny and public consultation, 25 September 2008, Cm 7422

adjacent to England and Scottish, Northern Irish and Welsh fishing boats in the territorial waters around England and the Devolved Administrations enforce legislation in respect of English fishing boats in the Scottish and Northern Irish Zones and the territorial waters adjacent to Wales.

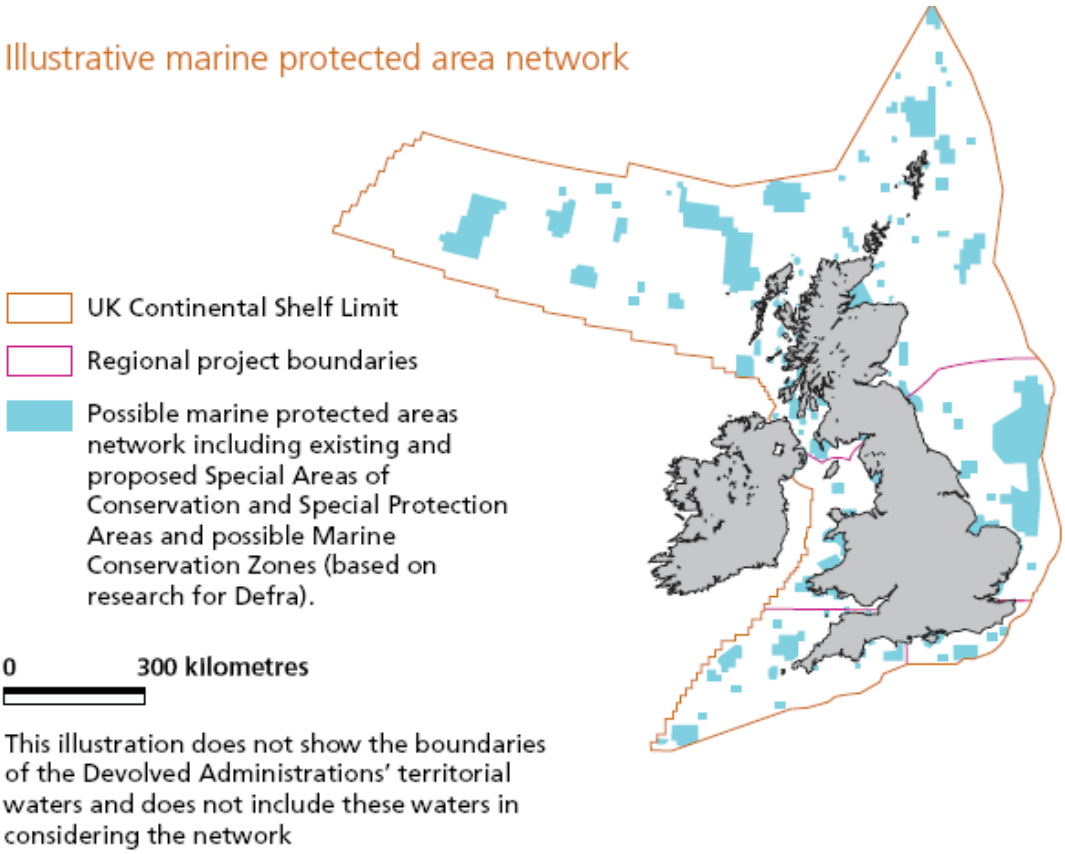
Marine Enforcement Officers will be given new powers to inspect fishing gear in the sea, and their powers to seize and forfeit fish and gear will be clarified and strengthened. At the same time, officers' power to detain fishing boats will be clarified and, wherever fish or gear have been seized or a fishing boat detained, the MMO will have the power to release the property on payment of a bond.

The Bill will contain a power enabling a fixed monetary penalty scheme when there is a breach of a Marine Conservation Zone (MCZ) bye law or order. This might be used when the breach relates to a single instance which is unlikely to have a major impact on the features for which the MCZ has been designated – for example: anchoring of a vessel in a prescribed area; or deliberately going within a certain distance of a specified species or feature. There will be a similar representations and appeals process as for monetary penalties issued for breaches of marine licensing requirements.

VI Marine Conservation Zones

This part of the Bill introduces powers, and obligations, to create and maintain a series of Marine Conservation Zones (MCZs) in UK waters.

In its document *Protecting our marine environment through the Marine Bill* Defra published an illustrative map of the areas that may be protected using the new legislation:



The document went on to set out how the network would function:

> We want to strengthen and improve marine conservation. By 2012 we are aiming to have an 'ecologically coherent network' of well managed marine protected areas. An 'ecologically coherent network' means a network of sites big enough to protect rare, threatened and valued habitats throughout our seas; with sites close enough together for species to move between them; and enough sites to conserve a range of habitats that are vital for the health of marine ecosystems. Research by the University of Bangor for Defra suggests a network of sites covering 14-20% of our seas may be sufficient to protect internationally important species and habitats.[57]

The tools for protecting the marine environment will be made available through the Bill:

- Marine Conservation Zones will provide a mechanism to protect nationally important species and habitats.
- Marine planning will help us to find space for the competing range of activities in our seas, for example fishing, windfarms and gravel extraction and manage them in a holistic way. We will be working with stakeholders to secure space for these activities, as well as for nature conservation.
- Modernised sea fisheries legislation will provide a much clearer focus on managing inshore fishing activities to protect important marine habitats and biodiversity.
- The Marine Management Organisation will regulate marine activities and help enforce laws to protect the marine environment.[58]

The Joint Committee on the Draft Marine Bill included the following recommendations on MCZs in its report published in July 2008:

> 53. We recommend specific mention in the Bill that the management measures within MCZs will range from multiple-use through to highly protected. (Paragraph 127)
>
> 54. We do not think it is appropriate to place any set percentage for highly protected areas on the face of the Bill. However, we recommend that the Bill sets out the need to establish Highly Protected Marine Reserves, and that their contribution to the overall Marine Protected Areas network and UK biodiversity targets should be reviewed after a stated period of time. (Paragraph 130)
>
> 55. An Environmental Impact Assessment of planned and existing activities within proposed MCZs should be undertaken and this should form the basis of decisions on activities that might be restricted in MCZs. (Paragraph 131)
>
> 56. We recommend a clear statement in the Bill to the effect that the assessments within MCZs must include fishing activity. (Paragraph 132)

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57 Defra, Protecting our marine environment through the Marine Bill,
58 ibid

57. We recommend the Bill confer a duty on a lead agency to enforce Marine Conservation Zones and that the Government should set out, in the Bill or in guidance, what arrangements will be necessary for the lead body to work co-operatively with others. (Paragraph 133)

58. We consider the role of statutory consultee in the designation of Marine Conservation Zones to be the most appropriate for the MMO. (Paragraph 134)

59. We do not think that the designation of Marine Conservation Zones should be delayed, but we recommend that the coordination of the planning system be given more thought, and provision be made to accommodate the fact that the MMO and indeed the Marine Policy Statement may not exist in time for the first designations. (Paragraph 135)[59]

A. Provisions of the Bill

The Bill Policy Document published by Defra in December 2008 summarised as follows the provisions with regard to MCZs:

1. The Bill provides the tools needed to designate and protect a network of sites – Marine Conservation Zones (MCZs) – which will provide protected areas important for the conservation of rare, threatened and representative habitats and species, such as the fan shell (Atrina fragilis), the ocean quahog clam (Arctica Icelandica), seagrass (Zostera) and maerl beds. The network of MCZs will be created to support functioning communities of marine wildlife.

2. We have asked the statutory nature conservation bodies (Natural England, the Joint Nature Conservation Committee and the Countryside Council for Wales) to develop programmes to enable designation of MCZs by the end of 2012. Sites will need to be selected on best available evidence, and may take into account the social and economic consequences of MCZ designation. In order to identify possible MCZs, the statutory nature conservation bodies are developing regional stakeholder projects based on the 'Finding Sanctuary' model in the southwest (http://www.finding-sanctuary.org/). The regional projects will be asked to consider potential sites on the basis of best available evidence. Similar arrangements are being developed in Wales by the Welsh Assembly Government and Countryside Council for Wales.

3. There will be a power for the Secretary of State, Welsh and Scottish Ministers to designate MCZs and a duty to exercise this power in order to contribute to the creation of a network of conservation sites. They will not be bound by the regional projects' recommendations, but will attach considerable weight to them (especially where they are based on consensus between the participating stakeholders).

Ministers will also be under a duty to report to Parliament (the Welsh Assembly or the Scottish Parliament as appropriate) on progress in designating the network of MCZs in 2012 and at least every six years thereafter.

4. Each site will have conservation objectives set out in its designating order, which will effectively determine the extent of the site, what is being protected and

[59] Joint Committee on the Draft Marine Bill, Draft Marine Bill, HL 159-I/HC 552-I

the level of protection. In most cases conservation objectives will result in few restrictions on activities that may take place. However, there will be scope to set more stringent restrictions where the value of a site and its conservation objectives site merit them. It is likely that there will be a number of such sites within the network.

5. Public authorities will have a duty to exercise their functions in ways which further – or, where that is not possible, least hinder – the conservation objectives set for MCZs. In the case of the MMO, it will mainly do this through considering them in the planning process and when exercising licensing and fisheries management functions. The duty is framed in a way that will best enable MCZs' conservation objectives to be achieved, whilst allowing an appropriate degree of flexibility – with safeguards – where it is considered that development needs to proceed in the public interest. The statutory nature conservation bodies will monitor MCZs so that this information can inform future decision-making by Ministers and other public authorities.

Byelaws/Orders

6. The MMO (with advice from the statutory nature conservation bodies) will need to assess and manage potential threats to MCZs and to engage with stakeholders in addressing them. Most activities will already be controlled through existing regulatory regimes, but sometimes it may be necessary to control unregulated activities like jetskiing, anchoring of boats or snorkelling. The MMO will therefore be able to make byelaws to control otherwise unregulated activities out to 12 nautical miles. Welsh Ministers will make conservation orders (similar to byelaws) to control unregulated activity in Welsh waters out to 12 nautical miles. Scottish Ministers will consider such proposals through their own legislation.

7. The Bill also gives ministers the power to set up a scheme giving enforcement authorities discretion to impose fixed administrative penalties for a breach of a byelaw or order. A fixed monetary penalty will not exceed £200.

8. The Bill also includes a general offence of deliberately damaging a feature of an MCZ. This is intended to deal with potential acts of environmental vandalism that would be difficult to predict and control through byelaws and orders. The general offence will also apply in UK offshore areas up to 200 nautical miles. A person or corporation found guilty of committing the general offence could be fined up to £50,000 on summary conviction or an unlimited amount on indictment.

9. Defra and the Welsh Assembly Government (with assistance from their statutory nature conservation advisors) published draft guidance on how it is anticipated the nature conservation provisions contained in the Bill would be implemented. This guidance will be revised to reflect the provisions contained in the Bill as introduced to Parliament. The revised guidance will be published on the Defra website and will include:

i. Guidance on selection and designation of MCZs;
ii. Guidance on achieving conservation objectives for MCZs through duties on public authorities;
iii. Guidance on the use of byelaws and orders to protect MCZs; and

iv. Guidance in relation to the setting of the seaward boundaries for SSSIs and NNRs.[60]

The revised draft guidance on selection and designation of Marine Conservation Zones (Note 1) published in May 2009 is now available on the Defra webpage for the *Marine and Coastal Access Bill*.

B. Responses to the Bill

1. Draft Bill

The Joint Committee report summarised mainly supportive views on the MCZs from across the board, although some thought that they might limit the ability to protect the marine ecosystem as a whole:

> 109. We have received much evidence in support of the establishment of Marine Conservation Zones, not limited to the conservation sector. The Crown Estate, for example supported "the need for improved environmental protection and [we] feel this is best achieved through the designation of MCZs". Mr Armstrong of the Scottish Fisherman's Federation was clear that the commercial fisheries sector was in favour of Marine Conservation Zones. Mr Deas of the National Federation of Fisherman's Organisations added that there was "practical experience of successful no-take zones, and protected areas that are well-designed, have a purpose, are monitored and have an exit strategy if the original purpose is not there any more. If all of those criteria are met then Marine Conservation Zones could be a good thing".
>
> 110. There was also some scepticism about the principle of MCZs: Save Our Seabirds said "the concept of Conservation Zones does not take account of the continual movement of the sea due to storms, winds, the ebb and flow of tides, carrying pollutants with it choking sea mammals, birds, any marine creatures with plastic, trapping them in oil and littering the sea-bed and its plants and wildlife". MARINET (the Marine Network of Friends of the Earth Local Groups) stated "Marine Conservation Zones […] seek to protect specific habitats and species in individual areas, and thus they do not embrace (other than incidentally) the concept and the need to protect the marine ecosystem as a whole. We regard this as a major deficiency in the draft Bill".[61]

2. Marine lobby of Parliament

A coalition of four conservation NGOs are campaigning for the MCZ provisions in the Bill to be strengthened.[62] They believe that ‘highly protected’ areas need to be designated, which could mean that certain activities should be prohibited in the area (such as fishing or dredging). They argue that the Bill contains no duty on the Government to create an “ecologically coherent” network or to designate highly protected areas. They believe that the Government should make designations purely on the basis of scientific evidence and

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60 Defra, Marine and Coastal Access Bill Policy Document, December 2008
61 Joint Committee on the Draft Marine Bill, Draft Marine Bill, HL 159-I/HC 552-I
62 WWF, RSPB, Wildlife Trust and MCS

conservation priorities—at present, they claim, the Bill would allow selection of protected areas also to be guided by socio-economic factors. [63]

The NGOs are calling for various changes summarised below:

- A definite duty to designate MCZs: Re-draft clause 119 on the creation of a network of conservation sites so that it delivers an unambiguous duty to designate an ecologically coherent network of MCZs that contains some highly protected areas as well.

- Designate MCZs for conservation: Delete clause 114(7) which allows that the economic or social consequences of site designation may be taken into account when considering whether it is desirable to designate an area as a MCZ

- And once designated, make sure MCZs are effective: Strengthen clause 136 to make sure that reckless damage to MCZs, and disturbance to marine wildlife within MCZs, are clearly prohibited.

They conclude:

> Therefore, we want the Marine & Coastal Access Bill amended so that:
>
> - Ministers are given a clear duty to designate an ecologically coherent network of Marine Conservation Zones that includes highly protected areas.
>
> - Sites are selected on the basis of conservation priorities and best available science, while socio-economic considerations are taken into account later on in the process, when site management is being determined.

Natural England, the Government's adviser on the natural environment, has said that it supports the inclusion of an offence for causing reckless damage and disturbance.[64]

C. House of Lords

1. Second Reading

Lord Hunt of Kings Heath summarised the Government's proposals with regard to MCZs as follows in Second Reading:

> Part 5 and Schedules 11, 12 and 13 provide a power across most UK waters to designate new marine conservation zones in place of the current power under the Wildlife and Countryside Act 1981 to designate marine nature reserves. We propose to convert existing marine nature reserves into marine conservation zones. The network of marine conservation zones will complement the Natura 2000 network of European sites. This will help us to fulfil the UK's commitment, under the Convention for the Protection of the Marine Environment of the North-

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63 WWF, RSPB, Wildlife Trust and MCS (Marine Conservation Society), *Make the Marine & Coastal Access Bill count*!, Marine Lobby of Parliament, 13th May 2009

64 Natural England, Chief Executive's Report, 11 February 2009

> East Atlantic—otherwise known as OSPAR—to establish a network of marine-protected areas.
>
> The Bill also provides for new duties on public bodies to exercise their functions in ways that further the conservation objectives set for marine conservation zones and to not authorise activities or development where it carries a significant risk of hindering those conservation objectives. There will also be powers to make by-laws and interim by-laws to protect sites, and potential sites, from otherwise unregulated activities which may cause harm. A general offence is also included and will catch acts of deliberate damage to a marine conservation zone.[65]

2. Committee Stage

Part 5 of the Bill was debated in Committee on 3, 9 and 11 March 2009. Lord Greaves speaking for the Liberal Democrats on the importance of this part of the Bill stated

> This part of the Bill is its raison d'être for many people the purpose of all these other different provisions [in the rest of the Bill] is to satisfy the need to stop the decline and degradation of the marine environment and marine ecosystems around our shores. That is what the Bill is all about. So Part 5 is at the very heart of the Bill, as is a consideration of how all this can be achieved while reconciling all the other important interests in the marine environment.[66]

Lord Taylor of Holbeach, speaking for the Conservatives, highlighted the importance of an ecosystem based network:

> I, too, hope that the MCZs will be designated from the first instance with an ecologically coherent, ecosystem-based network in mind. A scattergun approach in the initial stages would be counterproductive, resulting in time-consuming and distracting reviews and adjustments to the objectives and boundaries of zones. It would result also in ongoing confusion among the wider public. The finer detail of what comprises an ecologically coherent network will change over time as scientific research continues and more information is gathered.[67]

During the debate there was criticism of the Government for not going far enough. For example Baroness Young, ex-chairman of the Environment Agency, stated:

> The Government's response to the Joint Committee's report proposed that there would be a duty conferred on the Secretary of State and the Welsh Ministers to designate marine conservation zones, "in order to contribute to an ecologically coherent network of sites which will include highly protected sites". That commitment appears to have failed on all three counts: there is no duty, the Bill does not mention ecological coherence, and it does not mention the issue of highly protected sites—so it is nought out of three for the Government there.[68]

Regarding calls for it to be an offence to cause reckless damage to a MCZ, Lord Hunt of Kings Heath stated:

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65 HL Deb 15 December 2008 c647
66 HL Deb 3 Mar 2009 c673
67 Ibid c674
68 Ibid c676

> If we were to [make it an offence to cause reckless damage], the problem is that the person would be deemed to have committed an offence even if they could not have been expected to know that a feature was protected, and even where no significant harm occurred. Our concern is to get the balance right. We clearly want there to be deterrents so that there are sufficient sanctions and sufficient confidence that when prosecutions are taken, they will be successful if the evidence is there. We are concerned about well-intentioned and responsible people finding themselves unwittingly in breach of the law… We do not want to criminalise people whose behaviour is unlikely to have discernable conservation impact.[69]

3. Report Stage

During Report an opposition amendment was introduced to create a separate designation of "highly protected marine conservation zone" with the aim of protecting pristine areas by banning all activities.[70] The Minister rejected the proposal as creating a two tier system:

> I do not believe that there is disagreement between us on the principles. We believe that the powers in the Bill are broad enough in appropriate cases to protect marine conservation zones from all damaging human activities. I can assure the House that the Bill allows for this.

and:

> Clause 113(1) states that the appropriate authority—for England, this is the Secretary of State—may designate marine conservation zones. It applies no restrictions on the power of the appropriate authority to set stringent restrictions. Clause 120(2)(c) refers to the requirement to report to Parliament and talks specifically of areas where licensable or extractive activities are prohibited. Licensing conditions can be set under Clause 68(3). They can be as stringent as necessary and they will come under the duty of public authorities in Clause 121 to best further or least hinder the conservation objectives of each marine conservation zone.[71]

Throughout the debate concerns were expressed that any restrictions placed on UK fishing vessels within MCZs may not apply to those from other EU countries. However, Ministers were not supportive of placing limits on the restrictions that could be applied to UK vessels:

> Under the common fisheries policy we have scope to set conditions unilaterally for UK vessels. It is possible that we can use that power to further marine sustainability goals. Indeed, some noble Lords would welcome that possibility. It is true that on rare occasions we have done so and it is entirely possible that we might want to do the same to show environmental leadership and increase our chances of persuading other member states of the EU to do likewise. We will not rush into doing so, but it would not be right simply to remove that instrument as a result of the

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69 HL Deb 11 Mar 2009 c1242
70 HL Deb 12 May 2009 c990
71 Ibid c995

> amendment. Were we to remove such an ability, it should be done in the context of reform of the Common Fisheries Policy more generally.[72]

During the debate the Government said that the designation of MCZs will be guided by the best available science and conservation needs. Lord Hunt, Defra Minister, said that any potential conflict between socio-economic factors and conservation objectives will effectively be managed in the Bill and that science will be the first consideration in all designations:

> …the fundamental basis for designating marine conservation zones will be the science supporting conservation. The Bill allows us to factor in the impacts of designation on other interests at a slightly earlier stage in the process. It ensures that we have a flexible system which gives us the best chance of delivering conservation policies in the context of our wider marine policies. We wish to provide significant protection for some areas of our seas.
>
> […]
>
> The science will be the first consideration in all designations. In some cases the need for conservation must prevail but, at the very least, we should take decisions in the knowledge of the likely impacts. That is why, in implementing the Bill, Ministers will expect an impact assessment to accompany each proposal for designation.
>
> In some cases we will have more options. In designating a representative site, for example, we will often have more choice of potential locations and we will need to consider the size and shape of a marine conservation zone. In such circumstances, it would be sensible to take account of socio-economic considerations in deciding where a site, or group of sites, should be designated.
>
> […]
>
> It is implicit that the appropriate authority must make such a decision based primarily on scientific evidence; otherwise, it would not be exercising its duty in a reasonable way. Social and economic factors are optional secondary considerations. I believe that that is reflected in the drafting of the Bill.[73]

An opposition amendment was tabled to ensure a designation of an "ecologically coherent" network. This was rejected by the Minister, who did however offer to amend the Explanatory Notes for the Bill:

> to highlight that Clause 119(3) sets out what the network of marine conservation zones should achieve, listing three core principles based on the definition of an ecologically coherent network developed for the Convention for the Protection of the Marine Environment of the North-East Atlantic. It is worth pointing out that the Explanatory Notes issued with an Act of Parliament are used to inform cases of doubt in court, as they give further advice and information on the intent behind the provisions. The amendment to the Explanatory Notes will reference ecological

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72 Ibid c1016

73 HL Deb 12 May 2009 c1031

> coherence, while allowing flexibility to respect evolving definitions of ecological coherence in years to come.[74]

During Report Stage the Government introduced the following amendments in response to concerns raised during Committee Stage:

- Following a proposal by the Secretary of State to designate an MCZ, a designation must be made within 12 months.[75]
- The MMO will have to publish a notice of the making of a MCZ.[76]
- The Bill now places a duty on Ministers to designate a network of conservation zones. The network must comprise multiple marine conservation zones.[77]
- The network has been extended to cover Ramsar sites and Sites of Special Scientific Interest in addition to MCZ and European marine sites.[78]
- The Secretary of State's six yearly reports to Parliament from 2012 will report on progress and the number of MCZs.[79]
- The Bill was amended to make it immaterial when determining whether damage has been done to a MCZ whether the offender knew they were committing an offence.[80]
- Several Conservative amendments, supported by Ministers, have extended the offence of damaging protected features of MCZs to cover reckless behaviour. These amendments were agreed to without a vote.[81]

Opposition amendments were tabled to ban the entry of all vessels into MCZs but were withdrawn when the Minister promised to table an amendment during Third Reading.[82]

4. Third Reading

During Third Reading the Government put forward several amendments to strengthen the provisions of the Bill with regard to MCZs.

Amendments were made to remove the term recreational, to allow restrictions within MCZs to be applied to all vessels. With regards to this the Minister stated:

> Amendment 14 to Clause 128 therefore removes "recreational" from subsection (3)(b), ensuring that, if the conservation objectives for a site require it, the MMO can make by-laws which restrict all vessels entering into or moving within marine conservation zones, provided it complies with the UN Convention on the Law of the Sea.

and:

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74 HL Deb 19 May 2009 c1323
75 Ibid c1313
76 Ibid c1315
77 Ibid
78 Ibid c1316
79 Ibid
80 Ibid c1332
81 Ibid c1331
82 Ibid c1327

> I have also tabled Amendment 15 to Clause 140. Following the points made by the noble Lord, Lord Greenway, in Committee, we have also looked again at this aspect of the UN Convention on the Law of the Sea. Our analysis of the text is that it is only once we have declared an exclusive economic zone that we can apply the general offence to vessels from third countries. The amendment therefore applies the general offence of deliberately or recklessly damaging a marine conservation zone to third-country vessels once the UK has declared an exclusive economic zone. Part 2 of the Bill gives us the power to declare such a zone.[83]

There were also amendments from the Government to oblige all the Administrations to publish statements on the provision of an ecologically coherent network of sites:

> I have tabled a series of amendments which will require the appropriate authority—Scottish Ministers, Welsh Ministers and the Secretary of State—each to lay a statement before the relevant legislature. The statement is to set out the principles that each will follow in contributing to the UK network and may also set out any other matters that they consider might be relevant. The statement must be made within two months of the commencement date for the nature conservation provisions set out in this Bill and must be kept under review and updated in accordance with any future changes to the design principles.
>
> The Government would use this statement to set out their intention to use the principles of ecological coherence and to say what those principles are.[84]

VII Coastal access

The Bill will enable the creation of a continuous signed and managed route around the coast plus areas of spreading room, for example beaches, dunes and cliffs, where it is appropriate to do so.

The Bill provides Natural England with a duty to provide this access. The legislation will be implemented by Natural England using powers contained in the *National Parks and Access to the Countryside Act 1949*, which already allows for the creation of a long distance route. In addition the Bill amends the *Countryside and Rights of Way Act 2000* (the CROW Act) to allow an order to be made by the Secretary of State under a new section 3A of the CROW Act.

This order will be used to create access land either side of the coastal access path. This will cover all land within two metres either side of the path; all land on the seaward side of the path; and all land inland of the path of typical coastal land type (dunes, cliffs etc.).

Natural England is required to set out the approach it will take to discharging its coastal access duty in a Coastal Access Scheme. The final scheme will be the subject of public consultation once the Bill becomes law. A draft scheme has been published

The access route will be determined by Natural England in consultation with local interests, taking due account of the existing pattern of physical features and boundaries, and of potential impacts on agriculture, local businesses, nature conservation and other

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83 HL Deb 8 June 2009 c433
84 HL Deb 8 June 2009 c432

land uses. The Bill will allow the access to be seasonally closed. It also sets out the following exceptions, which can not be made into access land:

> 1 Land on which crops or trees are planted or ploughed land.
>
> 2 Land covered by buildings or the curtilage of such land.
>
> 3 Land within 20 metres of a dwelling.
>
> 4 Land used as a park or garden.
>
> 5 Quarry and Mining land.
>
> 6 Rail and tramways.
>
> 7 Golf course, racecourse or aerodrome.
>
> 8 Land used by telecommunications opperators.
>
> 9 Land which is under development to become 2 to 8 above.
>
> 10 Land within 20 metres of a building which is used for housing livestock, not being a temporary or moveable structure.
>
> 11 Land covered by pens in use for the temporary reception or detention of livestock.
>
> 12 Land habitually used for the training of racehorses.
>
> 13 Military Land.

A. General information on coastal access; Summary up until the Government Consultation

Provision for extending access to the coast was made in the *Countryside and Rights of Way Act 2000*. A commitment to improve coastal access was included in the Defra Five Year strategy in December 2004. The Labour Party's election paper *Rural Communities forward not back* in April 2005 promised that "Improving access to coastal areas will be an early priority for a Labour third term".

In 2005 the Countryside Agency together with English Nature and the Rural Development Service were asked to consider how best to improve access to the English coast. In October 2006 Natural England was established, encompassing these three founding bodies. In February 2006, Defra announced a study of four parts of the UK coastline:

> "We need to look carefully at potential ways to improve access to the coast in ways that will really benefit people and nature, and help people to get the most out of the coast."…
>
> The study will also explore ways in which benefits for the natural environment could be gained, whilst ensuring that the negative effects of improved access on the landscape and wildlife are minimised.

> The Natural England partnership, comprising the Countryside Agency, English Nature, and the Rural Development Service, will undertake fact-finding work on the coastal situation and the types of access that would be most valuable to people.
>
> These areas represent the diverse conditions around England's coast. The studies will look at the different types of coastline (for example cliffs, dunes and areas of coastal erosion and accretion), areas with good or less good existing access provision, and other issues such as tourism levels and proximity to large population centres.
>
> The Natural England partnership will report in early summer, and Defra will issue a public consultation paper on the subject in the autumn that will help inform a comprehensive coastal access policy.[85]

Natural England provided their advice to the Government at the end of February 2007. Their full report, *Improving costal access: Our advice to Government*, contains information from a number of separate studies:

The following information from the report is of most relevance:

1. Public Perception:

   43. There were 72 million leisure visits to the coast (outside seaside towns) in 2005. Going for a walk is more popular than visiting the beach [England Leisure Visits Survey 2005]

   44. Half of the English public said that they did not visit the coast frequently but would like to visit more [Ipsos MORI 2006].

   45. The coast is important to the English public for six main reasons: it is a symbol of national identity, a place for rest and relaxation, somewhere that provides a sense of freedom, people enjoy it for its scenery, its wildlife and it provides economic benefit via tourism [Ipsos MORI 2006].

   46. Local residents are more confident about their access 'rights' than visitors [Ipsos MORI 2006].

2. Current access rights along the coast

   47. We estimate that at least 30 per cent of the coast has no legal or recognised access at all, and a proportion of the remaining 70 per cent does not provide continuity of access or a quality coastal experience. Existing rights and provisions for access within the '70 per cent' often fail to join up with each other to allow a clear onward walk. For example, two contiguous sections of coastline may each contain public rights of way - but these paths may not connect up with each other. In addition, existing access rights are periodically lost when erosion takes the ground over which they run.

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[85] Defra News Release, *Four areas chosen for coastal access study*, 21 February 2006

48. The amount of legal or recognised access along the coast varies significantly between regions.

49. Formal permissive access arrangements currently have little impact on the provision of access along the coast.

3. Current access rights on beaches

54. Beaches are extremely important to the English public and 59 per cent were unaware that they do not have an automatic right of access [Ipsos MORI 2006].

55. Existing access arrangements on English beaches, most of which are de facto or permissive, are generally working.

56. A small number of exclusive beaches exist where entry is based on paying an entrance fee, is directly associated with paying guests, or where there is no public access.

57. There is public disquiet if de facto beach access is threatened, taken away or ceases to exist [Ipsos MORI 2006].

4. Higher Rights – horse riding and cycling

61. We estimate that 7 per cent of coastal Rights of Way have higher rights.

62. Study Area stakeholders are enthusiastic that higher rights be considered within the context of coastal access.

63. 7 per cent of the public said that they would definitely visit the coast more frequently if there were more cycling or horse riding opportunities [Ipsos MORI 2006].

The Natural England report was taken forward by Defra as the basis of its consultation, *On proposals to improve access to the English coast.* The consultation asked for comment on the following proposals from Natural England:

Natural England's recommendations are:

- The Government should legislate to create a new approach to access, tailored to the circumstances of the coast

- Legislation should create statutory powers for Natural England to align a coastal access corridor around the whole English coast, to create access where it does not exist and improve it where it needs improving, and to repeat this process later on any stretch of coast where considered necessary.

- Natural England would not intervene on stretches of coast where secure, good quality access already exists

- The access corridor would include new areas of spreading room along the coast, and could also formalise existing beach access

- Natural England's powers would include undertaking any necessary establishment work on the ground, such as installing gates and bridges

- Natural England would undertake nature conservation assessments as part of the planning process, to avoid damage to any features of importance. Natural England would undertake much of the planning and implementation through access authorities, where they were willing to take it on. Natural England would do it themselves where the access authority was unwilling to act. Natural England would fund the necessary work irrespective of who undertook it

- Local solutions would be designed in consultation with local interests, including local access forums and land managers

- This would require an implementation programme which Natural England provisionally estimates would cost an average of around £5m per year over the 10 year creation phase. Work is continuing to refine the cost estimates

- There should be a working presumption against paying compensation for public access along the coast

- The reduced level of occupiers' liability introduced for CRoW Act access land should also apply to coastal access

- There is a need for complementary work, by Natural England and others, to enhance coastal landscapes and wildlife[86]

The Country Land and Business Association (CLA) responded to the Natural England Report:

> Defra is keen to promote a blanket statutory solution to create an onward journey along England's coastline. The CLA view is that this is unnecessary, the current combination of statutory and voluntary arrangements along England's coastline already attracts over 200 million day visits, and the provisions work to the extent that 85% people believe that they have a right of access to the English Coast.
>
> There is no substantive evidence to show that the 'right to roam' granted on Mountain Moors Heath and Down and Registered Commons has been popular with the public or helped the rural economy in the areas affected. The CLA believes the government should focus on delivering practical access solutions that deliver the access the wider public desires and needs in order to meet its health and diversity commitments.
>
> Damaging/inappropriate coastal access to the entire coast would involve damage to wildlife and have a detrimental impact on agriculture and individual rural businesses e.g. golf courses; private hotels, holiday parks and caravan sites, where the business relies on privacy and exclusivity.

[86] Defra, Consultation on Proposals to improve access to the English coast, June 2007.

> The 'blanket approach' advocated by Natural England will not deliver workable access and takes no account of the needs of land managers, as an exceptions and restrictions regime (which applies under CROW) is dismissed.
>
> The CLA believes to improve coastal access is not about quantity, as there is already considerable access to the coast, but about the quality of provisions. This means there is a need to identify reasons why parts of the coast are not visited and then find the solution that best overcomes those concerns. The issues that have been identified are often specific to an area and the Rights of Way Improvement Plan should be used to identified problems and deliver local solutions.[87]

B. Pre-legislative scrutiny and Lords Debate

A number of key issues have emerged since the Bill was presented in its first draft form. These continue to be the focus for debate.

1. Funding

On the face of the Bill there are no provisions for funding the new access right nor is there an explicit mechanism for maintaining the paths created by the access duty. During scrutiny of the Draft Bill the EFRA Committee concluded:

> 68. The development of the coastal pathway requires sound establishment in the first instance. We are not convinced that £50 million over ten years is the correct sum for the job. Whilst the Bill is amended in the light of the consultation exercise, Defra should reevaluate Natural England's assumption regarding the cost of developing the pathway. Once the exercise is completed a detailed schedule of the proposal's cost should be published.
>
> […]
>
> 72. The Government should clarify responsibility for, and the estimated costs involved in providing, long-term maintenance before the Bill is introduced. If assurances on this cannot be given ahead of the introduction of the Bill then the Government should not proceed with the measure until this is clarified.[88]

During the Lords Committee Stage Lord Hunt of Kings Heath explained how the funding will be distributed.

> **Lord Hunt of Kings Heath:** I will deal first with the question of money spent on the coastal access path. The costs are estimated at £50 million over 10 years. They will fall to Natural England. We will deal with that as part of the overall settlement that will come to my department and then be allocated to Natural England.

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87 CLA, Coastal Access Response

88 Environment, Food and Rural Affairs Committee, Draft Marine Bill: Coastal Access Provisions, 14 July 2008, HC 656.

> If a local authority decided that it wanted to undertake works itself, which it would then be responsible for, the costs would fall on the authority. There is no reason why a local authority would not want to do that. If it believes that opening up the coast would, for instance, enhance tourism activities in the district, it would give serious consideration to the matter.
>
> I hope that I have answered the point raised by the noble Lord, Lord Greaves, about opening some parts of the route first, rather than opening the whole route [89]

2. Compensation and appeals

The Bill provides no mechanism for compensating landowners affected by the creation of new access land. Evidence submitted during the EFRA Committee's inquiry into the Draft Bill suggests that most organisations thought that, in the majority of cases, compensation would not be an issue. However in response to submissions from the CLA, the NFU and others the Committee concluded:

> The Bill should give Natural England the power to offer compensation to owners and occupiers who can demonstrate financial loss as a result of the coastal access provisions where such compensation is necessary to achieve the fair balance between public and private interests that the Bill requires.[90]

In response to a parliamentary question from Andrew George the Government remained clear that a working presumption against compensation will continue:

> **Jonathan Shaw:** Natural England will consult with landowners before making proposals on the most appropriate positioning of the coastal route. The amount of private land affected by the creation of the coastal corridor will depend on local decisions.
>
> The draft Marine Bill makes no provision for compensation to be paid to private landowners for the creation of the coastal access corridor. Natural England's report to Government recommended that there should be a working presumption against paying compensation for the new right of access in view of the fact that legislation would be simply creating access rights over land rather than depriving landowners of property. The legislation has been drawn up so that implementation will take account of the interests of landowners and minimise any impact on businesses. Natural England will consult with landowners on any necessary conditions on access, for example for land management purposes.[91]

On entering the Lords the Bill did not contain any appeals mechanism for those affected by the new coastal access duty. Following debate in Committee the Government introduced a series of amendments at Report Stage that now provide an appeals process. This was described by Lord Hunt of Kings Heath:

> Paragraph 2 of that schedule says that Natural England must advertise a coastal access report and must take reasonable steps to give notice of the report to those with a relevant interest in affected land and to certain bodies, and to persons set

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89 HL Deb 30 Mar 2009 c887

90 Environment, Food and Rural Affairs Committee, Draft Marine Bill: Coastal Access Provisions, 14 July 2008, HC 656.

91 HC Deb, 22 July 2008 c1003W

out in regulations. Paragraph 3 says that those with a relevant interest in affected land may make objections that Natural England's proposals fail to strike a fair balance on certain grounds. They must specify the reasons why they are of the opinion that a fair balance has not been struck. The person making the objection may propose modifications of the proposal.

To be relevant, any modification proposed either at this stage or at a later stage by the appointed person must meet certain criteria. These are that they must be practicable, take account of the considerations mentioned in Clause 287(2)—considerations about safety and convenience of the route, the desirability of the route adhering to the coastal periphery, keeping interruptions to a minimum—and, where appropriate, Clause 291(4), dealing with estuaries. They must also be in accordance with the scheme which is drawn up by Natural England, approved by the Secretary of State, and laid before both Houses of Parliament. These conditions are set out in paragraph 3(6).

Paragraphs 4 and 5 require Natural England to forward any objection to the Secretary of State. The Secretary of State must refer the objection to the appointed person. I make it clear that we envisage that this will be the Planning Inspectorate. The appointed person must initially decide if it is admissible—that is, meets the conditions for making an objection above and is made in accordance with any regulations as to the form and manner of objections and period within which they are to be made. I know that the status and qualifications of the appointed person will be of great significance. I believe that in the inspectorate we will have the independent element in the chain of decision-making about coastal access reports which will give confidence in the objection procedure for those who may bring forward such an objection.

Paragraph 6 says that if the independent person decides that the objection is admissible, the Secretary of State must collect together information relating to the land about which the objection is made. This includes Natural England's comments on the objection, copies of relevant reports, representations made on the report or any summary of representations and Natural England's comments on them. The appointed person may require Natural England's comments to include information on any relevant alternatives or rejected options. This is because it is not the role of the appointed person to repeat the work of Natural England in identifying all alternatives; this mechanism enables the appointed person to be in possession of all the information that Natural England has gathered that is relevant to the objection, and the alternatives that Natural England has considered.

Paragraphs 7 and 8 say that anyone may make a representation to the Secretary of State on the coastal access proposals. Representations from certain bodies, and representations from the persons set out in regulations, which I mentioned earlier, will go in full to the Secretary of State together with Natural England's comments on them. Other representations will be summarised by Natural England and sent to the Secretary of State with Natural England's comments. Paragraph 9 requires the Secretary of State to send information on admissible objections to the appointed person. Paragraph 10 says that the appointed person will consider the information and if he is minded to decide that a fair balance has not been struck he will publish the objection and invite representations. Anyone can make representations to the appointed person. The intention here is that the appointed person is required to make a preliminary decision that a fair balance has not been struck but that there are still a number of steps to carry out before he is able to make a final recommendation.

> Paragraph 13 provides that the appointed person may limit the proceedings to written representations, or he may hold a hearing or local inquiry where he considers it necessary or expedient to do so. Paragraph 11 deals with the recommendation of the appointed person to the Secretary of State as to whether he should determine that the proposals fail or do not fail to strike a fair balance. If he recommends that they do fail to strike a fair balance, then the appointed person must recommend either that no modification would strike the fair balance, a certain modification would strike the fair balance, or a certain modification may strike the fair balance. Where he recommends that no modification would strike a fair balance, he may additionally recommend that a certain modification would, or may, mitigate the effects of the failure to strike a fair balance. Any modification must be in accordance with the criteria set out in paragraph 3(6), which I mentioned earlier.[92]

3. Exceptions

Schedule 1 to the CROW Act contains a list of categories of "excepted land" which is not "access land" for the purposes of section 2(1) of the Act. The Government's policy is that the order under the new section 3A should make some changes to the existing categories of excepted land as they affect land that is coastal margin. The nature of excepted land particularly in relation to parks and gardens remains contentious. Lord Davies explained the Government's position:

> **Lord Davies of Oldham:** The noble Lord will have listened with the same care that I did to the part of the debate which the noble Lord, Lord Greaves, initiated on parks and gardens. The noble Baroness, Lady Byford, identified the Committee's views on that. A range of significant views exist on a number of these issues. The Government have given very careful thought to what needs to be included in exemptions with regard to parks and gardens, which is the burden of the amendment tabled by the noble Lord, Lord Greaves. It will be recognised that there is conflict of opinion in the Chamber on this issue. I hope that the noble Lord will forgive me if I put amusement parks into the same category.
>
> We know the principles on which we intend to work: the nature of excepted land, derived from CROW, is clear from the Bill. The noble Duke, the Duke of Montrose, asked about land within 20 metres of a dwelling. We intend to remove the category of land within that 20-metre range: we have accepted the point.
>
> The noble Duke will have to accept that considerable discussion will go on for a long time before the Bill is completed, and there will be further discussion before the order is drafted. It is the order that will give effect to the Bill in this area. There will be a need for the Government to gain the support of both Houses for the order. We will have to engage in additional consultation about these issues. I hope that the noble Duke will accept that, at this stage, it would not advance the legislation, nor indeed the cause of those expressing proper anxieties about the boundaries of the concept of excepted land, if amendments produced rigidities in the framework of what is proposed in the Bill. We have the bedrock definition of excepted land from the CROW Act, and some points that have been raised today,

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92 HL Deb, 1 Jun 2009 cc42-5

> which I understand are the subject of considerable controversy and concern, will need to be worked through before we eventually complete our deliberations.[93]

4. Higher rights

The coastal access provisions in the Bill do not provide for access for cyclists or people on horseback. However the Government and Natural England have suggested that, when it is practical to do so, higher rights of access could be allowed with consent of the landowner and those that may be affected.

This issue was raised during the Environmental Audit Committee's scrutiny of the Draft Bill:

> 'Higher rights' - Defra and Natural England's approach to 'higher rights' is a sensible one. The focus of the proposal is for access on foot. It would not be practical or affordable to make the whole of the coastal path usable by horses and bicycles. But we agree that where local geography and environmental circumstances allow, the opportunity should be taken to improve access for such users. We do not believe that such an approach needs to be specified as a duty in the legislation. If access for other users is granted it should not be implemented until decisions on future maintenance of the pathway are agreed with the access authority.[94]

The British Horse Society was campaigning for access to be provided for horses. It asked for access rights that compare well with the situation in Scotland. In Scotland the *Land Reform (Scotland) Act 2003* gives everyone statutory access rights for recreational purposes which can include riding a horse.

Lord Davies explained that the Government believed that it would be impractical to provide for higher rights along the entire coast but that where local circumstances allow arrangements could be made with landowners.

> Our approach to additional rights for horse riders was supported by both the Joint Committee and the departmental Select Committee in their scrutiny of the draft Bill. In particular, the departmental committee agreed that it would not be practical or affordable to make the whole of the coastal path useable by horses and bicycles but that, where local geography and environmental circumstances allowed, the opportunity should be taken to improve access for such users. We agree with the committee that such an approach does not need to be specified as a duty in the Bill. I appreciate the anxiety expressed by my noble friend but I can assure her that, when a new right of access is introduced to the English coast, it will not affect any existing rights or permissions to ride a horse on the foreshore. I am not able to give her a disposition on common law rights with regard to the foreshore—she is a lawyer, I am not—but I can reassure her on the question of existing rights. If people are currently allowed to ride on the foreshore, they will still be able to do so when the new right comes into force.
>
> However, I understand the concerns that have been raised that there should be absolute clarity that existing rights for horse riders are not affected by any new

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93 HL Deb, 30 Mar 2009 c916

94 Taking forward the Marine Bill: The Government response to pre-legislative scrutiny and public consultation, September 2008, CM 7422

> right of access to the coast. Our discussions have identified this as an important matter and I can assure the Committee that we will take it away and look at it closely to see whether anything needs to be done in the Bill on this point. We are charged with the significance of the issue. I am not prepared to accept that the Bill is developing in quite the "ominous" way suggested by my noble friend. She said that things were distinctly pejorative to the horse-riding fraternity but that is not the case. However, we will look further at matters with a view to being constructive.[95]

[95] HL Deb, 30 Mar 2009 c 950

Key Documents

Defra has produced a range of policy documents that set out their aims for the different sections of the Bill. They have also produced a range of policy papers and have made the various consultation documents available on their website. A series of maps have also been created. These explain how the Bill will apply to different areas of the UK.

a. 2009

Managing our marine resources - licensing under the Marine Bill
Factsheets - what does the Bill mean for different sectors?
"Protecting our marine environment through the Marine Bill"

b. 2008

Marine and Coastal Access Bill Policy Paper
Government Response to pre-legislative scrutiny and public consultation, "Taking Forward the Marine Bill: The Government response to pre-legislative scrutiny and public consultation"
Summary of responses to the public consultation on the Marine Bill
Joint Parliamentary Committee Report on pre-legislative scrutiny of the Marine Bill
EFRA Committee Report on pre-legislative scrutiny of the coastal access provisions of the Marine Bill

c. 2007

A Sea Change, A Marine Bill White Paper – Summary of Responses
A Sea Change, A Marine Bill White Paper
White Paper Partial Regulatory Impact Assessment

d. 2006

Marine Bill Consultation – Summary of Responses
Marine Bill Consultation

e. 2004

Turning the Tide - a Royal Commission on Environmental Pollution report

f. 2002

Marine Stewardship Report - "Safeguarding Our Seas"