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Marine and Coastal Access Bill Policy Paper

Last updated: 8 October 2009

defra
Department for Environment Food and Rural Affairs

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Introduction

1. The Government's 2005 election manifesto made a commitment to introduce through a Marine Act, a new framework for the seas, based on marine spatial planning, that balances conservation, energy and resource needs. The Labour party's 2005 election paper *Rural Communities forward not back* stated that improving access to coastal areas would be an early priority for a Labour third term and committed to modernise laws to continue to improve salmon and freshwater fisheries.

2. The Marine and Coastal Access Bill fulfils these commitments. Introduced in the House of Lords on 4th December 2008, it has been developed to provide enhanced protection of the marine environment and biodiversity, improved management of freshwater and migratory fisheries in England and Wales and improved access to the English coast. At the heart of the Bill is the integration of the socio-economic needs of all marine users with the need to protect the marine environment and preserve biodiversity.

3. The Bill comprises eleven parts:

    Part 1 creates the Marine Management Organisation (MMO) to deliver marine functions in the waters around England and in the UK offshore area (for matters that are not devolved);

    Part 2 sets out the UK marine area, used by subsequent Parts of the Bill to define where activities may take place. It also allows an Exclusive Economic Zone to be designated and allows the Welsh Assembly Government to designate a Welsh Zone for fisheries matters.

    Part 3 introduces a new UK-wide system of marine planning, to enable more strategic and effective management of our seas;

    Part 4 establishes a streamlined, transparent and consistent system for licensing marine works and activities;

    Part 5 introduces a flexible mechanism for marine nature conservation, including marine conservation zones with clear objectives;

    Part 6 makes improvements to the management of inshore fisheries in relation to England and Wales;

    Part 7 makes improvements to legislation relating to commercial and recreational fishing, management of shellfisheries and management of migratory and freshwater fisheries;

Part 8 provides for streamlined and modernised enforcement through common powers and introduces a civil sanctions scheme for marine licensing and nature conservation;

Part 9 introduces provisions to improve access on foot to the English coast;

Parts 10 & 11 set out miscellaneous and supplementary provisions relating to Natural England and cross-cutting issues such as offences by directors.

Why do we need a Marine and Coastal Access Bill?

Introduction

1. The UK is a world leader in many aspects of marine management and protection and is at the forefront of the development of many new and nationally important uses of the marine area, such as renewable energy production. We have made much progress in ensuring the sustainable use and protection of the resources that our seas provide. However, our seas are some of the busiest in the world and demands on their resources are increasing. If we are to ensure that we can continue to make the best sustainable use of those resources we need to be able to take a more strategic approach to managing marine activities and protecting marine resources in the future. The Bill will give us the legislative tools we need to take this strategic and coherent approach.

Climate change

2. Climate change is already having a significant impact in the marine area, on the goods and services it provides and the way we use our marine space. The Bill will help us meet the challenges that climate change will bring. It will allow us to make better decisions about the activities in our marine area that will help mitigate climate change – for example the development of renewable energy projects – and the measures introduced under the Bill will be adaptable to allow us to manage and use new technologies as they come along. Provisions on marine nature conservation and fisheries will also help us to restore and maintain marine ecosystems to ensure they are resilient to the effects of climate change.

3. The 2007/8 Marine Climate Change Impacts Partnership (MCCIP) annual report card was launched in January 2008. The MCCIP play a vital role in helping us understand what we need to do to tackle the problem of climate change.

4. Key findings from the 2007/8 report include that climate change is having a significant impact on the marine environment and the goods and services it provides.

5. Coastal erosion is occurring along 17 per cent of the UK coastline (30 per cent of England's coastline; 23 per cent of Wales; 20 per cent of Northern Ireland; 12 per cent Scotland).

6. Recent warmer conditions and associated shifts in the abundance and geographical distribution of plankton have led to reduced availability of prey fish for some seabirds, which has been strongly linked to recent poor breeding success and reduced survival rates.

7. The impacts of climate change on the commercial services provided by our seas will be significant. Sea-level rise, coastal flooding, storms and bigger waves will affect ports, shipping and built structures. Fishing and fish farming will be affected by temperature change and plankton (prey) availability.

Better regulation

8. The Bill will significantly improve decision making in the marine environment by providing clearer direction and more certainty to developers, both from industry and local government, and to marine users generally. It streamlines and simplifies existing legislation and requirements. It reduces the number of regulatory bodies and regimes that developers have to deal with. However, it does not reduce environmental assessment requirements as these are key to ensuring we understand how our decisions and activities impact on the marine environment.

9. The Bill also modernises compliance mechanisms in line with the recommendations of the Macrory Review of Regulatory Penalties (http://bre.berr.gov.uk/regulation/documents/pdf/macrory_penalties.pdf 19) to ensure that all industry and business work on a level playing field. It will provide a transparent and equitable arrangement for managing marine activities and ensuring sustainable marine development.

10. The main industries which will benefit from the measures proposed in the Bill include ports and harbours, fisheries, aggregate dredgers, recreational service providers and renewable energy developers.

How we got here

1. Work on the marine policies in the Marine and Coastal Access Bill date back to 2001, when the Prime Minister committed the UK Government to new measures to improve marine conservation, including a series of Marine Stewardship reports. The first of these 'Safeguarding Our Seas', jointly published a year later by the UK Government and devolved administrations, set out the shared vision of "clean, healthy, safe, productive and biologically diverse oceans and seas".

2. We followed this in 2005 with the first integrated assessment of the 'State of Our Seas – Charting Progress'. This showed that although UK seas are productive and support a wide range of fish, mammals, seabirds and other marine life and the levels of monitored contaminants and pollution have decreased significantly, human activities have resulted in adverse changes to the marine ecosystem and continue to do so. These direct human interventions, along with climate change, pose a real threat to the balance and integrity of the marine ecosystem.

3. In March 2006, we consulted on initial proposals and the strategic direction for a Marine Bill, asking specific questions on nature conservation, reform of marine licensing, introduction of marine planning, and the case for a new Marine Management Organisation and what it's functions might be. We received 1233 responses, the majority of which were supportive of our proposals.

4. In March 2007, we published a Marine Bill White Paper and partial Regulatory Impact Assessment for public consultation. In this, we proposed new systems of marine planning and licensing, and new measures for managing marine nature conservation and fisheries. We also proposed a new body – the Marine Management Organisation – to deliver our objectives in the marine area. We received 8519 responses to the consultation that we have used to develop and refine our policy.

5. Work on proposals for the regulation and management of salmon and freshwater fisheries in England and Wales date back to a 1998 Government review of legislation and policy and the extent that continuing Government involvement was needed in this area. The Review Group reported in 2000 and the Government response, issued in 2001, accepted most of the 195 recommendations of the Report in full or in part. The Government made a commitment to introduce new primary legislation when Parliamentary time made this possible, and the majority of those recommendations requiring changes to primary legislation have been taken up in this Bill.

6. 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*".

7. The Government's vision is of "*A coastal environment where rights to walk along the length of the English coast lie within a wildlife and landscape corridor that offers enjoyment, understanding of the natural environment and a high quality experience; and is managed sustainably in the context of a changing coastline*". Natural England was asked to research the access situation on the coast and look at a number of

options for doing this, working to the vision set out above. Natural England looked at three existing options for improving coastal access – using existing Rights of Ways legislation; using Section 3 of the CROW Act and using voluntary measures - and also an option for new legislation.

8. The Natural England Board submitted its report on coastal access to Defra at the end of February 2007. The Report *Improving coastal access Our advice to Government* is available on its website http://www.naturalengland.org.uk. Natural England's report highlighted the fact that there are parts of the coast where public access on foot is not currently possible, particularly frustrating for walkers finding their route blocked and having to make a diversion inland. The study has also shown that the English coast is a dynamic environment, where some stretches of existing coastal paths are closed or have fallen into the sea as a result of the natural changes which are occurring to our coastline. In other parts the feeling of confinement leaves the walker wishing for a better quality of experience and a sense of freedom with the elements. The coast is vitally important for nature conservation and wildlife.

9. Natural England recommended that the Government should introduce new legislation to enable an approach that combines the best features of the existing mechanisms – giving Natural England customised powers to make sense of the unique coastal situation, and to ensure the necessary flexibility to take account of the circumstances on each section of coast. The key outcome would be a national "coastal access corridor", providing secure and consistent rights for people to enjoy the whole English coast with confidence and certainty.

10. On 19 June 2007, Defra published a consultation document "*Consultation on Proposals to Improve Access to the English Coast"* asking for views on the three existing options for improving coastal access and on Natural England's proposals for new legislation. A document which summarises all the views expressed in response to the consultation and the accompanying partial Regulatory Impact Assessment can be found on the Defra website at the following address:
http://defraweb/rural/documents/countryside/accesscoast-con2007sum.pdf.

11. On 27 September 2007 at the Labour Party Conference in Bournemouth, Secretary of State, Hilary Benn, announced that the Government intended to legislate so that the public would have the right to walk around the English coast for the first time. Defra consulted on options, including the approach recommended by Natural England, in June 2007. We received 749 responses which contributed to the development of our proposals. The overall weight of the responses supported new legislation as the best way forward for improving access to the coast and proposals to implement this are included in this Bill.

12. The draft Marine Bill was published, on 3 April 2008, for public consultation. It was also subject to pre-legislative scrutiny by Parliament during the Summer of 2008.

13. The pre legislative scrutiny was undertaken by a Joint Committee made up from members of both the House of Lords and House of Commons, and also gave people and organisations with an interest in the Bill the opportunity to give their views to the Committee. At the same time, the coastal access provisions of the Bill were examined by the Environment, Food and Rural Affairs Committee (EFRA). The Joint

Committee published its Report and recommendations on 30 July 2008. The EFRA Committee published its Report on 22 July 2008.

14. The Government published its response to the pre-legislative scrutiny and the public consultation in its Command paper "Taking Forward the Marine Bill: The Government response to pre-legislative scrutiny and public consultation" on 25 September 2008 and these were published on the Defra website.

15. Throughout the process of developing the proposals in the Marine and Coastal Access Bill we have worked with the Devolved Administrations. There are different situations in the different areas, so different approaches are needed to enable us to work towards our shared vision throughout UK waters.

Major Changes since publication of draft Bill on 3 April 2008

The revised Bill is more robust, clear, transparent and accountable and thus presents an even stronger framework for the sustainable, UK-wide management of the marine environment, as well as contributing to the achievement of wider environmental targets.

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 a to 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.

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 Northern Ireland 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 and Coastal Access 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.

The overall policy context for marine regulation

The Bill is only one strand of work in the marine environment. This section outlines some of the main policy context, in terms of our international and EU commitments.

International Policy

1. The UK is party to the United Nations Convention on Law of the Sea (UNCLOS) which sets out the legal framework for all ocean activities. The Convention covers the governance of all aspects of ocean space, including environmental control, marine scientific research and economic and commercial activities. It also defines the areas of the sea over which countries have jurisdiction.

2. Shipping activity, whilst within the framework of UNCLOS, is managed by the UN's International Maritime Organisation (IMO), of which the UK is a Member State. This agency of the UN regulates all aspects of shipping activity, from safety, through maritime security to the management of environmental impacts.

3. The UK is also party to a number of conventions and commissions which have specific implications for the marine environment. We work with the International Whaling Commission to support the current moratorium on commercial whaling, and with the North Atlantic Salmon Conservation Organisation (NASCO), which promotes the conservation and rational management of salmon stocks in the North Atlantic through international co-operation. We are working towards commitments under the World Summit on Sustainable Development and the Convention on Biological Diversity to achieve by 2010 a significant reduction in the current rate of biodiversity loss, encourage the application of the ecosystem approach, establish a network of marine protected areas by 2012 and restore depleted fish stocks by 2015 where possible.

4. Closer to home, the UK plays a key role in the Oslo-Paris Convention for Protection of the Marine Environment of the North East Atlantic (OSPAR). OSPAR concerns itself with the protection and conservation of marine biodiversity and ecosystems, eutrophication, hazardous substances, offshore oil and gas, radioactive substances and monitoring and assessment.

5. Under OSPAR, we are committed to developing ecological quality objectives for the North Sea, protecting species that are threatened or in decline, and managing human activities which may affect the marine environment. We are also committed to designating relevant areas of the UK's seas as areas of marine protection belonging to a network of well managed sites. The marine nature conservation proposals in the Bill will help us to deliver this.

6. We also work with the International Council for the Exploration of the Seas (ICES) which co-ordinates and promotes marine research in the North Atlantic, including adjacent seas such as the Baltic Sea and North Sea.

EU framework

7. Along with OSPAR, EU legislation has been central to developing a variety of measures to manage important sectors and impacts in the marine environment. These cover areas

such as conservation, fisheries, environmental pollution, renewable energy targets and water quality, and have been key to helping us improve and clean up our seas. The Box below shows some of the legislation that impacts on the management of our marine environment.

Existing EU measures include:

Industry	Common Fisheries Policy
	EU Renewables Directive
	Legislation on marine shipping fuel
Conservation	Birds Directive
	Habitats Directive
Water Quality and Inputs	Bathing Waters Directive
	Habitats Directive
	Shellfish Waters Directive
	Urban Waste Water Treatment Directive
	Water Framework Directive
Assessment	Environment Impact Assessment Directive
	Strategic Environmental Assessment Directive

8. The EU Marine Strategy Framework Directive was adopted in 2008. This requires Member States to take the necessary measures to achieve “Good Environmental Status” (GES) in their waters. This will be developed using an ecosystem based approach; describing the environmental status of our waters to which we aspire, our impacts on them, and then developing a programme of measures to attain GES. Programmes of measures must include protected areas covering the range of marine habitats. The Bill will enable us to implement the Marine Strategy Framework Directive in a coherent and systematic way.

9. Under the Directive, the UK (and other Member States) will need to co-ordinate our activities in the marine regions (such as the North Sea and the Channel) which we share with other countries. This means that we (for example the new Marine Management Organisation) will need to be alert to what is happening in other countries to ensure that licensing and other work reflect these.

10. The EU has also announced the publication of a Blue Book (a “vision document”) on an Integrated Maritime Policy for the EU. This is a thematic document setting out policy on maritime matters, covering a range of policy areas from marine planning through to shipping. The Marine Strategy Framework Directive is seen by the European Commission as the environmental pillar of their Maritime Policy.

Research

1. A strong research programme is also a key underpinning element of our ability to make good policy and management decisions. Defra has a comprehensive research programme, encompassing projects and programmes on individual marine activities, such as aggregate extraction, through to studies to help us understand the ecological structure and function of our oceans and seas and to ensure we have the information we need to make policy decisions.

2. Defra's current marine environment research includes a number of projects looking at how best to manage marine activities in an integrated way. The findings of the projects within this programme will help inform how Government, and particularly the Marine Management Organisation, take decisions in the marine environment.

3. Defra is currently reviewing its marine environment research programme to ensure that it provides the right evidence for effective management of the marine environment. Together with marine monitoring, the output from research into topics such as how the ecosystem functions and man's impact on it will be essential for the effective implementation of marine planning.

4. Defra also has a programme of sustainable marine fisheries research, which covers the impact of fishing on the marine ecosystem, the effects of the environment on fish stocks and fisheries management.

5. There is more detailed information on Research in the context of the Marine and Coastal Access Bill on our website at: –
   http://defraweb/environment/marine/science/index.htm

Part 1 - The Marine Management Organisation

1. We need a way to deliver Government policies in the marine area – as set out in the Marine Policy Statement – simply, effectively and efficiently. The Marine Management Organisation (MMO) will be the UK Government's strategic delivery body in the marine area, charged with making a unique contribution to the sustainable development of the marine area.

2. The MMO will be the marine planning body on behalf of the UK Government in the waters off England and the adjacent offshore area and the regulator of most activities in the marine environment. It will make decisions according to the Marine Policy Statement and marine plans on most marine developments, will license fishing activity under the European Union Common Fisheries Policy and license exemptions to nature conservation legislation. The MMO will also be a key adviser on marine issues to other bodies taking decisions affecting the marine area, such as the Infrastructure Planning Commission (IPC).

3. It will continue to manage marine fisheries as currently done by the Marine and Fisheries Agency (MFA) and will also work closely with local authorities, Inshore Fisheries and Conservation Authorities (IFCAs), the Environment Agency and others to integrate management of our seas with estuaries and land at the coast. The MMO will use modernised powers to enforce marine legislation, working effectively with other marine enforcement bodies. We want the MMO to be visible and approachable, an identifiable focus of UK Government activity in the marine area. The combination of marine functions delivered by the MMO and the resulting body of knowledge and expertise within the one organisation will enable integrated implementation of Government policy for the marine area.

4. The MMO will be an executive Non-Departmental Public Body (NDPB). As such, it will act independently of individual Government Departments and will work closely with the full range of marine users and interests. Creating this marine delivery body will enable Government Departments such as Defra, the Department for Transport (DfT), Department of Energy and Climate Change (DECC), Communities and Local Government (CLG), Ministry of Defence (MoD) and the Department for Culture, Media and Sport (DCMS) to focus on developing policy.

5. The MMO will work closely with Natural England and the Joint Nature Conservation Committee, the Environment Agency, the Infrastructure Planning Commission, the Maritime and Coastguard Agency, Centre for Environment, Fisheries and Aquaculture Science and a range of other bodies with responsibilities in the marine area.

6. The new body will build strong and effective relationships with local authorities and coastal stakeholders. In all activities with an impact on the coast, the MMO and other delivery bodies will work closely to ensure that delivery of different functions is integrated and coastal stakeholders have a say in how their local environment is managed.

7. More detail on the functions of the MMO can be found in the summary at the end of this section and in the brochure 'Managing Marine Resources: The Marine Management Organisation. The brochure is available at:

   http://defraweb/environment/marine/documents/legislation/mmo-brochure.pdf

Set up of the MMO

8. In advance of the formal establishment (vesting) of the MMO, we are planning to create a 'skeleton' MMO (that is, a body without functions). This will comprise the future MMO Chair, Board members and Chief Executive supported by a small staff. The skeleton body will work with Government to develop a Framework Document for the MMO, setting out its remit, governance and accountability arrangements. These will cover the operations, financing, accountability and control of the NDPB, and the conditions under which any government funds are provided. It aims to achieve the maximum operational flexibility and delegation consistent with full accountability to Parliament.

9. The skeleton body will contribute to preparations for the establishment of the MMO such as developing the initial corporate plan; the overall shape of the future organisation (including staff structure); assessment of financial issues (including accounting systems); assessment of IT requirements; and approach and procedures for recruiting staff to undertake the new activities.

10. To minimise the risk associated with a 'big bang' launch of a new organisation, where everything changes at once, we are taking a 'managed transition' approach to establishing the MMO. The MMO will be built on the existing Marine and Fisheries Agency and, where practicable, we are transferring functions to the MFA in advance of the establishment of the MMO. Bringing existing responsibilities together in the MFA is intended to ease the transition to the MMO, maximise the ability of staff to adjust to the new organisation and minimise disruption to customers and those who will need to work alongside the MMO. In advance of the MMO vesting date, the MFA will continue to deliver these existing functions (in effect acting as a shadow MMO), leaving the skeleton MMO to focus on preparations for the establishment of the MMO. At vesting of the MMO, the MFA will cease to exist.

11. The MMO will be led by a Chair and a Board of up to eight members. Board members will be sought with experience and expertise relevant to all three 'pillars' of sustainable development:

    i. economic, e.g. aggregate extraction, renewable energy, fishing, ports/ harbours, shipping;
    ii. environmental, e.g. habitats, fish stocks and water quality; and
    iii. social, e.g. heritage, recreation and defence.

12. There will be no sectoral representation or nomination rights to the Board. However, we expect the MMO to establish a Stakeholder Advisory Committee so that the Board can benefit from the advice and experience of representatives of a range of marine industries, sectors and interests. This is in addition to the cross-Government

sponsorship group which will advise the Secretary of State on the MMO and its responsibilities. The Board will also be advised by a Chief Scientific Adviser.

13. The earliest possible opportunity to establish the MMO is April 2010, however this depends on Parliamentary progress of the Marine and Coastal Access Bill. We are planning to be ready for establishment at the earliest opportunity but are mindful of the lessons from recent experience in establishing other NDPBs. In particular, we are aware of the need to plan carefully and allow sufficient time for the processes involved in establishing a new body, accepting the fact that from the administrative point of view, April is the most appropriate time at which to vest a new body.

Location

14. The MMO will have a headquarters office in Tyneside providing a firm focus for the organisation. Tyneside was chosen because of its broad range and good balance of marine interests. It has a working port, a busy local fishing industry, and businesses including offshore renewable energy development, all of which fit well with the MMO's role. The headquarters office will be complemented by a strong local presence in the form of a network of offices around the coast of England (the 18 coastal offices currently operated by the MFA, subject to any mergers or relocations that may take place in the normal course of business).

Staff

15. The MMO will be an executive NDPB, employing public servants.

16. The majority of MMO posts will be existing posts transferring from the Marine and Fisheries Agency, which currently has around 200 staff. The MMO will also take on functions currently delivered by the Department for Transport, Department of Energy and Climate Change, and the Department for Environment, Food and Rural Affairs and resources will be transferred accordingly.

17. In addition the MMO will be taking on new functions set out in the Marine and Coastal Access Bill for which it will need new posts. The Impact Assessment published alongside the Bill outlines the anticipated additional staffing requirements for the MMO at around 40 new posts. As an executive NDPB, it will need a strengthened corporate function and access to independent legal advice.

18. Staff transferring to an NDPB do so under COSOP (Cabinet Office Statement of Practice on Staff Transfers in the Public Sector) using TUPE (The Transfer of Undertakings Protection of Employment Regulations) (5 principles), which state that there should be no detriment to pay or terms and conditions of employment at the point of transfer. Any future changes would only happen through proper consultation with the relevant trade unions and with the approval of the Secretary of State.

Post-launch

19. For a range of reasons, including maximising flexibility and dealing with obligations stemming from EU policies, several of the MMO's functions will be transferred to it

using secondary legislation and/or powers set out in the Marine and Coastal Access Bill.

20. The MMO will be the UK Government's strategic delivery body in the marine area. It will be an executive NDPB of Defra, therefore Defra's Secretary of State will be formally accountable to Parliament for its activities and performance. To reinforce the policy interest of a range of Departments in the work of the MMO, Defra's Secretary of State will be formally advised by a cross-Government MMO Sponsorship Group made up of senior civil servants from relevant Departments: DECC (energy generation), Defra (marine nature conservation, fisheries, integrated coastal management, flood and coastal erosion and the marine environment), DfT (shipping, ports and harbours), CLG (interaction with terrestrial planning system), MoD (defence activities in marine area) and DCMS (marine heritage, recreation and tourism).

21. The UK Government will support the MMO by providing guidance, for example, on the contribution the MMO is expected to make to sustainable development.

22. We anticipate that the detail of relationships with other marine delivery bodies will be set out in a range of appropriate agreements drawn up between the key bodies and the skeleton MMO. This work on relationships between the MMO and key delivery partners will be an important strand in the implementation work in the run up to vesting of the MMO. We are working to ensure we join up with the MFA's ongoing stakeholder engagement work.

23. The Bill also gives the MMO some 'incidental powers'. This provision is intended to ensure the MMO as an independent organisation has all the powers it will need in order to carry out its functions and meet its general objective. These include the ability to enter into agreements, acquire or dispose of property, and borrow or invest money. We also want the MMO to be able to charge for any services it provides. Charges will be based on the Government's principles of cost recovery and proportionality and will be linked to the cost to the MMO of providing any particular service.

Marine data and information

24. Appropriate scientific data and information is needed in order to provide an evidence-based approach to policy making, both at the strategic level (planning) and for local marine management decisions (licensing, enforcement and nature conservation). A great deal of information has been collected by various bodies over time. However, much of the data has been collected using different standards, to different levels of quality and in an unco-ordinated way which inevitably leads to more and more duplication.

25. A 2007 report "Investigating the Oceans" (House of Commons Science and Technology Committee, Tenth Report of Session 2006-07 Volume 1), recommended a 'collect once, use many times' principle in relation to data. It also recommended that the MMO should be responsible for 'facilitating the release of data and interaction between producers and suppliers and users of data to maximise its value to the community at large'.

26. In responding to those recommendations, the Government stated that it is acutely aware of the need to maximise the value of data in order to meet a number of its key priorities such as the EU INSPIRE Directive (INSPIRE aims to create a spatial data infrastructure to facilitate the sharing of spatial information between public authorities and provide improved public access) and marine planning. Government Departments and the Devolved Administrations have committed to the principle of 'collect once, use many times' through the continued support of key initiatives such as the Marine Environmental Data and Information Network (MEDIN) which is a partnership of Government Departments, Devolved Administrations and Government agencies both using and generating marine data. The partnership was set up in 2007 to improve access to and management of UK marine environmental data and information. It is through initiatives such as MEDIN and the on-going work within the UK Marine Monitoring and Assessment Strategy (UKMMAS) that issues pertaining to the release of data will be addressed and interactions between producers, suppliers and users of data strengthened.

27. In order to fulfil its functions, the MMO will need to access and use data and information to create maps, charts, graphs, tables and reports and will have to establish its own arrangements for marine data acquisition, manipulation and storage. Data covering habitats, species types, distribution, bathymetry, geology and hydromorphology will be required, along with information about marine uses and other socio-economic data.

28. The MMO will therefore need to secure access to a broad range of data types collected by industry, regulators and other organisations and contribute to establishing mechanisms to facilitate the release of data and interaction between producers, suppliers and users of data to maximise its value to the community at large; it will need to work to resolve issues surrounding the sporadic way in which data has been collected and managed. We expect that the MMO will participate in the UKMMAS Group to ensure that data, assessments and information collected by UKMMAS and its evidence groups inform the MMO's work. This will also involve the MMO in providing relevant information it has collected for use in the assessments of the state of the marine environment carried out under UKMMAS. We also expect that the MMO will join MEDIN.

29. It is likely that the breadth of the data handled will increase as the MMO is developed and the type of data required will change according to the needs of the MMO. Work is already ongoing to determine the data requirements of the new organisation. A suitable management system will be developed to meet the needs of the MMO; this will be key to its effective operation.

Summary of MMO Activities

Marine planning

1. Government will agree a marine policy statement. The MMO will prepare a series of marine plans to articulate what this policy statement means for different areas of the sea and coast. The MMO will need to work closely with a wide range of existing bodies and any future bodies set up by the devolved administrations, and will also need to engage communities with an interest.

Marine licensing

2. The MMO will be the Government's regulator of most activities in the marine environment. The exceptions to this are (i) oil and gas installations which will be regulated by DECC (ii) renewable energy installations and major ports classified as 'nationally significant infrastructure', on which decisions will be taken by the Infrastructure Planning Commission (iii) shipping which will be regulated by the Maritime and Coastguard Agency and (iv) land based or associated activities which will be regulated by the Environment Agency and local authorities.

3. The MMO will make decisions on applications, issue licences, and set and monitor conditions on marine developments such as wind farms, tidal and wave power projects, jetties, moorings, aggregate extraction and dredging. It will also administer Harbour Orders and license exemptions from nature conservation legislation. The MMO will draw on advice and information from experts such as CEFAS, Natural England, JNCC, and the Maritime & Coastguard Agency as well as consulting other parties likely to be affected and the public. The MMO will in turn act as a key adviser to other bodies such as the Infrastructure Planning Commission for developments licensed by that body in the marine area.

Nature conservation

4. Delivering its various functions will give the MMO knowledge and understanding of the range of uses of the marine area. It will use this information to contribute to the selection of sites for designation as Marine Conservation Zones (MCZs), in particular in relation to the socio-economic considerations of site designation.

5. In common with other public bodies, the MMO will be under a general duty to exercise its functions in a manner which it considers will further conservation objectives for MCZs, and will be under a further duty not to authorise any project where there is a significant risk of hindering the conservation objectives for a site. It will mainly do this through considering MCZs and conservation objectives in the planning process and through exercising its licensing and fisheries management functions.

6. The MMO will also have a new power to make byelaws (and interim byelaws where urgent action is needed) to regulate otherwise unregulated activities when this is necessary to futher the conservation objectives of an MCZ (or potential MCZ). We intend that the MMO will undertake a similar role in respect of European marine sites.

Enforcement

7. The MMO will appoint marine enforcement officers, with the streamlined enforcement powers set out in the Bill to enforce sea fisheries, nature conservation and licensing legislation in the marine area. It will work closely with others (such as IFCAs) to co-ordinate enforcement activities.

Marine fisheries management

8. The MMO will deliver Defra's fisheries management functions which include managing the UK fleet capacity, implementing the EU marketing regime, managing UK fisheries quotas, biological sampling of fish and shellfish, managing fishing industry grants and UK state aids and managing, recording and providing data on fishing activity and catches.

Marine emergencies

9. The MMO will review and comment on oil spill contingency plans. It will maintain and review an oil spill emergencies plan and will provide a mechanism to co-ordinate Defra's response in major marine pollution incidents where the Maritime and Coastguard Agency leads the response. The MMO will also arrange for the testing of oil treatment substances, sorbents for chemicals and surface cleaners for their probable impacts on the marine environment. It will also approve those products, including their use in emergencies.

Other functions

10. As the Government's principal marine delivery body, we expect the MMO to provide advice to Government and others, including the public, on the sustainable development of the marine area.

11. The MMO will appoint members of local Inshore Fisheries and Conservation Authorities, and will also have a seat on each of these Authorities

12. It is likely that the MMO will also play a role in relation to implementation of the Environmental Liability and Marine Strategy Framework Directives.

Part 2 - Exclusive Economic Zone, UK Marine Area and Welsh Zone

Exclusive Economic Zone

This Part of the Bill allows for the declaration of an Exclusive Economic Zone (EEZ) around the coast of the United Kingdom. The declaration of an EEZ will allow the UK to fully assert its rights and assume its obligations in accordance with Part V of the 1982 United Nations Convention on the Law of the Sea. Such a declaration will remove inconsistencies in the current maritime zones claimed by the UK. Up until now the UK has declared different zones for different purposes (fisheries, marine pollution, renewable energy, carbon storage). But this is confusing domestically and contrary to best international practice. The replacement of these zones with one EEZ will simplify the management of our offshore maritime areas at a time when it is increasingly being used for a wider variety of purposes.

UK Marine Area

This Part of the Bill defines the UK marine area for the purposes of subsequent Parts of the Bill, in particular Part 3 – Marine Planning and Part 4 – Marine Licensing. The UK marine area extends from the mean high water mark and most inland tidal parts of the rivers on its landward side out to the seaward limits of the Renewable Energy Zone or the Continental Shelf boundary, whichever is further from our shores. If the power to declare an Exclusive Economic Zone is exercised, the outer limit of the UK marine area will become the seaward limits of the Exclusive Economic Zone or the Continental Shelf boundary, whichever is further from our shores. The UK marine area generally includes the sea, seabed and its subsoil. However our claim is limited to what we have agreed under our international commitments. In practice this means that beyond 200 nautical miles we only have sovereign rights over the seabed and subsoil and not over the water column.

Welsh Zone

Finally, this Part of the Bill also creates the Welsh Zone, the boundaries of which are to be set by an order made by the Secretary of State or an Order in Council made by Her Majesty. It also makes provision in the Bill for certain functions (e.g. relating to fisheries) to be conferred on or transferred to the Welsh Ministers in relation to the Welsh Zone. The creation of a Welsh Zone will allow the Welsh Ministers to exercise a more cohesive fisheries regime for the seas around Wales. The proposed extension will make the legislation over this area of sea more easily understood by members of the public, businesses and other organisations as there will be one set of regulations and administrative arrangements covering the Welsh half of the Irish and Celtic Seas. The functions which may be transferred to the Welsh Ministers in relation to the Welsh Zone are limited to functions connected with fishing, fisheries and fish health as these issues, and the industry governed by those functions, are most logically dealt with as a whole in a holistic approach.

Part 3 - Marine Planning: Marine Policy Statement

1. The Bill sets out a clear procedure for developing, consulting on, and agreeing a Marine Policy Statement (MPS), including provision for the legislatures in all the participating administrations to scrutinise the contents of the draft Statement.

2. The Bill provides for an MPS to be created for the whole of the UK waters. Our intention is that UK Government, Scottish Ministers, Welsh Ministers and the Northern Ireland Executive will work together on the MPS, and adopt it jointly. This shared approach will ensure that the planning arrangements implemented throughout UK waters will be fully joined up, but flexible enough to meet the needs of different Administrations, stakeholders and decision-makers in different parts of the UK.

3. It remains the UK Government and Devolved Administrations' intention that an MPS will be in place within two years of Royal Assent. The Bill does not impose a deadline by which the MPS should be prepared, or any duty on Administrations to work together to do this. To do so would run the risk of forcing the Administrations to agree something that could be undermined, diluted or is less detailed, simply for the sake of meeting an arbitrary deadline. Marine planning is a new system, and we think that it is more important that we have sufficient time to negotiate an effective UK-wide document which is fundamental to the new planning system; including taking the time to properly consider and integrate policies and assess their sustainability. We also want to take the time to engage fully with as many of our stakeholders as we can over the development of the MPS, whilst recognising the importance of getting something in place as quickly as possible so that benefits of this more strategic approach can begin to be realised.

4. The Bill does enable individual administrations to decide to opt out of the Statement if they no longer support the policies it includes, or no longer wish to participate. Equally the UK Government may proceed alone if none of the other Administrations wish to participate. These provisions are in place simply to ensure flexibility for the long term future if the circumstances of the Administrations change. For example, if for any reason an Administration no longer felt able to contribute to the MPS, the other Administrations would still have the ability to take one forward.

5. The Bill makes clear that the policies in the MPS should contribute to the achievement of sustainable development of the UK marine area. In developing the MPS, we intend to build on the High Level Marine Objectives (HLMOs) which set out the outcomes we are seeking in the marine area which will contribute towards achieving sustainable development. Following consultation in summer-autumn 2008, the UK Government, Welsh Assembly Government, Northern Ireland Executive and Scottish Government published *Our seas-a shared resource: High Level Marine Objectives* on 20 April 2009. The HLMOs are essentially a stepping stone to helping us develop the policies that will go into the MPS. The HLMOs can be found on the Defra website; http://www.defra.gov.uk/environment/marine/policy.htm

6. Work on the MPS is at an early stage and there will need to be further policy development and wide ranging engagement across the UK Administrations and with

external stakeholders in order to develop a comprehensive and practical document that will give a policy steer for decision makers and users in the marine area.

7. We are clear that the MPS will need to set out policies and priorities for the whole of the UK marine area, taking into consideration the priorities of all the different UK administrations. It will need to address EU and international obligations and commitments.

8. An important part of the Statement's purpose is to set out key points of policy that will be relevant in making site-specific assessment and decisions and will assist the development of marine plans. The MPS is therefore likely to include high level information about the current use of marine resources, predicted future trends and environmental changes, and the approach we aim to take towards them. It may also contain information about the location and extent of resources, activities and pressures.

9. Equally, the MPS cannot look at our seas in isolation. It also provides us with a useful opportunity to articulate our policy on how we can achieve integration in coastal areas between our objectives at sea and on land by covering the marine aspects of the coast and flagging up the important interactions with terrestrial planning regimes. The MPS will reflect and as appropriate expand on a variety of policy in the administrations around the UK. For example it will draw on and, as appropriate, expand on the National Policy Statements (NPSs) being drawn up under the Planning Act 2008 for key infrastructure sectors. The new Infrastructure Planning Commission (IPC) will take decisions on nationally significant infrastructure projects in England and Wales in accordance with these NPSs, which will be agreed collectively by UK Government and subject to Parliamentary scrutiny. In addition, the IPC will have to have regard to the MPS and marine plans in taking its decisions in the UK marine area. We are ensuring that our marine policy objectives are appropriately factored into the suite of National Policy Statements, and UK Government departments are working together to ensure that there is a clear and consistent framework within which the IPC can take decisions in the marine area. The MPS will also include a statement about the interactions with planning regimes/ arrangements applying for devolved responsibilities, where appropriate.

Sustainability Appraisal

10. It is the defining characteristic of an MPS that the policies it contains contribute to the achievement of sustainable development in the UK marine area. It is therefore essential that we are confident that the policies in the MPS make this contribution. Appraisal of sustainability is inherent in the process of preparing an MPS, rather than a separate consideration, and the Bill includes a requirement that the MPS should be supported by such an appraisal. An Appraisal of Sustainability has been commissioned and work has begun. Work has also begun on the preparation of an Impact Assessment.

Involving people

11. We want the process by which any MPS is prepared to be fair, transparent and open to engagement by stakeholders and the general public. The Bill therefore sets out certain requirements for consultation and community engagement that must be followed during the preparation of any MPS, including publication of a Statement of Public Participation (SPP) at the start of the process. The SPP will set out how the policy administrations preparing the MPS intend to involve people in the development or revision of the MPS, and the timetable for taking it forward.

12. Anyone will be entitled to make representations on a draft MPS when it is published for consultation, and the policy authorities must have regard to any representations made, including the reports of any public meetings or hearings. The policy authorities must allow sufficient time for people to make comments on their proposals before adopting the proposed statement as final.

13. We have already begun stakeholder engagement with a wide range of representatives from different sectors with an interest in the Marine Policy Statement. Workshops have taken place in England (a joint English/Welsh event) and Scotland with further workshops expected in the coming months.

Scrutiny

14. We have introduced into the Bill a requirement that a draft MPS must be laid before both Houses of Parliament and the devolved legislatures of all the Administrations which choose to participate in preparing it. If Parliament or any of the legislatures then make recommendations about the draft MPS, we will be under a duty to respond to those recommendations.

Adoption and review

15. Once adopted, the MPS will provide a clear, and most importantly, a consistent steer to marine regulators and users as to the policies that should be considered when decisions are made. The Bill gives the MPS a legal effect on decision making, which means that our policies on marine matters and integration at the coast will be directly delivered by those carrying out functions there.

16. There will be no fixed review cycle for the MPS, although there will be an obligation on the policy authorities which adopted it to review it “when they consider appropriate” to ensure that it properly reflects the policies within. Whether we make smaller amendments to the MPS or replace the whole document will depend on whether the policy authorities who have adopted the MPS wish to change their policies substantially.

Part 3 - Marine Planning

Introduction

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.

3. The allocation of responsibilities for planning and the procedure to be followed when preparing plans are set out in Part 3 and Schedule 6 of the Bill. Defra is also carrying out research to help determine in more detail how the process will operate in practice, and intend to turn this into guidance after further consultation during 2010.

Planning Areas

4. The Bill refers to different 'marine plan authorities' being responsible for different parts or 'regions' of the UK's waters. The guiding principle is that the allocation of responsibility for marine planning should reflect the distribution of functions under the devolution settlement, as follows:-

5. The UK Government will be the marine plan authority in the territorial and offshore waters adjacent to England (i.e. from 0-200 nautical miles or, if further, to the end of the UK sector of the continental shelf). While Government departments will contribute to the development of plans and will sign off the final versions before they come into effect, most of the planning activity in this area will be delegated to the MMO, so references to the "plan authority" throughout this section will often mean the MMO working on behalf of the UK Government.

6. In Welsh territorial waters and the new Welsh offshore region, the Welsh Ministers will be the plan authority. Welsh Ministers will agree the final versions of any plan(s) produced in the Welsh offshore area with UK Government.

7. In the waters offshore of Northern Ireland, the Department of Environment, in consultation with other Northern Ireland Departments with marine functions, will take the lead in preparing a plan, and will agree the final versions with UK Government. Northern Ireland intends to take forward marine planning in the territorial waters within Northern Ireland through its own legislative process.

8. In the waters offshore from Scotland, Scottish Ministers will be responsible for marine planning. They will agree the final versions of any plan(s) produced in their offshore area with UK Government. The Scottish Parliament is presently considering

the Marine (Scotland) Bill, which includes proposals for marine planning in the UK territorial waters within Scotland.

9. The Bill seeks to ensure that marine planning can work effectively across the boundaries between these areas or regions by placing a duty on each of the plan authorities to notify the adjacent authorities or Administrations prior to developing a new plan, so that they can consider the involvement they will need to have. Each authority is then also required to do all that is reasonable to ensure compatibility between plans that are adjacent or 'related to' each other – including across the boundary between different marine planning regions, and between marine and terrestrial plans. Above all, it is imperative that plan authorities look beyond their borders at the wider effect their proposals may have, and also at what external factors could affect their marine plan areas: it will not be enough to focus only on trying to achieve sustainable development within each individual plan area or region.

10. This will be most beneficial in cross-border estuaries and the Irish Sea. We are beginning to look with the Devolved Administrations at practical mechanisms which might help us to cement this integrated approach, with a focus on 'joint working' (since devolution arrangements mean that it will not be possible to prepare a single plan for a border estuary). This could include marine plan authorities sharing expert groups, and, by planning at the same time on each side of the border, perhaps also sharing consultation resources etc. We will try as far as possible to ensure that, although the area will legally be covered by two separate plans, they will each be prepared with a view to the estuary as a whole and will work seamlessly together so that marine users will not be inconvenienced or confused.

11. The plan authorities between them will be able to plan from the area covered at mean high water spring tide, out to furthest limits of either the continental shelf or the Renewable Energy Zone. The Bill also enables an "Exclusive Economic Zone" (EEZ) to be declared. Once this happens, the definition of the UK marine area will automatically adjust to reflect the EEZ rather than the Renewable Energy Zone. The definition of the UK marine area is deliberately as inclusive as possible, matching the area within which the new Marine Act licences will be required[1] and enabling us to manage all the issues for which the UK has responsibility in the marine area within a single strategic planning framework.

12. The plan authorities will need to determine the appropriate area to be covered by individual plans, within the limits of the regions they are responsible for. In deciding this, each authority will need to take account of current administrative boundaries, existing management processes, the information known about natural resources, patterns of human activities and where marine planning can add value. This will need to be done in discussion with local regulators and other people with an interest.

13. It is envisaged that marine plans will be introduced incrementally over time. We may decide to plan for larger areas, then as we obtain more information plan for smaller areas in more detail, and the Bill gives us the flexibility to do this. Throughout, our priority will be to ensure that there is a single, clear set of plan proposals in any given

[1] Although the new Marine Act licensing process will not apply in the 'Scottish inshore region'.

area, within the overarching policy framework of the MPS. Defra is taking forward work based on what people have already told us in consultation responses, workshops and other events to determine the criteria to be used for deciding the scale and scope for each individual plan area and the considerations which might affect the order in which plans are developed. This will be further consulted on later in 2009. Once marine plan areas are identified, the MMO can develop its marine planning programme and the process of preparing the first plans can begin.

14. The Bill does not set out how many plans there will be in the UK or when they should be produced by, because this would reduce this flexibility, and the dynamic nature of the marine area makes it difficult to prescribe such things in primary legislation. The people we have talked to agree that the system needs to evolve.

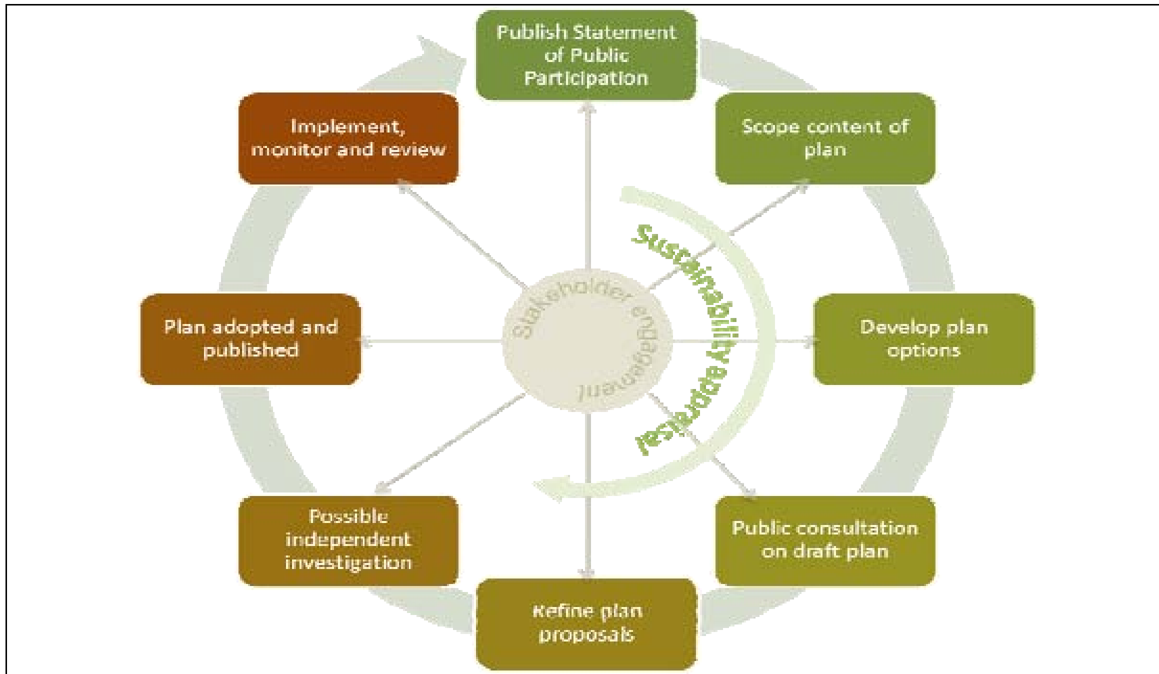
Planning Teams

15. It will be important that the different plan authorities have the right teams in place to take forward the process set out in the Bill. Based on research and discussions with teams that undertake terrestrial planning, Defra consider that in addition to specialist marine planning skills, planning teams will also need to think strategically, communicate and mediate effectively, remain objective about the demands and interests in the planning area, and be able to make calculated judgements and decisions based on the available information. These teams will also almost certainly need to draw on or liaise with those who have relevant marine expertise, policy development experience and strategic project management skills. As planning in the marine area is a new regime, there will inevitably need to be a learning experience of implementing plans over time. It is perhaps equally important to recognise that planning teams will not be working alone – they will be coordinating a process of discussions with marine users and other interested people throughout the process.

Plan preparation

16. We expect that each marine plan will take at least two and a half years to prepare and publish. These assumptions are based on experience of how long it approximately took to prepare the English Regional Spatial Strategies on land and the discussions Defra has had with its marine stakeholders.

17. The diagram below illustrates the different stages of the marine plan process, and the order in which each stage occurs.



18. UK Government envisages that in preparing the plans, the plan authority will need to draw on spatial information about the marine environment and its uses, the relationships between them and forecasted changes when developing the proposals for the plan. This will need to be looked at alongside the policy objectives articulated through the MPS, and by using a series of tools and methodologies that allow planners to assess the relationship between human uses and ecosystem components, assessing efficient use of marine space and appraising proposals for their sustainability. Defra is taking forward a research project to look at the types of planning tools and methodologies that could be used to achieve this, working with a range of different stakeholders with an interest in marine management, to ensure these tools are fit for purpose.

Sustainability Appraisal

19. Whilst developing and considering the possible policies for inclusion in a marine plan, there is a requirement on the plan authority to appraise the proposals of their sustainability. This will include consideration of the likely environmental, social and economic effects plan proposals will have. Within this process, the plan authority must also meet the requirements of EU legislation on Strategic Environmental Assessment (SEA), and any Appropriate Assessments required under the Birds or Habitats Directives. The Bill makes clear that this appraisal should directly steer the selection of options to be included in the draft plan for consultation. Over this coming year Defra will be preparing guidance to the MMO on how it should undertake a sustainability appraisal of plans.

Involving people

20. All marine users will have an opportunity to get involved in the planning process, and the final plans should represent as much consensus and agreement as possible. It is particularly important that those organisations who already hold key planning and regulatory roles in the marine and coastal area, particularly local authorities, are able to play a full and effective role throughout the process and ensure that marine

planning integrates effectively with other management processes that will operate alongside it. The process of developing marine plans will also bring together coastal managers, users and communities and enable them to work together and shape the direction of plans from an early stage.

21. Offering people a chance to be involved in the planning process will give them a greater sense of ownership of the final plan, and a sense of stewardship for that area, which subsequently increases the chance of the plan being implemented effectively by decision-makers. This also provides opportunities to rebuild the connection between coastal communities and their marine environment.

22. To facilitate this process and with the aim of ensuring transparency, the plan authority will be required to publish a statement at the beginning of the development of each plan setting out who it believes is likely to be interested in, or affected by the plan, and how it intends to involve these people during each stage of the planning process. This will enable those with an interest to be clear about the anticipated process, consider the involvement they want to have and plan ahead for it. The statement will also invite people to put forward their views on what should be included in the plan. This is intended to draw out vital local knowledge and to offer an opportunity for anyone with an interest to set out their views and aspirations for that part of the marine area.

23. The plan authority will be required to keep the statement up to date, ensuring that it always represents an accurate picture of the expected process, timetable and opportunities for engagement in the plan development. This will include updating the statement throughout the process to take account of any changes to the expected process or to correct flaws.

24. The Bill also enables the plan authorities to seek advice from individuals or organisations with particular interest or expertise, to help them develop plans effectively. The use of 'steering' or 'advisory' groups is one way to do this, particularly in border areas such as the Severn estuary or Solway Firth. Defra are continuing to explore options for how these groups will be shaped to best support the preparation of plans. It is clear from what people have told us on this issue that different groups may be needed in different planning areas, and at different times in the process, so this will need to be explored further before guidance can be provided.

25. The Bill importantly requires a full public consultation of every draft plan so that anyone with an interest in the plan has an opportunity to comment formally before the plan is finally adopted. However, we expect community and public involvement in planning to go on throughout the planning process, not just during this public consultation period.

Independent scrutiny

26. Before the plan is adopted there is also provision in the Bill requiring the plan authority to consider whether an independent investigator should be appointed to consider the plan. In making that decision, the plan authority must consider the representations made at the start of the planning process and during the public

consultation, and also consider whether there are any unresolved issues. If the decision is taken that an investigation is required, an investigator will be appointed to consider the responses received to the consultation on the draft plan, and any particular issues (of substance or process) that may have arisen during its preparation.

27. An investigation need not be held for every plan. This ensures that the process is proportionate to the issues that may arise during plan development – which may vary in how contentious they are, and depending on which part of the marine area is being planned for and the complexity of different uses going on there.

28. The person appointed to carry out the independent investigation will be required to make recommendations to the plan authority, and give reasons for the recommendations, all of which would be published.

Plan adoption and review

29. Plans come into effect when they have been adopted and published by the relevant marine plan authority. Although it is hoped that plans will look ahead for approximately 20-25 years, the Bill does require the plan authority to monitor and report regularly on its planning activities, and the effects that plans are having, including how well they are achieving their objectives and the objectives set out in the MPS. These reports must then be laid before Parliament or the appropriate devolved Parliament or Assembly.

30. In particular, each marine plan authority must report every 6 years (until 2030) on its planning activity, including details of the new plans it has prepared, any amendments it expects to make to those plans, and any new plans it intends to prepare. This six-yearly reporting cycle will enable these reports to be combined with those required by the Marine Strategy Framework Directive on the measures being taken to ensure 'good environmental status' in the UK marine area. This reporting will also enable the UK Parliament and Devolved Administrations to hold their plan authorities to account for their planning activity, as well as enabling us to present a full picture of how we are managing the UK's marine environment and resources.

31. In addition, each marine plan must be reviewed by the plan authority every three years. After each review, the plan authority will determine whether the plan is still good, or needs to be amended or replaced with a new one. The provisions do not require the plan authority to make amendments or to have a new plan within a specific cycle, because we anticipate every plan will be different. With such a new system we do not want to be prescriptive early on, but to have the flexibility to decide when changes are needed. At this initial stage however we anticipate that amendments might be needed roughly six years after the plans have been adopted.

32. If the plans require amendment or replacing, this will follow exactly the same procedures as those followed for the initial plan preparation – i.e. scoping, developing options, appraisal, consultation, amendment and adoption.

33. Although a clear and transparent procedure for preparing marine plans is set out in the Bill, Defra intends to develop guidance over the next two years that will set out in

more detail the principles and processes that should be adopted through the planning process for plans produced in English waters.

34. In exceptional circumstances, it may become necessary to withdraw the MPS or a plan and the Bill provides mechanisms for this. However, in all but the most extreme cases we expect that it will be possible to amend the MPS or plans, rather than withdrawing them entirely. This enables those aspects of the document which do not need to change to remain effective, and continue to steer decision-making whilst other elements are updated. (See paragraph 40 below on the interim and transitional arrangements which might apply in these circumstances.)

Effect of the MPS and Plans

35. The Marine Policy Statement and marine plans will offer certainty about the UK Government and Devolved Administration's policy intentions: the MPS will set out objectives and priorities, as well as bringing together the marine aspects of our other policies, whilst plans will make clear what we know about the characteristics of the marine environment, the designations which are in place, e.g. for heritage or conservation, and what activities are already going on in a specific area. Together, they will guide developers about where they are likely to be able to carry out activities, or where conditions or restrictions may be placed on what they do. Certainty will come from the fact that all operators and regulators in a given area are steered by the same documents and information, thereby achieving consistency in the way decisions are made.

36. Plans will not remove the need for the current licensing process, which looks at an individual project or development, assesses the impact of that project and ultimately determines whether it can proceed. Rather they will advise and steer marine users towards a more efficient, co-ordinated use of marine space that will ultimately make the whole licensing process more efficient. For example, plans should provide greater information on the marine area, therefore providing greater guidance for developers on the most or least suitable sites for projects, by highlighting potential conflicts or opportunities. Developers may also be able to benefit from the prior consultation and negotiations over the content of the plan, so that they can judge whether a project is likely to meet with opposition or support from the local community and marine users.

37. Authorisation and enforcement decisions by public authorities operating in the marine area will generally have to be made in accordance with the MPS and marine plans, unless relevant considerations indicate that another course of action is more appropriate than set out in the MPS, or in the plan. The kinds of decisions that will be affected will primarily be licensing decisions, including the final decision on whether to grant the licence, and any conditions or enforcement activities. Furthermore, when public bodies are operating generally in the marine area, they will need to have regard to the MPS and plans when making decisions which do not need a licence but which might still affect the marine area (e.g. the creation of other plans, designation of zones etc.).

38. The Infrastructure Planning Commission (IPC), established under the Planning Act 2008 to make decisions about proposed new nationally-significant infrastructure

projects in England and Wales will take its decisions in accordance with sector-specific National Policy Statements (NPSs) which will be agreed collectively by UK Government. When the IPC is taking decisions which are capable of affecting the marine area, it must have regard to the MPS and plans. The MMO (and the Welsh Assembly Government, or the Scottish Ministers as appropriate) will also be consulted by the IPC when it is considering applications for projects which will affect the marine area.

39. Although the Bill enables decision-makers to depart from the policies set out in the plan (or MPS) if relevant considerations indicate that another course of action is more appropriate than that set out in the plan, we would not expect this flexibility to be used as a matter of course. In fact, needing to depart from the plan or MPS could indicate that they are not working effectively, and could need amending. The Bill therefore requires decision-makers which do depart from the provisions of the plan to state their reasons for doing so, and we will monitor these decisions to ensure that any problems with the plan are identified as soon as possible.

Interim arrangements before plans come into force, and whilst plans are amended

40. We intend as far as possible to avoid uncertainty that may arise for developers and decision-makers between the announcement of a forthcoming plan and the publication of that plan, as to how they might have to adjust the way they operate. Similarly, we need to manage any uncertainty that may arise when the intention to revise an existing plan is announced. We will therefore make clear in guidance that decision makers can make decisions without reference to plans 'in preparation' which have not yet been published in draft. Decision makers will still however be able to access any relevant research and information, alongside the MPS that have informed the plan, and should consider these when making decisions.

41. When the intention to amend a plan is announced, we will make clear which parts of the plan we expect to amend, and why the amendment is needed. This will assist decision-makers who are relying on the plan to know which parts are likely to change, and (although subject to public consultation) the likely direction of those changes.

42. Once a plan has been published in draft, or the proposed amendment(s) announced, it may be a 'relevant consideration' for decision makers to bear in mind when carrying out their functions. However they will not be required to act *in accordance with* the plan until it has been adopted in its final form, because until then the content of the plan may change.

43. Where a plan is already in place following adoption, we would encourage developers to contact the plan authority before submitting their formal applications for licences, to discuss any new information that may have come to light since the plan was published.

44. Similarly, we would expect any decision-makers who are aware of likely amendments which might affect their decisions to contact the plan authority, and perhaps also the relevant government departments, to discuss the issue.

Coastal integration in England

45. It has been the priority throughout the development of the Bill, to ensure that marine planning contributes effectively towards more consistent and coordinated decision making at the coast.

46. This will become more important as we continue to develop our proposals for a new system of marine planning and to ensure that there is coherence between these proposals and the different policies and management processes at work in coastal areas, i.e. that we have "integrated coastal zone management" or "coastal integration".

47. We recognise that any changes we make to marine planning must be considered alongside other changes being made to planning structures on land, and are made to work effectively with them. In May-June 2008, Defra undertook a desk study with the Environment Agency, key coastal managers and other stakeholders to explore how the new marine planning and licensing proposals might work alongside existing planning and decision making structures on land, and the effects that our proposals might have on coastal stakeholders. The results from this study, which were published on the Defra website in October 2008[2], will help to inform the guidance that Defra intends to prepare for the MMO and to also help to ensure that our proposals contribute as effectively as possible towards coastal integration. We are now taking this work forward with a series of workshops with local authority representatives, to look at the particular issues local authorities will face in working with the new marine planning system.

48. Marine planning will lead the process of integration in coastal areas and, together with other proposals in the Bill, make a significant contribution towards coastal integration. We have placed an obligation on the plan authority to work together with other administrations and planning bodies to ensure compatibility with other plans which overlap, are adjacent to, or have some relevance to marine plans. This includes plans such as River Basin Management plans (RBMPs and terrestrial plans. Planners will also have to have regard to non-statutory and voluntary plans and management schemes such as Shoreline Management Plans (SMPs) and estuary management plans.

49. We also believe that marine planning will make a real improvement to coastal integration in other ways. For example, the MPS will bring together social, economic and environmental policies and set a clear and consistent policy steer for all coastal regulators and users. It will also enable everyone with a coastal and marine interest to work towards common goals. The process of developing marine plans will also bring together coastal managers, users and communities and enable them to build relationships, work together and shape the direction of marine plans from an early stage.

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2. http://defraweb/environment/marine/documents/legislation/marine-plan-desk-full.pdf

50. The Marine and Coastal Access Bill is, however, only one piece of regulation in the coastal area – we must promote an integrated approach through all the activities which take place there and this includes both regulatory and non-regulatory activities. Defra published a Strategy for Promoting an Integrated Approach to the Management of Coastal Resources in England in early 2009, to show how these activities and processes fit together. Similar strategies have also been published by Scotland, Wales and Northern Ireland. This "ICZM strategy for England" sets out the initiatives being taken forward across Government which will contribute towards integration in coastal areas. It also contains our objectives for coastal management and the actions we are committed to taking forward. This should enable people to see how all the work being done to promote a more integrated approach to decision making at the coast fits together.

Part 4 – Marine Licensing

1. Through the process of marine licensing, and the conditions we put into licences, we seek to achieve our objectives in the marine area for all three limbs of sustainable development – environmental, social and economic.

2. The major change to the licensing regime is the consolidation and modernisation of two existing pieces of legislation: Part 2 of the Food and Environment Protection Act 1985 (FEPA) and Part 2 of the Coast Protection Act 1949 (CPA). When enacted, FEPA was intended to control dumping and incineration at sea, and to protect the marine environment, human health and other legitimate uses of the sea from the adverse effects of construction on the seabed. The CPA was designed to ensure a safe environment for navigation following similar activities. Their consolidation removes the complexity and overlap that has grown up over the years with successive amendments and the advent of EU requirements. It draws together into a single licensing decision consideration of environmental, human health and navigational safety factors as well as the interests of other users of the sea.

3. We are aiming to achieve two main objectives. The first is that by consolidating FEPA and the CPA, and making the legal links with other pieces of legislation as set out below, we want to simplify and streamline the process of getting a licence. Where we are making these links, our reforms enable the Marine Management Organisation (MMO) (for England) to use a single consenting process for decisions that are currently subject to different procedural rules, running to different timescales and with different considerations. That will save effort for all concerned, and in combination with the ability to make further provisions about the procedure, such as setting timescales for decisions, bring greater certainty to the outcome.

4. Our second objective is, for most projects, to enable the MMO to consider all of the relevant factors simultaneously, and so empower it to make decisions about each project as a whole. This is fundamental to the MMO's ability to deliver our sustainable development objectives. As outlined for particular cases below, where possible the MMO will issue a consent covering associated works, such as those onshore, as well as the main marine part of the project.

5. The changes set out in the Bill will also require Ministers to establish a new appeals mechanism. We recognise that the process set out in FEPA does not meet modern expectations of transparency and accountability. We will therefore set up an appeals mechanism that will work to a clearly defined and transparent process.

Integrating flood risk and marine licensing

6. We recognise that many projects take place at the coast and straddle the land/sea boundary. Some of these involve coastal engineering, and there are therefore issues of flood risk and land drainage to consider. Projects that raise these issues also require assessment and consent under other legislation (flood risk management consent is given under the Water Resources Act 1991), normally from the Environment Agency (EA). In future, when projects are mainly marine in nature, the Bill enables the MMO, with the EA's collaboration and consent, to incorporate the

necessary flood risk management and land drainage conditions as part of a licence under the Marine and Coastal Access Bill.

Harbour Development

7. Harbours lie at the interface of the marine and terrestrial worlds. The rules and regulations that apply to them are therefore as complex as for any marine development. Through the Bill, we are making it possible for a single organisation (the MMO for England) to be responsible for the two main marine consents required for harbour construction or alteration. These are the Harbour Empowerment or Revision Order, and the marine environmental consent (currently FEPA, in the future the marine licence). Furthermore, the provisions of the Bill enable us to put both of these consents through the same process. So when plans for harbour construction or alteration are detailed enough at the outset (this is not always the case), the Bill allows us to consider the Harbour Order and marine licence issues together through a single process, considerably simplifying matters for applicants. As with other marine projects, harbours often involve flood risk management considerations. These issues will also be able to be considered in the streamlined process. The changes also allow the Secretary of State to amend the Harbours Order process to ensure that it is compatible with the new standards of transparency and clarity set by the Marine and Coastal Access Bill.

8. The Marine and Coastal Access Bill also amends the Harbours Act to ensure that inquiries are only held when serious or substantial issues are raised or when the Secretary of State decides that one should be held. At present an inquiry must be held if any person raises an objection that is not trivial, even in cases where that person does not want an inquiry. This has proved costly and time-consuming in the past.

9. Added together, the benefit of these changes is to make the MMO the main, and in many cases the single point of contact for harbour developers. The MMO will consider the issues raised by as many as four different consenting regimes currently operated by four different authorities[1].

Dredging

10. Dredging, depending on its method and purpose, currently falls under several different regimes. Some dredging is not regulated at all. The Bill brings consistency to its regulation, and puts all forms of dredging on an equal footing, so that each operation is treated according to the risks and impacts associated with it. Our proposals do not affect the rights of harbour authorities to carry out maintenance dredging where that is permitted by a local Act or Harbour Order.

11. Even where there is no local Act or Harbour Order in force, much dredging is carried out on a regular basis to keep navigation channels, harbours and marinas clear of silt and debris brought in by rivers and the tides. In many cases it has been

[1] See the publication "Managing our marine resources – licensing under the Marine Bill" for further information (http://defraweb/environment/marine/documents/legislation/marine-licensing.pdf)

undertaken in the same way for years if not decades with little apparent adverse impact and considerable socio-economic benefit. We have already started the process of working with harbour authorities, dredgers and others to establish whether and to what degree we could exempt maintenance dredging where we can show that it has a low or negligible impact on the environment. Where maintenance dredging will become licensable for the first time under the Bill, the Bill provides for a year's grace period after the commencement of the new regime during which operators will need to apply for a licence.

Renewable electricity

12. Marine renewable electricity installations currently require consent under section 36 of the Electricity Act and a licence under FEPA. Some also require CPA consent. As with our proposals on Harbour Orders, the Bill enables the Secretary of State to create provisions allowing the marine licence application to be considered through the Electricity Act procedure. The effect is a single process for obtaining consent to build the offshore elements of each new renewable energy development.

Enforcement

13. Licensing conditions are set to protect the environment and human health and prevent interference with other legitimate uses of the sea. Breaching a licence condition may lead to a fine of up to £50,000 on summary conviction or an unlimited fine and/or up to two years' imprisonment on indictment.

14. To provide a range of more proportionate enforcement sanctions, statutory notices will be introduced for licensing offences covering "stop", emergency safety, compliance and remediation purposes. These will enable the enforcement officer to:

    - In urgent circumstances, get an operator to stop an activity, where that activity is causing serious harm or is likely to cause serious harm to the environment and/or human health, or is seriously interfering with (or likely to so interfere with) other uses of the sea;
    - Quickly get the operator to take steps to prevent serious interference with other users of the sea when there is an urgent need to take action, for example, by providing navigational lights to warn of an obstruction;
    - For less serious situations, issue a compliance notice which will make sure that the licensee is left in no doubt as to what actions they need to undertake to comply with their licence; or
    - Specify what needs to be done by way of remediation measures when the environment has been harmed.

    An appeals mechanism to an independent tribunal for these statutory notices will be established under powers provided in the Bill.

15. The Bill also provides for the issue of monetary penalties in relation to an offence under Part 4. The provision for monetary penalties is similar to that established by the Regulatory Enforcement and Sanctions Act 2008. The section on marine enforcement provides more detail.

Cross-border issues

16. Although rare, where activities or projects take place in waters controlled by two or more licensing authorities then, as now, developers will need to obtain the relevant licence from each authority.

17. So, for example, a project that involved dredging material in Wales and depositing where the MMO was the licensing authority would need:

    - A licence to dredge from Welsh ministers; and
    - A licence to deposit from the MMO.

18. There would need to be close working arrangements in place between officials of the two licensing authorities concerned to ensure that both authorities were content with the operation. Work has already started to build on the existing relationships that the Marine and Fisheries Agency (MFA) has with a range of other bodies as we move towards establishing the MMO.

Infrastructure Planning Commission

19. The Planning Act 2008 sets up an Infrastructure Planning Commission (IPC) to take decisions on nationally significant infrastructure projects. At sea, the IPC will be responsible for issuing development consents for large offshore renewable energy projects and the biggest harbours in the territorial waters around England and Wales and in the Renewable Energy Zone (except where Scottish Ministers have responsibility). In making its decisions, the IPC will have regard to the Marine Policy Statement or relevant marine plans. The IPC will make decisions under the Planning Act, and deem marine licences (FEPA licence and CPA consent until the Marine and Coastal Access Bill licensing provisions come into force), advised by the MMO as the specialist marine licensing authority, including on licence conditions. Marine Enforcement Officers will use enforcement powers in the Bill to monitor and enforce marine licences. In the territorial waters around Wales, Marine Enforcement Officers appointed by Welsh Ministers will enforce marine licences.

Licensing under the Marine and Coastal Access Bill: Transitional provisions

1. We intend the new marine licensing regime to come into operation at a time which best ensures a smooth transition between the current regime and the new system proposed under the Bill. Most of the secondary legislation produced under the licensing part of the Bill will also come into force at the same time.

2. As part of our response to the Joint Committee's scrutiny of the draft Bill, we have set out most of the licensing transitional provisions in Schedule 9. This should help provide clarity and assurance to stakeholders in advance of moving from the old system to the new.

Existing licences, consents and approvals

3. Existing FEPA licences and CPA consents will automatically become marine licences on commencement of the Bill's licensing provisions. Existing holders of these licences and consents need do nothing. Any conditions attached to existing licences and consents will also remain applicable as conditions of the replacement marine licence.

4. Applications for CPA consent or a FEPA licence that are under consideration by the relevant licensing authority at the time of commencement of the Bill's licensing provisions will be treated as applications for a marine licence. No additional licence fees will be chargeable on top of those already paid, if FEPA, or at all in the case of an application for CPA consent for which no fee is currently charged.

5. We are adopting the same approach for existing approvals and applications for approval under the Electronic Communications Code, which relate to the laying of submarine cables, and which the marine licence will also replace.

Dredging

6. Currently some forms of maintenance dredging that do not involve deposits, such as plough and hydrodynamic dredging, are not licensable. The Bill will bring all forms of dredging into the scope of licensing. In order to minimise the burden on both the marine licensing authorities and stakeholders and ease the transition from the old to the new systems, there will be a one-year grace period from the commencement of the marine licensing provisions where these previously unlicensed dredging activities can continue before they need to obtain a marine licence.

Enforcement

7. We intend for statutory notices and civil sanctions for licensing enforcement to come into force at the same time as the new licensing scheme are launched.

8. Offences will be those that applied at the time the offence was committed, irrespective of whether a licence was issued under the existing or the new regime.

Enforcement powers will be those that apply at the time, so an offence committed under the old licensing regime could be investigated using Marine and Coastal Access Bill powers if the investigation continued past the commencement date for the common powers. There may be circumstances where offences under the old regime were unenforceable (for example, judged not proportionate to prosecute) but which, given the new powers can be more effectively addressed. We think that in many cases, the licensing authority will signal the change to the new regime by imposition of a compliance notice, which if breached, could trigger a penalty or the use of other new enforcement tools. This should address situations such as where people have not applied for a licence for licensable works.

9. Any enforcement proceedings in progress when the new regime starts will continue as if the Marine and Coastal Access Bill had not come into force.

Other licensing transitional provisions

10. While the Bill outlines the most important transitional arrangements for the licensing regime, the Bill also contains a power for the Secretary of State to make further transitional arrangements by Order. We intend to consult stakeholders on any further transitional arrangements that are made in any such Order.

Part 5 Nature Conservation

1. The Bill provides the tools to designate and protect Marine Conservation Zones (MCZs) – these 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 and protect biodiversity. Marine Conservation Zones, together with other types of Marine Protected Areas (MPAs) such as the European Natura 2000 sites, will fulfil our commitment to an ecologically coherent UK network of MPAs by 2012. We anticipate that MCZs will also contribute to our European Commitment to achieving 'Good Environmental Status' through the Marine Strategy Framework Directive.

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 clear 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. The Bill allows MCZs to be given the appropriate level of protection, without the need for sites to be categorised as either more-highly or less-highly protected. Such a distinction would overlook the fact that levels of restriction might change over time seasonally, or from one part of a site to another. This might happen, for example, because the protected features in an MCZ are vulnerable only at certain times of the year, or in response to new information about their condition or conservation needs. We are also concerned that a two-tier approach could be confusing to sea-users and imply that less-highly protected sites are somehow less important or have less conservation value.

5. Each site will have conservation objectives set out in its designating order which will be based on scientific evidence, which will effectively determine the extent of the site, what is being protected and 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. There will be a number of such sites within the network.

6. 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 Marine Management Organisation (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

7. 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 jet-skiing, 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 are considering such proposals through their own legislation.

8. 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, and the appropriate authority would need to have evidence that met the criminal level of proof before imposing such a penalty.

9. The Bill also includes a general offence to capture acts of deliberate or reckless damage to 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. Fines are likely to be higher if an individual or corporation is considered to have profited commercially from the prohibited activities and fines may be higher for deliberate acts of damage.

Guidance

10. The Government also intends to issue guidance to the regional projects responsible for recommending potential MCZs to the Secretary of State. We have revised the draft guidance which we originally published in 2008 (Guidance note 1 - draft *Guidance on selection and designation of Marine Conservation Zones*). This builds on the draft strategy, elaborating what we mean and understand by the various principles that underpin an ecologically coherent network of Marine Protected Areas.

This will include, for example, further information on the importance of connectivity within the UK network. It will also stress that the network should seek to maximise and enhance the linkages among individual Marine Protected Areas and between regional networks of Marine Protected Areas using the best current science. For certain species this will mean sites with suitable habitat will need to be located in a manner that will allow the exchange between Marine Protected Areas of key life stages. Further detailed practical and technical guidance will be provided by Statutory Nature Conservation Bodies. This will set out the principles for network design and form the basis for assessing the ecological coherence of the MPA network.

Part 6 - Management of Inshore Fisheries

Inshore fisheries and conservation authorities

1. The Bill modernises inshore fisheries and environmental management arrangements in England and Wales. In England, it replaces Sea Fisheries Committees (SFCs) with Inshore Fisheries and Conservation Authorities (IFCAs). IFCAs will have a duty to manage sea fisheries sustainably, balancing socio-economic benefits with protection of the marine environment. They will have strengthened powers, while keeping local involvement in decision-making. IFCAs will have a new duty to protect the marine environment, and promote its recovery, from the effects of sea fisheries exploitation. In carrying out their general duty, IFCAs will be required to take necessary steps to make a contribution to the achievement of sustainable development, and the Secretary of State must give guidance to IFCAs on how they should do so.

2. IFCAs will have a duty exercise their powers to ensure that the conservation objectives of any Marine Conservation Zone (MCZ) in their district are furthered. As well as introducing and enforcing their own byelaws for the protection of an MCZ where the impact is from fishing activity, IFCAs will also enforce MMO byelaws introduced for the protection of MCZs.

3. IFC districts will extend around the entire coastline of England out to six nautical miles and in estuaries where IFCAs 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. IFCAs will lead on marine species management. IFCAs 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 IFCA, and through cross warranting of enforcement officers.

4. The new network of IFC districts will be established through secondary legislation. Defra consulted on proposals for the new districts earlier this year and has since confirmed that there will be 10 IFC districts. There will be further public consultation on the draft Orders setting up the new districts. There is provision in the Bill for IFCAs to establish a body to co-ordinate their activities and Defra will encourage them to do so.

5. The Bill provides for a new membership structure for IFCAs the detail of which will be set out in the orders setting up the districts. About a third of seats will be allocated to unitary and upper tier local authorities – the exact number will depend on the size of each district. The constituent authorities in each IFC district will be set out in the order establishing each IFCA. Every local authority that is required to fund its IFCA will be entitled to a seat on the authority.

6. There will be one statutory seat each on every IFCA for the MMO, Natural England and the Environment Agency. The remainder will be appointed by the MMO and

comprise people acquainted with the needs and opinions of the fishing community of the district, and people with knowledge of, or expertise in, marine environmental matters. Defra will issue guidance to the MMO on appointments to ensure that the right balance of people is appointed to enable IFCAs to deliver their new duties. There will be consultation on this guidance.

7. IFCAs will have powers to make byelaws for the management of sea fisheries resources within their districts as well as for wider environmental purposes such as the protection of species and habitats from fishing activity. Their powers will be broad enough to enable the regulation of the full range of marine fisheries activities including the introduction of chargeable permits, effort limitation, areas restricted to fishing, etc.

8. IFCAs will have to exercise their powers to ensure that the conservation objectives of any Marine Conservation Zones (MCZs) in their districts are furthered. As well as introducing and enforcing their own byelaws for the protection of an MCZ where the impact is from fishing activity, IFCAs will also enforce MMO byelaws introduced for the protection of MCZs.

9. The Bill provides IFCAs with the power to make any byelaws which are required for them to meet their duties of managing the exploitation of sea fisheries resources in their districts and furthering conservation objectives in MCZs. The current process for proposing and making byelaws will be updated. IFCAs will be required to consult the Environment Agency, Natural England, neighbouring IFCAs and the MMO on byelaws as well as all stakeholders who have an interest. Again, for flexibility, these requirements will be set out in secondary legislation.

10. IFCAs will be able to introduce emergency byelaws at short notice so that they are able to deal urgently with unforeseen events. An emergency byelaw would not need to be confirmed by the Secretary of State but would expire after 12 months. Emergency byelaws would be extendable once for a further period of up to 6 months with the written approval of the Secretary of State as appropriate.

11. IFCAs will have strengthened powers to enforce their byelaws and the maximum penalty for offences will be increased from £5,000 to £50,000. For offences involving a breach of a permit issued by an IFCA, the court may revoke or suspend the permit, or disqualify the person from holding or obtaining a type of permit. Provision is also made for a system of financial administrative penalties for minor offending in lieu of a court hearing. This is based on the national fisheries model. As well as enforcing their own byelaws and MMO byelaws, IFCA will have powers to enforce national fisheries legislation in their district.

12. Each IFCA must take such steps as it considers appropriate to co-operate with neighbouring IFCAs and with other public authorities exercising regulatory functions in sea areas falling within IFC districts.

13. The Bill introduces new funding arrangements for IFCAs when compared with the current SFC regime. All unitary and upper tier local authorities with a seashore must fund their local IFCA. This removes the current opt out exercised by some local authorities. Defra will provide funding to local authorities to cover the additional

burden that will arise from the reform package. IFCAs will be able to charge fishermen to offset some of their costs of operating permit schemes.

14. IFCAs will have powers to collect such statistics as they deem are necessary for carrying out their functions. They must produce an annual plan before the beginning of each financial year and must report on their activities in that year. A report on the conduct and operation of IFCAs must be laid before Parliament every four years.

15. The Bill provides powers for Welsh Ministers to enable them to undertake the management of fisheries in Wales in the same way that IFCAs will undertake that management in England. The Bill will enable key legislative changes, including allowing the work of the current North West and North Wales Sea Fisheries Committee to be divided between the relevant IFCA in England and the Welsh Assembly Government.

16. In bringing in new arrangements for inshore fisheries management, certain transitional provisions will be put in place to transfer the existing management regime into the new.

Part 7 Fisheries - Migratory and Freshwater Fisheries

1. The day-to-day responsibility for regulation and management of salmon and freshwater fisheries in England and Wales lies with the Environment Agency (EA). The Bill will modernise the tools available to the EA for their management and enforcement role.

Types of fish

2. The EA's regulatory powers (including a licensing system, byelaw making powers, enforcement powers and certain other powers to restrict fishing effort) will be extended to include smelt and lamprey, two migratory species which currently fall outside the scope of fisheries management measures. In addition, Ministers will be able by Order to add further kinds of fish to the EA's remit; marine species such as flounder, mullet or bass can be found in significant numbers in freshwater and it is possible that new species of diadromous fish could start to colonise English and Welsh inland waters as a result of climate change. (Diadromous fish are those species that need to migrate between freshwater and the marine in order to complete their life cycles.) There is no intention to lay such an Order until a fishery has developed or is developing, and we intend that any extension to marine species will be limited to inland waters only, to ensure there is no duplication of management with the relevant body responsible for managing sea fisheries in the marine area. This will allow for a more holistic approach to inland fisheries management, allowing all fish stocks to be managed at sustainable levels.

3. In the inshore area the Environment Agency will manage those fisheries targeting migratory fish, i.e. salmon, sea trout, eels, lamprey and smelt and those species so determined by Ministers. All other fisheries will be managed by the local IFCA, or in Wales, by the Welsh Assembly Government. Where a fishery managed by the IFCA is having an impact on the conservation or management of migratory fish, then it will be the IFCA's responsibility to introduce appropriate measures in consultation with the Environment Agency.

Licensing

4. To complement the new licensing powers, the current deeming provisions (whereby a salmon licence is deemed to allow fishing for trout etc.) will be repealed so that the EA will have more flexibility to determine the scope of the various licences it may issue. At present the EA intends to offer two separate licences for rod and line fishers:
    - salmon, trout (both migratory and non-migratory), coarse fish and eel; and
    - (non-migratory) trout, coarse fish, smelt, lamprey and eel.

    In practice little will change for anglers in the short term; however the EA will have the flexibility, should there be sufficient interest, to introduce licences covering different combinations of species.

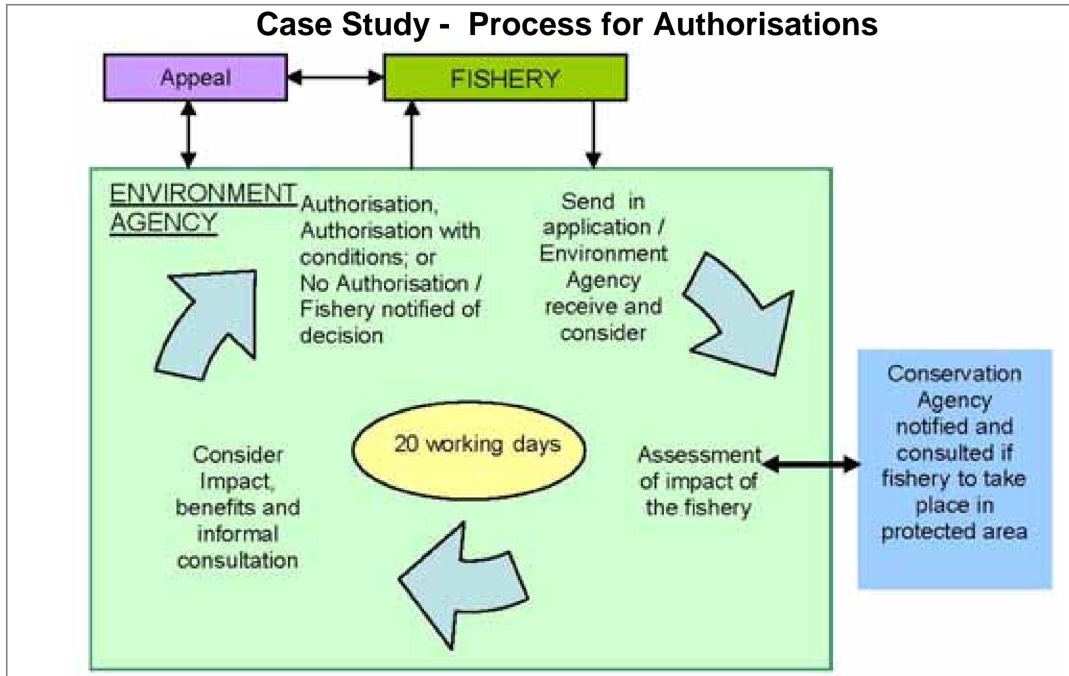
5. Net and trap fisheries will either be licensed (generally those less intensive methods of fishing) or authorised (methods which pose a higher risk to either fish stocks or the aquatic environment). At present we intend that the following will be licensed:
    - for salmon and sea trout - compass nets, haaf nets, draft hand and trammel/whammel nets, wade nets (including lave and dip nets), coracle nets, T&J nets, drift nets, gill nets, heave and seine nets;
    - for eels – fyke nets (both leaderless/wingless and with leaders or wings), Gloucester Wing Nets, trawls, putcheons, pipe traps, criggs, pots, baskets, hives (or like instruments) and elver dip nets; and
    - fisheries currently undertaken under Certificates of Privilege or statutory entitlement.

6. The EA will be able to impose conditions on the use of “historic installations”. “Historic installations” include those fixed nets or traps that have been fished under privileged status since at least the 19th century. Their privileged status has prevented the EA from taking coherent action to control fishing pressure. The EA may use the new powers, for instance, to include a limitation on the number of fish which may be taken, the times at which they may be taken and specifications as to the fishing gear that may be used.

Authorisations

7. Those who wish to pursue fisheries not covered by licences will need to apply to the EA for an authorisation to fish. This will most likely include the following:
    - Crayfish traps, eel fixed traps, coops, electric fishing and stake nets;
    - Any new fisheries that may develop; and
    - Fisheries undertaken for scientific or management purposes (such as those during a close season that would otherwise be illegal).

8. This formal separation allows for the assessment of those fisheries that may pose a higher risk to either fish stocks or the aquatic environment, or which involve new fishing methods that may develop and which have potential to harm the aquatic environment. The EA will be able to refuse to grant an authorisation or place conditions on any authorisation such as the number of fish that may be taken or specifications on the gear used.



Effort Limitation

9. The EA is able to restrict the number of licences in salmon or sea trout net and trap fisheries through Net Limitation Orders (NLOs). The Bill extends this power to all migratory species, and empowers the EA to make NLOs to protect the marine and aquatic environment when fisheries have a significant impact. Whilst byelaws can provide a level of protection, there may be circumstances when limiting a fishery is the only viable option. It will be for Ministers to determine whether a public enquiry into the Order is necessary (the current obligation to hold a public enquiry in certain circumstances will be removed). The EA will still be required to consult on proposed NLOs. The EA will be obliged to consider whether compensation should be payable to those, wholly dependent on the relevant fishery, whose livelihood will be removed. It will be able to take into account cases in which other compensatory payments have been made, for instance by private groups or organisations. Therefore safeguards will remain for fishers' livelihoods.

Illegal instruments

10. The use of certain instruments (or implements) when fishing is already banned. The Bill gives Ministers the power (subject to consultation) to prohibit the use of further instruments that have the potential to take fish indiscriminately, damage fish such that subsequent release is unlikely to be successful or take a large proportion of fish present. The Bill will make clear that a licence to fish by rod and line does not entitle a person to use a gaff or tailer.

Power for EA to make emergency byelaws

11. The Bill empowers the EA to introduce emergency byelaws in response to situations such as serious drought, collapse in numbers of returning fish, high temperatures (which can lead to de-oxygenation of the water) or water pollution. Such byelaws would be introduced for a maximum of 12 months in the first instance, with the possibility of extending them for a further 6 months where necessary. There will be no formal consultation on emergency byelaws, but Ministers will be obliged to revoke or amend the byelaws should they consider them (at point of confirmation or subsequently) to be no longer necessary for the protection of fisheries.

Case Study

Had these powers been available the Environment Agency would have used them to address problems with low flows on the River Usk during a prolonged drought which made salmon more vulnerable to fishing at various migration barriers. An emergency byelaw imposing a temporary ban on fishing adjacent to obstructions to up- or downstream passage of fish would have reduced the vulnerability of salmon to fishing. Whilst such a byelaw would have temporarily reduced fishing opportunities at favoured locations other sites nearby would still have been available.

Reform of law on byelaws

12. The Bill removes statutory close seasons and close season lengths. The current provisions impose an unnecessary restriction on the EA's ability to determine appropriate evidence-informed close seasons. The Bill gives the EA the power to set close seasons through byelaws, and whilst initially we do not envisage significant changes to the current close seasons, there will be more flexibility to adapt to future challenges such as different spawning times brought about by changes in water temperature due to climate change. This will allow the EA to protect fish stocks when they are most vulnerable.

13. In addition, the current right for owners of salmon and trout fisheries, and anyone with their permission, to remove freshwater fish by rod and line during the close season will be removed as this undermines any catch and release requirements or close seasons for freshwater fish.

14. The Bill also includes a power for the EA to make byelaws to prohibit the taking of fish larger than a particular size. Larger fish generally produce more eggs and more viable eggs, and protecting them can contribute significantly to the sustainability of the species concerned. The EA already has the power to make byelaws setting minimum landing sizes.

15. Furthermore the current obligation to pay compensation in certain circumstances will be removed and replaced with a power for the Environment Agency to consider paying compensation. We believe that the current obligation to pay compensation to fishery owners may, in the past, have discouraged the Agency from proposing byelaws, enactment of which would have enhanced fisheries conservation. While there may be rare circumstances in which compensation of fishery owners for the effects of a byelaw might be justifiable, we believe that such compensation cannot possibly be justified – and should not therefore be paid - in circumstances in which

reduction in exploitation are necessary for the general public good. To the extent that reductions in the level of exploitation ultimately result in stock recovery, fishery owners stand to benefit and compensation is therefore inappropriate

Reform of law on introduction of live fish

16. The introduction of fish, whether native or alien, into inland waters can be detrimental to local and/or national biodiversity through competition, predation and hybridisation, or through impacts on the aquatic habitat. The Bill includes powers for Ministers to make regulations establishing a system for regulating the keeping, movement, release and removal of native species of live fish (together with certain non-native kinds of fish which are not regulated through European Community law on the use of alien species in aquaculture (the Alien Species Regulation)) to ensure all fish movements are regulated in a consistent and effective manner.

17. We intend that the key provision of this new scheme shall be an authorisation scheme. Each authorisation would be a consolidated consent detailing what species of fish may be kept at, introduced into or removed from a particular site. The authorisation would be a long-term consenting framework against which all future fish movements for that site would be made and would therefore reduce the administrative burden for both suppliers and the EA. The details an authorisation might contain include:

    - Species that may be kept/stocked/removed;
    - Notification periods for stocking/removal operations; and
    - Stocking/removals to be undertaken by registered and licensed fish supplier.

18. The long term consent would require a "consignment note" and duty of care system for suppliers; in practice this means that they would report movements electronically as they carry them out and these reports will be matched up against consents already in place and recorded on the Live Fish Movements Database, kept by the Centre for Environmental Fisheries and Aquaculture Science (CEFAS) and the EA.

19. All fish farms would be covered by this scheme (they are not generally covered by current controls, unless they are selling fish for stocking into the 'wild'). In addition carriers of live fish would be required to ensure that the fish they were carrying were accompanied by the relevant consents.

20. The proposed measures aim to steer away from dealing with native and non-native species separately in terms of the licensing and internal fish movement schemes. However, the conditions imposed through consents and licences will vary in proportion to the risk posed by particular species or activities. Controls on most native species are expected to be minimal.

21. In particular the proposed scheme would:

- Expand the scope of the offence of introduction of fish, to make owners and occupiers of inland waters liable where they know or suspect, or ought to know or suspect, that the fish were introduced without EA consent;
- Apply these requirements to fish farm waters in respect of native kinds of fish;

- Expand the scope of the offence of possession of live fish to cover a person who knows or suspects, or ought to know or suspect, that the fish will be introduced without EA consent; and
- Require prior authorisation for the removal of live fish from inland waters.
- The details of the scheme will be laid out in secondary legislation and subject to consultation before introduction.

Part 7 – Fisheries: Shellfish

1. The Sea Fisheries (Shellfish) Act 1967 provides for the establishment and improvement of commercial shellfisheries through a Several Order. It also allows the preservation and improvement of existing wild shellfisheries that may be at risk of over-exploitation through a Regulating Order. The first essentially grants an exclusive right to develop a private fishery (of certain types of shellfish specified in the Order) to the grantee (often a group of fisherman). The second either imposes restrictions or makes regulations (or both) respecting the dredging, fishing for, and taking of shellfish specified in the Order. A hybrid Order combines the rights of both types of Order.

2. The process of application, extension and operation of Several and Regulating Orders can be burdensome and costly. This means that over time more Orders might lapse with adverse consequences for long-term sustainability, local economies and the marine environment. The Bill implements changes to reduce the cost and burden, and to improve enforcement of Orders in England and Wales.

3. The current criteria under which public inquiries are triggered during application will be removed. This will mean that inquiries are only held where serious or substantial issues are raised or when the Secretary of State decides that one should be held.

4. The Act currently requires the consent of The Crown Estate or the Duchy of Cornwall, or the Duchy of Lancaster before a shellfish Order can be granted (should the Order be on land owned by one of these organisations). This process has in recent years delayed or prevented the creation of shellfish Orders because of problems around the implications of this consent in the event of future developments. The Bill will remove the requirement for consent, making both The Crown Estate and the Duchies consultees, as is the case with other landowners. The Crown Estate has statutory duties and this will be reflected in the revised Act.

5. Alongside this, the Bill will introduce a process for the variation or revocation of an Order where developments occur within the area covered by an Order. As we are removing the need for consent from The Crown Estate and the Duchies, it is important that the Act allows a mechanism for them to develop their land should they wish. The process of variation or revocation set out in the Bill will allow this, should certain criteria be met, along with a requirement for compensation to be considered where variation or revocation occurs.

6. Inshore Fisheries and Conservation Authorities (IFCAs) and their enforcement officers will be able to enforce the provisions of Several and Regulating Orders. For both types of Order, when the Order is held by a body other than an IFCA, the officers will only be able to enforce it when the grantee asks them to do so. We envisage this will operate through some form of contractual arrangement.

7. The maximum penalty for offences will increase from £5,000 to £50,000 upon summary conviction and the grantees of Regulating Orders will be able to cancel licences following a single conviction, rather than two.

8. The Bill introduces greater flexibility over the use of certain fishing gears within a several fishery. Some gears are currently prohibited but could be used without adverse impact. The Bill provides for such matters to be specified in the Order establishing the individual fishery. The Bill also provides for other minor amendments to the Sea Fisheries (Shellfish) Act 1967 such as for the clarification of the tolls and royalties that may be levied by grantees of Regulating Orders.

Part 7 – Fisheries: Recreational Sea Angling and other amendments to the Sea Fish (Conservation) Act 1967

1. The Bill extends powers in the Sea Fish (Conservation) Act 1967 to regulate recreational sea angling and other fishing activities from the shore and also updates the conservation powers available under the Act. Currently the Act generally only governs commercial fishing activities conducted from vessels. For certain species or in certain circumstances, the lack of a power to regulate activities such as recreational fishing from the shore could limit the effectiveness of a specific conservation measure.

2. The extended powers would allow the introduction of a 'bag limit' for particular species of fish (i.e. a limit on the number of fish which can be retained in any specified period) and allow a maximum size or a size range to be set for species of fish. Any use of the powers would be through secondary legislation and would be subject to consultation.

3. The Bill also includes a power to impose conditions on commercial fishing vessel licences for the protection of the marine environment. This power complements existing powers available under the Act to introduce orders to restrict fishing for marine environmental purposes.

4. The Government currently has powers to charge for commercial fishing licences, but does not use them. The current powers are flexible to some extent, in that they allow different charges to apply for different types of licence. The Bill introduces greater flexibility to enable charges to be levied according to different classes of vessel and gears in England and Wales. Before any scheme were introduced there would need to be full consideration of questions such as the possible impact on national and international competitiveness and equitable treatment across fishing sub-sectors.

Part 7 – Fisheries: Out-of-date and redundant fisheries legislation

Introduction

The Marine Bill White Paper identified nine out-of-date fisheries Acts in response to the Davidson Review which considered, amongst other things, where outdated legislation could be scrapped, simplified or consolidated in accordance with the principles of better regulation. Of the nine Acts identified in the White Paper, the Bill provides for six to be repealed together with a certain section of one other. We have identified provisions in the other two Acts that should be retained and therefore these will remain in force.

Inshore Fisheries Management - Transitional provisions

1. The Bill includes the necessary provisions to enable the transition from Sea Fisheries Committees (SFCs) to Inshore Fisheries and Conservation (IFC) authorities in England. Provisions will be able to made by order, including:

    a. Provisions for the transfer of staff, property, rights and liabilities;
    b. Provisions for the transfer of byelaws – so that they can be carried over with the same geographical extent as they currently have.

2. In England, new IFC districts and IFC authorities will be established through secondary legislation following consultation.

3. Responsibility for appointing certain members to each IFC authority will rest with the MMO. This function is undertaken by the Secretary of State in respect of SFCs. A transitional provision in the Bill enables the Secretary of State to appoint IFC authority members until the time the MMO comes into existence.

4. The Bill also contains provisions to ensure that changes to inshore management in Wales can be co-ordinated with those in England. For example, provisions will be made so that the current North West and North Wales SFC can be split between England and Wales if this proves necessary.

5. Detailed implementation work is now underway to plan the transitional work required in England and Wales.

6. The maximum level of fine for breach of IFC authority byelaws will increase from £5,000 to £50,000 when compared with the SFC regime. A transitional provision will ensure that this and other increases in penalties will only apply to offences committed after the increase comes into effect.

Part 8 - Enforcement

Introduction

1. Effective enforcement is essential to ensure that the rules and regulations designed to manage the marine area are implemented fairly. Under the Bill, we will take the opportunity to modernise powers and sanctions to provide a more proportionate marine enforcement regime. For licensing and nature conservation, we will introduce monetary penalties similar to some of the provisions in the Regulatory Enforcement and Sanctions Act 2008. For sea fisheries, we will introduce an administrative penalties scheme for domestic fisheries offences similar to that already available for offences under EU legislation. This scheme can also extend to Inshore Fisheries and Conservation (IFCA) byelaw offences.

Officers

2. The Bill is streamlining and modernising enforcement powers for sea fisheries, marine licensing and nature conservation from seven Acts and a number of regulations. The Marine Management Organisation (MMO) and Welsh Ministers will be able to appoint Marine Enforcement Officers (MEOs) with these common enforcement powers. Inshore Fisheries and Conservation Officers will use the powers for sea fisheries and nature conservation enforcement. The Department of the Environment in Northern Ireland will be able to appoint people with the powers for the purpose of enforcing marine licensing, as will Scottish Ministers for enforcing marine nature conservation zones (known as marine protected areas in Scotland) that they designate under the Bill and licensing in the offshore area adjacent to Scotland. Where the Marine and Coastal Access Bill powers do not apply, enforcement powers will be provided by existing legislation, such as that for British Sea Fisheries Officers.

Enforcement at the coast

3. Around England, the management and enforcement of fisheries and nature conservation legislation in the inshore area (0-6nm) and in estuaries will be the responsibility of the MMO, Environment Agency and IFCAs. IFCAs will lead on introducing measures for local sea fisheries management and in cases where fisheries activities adversely impact on the wider marine environment. The Environment Agency will lead on freshwater and migratory species fisheries management. The MMO will take action where national fisheries measures are required.

4. Around Wales, the management and enforcement of fisheries and nature conservation legislation in the inshore area (0-6nm) and in estuaries will be the responsibility of the Welsh Ministers and the Environment Agency.

5. In cases where nature conservation is at risk from otherwise-unregulated activities, the MMO will be able to make byelaws and Welsh Ministers will be able to make conservation orders to control those activities. All relevant bodies will have appropriate enforcement powers and the Bill provides for cross warranting of officers

to ensure efficient use of resources. A summary of these arrangements are set out at Annex A.

Common Enforcement Powers

6. 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.

7. 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.

Marine fisheries specific powers

9. Responsibility for fisheries enforcement depends on the vessel 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 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.

10. 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 Marine Management Organisation will have the power to release the property on payment of a bond.

Devolution

11. The common enforcement powers have been drafted to reflect the devolution settlements and where Devolved Administrations have chosen to adopt the powers to enforce the legislation for which they are responsible.

12. The common enforcement powers in the Bill will apply for licensing everywhere around the UK except for inshore Scotland. For nature conservation offences, they will apply everywhere except inshore Northern Ireland waters, inshore Scottish waters and the Scottish Offshore region (in the latter area the powers will be available for enforcing the general offence of damaging an Marine Conservation Zone (MCZ)). For sea fisheries, the powers will apply in England, English waters, Wales and Welsh waters. Where the powers do not apply, existing legislation will continue to apply. To enable officers to pursue someone who has committed an offence across a national boundary, we have provided for "domestic hot pursuit" powers within the UK.

Monetary penalties

13. Using monetary penalties will allow us to address offences in a proportionate and risk-based manner. At the moment, there can be less incentive to comply with the law than we would wish as it may not always be proportionate to prosecute. For the regulator, monetary penalties offer an efficient, cost-effective and proportionate approach to enforcement in relation to such minor or localised offences. For the offender, if they pay the penalty they avoid getting a criminal record.

14. The provisions for monetary penalties for marine licensing (Part 4) and nature conservation offences (Part 5) in the Bill implement the recommendations of the Macrory review[1] and the provisions of the Regulatory Enforcement and Sanctions Act 2008. The administrative penalties scheme for domestic sea fisheries offences, which reverts to the courts, brings national fisheries offences into line with a similar scheme for EU fisheries offences. This scheme can be extended to IFCAs for offences against IFCA byelaws. We have taken different approaches to the monetary penalties because the Bill brings together a number of different legislative areas. This means that we need to address different sectors under the same broad heading and there are instances where the same, "one-size-fits-all" approach is not appropriate.

[1] Richard Macrory, "Regulatory justice: making sanctions effective", 2006

15. We want to ensure that the penalties regime is fair and transparent. People given a notice of intent to issue a civil monetary penalty by the enforcement authority will be able to make representations for 28 days before a final notice may be imposed. If they are still unhappy about the imposition of the monetary penalty, they will be able to appeal to an independent tribunal. Similarly, people will be able to appeal against statutory notices for licensing to an independent tribunal.

Marine licensing regime

16. We will introduce secondary legislation for a monetary penalties regime to address breaches of licence conditions. As well as providing environmental protection, we want to avoid illegitimate operators being able to gain commercial advantage over those who comply with licence conditions.

17. We will use fixed monetary penalties to address minor non-compliances of conditions where little, if any, harm has been caused to the environment, human health or interference caused to other users of the sea. Fixed penalties will be used for low level offences, such as those which impact upon the efficiency of the licensing authority, for example when the licensee has not given the licensing authority advance warning that the licensed activity is due to start.

18. We will use variable monetary penalties to address more serious breaches of licence conditions. The level of variable monetary penalty should be high enough to remove any commercial advantage obtained by breaching a licence or its conditions. It may be calculated by reference to the size or turnover of the organisation. It may include a deterrent element and may take account of other aggravating factors such as the history of non-compliance or the seriousness of the non-compliance.

19. The proportionate and flexible tools provided by the Bill for licensing offences may be used in combination. For example, someone constructs a jetty without a licence. The jetty impedes access to other users of the sea and causes deterioration in water quality. The MMO could issue a remediation notice ordering the removal of the jetty and, depending upon the nature of the case, a variable monetary penalty issued for the offence of building the jetty without a licence.

20. The MMO will also be able to vary, suspend or revoke licences, where appropriate.

Marine nature conservation

21. The Bill will contain a power enabling a fixed monetary penalty scheme when there is a breach of a Marine Conservation Zone (MCZ) byelaw 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.

Sea fisheries

22. The Bill will contain a power enabling the fixed penalty scheme for marine fisheries offences (which we have introduced by secondary legislation for Community offences) to be extended to all fisheries offences. If someone does not pay one of these penalties, their case will go to court.

Annex A

Responsibilities for marine enforcement in England and English waters

Enforcement of which legislation:	Limits (nm)	Lead post-Marine and Coastal Access Act (1)	Officers who could be cross-warranted (2)	Other officers who have powers to enforce (3)
EA fisheries legislation and byelaws (migratory and freshwater fish)	0 – 6	EA	IFCA / MMO/ RN	---
IFCA Byelaws (sea fish)	0 – 6	IFCA	EA / MMO / RN	---
UK sea fisheries legislation	0 – 6	IFCA / MMO	EA	RN
UK sea fisheries legislation	6 – 12	MMO	IFCA	RN
UK sea fisheries legislation	12 – 200	MMO	---	RN
EU sea fisheries legislation	0 – 6	MMO	EA / IFCA	RN
EU sea fisheries legislation	6 – 12	MMO	IFCA	RN
EU sea fisheries legislation	12 – 200	MMO	---	RN
Marine environment licensing	0 – 200	MMO	---	RN
MMO Byelaws (including MCZs and European marine sites) and the general offence of damaging an MCZ	0 – 6	IFCA	EA	RN / MMO
MMO Byelaws (including MCZs and European marine sites) and the general offence of damaging an MCZ	6 - 12	MMO	IFCA	RN
General offence of damaging an MCZ	12 – 200	MMO	---	RN

Enforcement of which legislation:	Limits (nm)	Lead post-Marine and Coastal Access Act (1)	Officers who could be cross-warranted (2)	Other officers who have powers to enforce (3)
Wildlife and Countryside Act 1981, Conservation of Seals Act 1970	0 – 6	MMO	IFCA / EA	Police / RN
Wildlife and Countryside Act 1981, Conservation of Seals Act 1970	6 - 12	MMO	IFCA	Police / RN
Offences under Habitats Regs 1994	0 – 6	MMO	IFCA / EA	Police / RN
Offences under Habitats Regs 1994	6 - 12	MMO	IFCA	Police / RN
Offences under Habitats Regs 2007	12 – 200	MMO	---	RN
Legislation applying in international waters	Beyond 200	MMO	---	RN

Notes

(1) Responsibility for enforcing the legislation is with the organisation(s) listed under "Lead post-Marine and Coastal Access Act".

(2) Where it is appropriate, and with the agreement of both organisations, trained officers who could be cross-warranted to enforce that legislation are given in the "cross-warranted" column. It is not solely organisations listed here who could have staff cross-warranted to enforce the legislation: people from other organisations could be cross-warranted if appropriate and they had met the required training and competency standards.

(3) Officers of organisations who have powers to enforce, but do not have a direct responsibility for ensuring compliance, are given in the final column. For example, enforcement of the MMO responsibilities for sea fisheries and nature conservation may be carried out under contract by the Royal Navy (RN). There are also some other officers appointed under the Bill, such as those appointed by Welsh Ministers, who have powers to enforce some of the legislation but these have not been detailed here.

Part 9 - Coastal Access

Introduction

1. The Marine and Coastal Access Bill aims to improve public access to and enjoyment of the English coastline, providing secure and consistent rights for people to enjoy the coast with confidence and certainty. It will do this by making a coastal margin available for access around the coast of England. Within this margin people will be able to walk along the length of the English coast, and in addition will have access to suitable coastal land such as beaches, cliffs, rocks and dunes, for open-air recreation on foot.

What the Bill does

2. The Secretary of State and Natural England will be given a new duty to provide this improved public access. The legislation will be implemented by Natural England which will propose a series of long-distance routes around the coast of England, under the powers contained in the National Parks and Access to the Countryside Act 1949 as amended by this Bill. They will develop a proposed route in consultation with local people, and local access authorities, and propose a route in a report to the Secretary of State.

3. In addition to the long-distance route, 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. The effect of this order will be that the approval of a route will mean that land two metres either side of the line of the route, all land to the seaward of the route and any of the classic coastal land types (including dunes and cliffs) to the landward side will normally be available to the public under the right of access contained in section 2(1) of the CROW Act. Some additional land to the landward of the route may be included, to take the access land up to a suitable boundary (such as a fence) or other physical feature. This means that the process of fixing the line of the route will have wider significance than just for the route itself, as it will lead to access being given to certain land around the route. So, in addition to its own fieldwork, Natural England will consult widely on the implications of putting the route in a particular place.

4. The reason why we say that land in the coastal margin will "normally" be available to the public is that some land types will be excepted. There are already categories of excepted land in CROW Schedule 1, which will be amended by an Order under the CROW Act (see Annex) for the purposes of the coastal margin. In addition, the right of access may, in certain places, be subject to restrictions or exclusions e.g. for nature conservation or land management purposes. Natural England will propose what restrictions or exclusions should be put in place as part of the process of proposing the route. Any dogs will be required to be kept under effective control, and on particular sections of the coastal margin, might be required to be kept on a lead.

5. The route itself will be established so that it can always remain open: it will not, for example, be put through areas where there would be an unacceptable impact on nature conservation or through ports where security and safety are issues. The long-distance route (but not the wider areas of coastal margin) would be able to go

through certain categories of land which are otherwise excepted from the right of access, e.g. arable fields. Natural England, and the Secretary of State, will be under a duty to strike a fair balance between the interests of the public in acquiring a right of access and the interests of any owner or occupier of land over which the new right would apply.

6. The route could be subject to seasonal diversions, for instance to avoid disturbing nesting birds. Natural England could also re-designate the route at a later date if circumstances changed. Where the coastline is subject to rapid erosion, Natural England could specify that the route would "roll back" with erosion. This would avoid situations with rapid coastal erosion where the route fell into the sea and could not be reinstated until Natural England was able to revisit and propose a revised route.

7. The access route will be proposed 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 on other land uses. All Natural England's powers will be exercised under a statutory scheme, approved by the Secretary of State, which will set out how it would go about proposing the route in different coastal situations (e.g. cliffs, steep valleys, headlands, beaches). Consultation with landowners and those with an interest in the land will take place to identify any concerns over such matters as land management, privacy or business interests. There will also be discussion with other local interests – including parish councils, other local authorities and local access forums, and wildlife and user groups –which will form a key part of the local design. The Bill requires Natural England to work through access authorities (typically the local highway authority) in achieving much of the detailed proposals for the coastal access margin, wherever the authorities are willing to act and Natural England is satisfied that this would result in timely and effective action.

8. On estuaries, Natural England will have powers to extend the route as far as the first public foot crossing (either a bridge or a tunnel) if it is appropriate to do so. However Natural England will also have the discretion to stop the route at any point between the mouth of an estuary and the first crossing. This means that there will be a break in the continuity of the route in these cases. The Bill sets out criteria that Natural England must have regard to in taking a decision where to propose the route on estuaries.

9. Following public consultation on a particular stretch of coast, Natural England will produce a report for the Secretary of State proposing the line of the long-distance route. The report will indicate what other land will be subject to access as a result of the choice of route (in most cases by description rather than mapping), and any restrictions and exclusions that it proposes. Anyone can make representations to Natural England about the report, including about the line of the proposed route, or about any restrictions or exclusions which are proposed or which they believe should be proposed. and Natural England must send the Secretary of State a summary of the representations together with their comments. Certain listed bodies, will be able to make representations to Natural England which Natural England must include in full, together with any comments it may have on them, in the report to the Secretary of State. In addition, those with a relevant interest in affected land may make objections on certain grounds, which will be considered by an appointed person (we

envisage that this will be an inspector from the Planning Inspectorate) who will make a recommendation to the Secretary of State including, if appropriate, a recommendation that the route proposed in the report should be modified. The Secretary of State will consider the report, together with the representations and comments, the summary of other representations and any recommendations of the appointed person and will either approve or reject the report, or approve the report subject to modifications.

10. Once the route has been approved for a section of the coast, any necessary establishment work will be undertaken to create new or improved means of access, for example by installing bridges, steps, gates or drainage. Depending on the terrain, a specific path might be signed and managed within the coastal margin, to reinforce people's confidence in using the route and to ensure safe and convenient access. This work will be undertaken by or on behalf of the local authority, but funded by Natural England. Natural England will make directions putting in place the restrictions or exclusions approved by the Secretary of State, and will undertake publicity and education about the new right. The right will then come into force for that section of the long-distance route.

11. The establishment of the route will be carried out over a period of years – the assumption is that most work will be complete after 10 years, but there will not be a cut-off date for completing the work. Natural England is not obliged to act to any particular timetable and is free to prioritise. For example, they may regard areas where good quality access already exists in a secure way to be low priority.

12. The coast is a dangerous environment, but we believe that the public can and do make use of it safely and sensibly. In some cases (e.g. climbing on cliffs) members of the public wish to be allowed to make their own judgement on the level of risk they want. General information on safety is important, and the public need to be made aware of any unusual or hidden risks. However, we believe that it is right that those who go to the coast should take responsibility for their own safety and the safety of any children or others that they are responsible for. We do not believe that landowners should become subject to an increased risk of liability because of the new right of access. The legislation therefore removes occupier's liability in respect of any natural feature, in the same way as for other CROW access land, but in addition removes occupier's liability in respect of any non-natural feature. In both cases this is subject to safeguards, in particular the occupier not having acted intentionally or recklessly about a known danger.

13. The legislation only gives a right of access for open-air recreation on foot. But Natural England will be able to respond to locally identified opportunities to build on the core provision. This might for example involve agreement with the landowner on improved provision for horse riding, cycling, circular walks, or new routes to reach the coast from inland. Or it might involve a programme of local interpretation, or the creation of an easy access trail suitable for all users, or urban outreach work to help people get out on to the coast.

Further information and links to background documents

Why are we doing it?

14. There were 72 million leisure visits to the coast (outside seaside towns) generating £1.4 billion spend in 2005, and going for a walk was the most popular main activity on these visits[1]. Half of the English public said they did not visit the coast frequently but would like to visit more.[2] Natural England estimates that at least 30% of the coast has no legal or recognised access at all, and a proportion of the remaining 70% does not provide continuity of access or a quality coastal experience.[3]

15. The government's vision is of "A coastal environment where rights to walk along the length of the English coast lie within a wildlife and landscape corridor that offers enjoyment, understanding of the natural environment and a high quality experience; and is managed sustainably in the context of a changing coastline".

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[1] England Leisure Visits Survey 2005

2 Ipsos MORI 2006

3 *Improving coastal access Our advice to Government* Natural England 2007

Coastal access: an audit of coastal paths in England 2008-09 Natural England 2009

Annex – excepted land types

Excepted land categories

Land categories which will be excepted from the new right of access to coastal margin:

- Land covered by buildings or the curtilage of such land
- Land used as a park or garden
- Land used for the getting of minerals by surface working (including quarrying)
- Land used for the purposes of a railway (including a light railway) or tramway
- Land covered by pens in use for the temporary reception or detention of livestock
- Land used for the purposes of a racecourse or aerodrome
- Land which is being developed and will become excepted land under certain other excepted land provisions
- Land covered by works for the purposes of a statutory undertaking (except for flood defences)[4]
- Land the use of which is regulated by byelaws under section 14 of the Military Lands Act 1892 or section 2 of the Military Lands Act 1900
- Highways – defined as a way over which the public have a right to pass and repass, within the meaning of section 328 of the Highways Act 1980.[5]

Land categories which will excepted from the new right of access to coastal margin, except for an access strip, so that land within these categories over which the English coastal route passes, and land within 2 metres of the line taken by that route, will not be excepted land:

- Land on which the soil is being, or has at any time within the previous twelve months been, disturbed by any ploughing or drilling undertaken for the purposes of planting or sowing crops or trees
- Land used for the purposes of a golf course
- Formal camp sites or caravan sites and residential park home sites

[4] Many flood defences already have access to them: where access is not appropriate, for instance for nature conservation reasons, then a direction under chapter 2 of the CROW Act can be used to exclude or restrict access.

[5] There will be a number of instances where the English coastal route goes along an existing public right of way or is signed through a development (eg a coastal town or village). This category of excepted land ensures that we do not have two access regimes applying to the same land