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Joint Committee on the Draft
Marine Bill

Draft Marine Bill

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Report and formal minutes

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The Joint Committee on the Draft Marine Bill

The Joint Committee on the Draft Marine Bill was appointed by the House of Commons and the House of Lords on 13 May 2008 to examine the draft Marine Bill and report to both Houses by 22 July 2008.

Membership

Lord Greenway (Chairman), Cross Bench

Linda Gilroy MP, Plymouth Sutton, Labour Co-op

Nia Griffith MP, Llanelli, Labour

Anne Main MP, St Albans, Conservative

Martin Salter MP, Reading West, Labour

Sir Peter Soulsby MP, Leicester South, Labour

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The Report and evidence of the Joint Committee are published by The Stationery Office by Order of the two Houses. All publications of the Joint Committee (including press notices) are on the Internet at:
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Committee staff

The staff of the Joint Committee were drawn from both Houses and comprised Charlotte Littleboy (Commons Clerk), Ed Ollard (Lords Clerk), Richard Ward (Commons Clerk), Dr Jonny Wentworth, Parliamentary Office of Science and Technology (Inquiry Manager), Libby Gunn (Legal Adviser), Francene Graham (Committee Assistant), Lisette Pelletier (Team Manager), Sam Colebrook (Senior Office Clerk) and George Fleck (Office Support Assistant). This inquiry was run from the Scrutiny Unit in the Committee Office, House of Commons.

Contacts

All correspondence should be addressed to the Clerk of the Joint Committee, House of Commons, 7 Millbank London SW1P 3JA. The telephone number for general enquiries is 020 7219 8387. The Joint Committee's email address is draftmarinebill@parliament.uk.

Media inquiries should be addressed to Laura Kibby on 020 7219 0718.

Contents

Report	<i>Page</i>
Summary	5
1 Introduction	7
Call for evidence	8
Policy background	9
Domestic and international commitments	9
Devolved administrations	9
International and EU obligations	11
Implementation	12
A framework Bill?	13
Funding	14
Regulatory Impact Assessment	14
Post-legislative scrutiny	14
2 The European Context	16
Marine Strategy Directive	16
Water Framework Directive	17
The Common Fisheries Policy and historic rights in offshore waters	18
3 The Marine Management Organisation	21
Objectives of the MMO	21
Statutory status of the MMO	23
Composition of the MMO board	24
Functions, capacity and resources of the MMO	24
Resources	27
Governance Issues	27
Relationship between the MMO and other bodies	28
Role of science and access to data	30
Data access	31
Data charges	32
Transitional arrangements	33
Maritime and Coastguard Agency	35
4 Marine Planning	37
Marine Policy Statement	37
Parliamentary scrutiny	37
Content and structure	38
Timetable	39
Consultation	40
Coordination with the devolved administrations	41
Marine Plans	42
Coordination of plans	43
Major developments and the Infrastructure Planning Commission	44
The land/sea interface	45

Coastal partnerships	47
5 Marine Conservation Zones	48
Selection, objectives and the MCZ network	49
Duty	52
Timetable	52
Development of scientific knowledge	53
Monitoring	54
Sufficiency of data	54
Management measures to achieve the objectives of MCZs	56
Enforcement and marking	57
MCZ designation	58
6 Inshore Fisheries Management	60
Establishment and composition of the Inshore Fisheries and Conservation Authorities	60
Management of IFCAs	61
IFCA remit and objectives	62
Jurisdiction and estuaries	63
Grandfather rights – IFCA byelaws	65
Capacity and funding	66
Additional regulatory powers for IFCAs	67
Welsh Inshore Fisheries Management	68
7 Marine enforcement and management	70
Enforcement	70
Marine Enforcement Officers	71
Maritime and Coastguard Agency	72
MMO prosecutors	73
Administrative penalties	74
Parliamentary scrutiny of fixed monetary penalties and undertakings	75
Remediation, compliance and stop notices	76
Emergency fisheries byelaws and urgent and interim conservation orders	76
Conservation offences	78
General MCZ offences	78
Parliamentary Scrutiny	78
Fisheries offences: Keeping, introduction and removal of fish	78
8 Fisheries	81
Prohibited Instruments	81
Repeal of Section 212 of the Water Resources Act	82
Definitions relating to fish	82
Environment Agency’s Fishery Duty	83
9 The devolved administrations	84
Scotland	84
Wales	85
Northern Ireland	85
Cooperation between authorities	86

Devolved administrations and the MMO	86
10 Coastal Access	88
The principle of a continuous English coastal path	88
The exemption of parks and gardens	90
Independent appeals process	91
Compensation	91
Costs	92
11 Conclusion	93
Conclusions and recommendations	94
Annex 1: List of acronyms	105
Annex 2: Glossary	108
Annex 3: RIA – Scrutiny Unit Review	120
Annex 4: Delegated Powers Memorandum	127
Formal minutes	131
Witnesses	143
List of written evidence	146
List of unprinted written evidence	149

Summary

We welcome publication of the draft Marine Bill after a lengthy and thorough consultation process and we look forward to its introduction in the next Parliamentary Session.

We have reservations about the framework nature of the draft Bill—too much of its policy is contained in secondary legislation or guidance. There are significant areas of potential confusion of responsibility; between UK and international, especially EU, obligations; between the many agencies and other bodies who will be involved in delivering the proposals in the Bill; and most notably between the UK and the devolved administrations, particularly Scotland. We look to the Government to make it clear how, by whom, and on what advice the provisions of the Bill will be implemented.

The Marine Management Organisation must have a clear statement of purpose—we consider that it should be seen from the outset as the owner of the public interest in the UK marine environment. It needs defined duties and adequate resources with which to carry them out. It should have an appropriate level of scientific expertise, a scientific advisory panel to ensure that it is making best use of available research, and a duty to collect marine data and make it publicly available.

The Marine Policy Statement should be published as soon as possible. It must be subject to a high level of Parliamentary scrutiny, and should not be adopted before every effort has been made to reach agreement with the devolved administrations on it. The Bill should set out in greater detail what the contents of the Marine Policy Statement should be, and what bodies must be consulted in the process of preparing it. There is a valuable role for existing stakeholder partnerships and forums in developing marine plans. We hope that the Government will give thought as to how best the Marine Management Organisation and the new Infrastructure Planning Commission can work together to streamline the marine planning process.

We think it essential that the Bill impose a duty on the Secretary of State to create a network of Marine Conservation Zones. Although these zones should be identified on the basis of scientific need, other factors should be considered before they are designated, including existing international obligations and socio-economic costs and benefits. The statutory nature conservation bodies should be given a duty to monitor MCZs and to report on them to Parliament. We expect there to be a range of management approaches towards the zones, varying from multiple-use to highly protected.

We recommend that the new Inshore Fisheries and Conservation Authorities be required to work collaboratively to an agreed set of minimum standards, and given a duty to further conservation of coastal and marine fauna and flora—and that they must be adequately funded for this work. We think that the Environment Agency should manage the majority of estuaries but that working boundaries between the Agency and IFCAs should be set on a case by case basis. We would like to see all references to ‘grandfather rights’ removed from IFCA byelaws.

We are concerned about the current provisions for Marine Enforcement Officers and the general lack of clarity regarding enforcement of the Bill’s provisions. The Government must make it clear what role the Maritime and Coastguard Agency is expected to play. The Bill

should provide for much stronger parliamentary control over the creation of proposed new criminal offences.

We think the aim of a continuous coastal route around the English coast is laudable and agree with the principle of improved access to the coast. We consider that there is a need for an independent appeals mechanism against decisions on designation of the route for disagreements that cannot be decided through informal negotiations. Although we agree with the Government that compensation should not normally be payable, any payments made must be under a transparent scheme which should be included in the Bill. We think the Government needs to make a more adequate assessment of the likely costs of the coastal path.

1 Introduction

1. The draft Marine Bill was published on 3 April, accompanied by a Regulatory Impact Assessment.¹ The document also contained a policy paper, the consultation period for which closed on 26 June. On 14 May, the Prime Minister announced that the published Bill would be included in the Government's legislative programme for the next Parliamentary Session (2008-09).²

2. The Joint Committee was appointed on 13 May 2008 to "consider and report on the draft Marine Bill presented to both Houses on 3 April 2008" by 22 July 2008. We held eight public evidence sessions, hearing from 22 sets of witnesses representing 38 organisations. Ministers from the Department for Business, Enterprise and Regulatory Reform and the Department for the Environment, Food and Rural Affairs also gave evidence, as did officials from the Ministry of Defence, the European Commission and the Secretary of State for the Environment, Food and Rural Affairs. We received over 100 written memoranda. We have also been assisted by our Specialist Advisers, Dr Susan Gubbay, Professor Laurence Mee and Captain Dennis Barber, to whom we record our gratitude. We are very grateful to those who have taken the time to contribute to our inquiry.

3. The House of Commons Environment, Food and Rural Affairs (EFRA) Select Committee has also carried out pre-legislative scrutiny on the draft Marine Bill, concentrating entirely on the coastal access provisions contained in Part 9 of the Bill. The Committee published its Report on 22 July.³ We sought not to duplicate the work done by the EFRA Committee, and we are glad that the draft Bill has benefited from such thorough Parliamentary scrutiny.

4. There was a gap of almost six weeks between publication of the draft Bill and the establishment of this Committee. This delay meant that we had only nine sitting weeks to carry out pre-legislative scrutiny of a lengthy and complex piece of draft legislation, which led to a very tight timetable for taking evidence and consideration of this Report. This falls some way below the three month minimum period for a pre-legislative inquiry set out in the Cabinet Office *Guide to Legislative Procedure*, to which the Government, we understand, "remains committed".⁴ There was no clear reason for the lengthy interval between publication and appointment and the pressure on our timetable inevitably meant that we were not able to give the draft Bill the full scrutiny we would have liked. **Serious and productive pre-legislative scrutiny ideally requires at least 12 sitting weeks, and more if possible, and we recommend that the Government commit itself to providing this in future when publishing draft Bills and establishing ad-hoc Joint Committees.**

1 *Draft Marine Bill*, 3 April 2008, Cm 7351 (hereafter Cm 7351)

2 *Preparing Britain for the future: the Government's draft legislative programme 2008-09*, 14 May 2008, Cm 7372

3 Environment, Food and Rural Affairs Committee, Ninth Report of Session 2007-08, *Draft Marine Bill: Coastal Access Provisions*, HC 656 (hereafter HC 656)

4 Government Response to the House of Lords Constitution Committee Report on Pre-legislative Scrutiny in the 2006-07 Session, printed in Constitution Committee, 8th Report 2007-08, HL Paper 129

Call for evidence

5. On 16 May 2008, we issued a call for evidence on the following issues:

- i) The challenge of assessing whether the legislative framework for marine spatial planning set out is fit for purpose in the absence of the government setting out what the objectives for the planning system are (the Marine Policy Statement).
- ii) How well the regulatory framework proposed will operate, given the wide range of responsibilities involved.
- iii) The proposed powers, structure and regulatory role of the Marine Management Organisation.
- iv) How well the provisions of the Bill will fit with the aims and policies of the devolved assemblies.
- v) Whether the system proposed would be sufficient to meet the requirements of the forthcoming European Marine Strategy Directive and achieve 'good environmental status' defined under the Directive.
- vi) Whether the proposed Marine Spatial Plans will be based on adequate scientific data and provide certainty about where activities and developments will be permitted in a given time frame.
- vii) Whether improvements to the management and enforcement of inshore marine fisheries can deliver required conservation and sustainable development objectives.
- viii) Should there be a statutory requirement on a UK body to ensure that the network of Marine Conservation Zones is created?
- ix) Is there sufficient biological data to identify a potential network of Marine Conservation Zones, especially in offshore areas, and what data will be required to measure their effectiveness? What proportion should be highly protected?
- x) Should socio-economic criteria as well as scientific criteria be used in identifying areas to be Marine Conservation Zones? What lessons on the designation of protected areas can be learned from existing SACs and Marine Nature Reserves?
- xi) Will the Government's 35GW renewable electricity target⁵ create a demand for marine sites that have potential as conservation areas?
- xii) The suitability of including regulatory issues concerning inland waters within the Marine Bill.
- xiii) The appropriateness of the measures contained in the draft Bill aimed at creating an English coastal route.

We did not restrict our inquiry to these issues.

Policy background

6. The draft Marine Bill has had a lengthy evolution. In 2001, the then Prime Minister announced that the UK would introduce new measures to improve marine conservation. This was followed in 2002 by *Safeguarding Our Seas*, a joint publication from the UK Government and devolved administrations, which promised an “ecosystem-based management approach” to marine management. The first mention of the Government’s intention to legislate in a Marine Bill came in 2004, when the Department for the Environment, Food and Rural Affairs (Defra) launched its five-year strategy.⁶ In 2005, Defra and the devolved administrations published *State of our Seas – Charting Progress: an integrated assessment of the state of UK seas*.⁷ This collected the results of marine monitoring programmes to provide an assessment of the waters around the UK shore.

7. In March 2006, a consultation was launched seeking comments on the strategic direction a Marine Bill should take.⁸ The consultation received 1233 responses.⁹ The consultation paper was also the subject of an inquiry by the House of Commons Environmental Audit Committee.¹⁰ The Committee praised Defra for the efforts made to consult and inform stakeholders and the public in the preparation of a draft Marine Bill, and urged that the Bill be introduced by the 2007-08 Parliamentary session.¹¹ A year later, the Marine Bill White Paper *A Sea Change*, and a partial Regulatory Impact Assessment, were published,¹² which received 8519 responses.¹³ The consultation paper now published alongside the draft Bill is therefore the third in three years.

Domestic and international commitments

Devolved administrations

8. The draft Bill covers the United Kingdom, but in line with the devolution settlement, certain areas will be the responsibility of the devolved administrations. In the case of Scotland, substantial policy areas are devolved, and the Scottish Government has announced that it will produce its own Marine Bill in the near future; a consultation document was published on 14 July 2008.¹⁴ The Scottish Marine Bill will include the establishment of a Scottish Marine Management Organisation. The Welsh Assembly Government and the Northern Ireland Government have both indicated that they are supportive of the policies in the Bill.

9. There are already quite complex arrangements between the national and devolved governments of the UK for administering the UK’s marine areas, which will be added to by

6 Defra Five Year Strategy: <http://www.defra.gov.uk/environment/water/marine/uk/policy/marine-bill/here.htm>

7 *State of our Seas – Charting Progress: an integrated assessment of the state of UK seas*, Defra, March 2005

8 *A Marine Bill: a consultation document*, Defra, March 2006

9 Cm 7351, p 17

10 *Proposals for a draft Marine Bill*, Environmental Audit Select Committee, Eighth Report of Session 2005-06, HC 1323 (hereafter HC 1323)

11 HC 1323, paras 19 and 29

12 *A Sea Change: a Marine Bill White Paper*, March 2007, Cm 7047

13 Cm 7351, p 17

14 *Sustainable Seas for All – a consultation on Scotland’s first marine bill*, Scottish Government, 14 July 2008

the measures contained in the Bill, as illustrated in Table 1. There are also some particular differences between the approaches adopted by devolved administrations for the offshore and onshore regions.

Table 1: Responsibilities across the devolved administrations under the provisions of the Bill¹⁵

Region		Marine Planning Authority/ Implementation	Licensing Authority	Fisheries Authority/ Implementation	Environmental Protection Authority/ Implementation
Great Britain Offshore region	English Offshore	SoS/MMO	SoS	EU Council of Ministers/ EU Fisheries Agency & Defra	SoS advised by JNCC (MMO role unclear)
	Welsh Offshore			EU Council of Ministers/ EU Fisheries Agency & Defra (proposed Welsh ministerial resp)	
	Scottish Offshore			Scottish Ministers	
	Northern Irish Offshore	SoS and NI Dept. of Environment	SoS	EU Council of Ministers/ EU Fisheries Agency & Defra	
Inshore regions [territorial seas]	English	SoS/MMO	SoS	SoS Environment Agency/Sea Fisheries Committees	SoS/ NE as "statutory conservation body" plus MMO with exceptions
	Scottish	Scottish Ministers	Scottish Ministers	Scottish Ministers	Scottish Ministers
	Welsh	Welsh Ministers	Welsh Ministers	SoS through IFCA/ Welsh Ministers as "appointment authority"	Welsh Ministers/ CCW
	Northern Irish	NI Ministers	DoE in N. Ireland	NI Ministers	NI Ministers
<i>Isle of</i>	Outside Marine Bill Jurisdiction				

¹⁵ Note that this does not include the Oil and Gas sector which is a UK responsibility exercised by the Secretary of State for Business, Enterprise and Regulatory Reform. EU competence applies in the six to twelve mile zone with respect to some foreign fishing, and beyond the twelve mile zone to the limits of UK territorial waters.

<i>Man</i>	
<i>Channel Isles</i>	Outside Marine Bill Jurisdiction

Bold titles indicate Marine Areas specified in the Bill

Shaded boxes are areas/provisions outside the Draft Bill

International and EU obligations

10. The United Kingdom has entered into a number of international agreements which regulate activities within its territorial waters. These cover jurisdiction (the UN Convention on the Law of the Sea), shipping (obligations deriving from the UK's membership of the International Maritime Organisation), fishing (through the Common Fisheries Policy of the European Union) and environmental conservation (through EU and international obligations). For the purposes of the draft Bill the specific obligations in respect of fishing and the environment are the most relevant, and the current obligations to which the UK is a party are set out in Table 2 below.

Table 2: Existing EU measures that have an impact on the management of our marine environment

Area	Measure
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

11. Key international maritime conventions to which the UK is a signatory include the commitment under the World Summit on Sustainable Development¹⁶ and the Convention on Biological Diversity¹⁷ to achieve a significant reduction in biodiversity loss by 2010, to encourage the application of the ecosystem approach of marine managements, to establish a network of marine protected areas by 2012 and to restore depleted fish stocks by 2015 if possible.

¹⁶ Johannesburg Declaration on Sustainable Development, 4 September 2002

¹⁷ The Convention on Biological Diversity was signed in 1992 at the Rio Earth Summit, and in April 2002 signatories committed themselves to achieve a significant reduction of biodiversity loss by 2010

12. The UK also has a commitment under the Oslo-Paris Convention for Protection of the Marine Environment of the North East Atlantic (OSPAR)¹⁸ to develop ecological quality objectives for the North Sea, and to designate areas of the UK's seas as "marine protected areas" as part of an "ecologically coherent" network of well managed sites.

13. Within the EU context the newest initiative, and the one which has the greatest bearing on the provisions in the draft Bill, is the European Marine Strategy Directive (MSD), which was agreed in May 2008 and must be transposed into domestic legislation by 15 July 2010. It now provides the overriding framework for EU action in the field of marine environmental policy. Though the Government intends to transpose the Directive in secondary legislation under the European Communities Act 1972, one of its purposes in bringing forward the Bill is to enable those EU obligations properly to be given effect.¹⁹

14. In October 2007, the European Commission produced a policy document, known as a "Blue Book", *An Integrated Maritime Policy for the European Union*.²⁰ The Blue Book sets out the framework that recognises "the challenges of globalisation and competitiveness, climate change, degradation of the marine environment, maritime safety and security, and energy security and sustainability".²¹

Implementation

15. The Bill involves commitment from and coordination between different parts of Whitehall as well as Defra. Defra told us that the following departmental policy interests were engaged in the marine area:

Table 3: Whitehall involvement in the marine environment

Department	Policy Interest
Environment, Food and Rural Affairs	Fisheries, marine nature conservation, integrated coastal management, flood and coastal erosion risk management and the marine environment, marine aggregates
Business, Enterprise and Regulatory Reform	Energy generation: oil, gas and renewables
Transport	Maritime safety and counter-pollution, search and rescue, shipping, ports, harbours
Communities and Local Government	Interaction with terrestrial planning system and local authority responsibilities
Culture, Media & Sport	Marine heritage, recreation, tourism
Ministry of Defence	Defence activities in the marine area

18 Convention for the Protection of the Marine Environment at the North-East Atlantic entered into force on 25 March 1998. It replaced the Oslo and Paris Conventions.

19 Q646

20 *An integrated Maritime Policy for the European Union*, COM (2007) 575

21 COM (2007) 575

16. We took evidence from the Minister for Energy from the Department for Business, Enterprise and Regulatory Reform (BERR) on marine planning and offshore renewables, and from the Ministry of Defence (MoD) on coastal access and enforcement. While both sets of witnesses welcomed the Bill, they also noted the complexity of the departmental interests involved. For example, the Director of Safety and Claims and Business Continuity from MoD told us that negotiations with Defra were “ongoing” with regard to the precise role of Royal Navy personnel in enforcement.²² The Minister for Energy commented that “I think it is quite a test for government to make sure we are properly joined up on this, as I know we are, in terms of the policy”.²³ **We note and agree with the Minister for Energy’s comments that implementing a Marine Act will take significant effort from across Whitehall. It is vital that Defra gets other departments ‘on board’ with its proposals.**

A framework Bill?

17. In its current form the Bill is—and is only intended to be—a piece of framework legislation, leaving the Government to decide exactly how or what it envisages doing with the powers set out in it. Much of the practical information necessary to implement the Bill is to be contained only in guidance. The absence of that guidance at this time makes it very difficult to understand the impact, or intended impact, of the draft Bill, let alone subject the policy to detailed scrutiny. Many witnesses raised this issue with us. Over the course of our inquiry, we did receive some draft guidance notes, and from these it is clear to us that the guidance will be key to the success of the measures in the Bill.²⁴ While this meant that we were unable to examine much of the detail, given the time and resources we had available, it also led us to question whether the draft Bill has the balance right between what is on its face and what will be in non-statutory guidance. This is likely to be a matter to which both Houses will wish to return when the Bill is eventually published next Session and fuller explanatory material is available than was disclosed to us. **But we recommend that the Government re-examine the amount of detail contained in guidance in advance of publication and consider moving material currently contained in or planned for guidance into the Bill itself on the grounds of transparency and simplicity.**

18. Owing to the framework nature of the Bill, it is ‘light’ on duties and often fails to specify which body will bear responsibility for particular actions. Many of the duties that *are* included in the Bill are placed on the Secretary of State and are delegable as he wishes. Clearly this makes it difficult to make an assessment of the feasibility of these duties and the consequent level of resources allocated to responsible bodies. We asked the Secretary of State about this and he told us that “I am fine with duties as long as they are for a clear purpose”.²⁵ **We are concerned that the Bill places very few statutory duties on the Secretary of State or other bodies. We recommend that the Government make more explicit which organisations it expects to implement the Bill, and that the Bill should impose appropriate duties.**

22 Q255

23 Q417

24 Four are appended to this Report: DMB 106, DMB 107, DMB 108, DMB 109

25 Q664

Funding

19. Whether the programme of work intended to be delivered by the Bill has been properly costed, and whether adequate funding will be made available to ensure that the Bill's provisions can be applied properly, has been a frequent cause of scepticism from witnesses. There are several large initiatives, specifically the creation of the Marine Management Organisation, the development of marine plans, the operation of Inshore Fisheries and Conservation Authorities and the development of the coastal path, which will require significant resources in order to be successfully implemented. Although we received assurances from the Secretary of State that funding will not be a problem, we remain to be convinced that funding has been considered adequately in the preparation of the Bill or that the levels of funds currently envisaged will be sufficient.²⁶ **We are concerned that proposed funding provision for the Marine Management Organisation, the development of marine plans, the operation of Inshore Fisheries Conservation Authorities and the development of the coastal path appears inadequate. Defra must ensure it is able to allocate funding to these initiatives and tasks on a scale that will enable them to be realised successfully. A detailed analysis of the requirements and arrangements for the proposals contained in the Bill should be published alongside the Bill.**

Regulatory Impact Assessment

20. We commissioned a detailed analysis (annexed to this report) of the Regulatory Impact Assessment (RIA) attached to the draft Bill.²⁷ The RIA notes that it “relies on many assumptions and implementation scenarios [...] as the draft Bill does not specify all the parameters necessary to facilitate detailed analysis”.²⁸ Our analysis suggests that the high degree of uncertainty in present proposals means that the net benefits set out in the RIA could vary by a factor of ten.²⁹ Defra is committed to updating the RIA “prior to introduction of the final Marine Bill to Parliament”, and “prior to the introduction of secondary legislation and accompanying guidance”.³⁰ Whilst accepting that this is standard practice for RIAs published with draft legislation, in this case there is the potential for considerable change, and without much more clarity of the policy intentions of the Bill we suspect that even a revised RIA may be of little practical utility. **There is, by the Government's own admission, a great degree of uncertainty in the Regulatory Impact Assessment. We welcome the commitment to publish a revised RIA when the Bill is introduced, but are concerned that the true costs and benefits may not be available for Parliament to scrutinise at the same time as the Bill itself.**

Post-legislative scrutiny

21. The House of Commons Liaison Committee has recently endorsed the Government's suggestion that post-legislative scrutiny be routinely carried out on Acts of Parliament.³¹

26 Qq671-2

27 Annex 3

28 Draft Marine Bill Impact Assessment, April 2008, p4 (hereafter 'Impact Assessment')

29 Annex 3, table 1

30 Impact Assessment, paras 23-24

31 Liaison Committee, Third Report of Session 2007-08, *The work of committees in 2007*, HC 427, para 64

Each government department will supply a memorandum on each of its Acts to the relevant departmental select committee, between three and five years after the Act is passed. The select committee will then decide whether or not to carry out scrutiny of the legislation. The Government intends that post-implementation reviews will be conducted for some of the proposals in the Marine Bill three years after Royal Assent, for inshore fisheries and conservation authorities after four years, and for marine planning, marine licensing and marine biodiversity proposals approximately 5-10 years after Royal Assent.

22. Given the framework nature of the draft Marine Bill, and the absence on the face of the legislation of many measurable objectives, **we welcome the prospect of post-legislative scrutiny on the Bill. Given the issues we have identified, including the lack of statutory duties in the Bill and the incomplete nature of the draft Regulatory Impact Assessment, it will be helpful to see which policy objectives the Government considers to be most useful in measuring the success of the legislation, and it is a good opportunity for further Parliamentary scrutiny once the content of the Bill is clearer.**

2 The European Context

Marine Strategy Directive

23. The Marine Strategy Directive (MSD) follows an ‘ecosystem-based approach’ and sets an overall goal of achieving ‘good environmental status’ for Europe’s seas by 2020. It divides up those seas into regions and sub-regions into which National sub-divisions should fit. In the case of the UK, the relevant region is the North-East Atlantic and the sub-regions are the Greater North Sea (including the English Channel), and the Celtic Seas. All Member States have to report their spatial sub-divisions to the EC by 15 July 2010; ‘good environmental status’ will then be defined collectively by the Member States through the EU machinery in respect of each of those regions and sub-regions, following a list of qualitative descriptors set out in the Directive, by 15 July 2012, and by this date there should be a full environmental assessment and a series of agreed environmental targets and associated indicators. Following that, by 15 July 2014, a monitoring programme must be established and implemented. Member States are required to establish ‘marine strategies’ for each region and sub-region to deliver all these actions in accordance with the timetable set in the Directive in order to implement measures to achieve ‘good environmental status’ no later than July 2016. The Government intends that the Marine Management Organisation should be the competent authority for the UK in respect of the Directive.

24. A specific requirement of the Directive is that marine strategies must include the creation by Member States of “spatial protection measures, contributing to coherent and representative networks of marine protected areas”, such as those required under the Birds and Habitats Directives and international obligations, by 2013.

25. Mr Richardson, from the European Commission DG Maritime Affairs and Fisheries, welcomed the draft Bill, and particularly the introduction of marine spatial planning provisions, which he regarded as “an absolutely necessary tool” for the implementation of the MSD.³² However he felt that the legislation itself could not provide any guarantee that it would be effective in practice, in part because standards and requirements had not yet been developed at EU level to implement the Directive and in part because the administrative machinery put in place in the draft Bill was complex and would require effective coordination of roles to ensure that the provisions of the Bill could actually be delivered:

“One of the good things about the Marine Bill is that [...] it produces a single planning system for marine waters; it has a single management authority; it has simplified procedures for economic operators to get their operations approved. Except that it does not. It is not a single planning system. It is a very fragmented planning system with a lot of need for coordination. It excludes oil and gas, it excludes shipping, it includes ports, it excludes wind farms [...] Is it a single authority? No, it certainly is not. As to simplified procedures, I think one has to see”.³³

32 Q555

33 Q569

26. The potential for the complexities of EU and international obligations not to be sufficiently recognised was a matter of concern to a number of witnesses. Mr MacMullen of the Seafish Industry Authority thought that the introduction of national measures which were dependent on agreement by other Member States was “a thorny area” given the economic interests involved.³⁴ Oil And Gas UK similarly noted that the industry was already subject to OSPAR requirements, which were not just applicable to the EU, and substantial investment programmes were in place to meet them: “So what we would not want is for incompatible requirements to be brought in as part of any of the Marine Bill”.³⁵ Mr Rogers, of Defra’s Centre for Environment, Fisheries and Aquaculture Science (Cefas), recognised that “the greatest attention will need to be spent once the Bill is in place on our transboundary concerns, because good environmental status applies to regional seas, not to our national waters; so we will need to ensure that our other colleagues, Member States in the North Sea, for example, share our vision for what our seas will be like”.³⁶

27. Mr Richardson thought that the need for such cooperation was implicit in the draft Bill but without more explicit emphasis had a “doubt” as to whether it would in fact happen as it should.³⁷ He felt cooperation needed to start within the UK itself, and then embrace neighbouring countries.³⁸ The Secretary of State assured us that “absolutely, the intention of the Bill is to try and streamline to get [...] better co-ordination [with European legislation]”.³⁹ **We received no evidence that the draft Bill itself contains any provisions which would make it more difficult to implement international obligations to which the UK is subject, but we share the concerns expressed to us that without a strong commitment to cooperation and consultation, which will take time and resources, there is a danger of the introduction of new and overlapping requirements at local, regional, national and international levels. We draw attention to some of these in our discussion of the marine planning system, but we ask the Government to set out in guidance how responsibilities under the Marine Strategy Directive will be allocated if the Bill is enacted.**

Water Framework Directive

28. The MSD is designed to integrate with the Water Framework Directive (already transposed into UK legislation) and thus provide joined-up management from river catchments to the edge of Economic Exclusive Zones. The Water Framework Directive covers coastal waters up to one nautical mile to sea, and estuarial waters.⁴⁰ Coordinated implementation of the two directives in UK marine waters will require a clear designation of duties. As Mr Waldock from Cefas pointed out “the Marine Management Organisation will not be able to take all the measures it needs itself to meet good environmental status, for example, under the Marine Strategy Directive and, therefore, there has to be a dialogue

34 Q202

35 Q388

36 Q491

37 Q557

38 Q587

39 Q674

40 Q572

with other departments and agencies, and, in terms of land-based discharges, the Environment Agency”.⁴¹

29. The Environment Agency (EA) is the competent authority for the Water Framework Directive in England and Wales, proposing environmental objectives and the measures needed to deliver them.⁴² Damage to the sea bed caused by fishing activity, particularly within estuaries, may compromise the achievement of environmental objectives set under the Directive, as would poor status of fish stocks. Under the Bill, these matters would fall to be regulated by new Inshore Fishing and Conservation Authorities (IFCAs).

30. We asked Jonathan Shaw MP, Minister of State at Defra, to clarify how the Bill would affect implementation of the Water Framework Directive in marine waters. He responded “we are very confident that the new bodies will take their responsibilities under the Water Framework Directive seriously and implement them and work in partnership with EA who will sit on their board”.⁴³ On the other hand the Environment Agency argued that the IFCAs should have a duty to exercise their functions compliantly with the Water Framework Directive requirements, to ensure they worked closely with the Agency to attain the relevant objectives.⁴⁴ The Moran Committee agreed.⁴⁵

31. In respect of the administration of the Water Framework Directive the Minister also told us that “if the Committee feels [...] that there should be powers and duties in particular areas, we will obviously look closely at those”.⁴⁶ We are happy to take up the Minister’s invitation. **We think that there is potential for overlap and lack of clarity in respect of the duties under the Water Framework and Marine Strategy Directives. These should be clearly allocated between the Marine Management Organisation, Environment Agency and Inshore Fisheries and Conservation Authorities (IFCAs) to ensure implementation of the relevant UK obligations under these Directives and the agreed guidance on Integrated Coast Zone Management. Although clause 160 places a statutory duty on IFCAs to co-operate with the Agency, we recommend that the Bill makes it explicit that the Environment Agency remains the competent body for the implementation of the Water Framework Directive (WFD), and we agree with those who argued that IFCAs should be given an additional duty to directly contribute to the attainment of the Water Framework Directive.**

The Common Fisheries Policy and historic rights in offshore waters

32. Fisheries access is reserved for UK vessels only between nought to six nautical miles from the shoreline. Between six and 12 nautical miles there are access rights for certain member states to fish.⁴⁷ The access reflects historic fishing activity by the relevant Member State in the given area; in some cases it is for all commercially exploited species, but it is

41 Q473

42 Water Framework Directive (2000/60/EC)

43 Q685

44 DMB 10 and DMB 76

45 DMB 28

46 Q685

47 Article 17 of the basic Common Fisheries Policy framework regulation, EC No. 2371/2002: detail for each Member State is in Annex I

mostly limited to particular groups of species such as those that live on the seabed (demersal species). For example, France and Belgium have rights to fish for demersal species in the Irish Sea, and the UK has rights to fish in this zone off the coasts of other Member States. Historic rights place no limit on the number of vessels from a Member State which might make use of those rights.

33. The National Federation of Fishermen's Organisations stated that

“there is a very serious jurisdiction issue here, given that anything outside the six-mile limit that affects fishing will have to be done through the Common Fisheries Policy mechanisms. To a large degree the draft Marine Bill is silent on that and the consequences of that, particularly in relation to the aspirations of the Bill for Marine Conservation Zones. So as it stands, the main weight of Marine Conservation Zones will be in the inshore area”.⁴⁸

34. The Seafish Industry Authority said that “we are approaching the major problem area of legislating in a way that will control activities of UK nationals but not necessarily non-UK nationals” and that French, Belgian and Spanish fishermen were unlikely to respect the management provisions in an area where they have no requirement to comply.⁴⁹ The Local Government Association stated “fishermen have just introduced a very large voluntary conservation zone for skate and ray. One of the big problems we have in terms of these sort of approaches is that sometimes people with grandfather fishing rights come into the six-mile limit and start hoovering up fish in very large quantities” and “there is a real issue about fairness and making sure that the legislation is appropriately applied to all parties and not just some parties”.⁵⁰ North Devon's UNESCO Biosphere Reserve mentioned that “if local regulations for MCZs and other fisheries management measures are made these should be universally applied and the ‘grandfather rights’ adopted by international boats should be extinguished”.⁵¹

35. The Secretary of State said “you need agreement under the Common Fisheries Policy—the agreement of other Member States and of the Commission. I think the Marine Strategy Directive may help in that respect in dealing with it, but it is true that that is one bit that we do not wholly control ourselves. There are one or two precedents where countries have gone and been able to get agreements, so it is not as if you cannot ever do it but we have to recognise that we are dependent on agreement in those particular cases”.⁵² Defra officials thought that the issue of historic rights would only be addressed as a part of a comprehensive reform of the CFP.⁵³ On the other hand Mr Richardson predicted that in general the implementation of the Marine Strategy Directive would lead to much more frequent resolution of such issues through the mechanisms of the EU, and considered that provided the relevant consultation and co-ordination had taken place with other Member States, the administrative machinery would achieve this.⁵⁴ We welcome Mr Richardson's

48 Q195

49 Q202

50 Q9

51 DMB 59

52 Q676

53 Qq624, 647

54 Qq581-3

assurance, though we may not share his confidence. **We believe the Government should negotiate the removal of historic fishing rights in UK waters with EU Member States to ensure that enforcement of nature conservation regulations are universally applied to UK national and other Member State fishing vessels in the six to 12 nautical mile zone.**

3 The Marine Management Organisation

Objectives of the MMO

36. The draft Bill begins by setting out the legal framework for establishing a non-departmental public body (NDPB), the Marine Management Organisation (MMO), whose purpose is to deliver various planning, licensing, fisheries management and marine enforcement functions in the waters around England, and in offshore areas for functions to the UK Government. Defra told us that the MMO is intended to be the Government's "primary delivery body in the marine area" that "will take the lead and overview in managing the seas".⁵⁵ Many of the MMO's aims and objectives, particularly with regard to preparation of marine plans, will be determined by a UK Marine Policy Statement, which we discuss in paragraphs 76 to 91.

37. The role and effectiveness of the MMO lies at the heart of the draft Bill and what it is seeking to achieve. The Environment Agency boldly stated that the MMO should be a "champion of the UK seas",⁵⁶ and Mr Gooding, the Chief Executive of the Marine and Fisheries Agency, which is to be the basis on which the new organisation is to be built, agreed that there was a "real opportunity for the MMO to be "the champion of the seas"". ⁵⁷ Defra put it more judiciously: the MMO "will be the Government's primary delivery body in the marine area. We do want it to take a lead and overview in managing the seas. We do want it to have a strong representation both across UK stakeholders and indeed further afield [...] It will have the teeth it needs".⁵⁸

38. But for others this was less clear. The MMO's general objective is put thus: "to carry out its functions with the objective of making a contribution to the achievement of sustainable development".⁵⁹ Mr Gooding suggested that the objectives of the new organisation should generally be left to secondary legislation, as opposed to its duties, which should be in the Bill.⁶⁰ For many, however the provisions in the draft Bill are "weak", unclear and should set out a stronger, more proactive duty, for example to "further sustainable development" or "a duty to deliver sustainable development".⁶¹ The Joint Nature Conservation Committee (JNCC) said "[sustainable development] has many meanings to many people".⁶² This was confirmed by the evidence we received: many of the sectors utilising marine areas have different interpretations of what such sustainable development would entail.⁶³ The JNCC accordingly wanted the definition tightened and also sought explicit reference to the "ecosystem approach" in the MMO's objectives.⁶⁴ Wildlife and Countryside Link thought

55 Q651

56 DMB 76

57 Q65

58 Qq651-652

59 Clause 2(1)

60 Q55

61 Q604, DMB 43, DMB 20, DMB 22, DMB 47, DMB 17, DMB 81

62 Q55

63 Q604, Q361, Q196, Q223, Q228, Q55, DMB17, DMB78

64 DMB 17 (The comprehensive integrated management of human activities, based on the best available scientific knowledge about the ecosystem and its dynamics, in order to identify and take action on influences which are

that there should also be reference to the UK Sustainable Development Strategy.⁶⁵ The Environment Agency argued that the MMO should have a duty to further conservation of marine flora and fauna and to secure compliance with the Water Framework Directive requirements and objectives in transitional and coastal waters.⁶⁶ British Energy highlighted the need for “a clear remit for the Marine Management Organisation set by government [...] so that the organisation has some clear objectives and is well-informed from scientific evidence from all sides and from its own resources before coming to decisions, taking account of these competing needs”.⁶⁷

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

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

41. The draft Bill refers to ‘sustainable development’ in the context of (a) the objective of the MMO, the content of the marine policy statement and the marine plans.⁶⁸ However, having introduced this term, the draft Bill then fails to define it. As a result the draft Bill leaves undefined a core ethos, by which it proposes that the marine environment be managed. There is no single definition of sustainable development; as mentioned in paragraph 39, different stakeholders have differing views on what this term may mean. The Shared UK Principles of Sustainable Development set out an approach to balancing nature conservation and economic development by using sound science responsibly to provide the evidence base for decision making.⁶⁹

42. The lack of a definition of ‘sustainable development’ creates uncertainty. Just one example may be found in the explanatory notes to clause 40, which state that the marine policy statement (MPS) will “provide a long term framework for managing sustainable development in the UK marine area by setting out a UK vision and objectives for the marine area and its uses, incorporating economic, social, *cultural* and environmental priorities”.⁷⁰ [Italics ours]. It is not clear what ‘cultural’ might mean in the context of sustainable development: whether it refers to the cultural aspects incorporated in the Government’s ‘well-being indicators’ or the historic cultural heritage encompassing

critical to the health of marine ecosystems, thereby achieving sustainable use of ecosystem goods and services and maintenance of ecosystem integrity).

65 DMB 102

66 DMB 10; others also supported this call for a duty to further the Water Framework Directive objectives, eg DMB 27

67 Q377

68 Clauses, 2, 40 and 46

69 <http://www.sustainable-development.gov.uk/what/principles.htm>

70 Cm 7351, explanatory notes, p 60, para 100

ancient geological landscapes beneath the sea and other artefacts (e.g. shipwrecks) that comprise the accepted marine cultural heritage.

43. The Department for Culture, Media and Sport's current draft Heritage Protection Bill, which, amongst other issues is concerned with the protection of marine cultural heritage, does not invoke sustainable development as a guiding principle. Equally, the Government has 68 National Indicators, including 20 Framework Indicators, on issues within the framework of sustainable development but nowhere is there a clear definition of cultural issues.⁷¹ If 'cultural' considerations are to be included in the definition of 'sustainable development' then this will be relevant not only to the MPS but also to the objectives of the MMO and to the content of marine plans. It is unsatisfactory to have such major initiatives dependent upon 'sustainable development' when that term remains undefined. **A definition of 'sustainable development' should be included on the face of the Bill. Defra should also set out, in policy documents and guidance, associated sustainable development metrics against which progress in managing the marine environment might be judged.**

Statutory status of the MMO

44. Schedule 1 sets out the detailed arrangements for the establishment of the Marine Management Organisation as a NDPB. The MMO will have a Chair and Board appointed by the Secretary of State. The Secretary of State will also approve the appointment of the first chief executive. Defra justifies NDPB status on the basis that the MMO will be delivering functions on behalf of the Government as whole and that it is in line with the status of Natural England and the Environment Agency, which undertake similar environmental regulatory roles. It is intended that the MMO will be accountable to Parliament through Defra Ministers, who will be advised by a cross-Government sponsorship group.

45. Its annual corporate plan will be approved by Defra Ministers after taking advice from the sponsorship group. The Public and Commercial Services Union argued against the MMO becoming an NDPB, but particularly against the existing MFA staff losing civil service status. It noted that staff in other NDPBs such as the Advisory, Conciliation and Arbitration Service have retained civil service status and suggested that Marine and Fisheries Agency staff should also do so.⁷² **We did not examine this issue in any detail, but we regard it as vital that the new organisation is able to get up and running quickly (a shadow body such as that established for the Committee on Climate Change could be helpful) and that it is able to attract and retain the quality of staff it needs to perform its functions effectively. Relevant analogies appear to us to be the Food Standards Agency and the Environment Agency, and we encourage the Government to consider whether there are lessons to be drawn from the constitution of those organisations which might inform the establishment of the MMO.**

71 <http://www.sustainable-development.gov.uk/progress/national/index.htm>

72 DMB 93

Composition of the MMO board

46. The Bill provides for between six and nine board members, including the Chair, all appointed by the Secretary of State. There is no specification as to the ordinary members' skills and expertise, only that the Secretary of State "must have regard to the desirability of appointing a person who has experience of, and has shown some capacity in, some matter relevant to the exercise of the MMO's functions, and of securing that a variety of skills and experience is available among the members".⁷³ Not surprisingly, relevant sectors wanted their interests to be represented on the board,⁷⁴ and some argued for specific sectoral representation or nomination rights.⁷⁵ The Government's intention is that "board members will be sought with experience and expertise across all three 'pillars' of sustainable development: economic; environmental; and social",⁷⁶ but it argues that "it is not practical to have [...] sectoral rights of representation on the Board. It would be too big and too unwieldy".⁷⁷ The Government intends the MMO to establish a stakeholder advisory committee and other committees and subcommittees to ensure all relevant interests are heard in the decision-making process.⁷⁸

47. We agree with our witnesses that it is necessary for the MMO to be able to access appropriate expert and specialist advice, in particular scientific advice, and for interested sectors to be represented in the MMO's decision-making processes. However, we understand the Government's position that it is impractical to include sectoral rights of representation on the MMO board and we do not think it is necessary to prescribe the make-up of the board in the Bill. **We recommend that the requirement for the Secretary of State to 'have regard to the desirability' of ensuring a variety of skills and expertise on the MMO board be strengthened to reflect the necessity of including skills and expertise from the 'three pillars' of sustainable development.**

Functions, capacity and resources of the MMO

48. The Government intends that the MMO will be based on the existing Marine and Fisheries Agency, an Executive Agency of Defra, staffed by civil servants, which is directly answerable to a Minister. The earliest date that the MMO could be established is April 2010. The Minister of State confirmed that "the Government is moving civil servants to the MMO; civil servants from DfT, from BERR as well and Defra staff are moving to the MMO, and Defra staff are moving to the MFA now. We are beefing up the MFA because it is a vital organisation that needs to be able to continue its effective operation from when the MMO goes live. We hope that will be 2010".⁷⁹ The Government intends that the MMO will develop its role and responsibilities incrementally following its establishment.

73 Schedule 1, para 5

74 For example, the Chamber of Shipping and the United Kingdom Major Ports Group thought a maritime professional from the shipping or ports sector should be on the board: DMB 34 and DMB 31

75 DMB 53, DMB 83

76 Cm 7351, p28

77 Q648

78 Q648

79 Q675

49. The Bill transfers to the MMO existing sea fisheries, marine consents and nature conservation functions (including functions currently with Natural England, the MFA, BERR and DfT), including the power to grant various licences. It will make decisions on applications, set and monitor conditions on marine developments such as tidal and wave power projects, jetties, moorings, aggregate extraction and dredging. It will also administer Harbour Orders and license exemptions from nature conservation legislation. Further, the Secretary of State can agree with the MMO that it will fulfil “any marine function”, and the MMO itself can designate, via ‘agreement’, any functions to other bodies including the Environment Agency, the Inshore Fisheries Committee Authorities (IFCAs) or harbour authorities.⁸⁰ The explanatory notes to the draft Bill state that

“Not all functions we intend the MMO to have will be given to it [by directly transferring functions through the primary legislation]. Other clauses of the draft Bill make new or existing marine functions delegable by direction or by order. This enables Ministers to use these mechanisms to give these functions to the MMO. Where functions that the MMO is to undertake are currently set out in secondary legislation, we will amend that legislation directly, rather than in the draft Bill”.⁸¹

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

“the creation of the new MMO is one of the most positive single proposals contained in the document; but only if it is genuinely and fully multi-sectoral. Clearly it will not be. The exclusion of several key government departments’ marine interests and the lack of involvement by the devolved administrations can only compromise the MMO’s considerable potential”.⁸²

Several submissions expressed concern that the exclusion of these key sectors “runs the risk of establishing a weak and ineffective marine planning system from its inception” and contradicts the Government’s Better Regulation agenda.⁸³ The Renewable Energy Association expressed surprise that, as the owner of the seabed, the Crown Estate was not more involved than any other marine stakeholder or consultee in formulation of the Marine Bill, and thought that it would have been more helpful to developers if the marine licensing system and seabed leasing arrangements could have been integrated in the Marine Bill.⁸⁴

51. Others were concerned that the functions that the MMO will actually undertake are unclear. The Crown Estate felt that

“The draft Bill does not adequately define the MMO’s actual or potential delivery functions, including key objectives, external relationships, consultation arrangements, approach to risk, and relationships with devolved government

80 Part I, Chapter III

81 Cm 7351, explanatory notes, p 28, para 41

82 DMB 60

83 DMB 21, DMB 25, DMB 11

84 DMB 98

amongst other issues. On the one hand Defra has made it clear in policy documents how it intends the Secretary of State to use some mechanisms in favour of the MMO but on the other hand it is not clear how the Secretary of State will use other mechanisms [...] We have concerns about the evolving nature and increase in the MMO’s catalogue of functions by virtue of subsequent primary and secondary legislation and the significant amount of discretion for the MMO”.⁸⁵

BWEA stated that “greater clarification of the objectives and character of this organisation is required”,⁸⁶ and agreed with Oil and Gas UK that the lack of clarity around the role of the MMO and whether it will have sufficient resources could itself reduce the confidence of investors in marine developments.⁸⁷ Associated British Ports noted that the shape of the MMO was dependent on whether it takes over or simply overlaps with existing regulatory roles in the marine environment.⁸⁸

52. Clause 15 of the draft Bill enables the MMO, with the approval of the Secretary of State, to authorise a ‘designated body’ to perform any of its functions. There is a short list of such bodies in the draft Bill but more can be added by order of the Secretary of State. Apart from a clear indication that they can be local authorities it is not clear what others may be added to that list. There is no requirement for them to be public bodies, which widens considerably the pool of potential organisations for designation.⁸⁹ The Secretary of State needs only to be satisfied that the body in question has at least one purpose or function that “is, or is related to or connected with, a marine function” of the Secretary of State.⁹⁰

53. Overall, it is clear that the Secretary of State will have a large amount of discretion over what may be added to the existing list of designated bodies in the draft Bill. It is surprising that additions are not subject to the draft affirmative procedure and that there is no obligation on the Secretary of State at least to consult a prospective ‘designated body’ before adding it to the list. It is also clear that Clause 15, despite the approval role for the Secretary of State, provides a significant power to the MMO. The explanatory notes state that Clause 15 “is to enable the MMO to make arrangements for the most effective discharge of its functions”.⁹¹ This lack of clarity about which bodies may be added to the list and what the scope of the authority designated to them may be (and therefore who may end up exercising the MMO’s functions) makes the uncertainty amongst marine stakeholders understandable. **Defra should provide, in a policy document, a clear and full justification for both the Secretary of State’s powers to add ‘designated bodies’ to the list in the draft Bill and the powers of the MMO under Clause 15, including examples of the expected use of these powers.**

54. The Government intends to retain as much flexibility as possible, and as such, it is difficult to know whether the allocated resources are likely to be sufficient. **Without designation of specific regulatory functions on the face of the Bill proper scrutiny of the**

85 DMB 64

86 DMB 36

87 Qq361-2, DMB 36

88 Q96

89 Clause 16(4)

90 Clause 16

91 Cm 7351, explanatory notes p 40, para 65

ability of the MMO to meet its responsibilities will not be possible, either by Parliament when the Bill is introduced, or by the public. We think this will undermine the Government's intention that the MMO should be an open and transparent organisation which commands public confidence. The Government should reflect on its approach further, with a view to providing greater clarity in the Bill of the intended functions of the MMO.

Resources

55. The National Trust, JNCC, UK Major Ports Group and British Ports Association all emphasised the importance of adequate funding for the MMO and those providing advice to the MMO.⁹² The Marine and Fisheries Agency stated that the creation of the MMO would require 40 additional staff to be added to its existing 180 staff.⁹³ There was widespread scepticism that this level of resource was sufficient.⁹⁴ The Local Government Association felt that 40 people could not possibly deliver the level of marine planning required, particularly given the “intimate nature” of estuary planning.⁹⁵ The Environment Agency concurred, stating that “we, likewise, believe that the 40 additional resources is not adequate, particularly when you think of the interaction and consultation that will be needed with a wide range of stakeholders”.⁹⁶ The British Marine Aggregate Producers Association (BMAPA) stated that the MMO would need to be adequately resourced to meet its wide-ranging functions and responsibilities, both in terms of the number of personnel and their respective skill set.⁹⁷ While the Minister told us that he was assured that “we have adequate resources to implement what we need to within the law and, hopefully, go beyond”,⁹⁸ **we are not convinced that a net addition of 40 staff to those allocated to the MFA will be sufficient to enable the MMO to deliver even the duties set out in the Bill, in particular the requirement to implement an entirely new system of marine planning, let alone to meet the aspirations which we and the Government share to create a strong advocate for the UK's marine area. The Government should revisit its staff planning for the MMO and we recommend that, before the Bill is introduced, it should subject its analysis of the number of extra staff required to independent audit and make the findings public to inform the scrutiny of the Bill as it passes through Parliament.**

Governance Issues

56. The British Wind Energy Association (BWEA) noted that the MMO's dual role in policy and decision-making was a potential source of conflict, particularly given the requirement of independence in decision-making under Article 6 of the European Convention on Human Rights.⁹⁹ Given the considerable uncertainty about exactly what the

92 DMB 21, DMB 17, DMB 31, DMB 32

93 Q71

94 Q181, DMB 31, DMB 34, DMB 35, DMB 89

95 Q4

96 Q5

97 DMB 35

98 Q672

99 DMB 36

MMO's full range of roles will be, it is difficult to assess the actual conflict between them. The policy paper attached to the Bill states that the MMO will "make decisions according to the Marine Policy Statement and marine plans".¹⁰⁰ Defra made it clear to us that the Government would remain responsible for marine policy.¹⁰¹ If this is indeed the case, the MMO would not be making decisions on its own policies; however, the policy paper also states that the "MMO will prepare a series of marine plans to articulate what this policy statement means for different areas of the sea and coast".¹⁰² **We draw the Government's attention to the potential for conflict between the MMO's policy and decision-making roles, but note that it is difficult properly to scrutinise the interaction of those roles due to the lack of clarity in the draft Bill as to what those roles will be in practice.**

57. The licensing regime set out in Part 3 of the draft Bill gives the 'appropriate licensing authority', for England, the Secretary of State, and for Wales, the Welsh Ministers, most licensing-related powers: in England they are largely to be delegated to the MMO.¹⁰³ We heard some criticism of the lack of provision for an appeals mechanism against MMO licensing decisions.¹⁰⁴ The policy paper indicates that an appeals mechanism to an independent tribunal is expected,¹⁰⁵ but this is not provided for in the Bill; if this situation were to continue, judicial review would be the only option. Several factors make the lack of appeal mechanism particularly significant: there are currently no statutory time limits proposed in the draft Bill on the MMO's licensing decisions, as for example are provided in the Planning Bill,¹⁰⁶ and the 'catch-all' nature of clause 66(3)(d), which allows a licensing authority to revoke a licence for 'any other reason that appears relevant' which will have a detrimental effect on the confidence of investors in the marine renewable energy sector.¹⁰⁷ **We recommend that the Bill provide a clear mechanism for appealing licensing decisions of the appropriate licensing authority, whether to the Secretary of State or the Marine Management Organisation, and that a timeframe for decision-making is set out in the Bill.**

Relationship between the MMO and other bodies

58. The MMO's success will depend on its effective interaction with many other public bodies, including Defra, the Environment Agency, Joint Nature Conservation Committee, Natural England, the Infrastructure Planning Commission, BERR, the Marine Science Coordinating Committee, IFCAs, the Crown Estate, local authorities, harbour authorities and Cefas. It will also have to work with its equivalents for Wales, Scotland and Northern Ireland. It is unclear what the relationships between the MMO and all of these bodies will be, particularly since many of the MMO's functions will be transferred to it using powers

100 Cm 7351, p26

101 DMB 109

102 Cm 7351, p70

103 The policy paper says 'Ministers expect to make use of their powers in the Bill to delegate their [licensing] functions to the MMO within a couple of years of the Bill receiving Royal Assent,' Cm 7351, p73.

104 DMB 78, DMB 86

105 Cm 7351, p73

106 DMB 31

107 DMB 89

provided in the draft Bill or secondary legislation, and the MMO will in turn be able to delegate many of those functions.

59. The Government has said that the detail of relationships with other bodies will be set out in memoranda of understanding.¹⁰⁸ Understandably, this was not sufficient for many of our witnesses. Evidence from Welsh and Scottish organisations argues for formalised working arrangements within the Bill to ensure UK-wide coordination.¹⁰⁹ Several submissions noted that in Wales the Welsh Assembly Government intended to assume functions to be performed by the MMO in England. However, the MMO having some responsibility for non-devolved activities in Wales will “result in a complicated mix of reserved and devolved functions in Welsh waters” and that it is therefore essential that the marine governance arrangements in Wales are well coordinated with the MMO.¹¹⁰ The Wales Coastal and Maritime Partnership commented that, although it is “difficult to legislate for individuals and organisations to cooperate and integrate their activities”, there is a need for the draft Bill to consider the role of stakeholder groups such as coastal partnerships in the MMO’s consultation processes, as legislative force would “help the process of integration”.¹¹¹ Commercial bodies also wanted a statutory consultation footing¹¹² and locally-focused organisations were concerned that local needs should not be marginalised,¹¹³ with local authorities arguing that the MMO should have a statutory duty to cooperate with them in the planning and licensing areas, and estuary management.¹¹⁴ A number of conservation interests argued that statutory nature conservation agencies should have a mandatory rather than discretionary function advising the MMO as experts on environmental issues.¹¹⁵ In her response to the Government’s consultation, Professor Lynda Warren referred to the number of organisations which will be required (either by the primary legislation or secondary legislation) to provide advice to the MMO and asked that the impact of such advisory obligations on their resources be remembered.¹¹⁶ “If the nature conservation agencies are to be put under a duty to provide advice to public authorities some boundaries must be set as to the scope of this advice otherwise there is a danger that the agencies will not cope. The resource issues implied by this clause should not be under-estimated”.¹¹⁷ **We recommend that the Government create statutory consultees where appropriate for decisions to be made by the Marine Management Organisation. We believe that this would assist effective cooperation with the many bodies with which the MMO will need to work, and streamline potentially difficult decision-making processes.**

108 Cm 7351, p29

109 DMB 43

110 DMB 47, DMB 24, DMB 25, DMB 11

111 DMB 47

112 DMB 34

113 DMB 39

114 For example, DMB 40

115 DMB 16, DMB 20, DMB 22

116 DMB 112

117 DMB 112

Role of science and access to data

60. Many witnesses considered scientific capacity integral to the functioning of the MMO.¹¹⁸ Clause 23 of the Bill requires the MMO to keep abreast of all matters relating to its purpose and allows it to research relevant matters, either by itself or in association with others, to commission research (alone or jointly) or fund or otherwise support research undertaken by others, and to make the results of research available on request.

61. The main source of in-house marine scientific advice to Defra at the moment is Cefas. It stated “there is a strong expectation that [we] will play a central role in providing a broad range of marine science and advisory services to the MMO...we aim to put in place partnership agreements that build on our extensive current interactions with MFA and UK Government Departments that will enable long term continuity of services and advisory support as responsibilities move into the MMO”.¹¹⁹ The Secretary of State put this in a wider context:

“The MMO will have its own knowledge and expertise but it will also draw on a lot of other peoples’. Since an important part of what the Marine Bill is seeking to do is to better bring together a lot of knowledge, a lot of expertise, a lot of views and a lot of opinions about what should be happening, for me the question is: have you got the right structure to enable you to bring all that together so that you have, in the case of your question, sufficient scientific expertise, so the JNCC and Natural England and Cefas, and others, and the MMO will need to have people who have got the ability to interpret that scientific information in order to inform the decisions that it makes. I think if you have got the network right and you have got the communications right, and people are talking to each other (going back to the original question about this being an open, approachable organisation that is in conversation all the time with all of the other bodies and organisations that have a lot of knowledge), that is the best way of ensuring that the MMO can do its job effectively”.¹²⁰

62. The Scottish Association of Marine Science highlighted that long-term data sets and sustained observation are fundamental to managing the marine environment.¹²¹ Dr Matthew Frost, of the UK Marine Biological Association stated “the aspirations of the MMO to be a conduit to gather data and disseminate to the wider research community I think are very laudable and I see no reason why this should not happen—they coincide with a lot of international efforts to do the same thing”.¹²² Mr Richardson described how within the EU the European Marine Observation and Data Network (EMODNET) is aiming to develop a collective system of data which is available to everyone, using the same level of detail to allow a co-ordinated approach to marine planning and conservation.¹²³ For him, access to science and new data will be critical to make informed decisions that balance environmental and social considerations.¹²⁴

118 For example, the Plymouth Marine Laboratory thought science “must be at the heart” of the MMO: DMB 87.

119 DMB 58

120 Q667

121 Q472

122 Q516

123 Q578

124 Q589

63. An important question is therefore how the MMO will be able to access, analyse, and where necessary commission the sort of data and scientific information it requires. The Royal Society of Edinburgh, in its response to the Government’s consultation, said that “neither Defra nor the proposed MMO will have sufficient resources to sponsor all of the marine science that they need to support the functions set out in the Bill. The levels of resource required to fulfil the ambitions set out in the Draft Bill are well beyond current expenditures”.¹²⁵ The National Centre for Ocean Forecasting suggested that it was difficult to discern the level of scientific expertise that would be within the Marine Management Organisation,¹²⁶ and the Plymouth Marine Laboratory queried how within the MMO the links were going to be made between marine spatial planning and scientific input, which would be key to its success.¹²⁷ The National Environment Research Council (NERC) and the JNCC suggested that the MMO will need to be suitably equipped to be an intelligent customer for science, able to interpret science information for both scientists and policymakers.¹²⁸ The Marine Biological Association stated that “the issue of MMO activities being based on scientific evidence is also important in ensuring that the best available conservation science is used to make decisions about protection of species and habitats and that nature conservation, as one of the duties of the Marine Management Organisation (MMO), is supported by conservation scientists within that organisation”,¹²⁹ but that “if you look at the actual Bill, there is a lot of emphasis on the need for research [...] but not a lot on the mechanisms. Another possibility [...] is having an expert advisory panel made up of scientists. I would like to see somebody within the MMO itself who took on this responsibility for ensuring the engagement with the research community”.¹³⁰ The RSPB suggested that when assessing applications it should be mandatory for experts to be consulted, as did Wildlife and Countryside Link.¹³¹

64. The MMO must have sufficient high-level in-house scientific capacity to ensure it can commission research effectively and be an intelligent interpreter of other bodies’ research. **We consider that scientific input is of sufficient importance to be reflected explicitly in the Bill. The MMO should establish a scientific advisory panel to examine the quality of science used by the MMO and to ensure that it is making best use of available information and technology. The panel should report to the MMO board. The MMO should also have a statutory duty to play a strategic role in defining marine science through mechanisms such as the Marine Science Coordinating Committee.**

Data access

65. A number of witnesses made a broader point about the potential role of the MMO in promoting access to marine data. The British Marine Aggregate Producers Association suggested that the present approach to marine data acquisition in the UK is not particularly integrated, and thought that there was an opportunity to provide the Marine

125 DMB 111

126 Q509

127 Q510

128 Q551, DMB 17

129 DMB 85

130 Q471

131 DMB 20, DMB 22

Management Organisation with a formal duty to be responsible for marine mapping and marine data acquisition.¹³² The Marine Biological Association stated that “data availability is sparse for marine ecosystems and some data is quite old” and that “the Marine Bill must acknowledge the need to continue to build and supplement our evidence base to underpin and improve our understanding, and give levels of certainty or confidence to our scientific advice”.¹³³ To facilitate this, the RSPB, Environment Agency and Wales Coastal Partnership argued that the MMO should have a lead role in co-ordinating the provision of marine data and research across different organisations and scientific establishments, acting as a hub for marine expertise, knowledge and data, identifying strategic data gaps and playing a role in the ‘free flow’ of data in the context of science and research.¹³⁴ It was suggested that without research and data management being specified as a requirement in the Bill the necessary financial backing might come under threat.¹³⁵ In response to concerns about the high cost of data, the Secretary of State said

“I think we have got a fair amount of information to get to work already, and we are beginning to plan ahead in relation to specific areas. We have put some money aside in relation to this to support the gathering of more data, and for each of the regional plans that are going to be drawn up there is going to be money put in as part of that for further data gathering. There will be some gaps and there are some things we do not yet know. The truth is that the more we do find out as this process continues the better position we will be in to take the right decisions on the basis of the information. Adding the right data is going to be really important for the process of managing what happens in the seas and the work of the MMO. It is also, of course, going to be hugely important in taking decisions about the designation of Marine Conservation Zones. I think we are in a reasonable place on that but it will be work in progress—that is the truth”.¹³⁶

The MMO should have a duty under the Bill to promote the publicly-funded production of marine data, to collect such data and to make them publicly available. In order to do this it will need to have the right levels of scientific expertise to be able both to commission research from other organisations and to be an intelligent interpreter of scientific evidence.

Data charges

66. Sharing data is currently inhibited by the charges which are made even for access to publicly-funded data. The JNCC suggested that the relatively high cost of obtaining marine scientific data from government agencies significantly impairs the research community’s capacity to build and share knowledge.¹³⁷ The NERC said that the current funding models regarding existing data, for example those held by trading funds such as the UK Hydrographic Office, would necessitate charging to release data to the MMO.¹³⁸ The

132 Q142

133 DMB 87

134 DMB 20, DMB 76, DMB 47

135 DMB 47

136 Q666

137 DMB 94 Qq61-62

138 DMB 62

National Environment Research Council noted that the Impact Assessment of the Draft Bill did not indicate the intention to provide funding for the MMO for the commissioning or purchase of research.¹³⁹ **The MMO will need to be funded adequately to enable it to access privately owned and public data alike, on the current public funding models. Alternatively, and for us preferably, the MMO should be empowered to collect data on a cost-free basis from any public body. The Bill also empowers (but does not require) the MMO to charge for sharing the results of research it undertakes or commissions itself. It follows that we think it inappropriate for any recharges to be made by the MMO for such research other than for the marginal costs involved in retrieving and reproducing the information.**

67. The MMO will not represent the UK in negotiation of marine policy in international fora.¹⁴⁰ However, as the principal competent authority for the Marine Strategy Directive, it will have to engage with the competent authorities of other Member States for functions such as regional sea marine spatial planning and to share relevant data. The National Centre for Ocean Forecasting stated that

“One of the functions that the MSCC intends to fulfil is to have a working group which would coordinate this sort of international engagement, at least with the inter-governmental groups like ICES and OSPAR and also the International Oceanographic Commission. I would very much hope that the MMO would be part of that working group. There is other much less formal scientific international engagement, for example the global ocean data assimilation experiment, of which I happen to be part”.¹⁴¹

In order to integrate the MMO into the wider international network of marine policy, we recommend that an MMO representative be included on the UK delegation to the Intergovernmental Oceanographic Commission.

Transitional arrangements

68. The creation of the MMO will require the transfer of functions from the Marine and Fisheries Agency and other bodies. In the interim, it is necessary that all those functions currently performed continue to be so, and that there is as seamless a transition as possible. The Government suggests that “as the MMO is a new organisation, there will be few transitional arrangements associated with setting it up. However, some transitional clauses will be needed to ensure continuity in functions being transferred to the MMO from the MFA and other bodies”.¹⁴²

69. Provision for such transition is difficult to assess given that the full functions of the MMO are unknown at this stage. However, it is clear that important development and conservations decisions will be taken in the marine area in the interim period before the MMO is a functioning entity, potentially including the designation of Marine Conservation Zones and the granting of consents to build renewable energy installations.

139 Q552

140 Q660

141 Q523

142 Cm 7351, p53

There will also be ongoing regulatory functions to perform, such as Harbour Revision Orders.¹⁴³ The Crown Estate wants provision for transitional arrangements on the face of the Bill to “prevent uncertainty during the move”;¹⁴⁴ the British Ports Association raised concerns about the transitional arrangements for the development of the MMO and how that sits alongside the development of the Infrastructure Planning Commission.¹⁴⁵ **For commercial interests it is particularly important to establish predictability and stability. We therefore invite the Government to set out its timetable for the handover of specific functions in the transition to the MMO, to ensure that there is minimal disruption to developments, either existing or about to enter the licensing system.**

70. Witnesses from the energy industry in particular expressed concern about the potential for delays in the new planning and licensing system affecting developer confidence and investment. Mr Carcas from Pelamis Wave Power Limited said “the danger is that additional bureaucracy is introduced that could slow down that process, particularly while things like the marine planning statement and zones are being identified. People may say, “You’ll have to wait until we have done all of this first before things can proceed”. It is clearly a concern”.¹⁴⁶ BWEA spoke of the transition period between now and when the planning framework is in place as potentially a “big bun fight” between different interested parties trying to “gazump” the framework and secure their area of the seabed.¹⁴⁷ They noted that the Crown Estate has very recently announced areas for which it will develop wind farms, while the process of stakeholder consultation in MCZ designation has already begun. The BWEA argued that there “needs to be a transitional process which manages that and avoids [it]”.¹⁴⁸ It would be counter-productive if the result of this scrutiny process, the consultation periods and the establishment of the planning system was a rush of pre-emptive developments, or informal designation processes. This would undermine the intention of the Government and the policy of sustainable development. **We believe it is critical that the Government put in place guidelines for all relevant departments and licensing bodies as soon as possible, from now until the functioning of the new planning and licensing systems, in order to ensure the integrity of the process and outcomes.**

71. **In cases where the Bill creates open-ended powers by which the MMO may come to exercise functions (in particular clauses 14 and 35(2)) Defra should set out a clear and full justification for such powers, including examples of their expected use. The Government should also explain how it envisages secondary legislation being used to augment the powers of the MMO.** This could be done by means of a list, to be revised on an ongoing basis, setting out the types of ‘marine function’ that may be the subject of a clause 14 agreement.

72. There is a particular issue about licensing of marine dredging, much of which is not currently subject to regulation. Although this activity will be subject to the new marine licensing regime, the policy intention, which was broadly welcomed, is that most will be

143 DMB 32

144 DMB 64

145 Q86, DMB 79

146 Q440

147 Q378

148 Q378

exempted at a later stage.¹⁴⁹ The Government envisages working with harbour authorities, dredgers and others over the next few years “to establish a sound evidence base on which to exempt the vast majority of such cases from marine licensing”.¹⁵⁰ However it also states that it will “take time” to exempt those dredging activities and in the transition period operators would have to apply for a licence.¹⁵¹ This situation could create a problem in the transitional period, which is of concern to the British Marine Federation and the British Marine Aggregate Producers Association. They suggested that the influx of licence applications from operators who have not had to be licensed until the implementation of the Bill might overwhelm the MMO and that industry would suffer from resulting delays.¹⁵² Industry was also anxious that subsequent applications for exemptions which might be required could be dealt with promptly. **Dredging is an unglamorous but very necessary activity and we recommend that the concern of the industry is given due consideration by the Government. It may be that timescales for licensing decision-making should be built into the Bill to ensure industry is not disadvantaged by the increased administrative burden of applying for licences for previously unlicensed activity, and subsequently then applying for exemptions.**

Maritime and Coastguard Agency

73. The Maritime and Coastguard Agency (MCA) is an executive agency of the Department for Transport, responsible for implementing the UK Government’s maritime safety policy. Defra said that “careful consideration has been given to the relationship between the MMO and the MCA in preparing the Marine Bill, as there will be considerable overlap between the geographic area of operation of the two organisations”.¹⁵³ The Government considered and rejected the idea of merging the MCA and the MMO because they have “discrete and very different functions” and “it is important to maintain the MCA as a separate organisation with a clear, single focus on shipping and maritime safety”.¹⁵⁴ The MMO will

“consult and work with the MCA whenever its activities are likely to impinge on issues of maritime safety, including the preparation of marine plans, marine licensing decisions that have a potential impact on navigation, the designation of Marine Conservation Zones, and the exercise of enforcement powers [...] Similarly the MCA will ensure that the MMO is involved in any of the Agency’s activities which might have implications for the MMO’s responsibilities. For example, we expect the MMO (as MFA currently does) to attend the Fishing Industry Safety Group (FISG), which advises DfT through the MCA”.¹⁵⁵

The Government expects a Memorandum of Understanding between the MMO and MCA, as with other bodies.¹⁵⁶ **We recommend that the Government formalise in the Bill**

149 Clause 67

150 Cm 7351, p38

151 Cm 7351, p73

152 DMB 46, DMB 35

153 DMB 107

154 *Ibid.*

155 *Ibid.*

156 *Ibid.*

the consultation requirements between the Maritime and Coastguard Agency and the Marine Management Organisation.

4 Marine Planning

74. A central aim of the draft Bill is to implement “a more strategic approach to managing marine activities and protecting marine resources in the future.”¹⁵⁷ There was general agreement that an important element in this approach will be a system of marine planning. The British Ports Association, for example, “look to the system to increase the body of knowledge about the dynamics of the coast, the effect of commercial operations and especially the impact of new activities and developments;”¹⁵⁸ Oil and Gas UK noted that “a functional strategic framework will provide certainty for industry and conservation interests alike”;¹⁵⁹ the Countryside Council for Wales reported that “the existing system for managing marine resources is fragmented and sectoral and unable to provide a framework to manage pressure on marine ecosystems;”¹⁶⁰ and Wildlife and Countryside Link believed that “a strategic, spatial, integrated planning regime is vital in seas that are increasingly busy.”¹⁶¹

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

Marine Policy Statement

76. The draft Bill provides that a Marine Policy Statement (MPS) will be prepared by the Secretary of State, Welsh Ministers and the Department of the Environment in Northern Ireland; it will state “general policies (however expressed) of [the policy authorities] for contributing to the achievement of sustainable development in the UK marine area”. The Marine Policy Statement can be adopted by the Secretary of State either alone, or with the agreement of only one of the other policy authorities. There is no timetable for introduction, guidance on the content of the MPS, or requirement for Parliamentary scrutiny of either the original MPS, any amendment to it or the introduction of a replacement MPS.¹⁶²

Parliamentary scrutiny

77. The National Policy Statements that will be introduced by the measures in the Planning Bill will be laid before both Houses in draft and may be scrutinised in depth. The Secretary

¹⁵⁷ Cm 7351, p18

¹⁵⁸ DMB 32

¹⁵⁹ DMB 65

¹⁶⁰ DMB 11

¹⁶¹ DMB 22

¹⁶² Clauses 40–42

of State is required to respond to any expression of opinion by either House or by a select committee of the House of Commons. No such procedure, indeed no parliamentary procedure at all, is currently envisaged in respect of the Marine Policy Statement. The National Trust told us “the Marine Policy Statements arising from the Marine Bill and National Policy Statements arising from the Planning Bill should carry equal weight”.¹⁶³ Mr Bird of Associated British Ports said “it would be perfectly reasonable for this to have exactly the same degree of parliamentary scrutiny as the other policy statements which are going to appear as part of the Planning Bill process.”¹⁶⁴ We asked the Secretary of State whether he felt the MPS should attract Parliamentary scrutiny; he replied “if the Committee wanted to suggest a process for Parliamentary scrutiny I would welcome it—I do not have any problem with that at all [...] but we have nothing to fear and everything to welcome from there being scrutiny of the MPS.”¹⁶⁵ **Given the clear desirability both of subjecting the Marine Policy Statement to Parliamentary scrutiny, and that this scrutiny be as high level as possible, we recommend that the Marine Policy Statement be subject to the same Parliamentary scrutiny as will apply to National Policy Statements made under the Planning Bill. We note however that scrutiny does not require approval by both Houses and so we would go further. We recommend that the Marine Policy Statement be laid before both Houses in draft form, be subject to affirmative procedure, and be subject to scrutiny by the appropriate select committees.**

Content and structure

78. Witnesses have been emphatic about the important role that the MPS will play. For example, Mr Russell of BMAPA stated “I think the Marine Policy Statement is going to be absolutely essential and integral to the ability of the proposals contained within the Marine Bill to actually deliver what they want;”¹⁶⁶ Mr Borwell, of Oil and Gas UK, said “the key for us is that the planning system is supported by a properly constructed marine policy statement and objectives.”¹⁶⁷

79. Given the central importance of the MPS a number of witnesses were critical of what they saw as a lack of clarity about what it would contain. The explanatory notes state “The MPS will provide a long term framework for managing sustainable development in the UK marine area by setting out a UK vision and objectives for the marine areas and its uses, incorporating economic, social, cultural and environmental priorities”.¹⁶⁸ Dr Davies of the JNCC told us “there is a general lack of clarity with the marine policy statement at the moment”.¹⁶⁹ The Wales Coastal and Maritime Partnership was “concerned that the draft provisions on the Marine Policy Statement (MPS) and marine plans are of high-level nature. Further guidance of substantive and procedural nature for the preparation of marine plans is required if these provisions are to achieve the objective of steering decision-

163 DMB 21

164 Q96

165 Q691

166 Q151

167 Q363

168 Cm 7351, explanatory notes, p60

169 Q55

making and ensuring sustainable development.”¹⁷⁰ The Crown Estate pointed out that the MPS lacked the sectoral detail that the National Planning Statements will contain: “We are [...] concerned that at present the relationship between the MPS and NPSs remains unclear. Whilst the MPS seeks to bring together policies on the full range of marine sectors, NPSs set out intentions for individual sectors.”¹⁷¹

80. When we asked Defra officials why the Bill did not give more information on the criteria to be considered when putting the MPS together, they responded “we have strayed away from having any more specific criteria in the Bill for what should be in the statement because we do not want to restrict ministers' abilities to include the issues that they think are important at the time or indeed the issues that come up in the consultation processes that stakeholders raise.”¹⁷² The Secretary of State said “the more of us who can agree on what it is that we agree on, for the purposes of the Marine Policy Statement, frankly, the better because it gives greater certainty and clarity to everybody, wherever they are, about what the basis will be on which decisions are taken.”¹⁷³

81. The lack of clear guidance about the content of the Marine Policy Statement has led to some uncertainty about how it will achieve the aim of managing sustainable development of UK waters. Without that clarity, we are also unsure how it will enable competing priorities, particularly between environmental and socio-economic factors, to be reconciled. **We recommend that the Bill contain a greater level of detail about the proposed structure and content of the Marine Policy Statement, in order to clarify exactly how the Government intends it to achieve its objective and balance its priorities. At the very least we would expect the Bill to set out criteria analogous to those contained in the Planning Bill for National Policy Statements.**

Timetable

82. The Bill does not set a timetable or deadline for the production of the Marine Policy Statement. This made some witnesses nervous about the speed, or lack of it, with which the MPS and consequent spatial plans would be implemented. There are external pressures which impose a deadline on the Government to produce the MPS. The Marine Strategy Directive, which will require a planning framework, must be transposed by July 2010. The MPS should also be in place before the designation of the network of Marine Conservation Zones: Defra told us it wanted full recommendations for designations by early 2011, and a final decision by 2012.¹⁷⁴

83. The Environment Agency recommended that “the Bill should create a duty for the policy authorities to agree a policy statement, and to produce marine plans for the whole UK marine area, within agreed timeframes”.¹⁷⁵ The Wales Coastal and Maritime Partnership said “we welcome the proposals that a marine policy statement is agreed before the actual development of marine plans commences and as soon as possible after the

170 DMB 47

171 DMB 64

172 Q654

173 Q694

174 Q637

175 DMB 76

passing of the Act (and in less than two years if possible) [...] We also suggest the Bill introduces a duty to prepare and adopt the MPS and plans and a deadline for completion to ensure their speedy delivery”.¹⁷⁶

84. In the absence of a timetable in the Bill, the Government will have to work to meet the external deadlines set by its international obligations, and in particular by the Marine Strategy Directive (see Chapter Two). **Although we do not consider there is a need to put a deadline for the publication of the Marine Policy Statement on the face of the Bill, it is clear to us that it should be produced as soon as possible, and certainly within two years of Royal Assent.**

Consultation

85. Schedule 4 to the Bill outlines the consultation process for the preparation of the Marine Policy Statement, by the means of a statement of public participation. There is expectation across the board that all sectors will be involved in consultation. Mr Bird of Associated British Ports, for example, told us “clearly we would expect there to be a degree of consultation on the marine policy statement and to contribute to that”.¹⁷⁷ But there was concern about the current arrangements. Mr McMullen, of the Seafish Industry Authority, said of the Bill as a whole “I do not think the current model of consultation will serve any stakeholders particularly well”.¹⁷⁸ In particular, the absence of specified consultees worried a number of witnesses. Schedule 4 requires that the statement of public participation be brought to the attention of:

- a) any persons appearing to the relevant authorities likely to be interested in, or affected by, policies proposed in the relevant document, and
- b) members of the general public.¹⁷⁹

86. Ms Morgan from Defra told us that “there are obligations both in relation to the policy statement and the plans for comprehensive consultation with anyone who might be interested or affected by anything that is in those documents. Crucially, at the beginning of those processes we have required the creation of statements of public participation and involvement and that is really so that we can set out right from the beginning how we intend to go through the process”.¹⁸⁰ The Secretary of State was even more emphatic: “there is a requirement in the Bill to consult and we want to consult everybody”.¹⁸¹ We are concerned that the desire to consult “everybody” and the wide range of the Schedule 4 provision might lead to a lack of focus on those who are most affected by MPS proposals. We also think **the Government should give thought to designating certain key bodies as statutory consultees in respect of the preparation or revision of the Marine Policy Statement, in order to strengthen the consultation and make it more transparent.**

176 DMB 47

177 Q97

178 Q208

179 Schedule 4, para 8

180 Q655

181 Q690

Coordination with the devolved administrations

87. The Marine Policy Statement covers the UK marine area, which is defined as:

- a) the area of sea within the seaward limits of the territorial sea adjacent to the United Kingdom,
- b) the area of sea within the limits of the UK sector on the continental shelf,
- c) any area of sea within the limits of a renewable energy zone (so far as not falling within the area mentioned in paragraph (b))

and includes the bed and subsoil of the sea within those areas.¹⁸²

88. Although the Bill covers the whole UK, as the Scottish Government put it, “the waters around Scotland are subject to a complicated mix of reserved and devolved responsibilities”.¹⁸³ This means that the MPS is restricted in content and impact in Scotland.¹⁸⁴ The Bill permits the Secretary of State to adopt the Marine Policy Statement without consulting the devolved administrations, although, as noted, both Welsh Ministers and the Department of the Environment in Northern Ireland (though not the Scottish Government) are listed as policy authorities for the preparation of the MPS.

89. This provision drew criticism from several witnesses, such as the Crown Estate, which was “concerned that devolved administrations can opt out of participating in the MPS. This could lead to a situation where policy authorities will not adhere or contribute to the sustainable development commitment in the MPS”.¹⁸⁵ The Environment Agency argued that “the UK marine policy statement should be jointly agreed and signed up to by all the devolved administrations”,¹⁸⁶ and was “concerned that there is no obligation for plan production and that it is possible to opt out of the planning process”.¹⁸⁷ We understand why the provision causes concern, and consider that it threatens the aim of a UK-wide Marine Policy. **We recommend that the provision in clause 41, which enables the Secretary of State to adopt the Marine Policy Statement without full agreement from the other policy authorities, be made conditional upon specified measures designed to facilitate agreement between policy authorities failing to produce an initial agreed statement.**

90. The RSPB raised the concern that “the Scottish Government’s lack of engagement in the MPS means that a truly UK-wide policy position is not attainable”.¹⁸⁸ We note that the Marine Strategy Directive requires the UK to produce ‘marine strategies’ on a regional and sub-regional level by 2016. The UK will therefore need to work across the administrations to develop planning strategies for this purpose. The prospect of the UK and Scotland producing, at this stage, two separate policy statements is neither rational nor appropriate,

¹⁸² Clause 39

¹⁸³ DMB 97

¹⁸⁴ Cm 7351, p20

¹⁸⁵ DMB 64

¹⁸⁶ DMB 10

¹⁸⁷ DMB 76

¹⁸⁸ DMB 20

and is unlikely to be the optimum way to develop UK marine planning. The Minister told us that “of course we have been in dialogue about the high level statement, and the Scottish Executive will be consulting within Scotland on their own, but they have given an undertaking that they will include our high level statement to ensure that all of their consultees and stakeholders see the two and can make comment to ensure that they work harmoniously”.¹⁸⁹

91. The Secretary of State confirmed that although, at present, it is envisaged that Scotland will produce a separate policy statement, the Welsh Assembly Government and the Northern Ireland Assembly are prepared to sign up to the UK MPS.¹⁹⁰ He added “what we would like is something that everybody signs up to. I recognise, in the case of Scotland, that they have decided they want to do it in a different way (and that they are perfectly able to do under the devolution settlement), but the more of us who can agree on what it is that we agree on, for the purposes of the Marine Policy Statement, frankly, the better because it gives greater certainty and clarity to everybody, wherever they are, about what the basis will be on which decisions are taken”.¹⁹¹ We endorse the comments of the Secretary of State. We recognise that the UK Government is making efforts to ensure that the MPS achieves the highest level of agreement across the devolved administrations as possible. **We believe it is essential that an MPS has the active support and approval of all the devolved administrations, just as it is equally important that the UK Government participates in the Scottish proposals. We regard the production of an agreed Marine Policy Statement that has consensus across the devolved administrations, including Scotland, as an imperative, and consider that the designation of machinery to achieve this if at all possible should be placed on the face of the Bill.**

Marine Plans

92. The draft Bill defines marine plans as documents which state the planning authority’s policies “for and in connection with the sustainable development of the area” to which the plan relates. The plans must be in conformity with the Marine Policy Statement applicable to the area, “unless relevant considerations indicate otherwise”. The Government proposes that marine plans be developed for 10 separate regions in UK waters. Due to the novelty of the system and allied resource constraints, it proposes initially developing two plans “in the areas where it is determined that early planning will be of most benefit”.¹⁹² Marine plan authorities “must take all reasonable steps to secure that the plans are compatible” with that of an adjoining marine planning authority. For England and Great Britain’s offshore waters the MMO will be the planning authority; for Wales the Welsh Assembly Government; for Northern Ireland inshore and offshore waters the Northern Ireland Government, in consultation with the UK Government; and in Scottish inshore waters, the Scottish Government. The importance of marine plans was widely recognised and their introduction was generally warmly welcomed in principle.¹⁹³ But there are a number of unanswered questions about their implementation.

189 Q692

190 Qq693–4

191 Q694

192 Cm 7351, p32

193 E.g. DBM 16, DMB 21, DMB 79

Coordination of plans

93. It will be important to designate marine planning zones for the Bill that do not conflict with the UK's commitments for larger scale planning under the MSD. Addressing the requirements of the MSD will require compatible objectives for Scotland and England for the North Sea sub-region and for England and all devolved administrations for the Celtic Sea. As the JNCC pointed out in written evidence, “the Directive requires regional cooperation between Member States but, for the UK, that will also require close cooperation between the Devolved Administrations and the UK Government to ensure coherence in our Marine Strategy”.¹⁹⁴

94. Others suggested that the coherence of the system was dependent on the establishment of a clear hierarchy of objectives. Oil and Gas UK told us “the key for us is that the planning system is supported by a properly constructed marine policy statement and objectives. Until they are in place it is going to be very difficult for the MMO to make decisions on which sea user, effectively, gets to use a particular piece of seabed”.¹⁹⁵ This requires proper coordination with the devolved authorities, especially in the Irish Sea,¹⁹⁶ and integration with EU obligations.¹⁹⁷ Natural England thought that “there should be comprehensive plan coverage for UK waters, although the scale and level of detail of individual plans may vary to reflect the amount, nature and complexity of marine activities in the area in question”.¹⁹⁸

95. The Bill currently requires the marine plan authority to “have regard” to other marine plans for a related planning area, or to a terrestrial development plan, or to a plan prepared by a public authority in connection with the management of marine or coastal resources.¹⁹⁹ In the case of other marine plans the marine planning authority is to “take all reasonable steps to ensure that the plans are compatible”.²⁰⁰ Mr Richardson, whose apt assessment of the fragmented nature of the planning system introduced by the draft Bill we have quoted above at paragraph 25, spoke for a number of witnesses in inviting us to consider whether these provisions would secure the joined-up system which the Bill aims to provide: “my suggestion to you would be to look at strengthening that language; not to do what they can to ensure compatibility, but to ensure compatibility full stop”.²⁰¹ We endorse this advice and **we invite the Government to strengthen the duty on marine plan authorities to ensure that marine plans are compatible with other plans, both marine and terrestrial.** This will provide for a more integrated system and ensure a level playing field for marine industries, user groups, environmental interests and other parties undertaking activities in UK waters.

194 DMB 17

195 Q363

196 Q383

197 Q581

198 DMB 16

199 Schedule 5, para 6

200 Schedule 5, para 1(2)

201 Q588

Major developments and the Infrastructure Planning Commission

96. The Bill, to the satisfaction of Oil and Gas UK, does not alter current arrangements for the licensing of offshore oil and gas development.²⁰² which is to remain the responsibility of BERR. We heard more debate on the proposal that the new Infrastructure Planning Commission (IPC), to be set up under the Planning Bill, is to be responsible for licensing major port developments and offshore renewable energy developments with a generating capacity in excess of 100 Megawatts (MWs). In terms of renewable energy, which is likely to be the focus of the most intensive activity given the Government's commitments to increase dramatically the supply in the near future, the cut-off was thought likely to result, in practice, in responsibility for licensing offshore wind development lying with the IPC, and responsibility for wave and tidal schemes resting with the MMO.

97. The argument in favour of this division of responsibilities is that regulation of such large projects as marine wind farm developments requires significant expertise and resources, which the MMO would not have, and that the MMO's role in overall planning would be more effectively furthered if it was only responsible for smaller projects.²⁰³ There is, of course, a contrary argument that determination of issues for large-scale developments in the marine environment requires specialist marine knowledge and skills, and from this point of view the involvement of the IPC in the marine environment undermines the achievement of a 'one stop shop' for marine licensing and the principle that the MMO should have the strategic overview of marine activities; for many this suggested that all marine projects should be within the MMO's planning and licensing remit.²⁰⁴

98. Other evidence from industry criticised the 'cut-off' of 100MW, with the renewable energy sector arguing for all developments above 1MW to fall within the IPC's remit.²⁰⁵ It was suggested that the current divide creates a two-tier system²⁰⁶ and has the potential for uncertainty if an existing under-100MW project sought to expand beyond 100MW²⁰⁷, and was in any event inconsistent with the terrestrial regime where the IPC will deal with onshore energy projects with generating capacity above 50MW.²⁰⁸ We note that, to date, only two applications for offshore wind farms of less than 50MW have been made. BERR said that the split between responsibilities of the MMO and IPC "is analogous to and consistent with the split of responsibilities between the IPC and local authorities for onshore renewables and conventional power generation projects" and that the different cut-off in MW generation capacity "makes sense because offshore renewables projects are generally bigger than onshore ones".²⁰⁹

99. The Government intends that when the IPC deals with applications for offshore energy installations, the MMO will advise the IPC on marine considerations. BERR said that the

202 Q367

203 Qq433-4

204 DMB 81, DMB 59, DMB 47, DMB 43, DMB 16, DMB 20, DMB 22, DMB 25, DMB 5, DMB 12, DMB 14

205 DMB 89

206 BWEA recommends all offshore renewable projects be within IPC's remit, DMB 36; British Ports Association is also concerned about the potential for a two-tier system with port developments, resulting in a disproportionate amount of resources being allocated to the IPC for major developments, sidelining the MMO: DMB 32.

207 Q382

208 DMB 78

209 DMB 61

IPC's decisions "will be informed by the MMO (which is expected to be a statutory advisor)" and those IPC decisions will be monitored and enforced by the MMO.²¹⁰ This advisory role of the MMO is not however provided for in the Bill, and the Environment Agency, for one, considered that the MMO should have a formal role in this respect.²¹¹ It is also unclear how the IPC (and other decision-making bodies) will be required to consider marine plans in their decision-making.²¹² On a broader scale, although the Government recognises the need for consistency between the National Policy Statement for renewables (introduced by the Planning Bill) and the Marine Policy Statement, there is no apparent mechanism for ensuring this happens.²¹³

100. The context in which the relationship between the MMO and the IPC will develop is therefore unclear, while at an institutional level each organisation will be expected to develop separate but complementary skills. The inconsistent thresholds applicable to onshore and offshore renewable energy projects might also cause uncertainty regarding the very many projects which inevitably involve the land-sea boundary, for example if they have a capacity of 80MW.

101. For our own part, we think that the most efficient resolution of these issues would be either for the MMO to have responsibility for all marine-related energy project licensing, or alternatively, for the IPC to deal with it all, regardless of size, with the MMO acting in a statutory advisory role. The division of responsibility is likely to lead to confusion and delays. **We recommend that the Government revisit the dual-body regulatory structure for offshore energy installations. The current situation is very unsatisfactory. Were the dual-body structure to be maintained, we recommend that the rationale for the division of responsibilities be better defined on the face of the Bill and that where an application to the IPC concerns the marine area the MMO be given a statutory advisory role. Further, we recommend that in all applications relating to the marine area, the IPC have a duty to act in accordance with relevant marine plans.**

The land/sea interface

102. Marine plans will overlap with the land-based planning system at the coastline and in estuaries, which are the most heavily used parts of the UK seas. The majority of casework is likely to be in the coastal zone, with many proposals for development subject to both terrestrial and marine planning consents.²¹⁴ The arrangements at the land/sea interface are thus of great importance. They need to be flexible given the changing nature of coastlines and will be especially complex in estuaries.

103. Witnesses were clear that there should be provision for integrating marine and land planning systems.²¹⁵ Essex County Council stated that there could be "disastrous impacts if a new system of planning is implemented without identifying how the integration at the

210 DMB 61

211 DMB 76, p3

212 DMB 75, DMB 80

213 DMB 61

214 DMB 12

215 Q384, DMB 76, DMB 40

coast will be achieved”.²¹⁶ In its view “the subsequent guidance and clarification [on planning in coastal areas] promised in the draft Marine Bill document should have been forthcoming at this stage to facilitate meaningful comment”.²¹⁷ If plans are to be accepted by local communities it is essential that a mechanism is found to promote and explore plans at an appropriate level.²¹⁸ Local authorities are not listed as organisations with which the MMO can make agreements, although functions can be delegated to them.²¹⁹ Essex County Council added “it is not clear, for example, if the MMO will be a named partner under the duty to cooperate and therefore whether it will need to be involved in Local Area Agreements”.²²⁰ The Bill specifically excludes joint committees from the planning process, despite joint committees of surrounding local authorities and the relevant harbour authorities being the logical body to which to delegate powers for enclosed estuaries.²²¹

104. We consider that these representations have considerable force. The Bill states that in the preparation of marine spatial plans, adjacent terrestrial development plans and regional plans should be taken into account but there is no requirement to ensure that they are compatible, despite the planning regimes effectively overlapping between the mean low water tide level and mean high tide level. Moreover the mechanisms for engaging organisations already holding key planning and regulatory roles in coastal areas and waters, and for delegating functions down to the local level, are unclear. **We accordingly recommend that the MMO should have a defined role on the face of the Bill as a statutory consultee within coastal planning processes, including changes to national coastal planning guidance, relevant regional spatial strategies, local development documents, and shoreline management plans.**

105. Given the evidence submitted to us on this issue we are also surprised to note that there is no mention of integrated coastal management on the face of the Bill. The planning and decision-making process at the land/sea interface is particularly important for certain industries, such as ports and offshore developments, that have a coastal landfall. **We think it is essential that the Government explain in detail how it envisages that integrated coastal management will be taken forward through the provisions in the Bill. We welcome the provisions in the Bill for simplified licensing of some of the activities being undertaken by these sectors such as harbour dredging and the laying of submarine cables but believe that promoting integrated coastal management would improve the situation for many more sectors. As the Bill enables the creation of ‘nested plans’, we recommend that priority is given to producing plans for an inshore/coastal zone. The Bill should impose a duty on plan producers to have regard to each others’ plans.**

216 DMB 53

217 DMB 53

218 DMB 40, DMB 59

219 Clause 20

220 DMB 53

221 Q4

Coastal partnerships

106. **We are disappointed by the lack of mention of coastal and estuary partnerships and the role they can play in helping to support Marine Planning at local level.** We have received evidence from a wide range of organisations that the broad membership of these groups makes them ideally placed to act as a sounding board for coastal planning, and to give local ownership of the proposed plans and greater accountability. Hampshire County Council, for example, reports that “coastal partnerships, such as the Solent Forum, which has members amongst others from local authorities, government organisations and marine industry, should be considered as possible vehicles for stakeholder engagement”.²²² We are aware that in Scotland, existing coastal forums are being used to help bridge cross-border issues, for example stakeholder mechanisms developed in support of the Water Framework Directive mechanism have been used to tackle projects in the Solway Firth and River Tweed. **The Marine Management Organisation should be given a duty to work with coastal partnerships and estuary forums where they exist and to promote new coastal and estuary forums where they do not. Such forums must be adequately resourced and should be given a specific role in the marine planning process—including objective setting, consultation, reporting and review.** These groups will be ideally placed to clarify the planning needs and responsibilities in intensively used areas such as estuaries.

5 Marine Conservation Zones

107. Part 4 of the draft Bill sets out provisions relating to Marine Conservation Zones (MCZs). The introduction to the Bill describes MCZs as measures “for protection of individual habitats and species” and “a network of sites representing marine ecosystems around the UK”. It also states that “designation will take account of environmental, social and economic criteria”.²²³ The Bill states that MCZs will be established “for the purposes of conserving:

- a) marine flora and fauna;
- b) marine habitats or types of marine habitat;
- c) features of geological or geomorphical interest”.²²⁴

The explanatory notes state that “the term ‘conserving marine flora or fauna or habitat’ covers not only species that are rare or threatened, but also the diversity of flora, fauna and habitat, whether or not any flora, fauna or habitat is considered rare or threatened”.²²⁵

108. An MCZ is a form of marine protected area (MPA), which is described as any area of intertidal or subtidal terrain, together with its overlying water and associated flora or fauna, historical or cultural features, which is protected by legal or other effective means. Highly protected marine areas prohibit all damaging activities, including dumping, dredging, construction and the extraction of all resources. Multiple-use marine protected areas permit activities as long as they do not impact on the biodiversity interest of the given site. For MCZs, the conservation objectives for each site will be set out in the designation order and these objectives will determine the level of protection afforded to the given MCZ. The majority of MCZs will be multiple use marine protected areas, although the policy paper states that where stringent conservation objectives are set, the MCZ will be a highly protected marine reserve (HPMR).²²⁶

109. We have received much evidence in support of the establishment of Marine Conservation Zones, not limited to the conservation sector. The Crown Estate, for example supported “the need for improved environmental protection and [we] feel this is best achieved through the designation of MCZs”.²²⁷ Mr Armstrong of the Scottish Fisherman’s Federation was clear that the commercial fisheries sector was in favour of Marine Conservation Zones.²²⁸ Mr Deas of the National Federation of Fisherman’s Organisations added that there was “practical experience of successful no-take zones, and protected areas that are well-designed, have a purpose, are monitored and have an exit strategy if the

223 Cm 7351, p23

224 Clause 106

225 Cm 7351, explanatory notes, para 254

226 Cm 7351 p40

227 DMB 64

228 Q214

original purpose is not there any more. If all of those criteria are met then Marine Conservation Zones could be a good thing”.²²⁹

110. There was also some scepticism about the principle of MCZs: Save Our Seabirds said “the concept of Conservation Zones does not take account of the continual movement of the sea due to storms, winds, the ebb and flow of tides, carrying pollutants with it choking sea mammals, birds, any marine creatures with plastic, trapping them in oil and littering the sea-bed and its plants and wildlife”.²³⁰ MARINET (the Marine Network of Friends of the Earth Local Groups) stated “Marine Conservation Zones [...] seek to protect specific habitats and species in individual areas, and thus they do not embrace (other than incidentally) the concept and the need to protect the marine ecosystem as a whole. We regard this as a major deficiency in the draft Bill”.²³¹ Despite these views, we consider that Marine Conservation Zones represent a first step forward in developing and enabling marine conservation in UK waters. **We welcome the establishment of Marine Conservation Zones and recognise they are needed to make an essential contribution to the UK commitment to sustainable development, as well as fulfilling specific international commitments on Marine Protected Areas.**

Selection, objectives and the MCZ network

111. We have heard from many witnesses of their concern that despite reference to a network in the introduction to the bill, and commitments by the UK at an international level to establishing such a network, there is no statutory *duty* to do so. Instead the Bill merely establishes the *ability* of the Secretary of State to designate MCZs. The Countryside Council for Wales for example, considered that there should be “some form of duty to designate MCZs, associated with a purpose to contribute to the objectives of an ecologically coherent network of Marine Protected Areas”.²³² Wildlife and Countryside Link stated “we fear that the legislation as currently drafted may well fail to deliver a coherent network at the UK level”.²³³ **It is essential that Marine Conservation Zones are developed as a network rather than as isolated areas; this should be explicit in the Bill.**

112. The proposed MCZ selection process has divided different sectors somewhat. Some organisations stated that socio-economic and environmental needs should be given high or equal consideration, for example the British Wind Energy Association told us “when considering the extent of any network and its spatial context relative to the distribution of energy generating resources, the impact on renewable energy activities should be taken into consideration”.²³⁴ Mr Barham of Association British Ports was concerned that

“the ports industry is generally—and certainly my company—in favour of the designation of Marine Conservation Zones. The slight difficulty we have in terms of the draft Bill, as it is, is that there are references in the draft Bill to the designation of Marine Conservation Zones where I think it says “may have regard to socio-

229 Q216

230 DMB 101

231 DMB 8

232 DMB 11

233 DMB 22

234 DMB 36

economic aspects”. As I say, the fear is that that ‘may have regard to socio-economic aspects’ means that the full regard to socio-economic aspects that we are effectively promised through marine spatial planning or marine planning does not happen when the marine planning process comes around later on. That is not to say that there is not an urgency for the protection of the marine environment; it is just that there seems to be less consideration of socio-economic aspects in terms of that designation”.²³⁵

Mr Allen of the British Sub-Aqua Club referred to the added benefits that MCZs could bring to the socio-economic development of the coastal leisure sector, saying that MCZs were “an opportunity to enhance that. The Member for Plymouth will probably testify to the success of the Scylla project. It is in millions, the benefit to the local economy, and that is one dive site. You could have as many of those around the coast as you like”.²³⁶

113. Others felt strongly that the initial identification and the subsequent designation of MCZs should be carried out on scientific/ecological grounds alone. The Environment Agency stated “the MCZ network should be identified on its scientific merit alone, as is the case with current land-based site-safeguard systems”.²³⁷ BWEA raised the need for scientific criteria to be sound: “Designations should only be made where there is clear justification for protection. Designations based on poor evidence will limit industry and not achieve conservation aims”.²³⁸ **We agree that it is vital for the designation of Marine Conservation Zones to be underpinned by scientific criteria.**

114. There is an accommodation to be reached between science and socio-economic factors. For example, Ms Edwards, from Wildlife and Countryside Link stated

“We are concerned that the nature conservation part of the Bill is quite weak, and we believe the selection of Marine Conservation Zones and the selection of the network should be based on purely scientific grounds, and we do not think decisions on where exactly Marine Conservation Zones should be should be based on socio-economics. What we do think, though, is that it is really important during the process of selection and the designation process that all stakeholders are involved in the process, so that there is a sense of ownership and there is an understanding why certain areas are being identified, so that they understand the science behind it and the fact that all stakeholders understand why you need a network of marine protected areas. What we do not want is a scenario of consensus building”.²³⁹

Dr Burrows of the Scottish Association for Marine Science said “As a scientist I know I should be purely commenting on the scientific value of protecting marine resources, but it is clear that if you are going to succeed in doing that, then you really need to engage the community”.²⁴⁰

235 Q105

236 Q327

237 DMB 76

238 DMB 36

239 Q592

240 Q489

115. The British Ports Association and Associated British Ports supported an approach of designating first and then addressing socio-economic issues as in line with the Habitats Directive Approach.²⁴¹ However, Mr Barham also stated

“I think one of the fears that we have at the moment with regard to the designation of marine conservation sites is not simply the fact that they will be designated, it is that if through the designation process they preclude opportunities for development that either might or might not have an impact on the environment or that could be mitigated or compensated, then there is a potential preclusion for development opportunities”.²⁴²

Mary Lewis, from the Countryside Council for Wales, told the Committee that

“In terms of exactly how we go about designating those sites, we have begun a process of discussion with stakeholders because we think it is right to do that from an early stage. That is where probably there is some discussion happening and we think it is right to have that discussion. We are fairly clear that primarily the first assessment we think needs to be done on the basis of scientific criteria which would throw up options and a variety of different possibilities for sites, and after that it is appropriate to then bring in social and economic criteria to start looking at the individual siting of particular sites”.²⁴³

We recognise that common sense dictates that socio-economic factors should be taken into consideration once the science case is made. **We recommend that the scoping of potential locations for Marine Conservation Zones should be based on the best scientific evidence, taking into account their representative nature, uniqueness, threat and sensitivity. We also emphasise the need to pay regard to existing international obligations (not least in respect of the International Right of Passage), the socio-economic costs and benefits of MCZs, and the ability of zones to accommodate other forms of use without harming their integrity, once the potential sites have been identified.**

116. The objectives of MCZs include a reference to recovery and restoration: the Bill states that “references to conserving a thing includes references to

- a) assisting in its conservation;
- b) enabling or facilitating its recovery or increase”.²⁴⁴

Mr Richardson from the European Commission reported that “we need to restore our seas to environmental health and we have given the job of doing that to Member States”.²⁴⁵ Witnesses were keen that the Government keep restoration of species and habitat as a priority when designating Marine Conservation Zones. Wildlife and Countryside Link

241 Q107

242 Q113

243 Q39

244 Clause 106

245 Q561

explained “the creation of an ecologically coherent, representative network of MCZs is fundamental to the recovery of marine biodiversity and ecosystem functioning”.²⁴⁶

117. Given that the UK is already committed to establishing an ecologically coherent network under OSPAR, supports World Commission on Sustainable Development targets on Marine Protected Areas and will shortly be required to fulfil obligations on Marine Protected Areas under the EU Marine Strategy Directive **we recommend that clear, comprehensive objectives for MCZs should be included in the Bill and that it should also include specific mention of the need for MCZs to contribute to an ecologically coherent representative network of Marine Protected Areas, with one objective being recovery and restoration.**

Duty

118. We have received much evidence in support of introducing a duty to designate MCZs. This has mostly come from the statutory agencies (NE, CCW and EA), and environmental NGOs (Wildlife and Countryside Link, Scottish Wildlife and Countryside Link). When questioned on this issue, the Secretary of State was “fine with duties as long as they are for a clear purpose”.²⁴⁷

119. The role and importance of Highly Protected Marine Reserves was raised in submissions. Greenpeace considered that “a large-scale network of no-take protected areas is vital to ensure the sustainability of our seas”.²⁴⁸ At the same time it is important that this does not compromise the safety of sea users and the international right of innocent passage.

120. We believe that the commitment in the Bill to establishing an ecologically coherent, representative, network of Marine Protected Areas, which would include MCZs and Highly Protected Marine Reserves is weak. Experience of trying to establish Marine Nature Reserves under the Wildlife and Countryside Act has shown that total agreement over potential sites is very unlikely, and that there is insufficient progress without a requirement to take action: it has taken 26 years to designate just three sites as Marine Nature Reserves. **We believe that the provisions in the Bill regarding Marine Conservation Zones should be strengthened and recommend a duty on the Secretary of State to designate a network of MCZs including some Highly Protected Marine Reserves.**

Timetable

121. There are no timetables for action on MCZs and several witnesses wish to see this addressed on the face of the Bill. The Environment Agency, for example said that “the designating authority should be required to establish a network of MPAs within an established timeframe”,²⁴⁹ and the Marine Conservation Society took the view that “timescales are needed for the designating authority to make decisions in relation to MCZs to ensure we can achieve our commitments and aims for the MPA network, and to avoid

246 DMB 22

247 Q664

248 DMB 77

249 DMB 10

problems experienced with Marine Nature Reserves associated with protected designation, or no decisions at all”.²⁵⁰ The JNCC was concerned “that the lack of any timetable in the draft Bill will undermine policy objectives”.²⁵¹ Dr Moffat, from Natural England, said that “we think there should be a timetable for making decisions on site designation so that the decision-making process does not go on for ever”.²⁵² Ms Edwards, from Wildlife and Countryside Link, stated

“One of the things we would like to see is a timetable for designation. We are slightly concerned at the moment that the Bill is quite weak and it talks about “you might establish”, and “you could”. What we would like to see is something definite and a timetable. Even more, we would like to see milestones written into the legislation or the guidance, so we would like to see when are Natural England and other statutory conservation bodies going to set up the regional network projects. At the moment they have been asked by Defra to start setting up these projects but we do not know when, how and why”.²⁵³

122. There are a number of external timetables which are relevant such as those set at the World Summit on Sustainable Development (2012), the Convention on Biological Diversity target and timetable to establish and maintain (by 2012) comprehensive, effectively managed and ecologically representative national and regional systems of protected areas that collectively contribute to the 2010 target significantly to reduce the current rate of biodiversity loss; OSPAR (2010) and the Marine Strategy Directive, which requires Member States to report the establishment of a network by 2014. **We recommend that the Bill should include a timetable for designation of the MCZ network.**

Development of scientific knowledge

123. Much of the evidence we received stressed the need for scientific underpinning for the development of MCZs—although the view that this was in contradiction to the Royal Commission on Environmental Pollution (RCEP) report which recommended a reversal of the burden of proof, whereby sea users should be required to demonstrate no long-term effects on sustainability, was also brought to our attention.²⁵⁴ On the question of whether there is sufficient understanding to arrive at appropriate conservation objectives for proposed MCZs, Mr Rodgers of Cefas stated

“One of the greatest challenges is identifying the objectives within zones. The conservation objectives need to be precise, not only so that we are clear about how much of them we need (and we have just had this discussion about what proportion), but in order to convince others that we can make management measures, particularly our European colleagues, and, having identified the objectives, the precise purpose that we need to protect sites, we can then start to look at the direction of water currents and the extent of dispersion of the species that we are most interested in and link them up; and there are models that we have used already

250 DMB 80

251 DMB 17

252 Q30

253 Q615

254 DMB 03

to look at the dispersion of organisms through the water column between sites to give us an order of magnitude, a feeling for distances and spatial scales”.²⁵⁵

The Wildlife Trusts said

“the aim must be to build a wide-ranging network of sites that represents the full range of habitats and wildlife in our seas. For the network of sites to be ecologically functional, it must be designed to provide connectivity between sites—in other words, MCZs must be an appropriate distance apart to facilitate movement of larvae (and in some cases adults) between sites. This will allow the sites to support each other, as well as helping to replenish the wider sea. These aims are expressed in the Policy Paper but are not specified in the Bill itself”.²⁵⁶

We support the opportunity for at least some MCZs, particularly where they are highly protected, to be designated areas to improve our scientific understanding both of the marine environment and of the effects of human activities on marine biodiversity.

Monitoring

124. Monitoring MCZs to determine whether they are achieving their objectives is an essential part of the process and two of the statutory conservation bodies have told us they would like to see this duty conferred upon them. The Countryside Council for Wales sought “a duty for SNCBs to report on the condition of site, in a way that assesses their effectiveness in contributing to the network”.²⁵⁷ Natural England told us “there should be a duty placed on Natural England to monitor and report on the condition of MCZs”.²⁵⁸ We agree with these views, and further consider that those bodies given a duty to monitor MCZs should be required to report annually to Parliament. **We recommend that the Bill should include a requirement to monitor and assess MCZs and that responsibility for this should lie with Natural England, the Countryside Council for Wales and the Joint Nature Conservation Committee. Their reports should be submitted to the Secretary of State and laid before Parliament as well as being reported to the Welsh Assembly Government.**

Sufficiency of data

125. We note that there are commitments to future data gathering contained in the Marine Strategy Directive. We are encouraged by the evidence we have received that there is a sufficient scientific basis to embark on the identification of potential MCZs while recognising that there will always be value in increasing data collection, getting more detail on specific areas and that some geographic areas, such as the continental slope and areas beyond territorial waters, are less well studied.²⁵⁹ The JNCC stated

255 Q487

256 DMB 26

257 DMB 11

258 DMB 16

259 DMB 11, Q538

“The way that we see the identification process of MCZs moving forward is largely based on the existing information, on the physical environment and the modelling work that the JNCC and its partners have undertaken in recent years where we feel, with a reasonable degree of confidence, we are able to predict the distribution of marine habitats on the seabed in offshore areas, but clearly we are fully aware that the lack of detailed data of actually what is present on the seabed from direct observations is necessary before we could proceed for actual designation of the sites. That is the point to make on your question about the validation. We think we can go forward with the prediction of areas but that before the sites could come into being we would have to go and check that the model predictions are correct”.²⁶⁰

Ms Edwards, from Wildlife and Countryside Link, told us

“Obviously, we can always learn more about our marine environment and we need to gather more data; we need to do more surveys, and that will require funding, but we believe that there is enough data at this point to actually get on with the job and, probably, come out in a small number of years with a comprehensive network. There is a lot of data there and what we have to ensure is that all the data is accessible to these network projects, and to ensure that as time goes on, as more data becomes available, we look at the networks that have been established and make sure that they are fit for purpose”.²⁶¹

Mr Eddy, from the Royal Commission on Environmental Pollution said

“we do need to get on and have some of these areas and some of them will be a bit of a punt, to be honest, because if we wait until we have all the science or all the ducks in a row it will be too late because we would have carried on ruining the marine environment”.²⁶²

126. The EU Treaty incorporates the precautionary principle as a legal obligation, and the Marine Strategy Directive requires measures to be devised on the basis of that principle. Greenpeace stated “we should not assume we will necessarily be able to obtain absolute scientific data for all of our marine areas, so we must apply the precautionary principle”,²⁶³ though Peter Jones of University College, London, cautioned that “objectively justifying HPMPs on a precautionary basis will essentially represent an impossible burden of proof on the conservation agencies”.²⁶⁴ **We recommend that where there is limited knowledge some locations may need to be designated on a precautionary basis, for example to avoid the potential for environmental damage or to support an effective MPA network under a scenario of climate change.**

260 Q58

261 Q616

262 Q536

263 DMB 77

264 DMB 3

Management measures to achieve the objectives of MCZs

127. Conservation orders and byelaws can be used to give MCZs different degrees of protection and that this was supported in the evidence we received. BWEA were concerned that “the level of protection in a MCZ must be carefully justified” and proposed “for a network to be effective it must have a clear balance between high protection areas, areas of dual use and areas of minimum or no protection”.²⁶⁵ This view is also apparent within the conservation sector as indicated by Ms Edwards of the Wildlife Trusts who said that “when MCZs are identified then an appropriate management plan for each zone should be established, because they will be established for different reasons”.²⁶⁶ The scope for different levels of protection should be made clear within the Bill. **We therefore recommend specific mention in the Bill that the management measures within MCZs will range from multiple-use through to highly protected.**

128. We note the very poor record of establishing Highly Protected Marine Reserves in UK waters (currently less than 0.01 per cent of territorial waters with statutory protection) and have received differing views on whether a set percentage should be recommended as highly protected. Those who supported including a figure proposed setting the figure between 20-40 per cent with respondents such as the Marine Conservation Society citing the RCEP recommendation of 30 per cent.²⁶⁷ We have also received evidence that the coverage of MCZs should depend on the objectives for their establishment and should therefore not be preset in the Bill. Wildlife and Countryside Link said

“There is lots of science out there about what this network would look like, what ‘representative’ means and the different sites that you would need, and there are lots of percentages, but I think what we are saying is: ‘Let’s not get caught up on the percentages; what we want is this thorough network’”.²⁶⁸

Dr Moffat, from Natural England, stated

“We are seeking sites that are highly protected in which no activities will happen and those may be for purposes like the recovery of particular habitats and species, providing control areas so that we can know what happens and help direct future management better”.²⁶⁹

Dr Frost from the Marine Biological Association said “We need some areas where there is no anthropogenic impact whatsoever so we can see what is happening and how change is occurring naturally”.²⁷⁰

129. The Marine Conservation Society told us that it was “concerned that, as currently drafted, the legislation would allow local and regional socio-economic concerns to override

265 DMB36

266 Q601

267 DMB 80

268 Q614

269 Q34

270 Q480

national, or even international, conservation priorities to hinder site designation, particularly for sites requiring strict protection—highly protected marine reserves.”²⁷¹

130. Wales Environment Link also raised concerns that as drafted the current legislation was not “sufficiently robust” to enable highly protected marine reserves to be designated; they consider such zones a vital component of “a coherent network of well-managed marine protected areas”.²⁷² **We do not think it is appropriate to place any set percentage for highly protected areas on the face of the Bill. However, we recommend that the Bill sets out the need to establish Highly Protected Marine Reserves, and that their contribution to the overall Marine Protected Areas network and UK biodiversity targets should be reviewed after a stated period of time.**

131. Management of activities within MCZs should be linked to the objectives of the site and of the overall network. Wildlife and Countryside Link stated

“It is important that some sites in the network are highly protected. Rather than advocating a specific proportion of the network that is highly protected, Link would rather see the management of all sites dictated by the conservation objectives. The Bill should include a duty on the statutory nature bodies to define a site’s conservation objectives prior to designation”.²⁷³

The Wildlife Trusts stated “the proposed MCZ network must have environmental and ecological considerations at the heart of decision-making to ensure that confusion of management objectives can be avoided”.²⁷⁴ Dr Burrows, from the Scottish Association for Marine Science, told us “each MCZ will probably come with its own unique set of conservation features and the activities that will be permissible within those areas or need managing will depend on that set of factors”.²⁷⁵ **An Environmental Impact Assessment of planned and existing activities within proposed MCZs should be undertaken and this should form the basis of decisions on activities that might be restricted in MCZs.**

132. The Bill refers to decisions concerning applications for authorisation of activities but does not make clear whether commercial fishing is included despite this being an activity which could compromise MCZs reaching their objectives. **We therefore recommend a clear statement in the Bill to the effect that the assessments within MCZs must include fishing activity.**

Enforcement and marking

133. The Bill is very vague on by whom and how enforcement of MCZs will be undertaken. We are also unclear about how such zones will be identified and marked. No specific bodies are mentioned, but a general duty is placed on the relevant public authorities.²⁷⁶ The organisations most likely to have some part in this would be the Marine Management

271 DMB 80

272 DMB 24

273 DMB 22

274 DMB 26

275 Q480

276 Clause 109

Organisation, Inshore Fisheries Conservation Authorities, and the statutory nature conservation bodies. Natural England also noted that “the 2007 Marine Bill White Paper proposed a general offence of damaging or destroying the nature conservation features of an MCZ. This offence does not appear within the draft Bill and Natural England believes that the result is a significant gap in the ability to protect MCZs”.²⁷⁷ In oral evidence Natural England added “through Marine Conservation Zones we are relying on the Marine Management Organisation and other regulatory bodies to carry out the enforcement for those sites”.²⁷⁸ **We recommend the Bill confer a duty on a lead agency to enforce Marine Conservation Zones and that the Government should set out, in the Bill or in guidance, what arrangements will be necessary for the lead body to work co-operatively with others.**

MCZ designation

134. The process of selecting areas to designate as Marine Conservation Zones is currently being led by the Statutory Nature Conservation Organisations, including the JNCC, Natural England and the Countryside Council for Wales (CCW), and the Secretary of State will designate the sites on the basis of their advice.²⁷⁹ BWEA expressed concern that nature conservation bodies such as Natural England do not have the expertise properly to consider the socio-economic issues, as their remit and expertise are confined to the environment.²⁸⁰ The Renewable Energy Association advocated a “sector-neutral body” to take on the designation role;²⁸¹ others have said they would prefer to see the MMO take on that balancing role.²⁸² Currently, the MMO must be consulted on the designation of MCZs.²⁸³ Natural England believed it was well placed to fulfil the advisory role as the designation should be based on science and conservation principles first and foremost, with socio-economic factors being considered after suitable sites have been identified.²⁸⁴ Indeed, Natural England argue that it should be the designating body.²⁸⁵ We understand the concerns of industry regarding the expertise of the nature conservation bodies; however we feel that a role for the MMO in the designation of MCZs could conflict with its balancing and enforcement role. **We consider the role of statutory consultee in the designation of Marine Conservation Zones to be the most appropriate for the MMO.**

135. As the MCZ designation process is preceding the formation of the MMO, which is unlikely to be created until April 2010 at the earliest,²⁸⁶ identification of MCZ sites and designation will probably occur prior to the development of the marine management framework of spatial planning that will govern future uses of the marine environment. Other uses will also be established such as licensed offshore wind farms, oil and gas

277 DMB 16

278 Q50

279 Qq364-5

280 Q393, DMB 79

281 DMB 89

282 Qq365-6

283 Clause 107(4)(j)

284 DMB 16

285 DMB 16

286 DMB 109

developments and port infrastructure. Concerns have been expressed by several witnesses regarding the unsynchronised timeline for establishing the planning system, MCZs and the MMO.²⁸⁷ In particular, industry representatives felt designation of MCZs out of the spatial planning context would be pre-emptory and prejudicial to their interests.²⁸⁸ **We do not think that the designation of Marine Conservation Zones should be delayed, but we recommend that the coordination of the planning system be given more thought, and provision be made to accommodate the fact that the MMO and indeed the Marine Policy Statement may not exist in time for the first designations.**

287 Q378

288 Qq364-6

6 Inshore Fisheries Management

Establishment and composition of the Inshore Fisheries and Conservation Authorities

136. Part 6 of the Bill is concerned with regulating the exploitation of inshore fisheries resources and furthering the conservation objectives of MCZs. These functions are to be the responsibility of Inshore Fisheries and Conservation Authorities (IFCAs) established for inshore fisheries conservation (IFC) districts, also set up by the Bill. The basis of these IFCAs will be the existing 12 Sea Fisheries Committees (SFCs) which were set up in 1888 and currently operate under the Sea Fisheries Regulation Act 1966.²⁸⁹

137. The Association of Sea Fisheries Committees informed us that “the Victorian legislation the Committees operate under at the minute will not do and must be reformed if the government wants a modern service delivered in a modern and effective fashion” and stated that they believed the Bill delivered the necessary reforms.²⁹⁰ The Minister of State at Defra informed us that “we have got 12 SFCs at the moment, and [...] the legislation is outdated, dating back to the 1960s and beyond that, I believe. We have said that we think that 12 is too many. We have not got a prescription as to how we think the number should be reduced but we believe that there can be savings. IFCAs will be different from the SFCs, and the membership will be different”.²⁹¹

138. The Bill guidance indicates that membership of the Authorities will be limited to 21 seats, comprising one third Local Authorities, and individual delegates from Natural England, the MMO and the Environment Agency. The remainder will be appointed by the MMO or by Welsh Ministers. (In Wales, the Welsh Assembly Government is consulting on its favoured option of not establishing IFCAs but carrying out these duties through ‘in-house’ arrangements.)

139. Clause 140 deals in detail with the provision that the secondary legislation may make about membership of IFC authorities: in particular subsection (2) requires that persons appointed as members under subsection (1)(b) must be acquainted with the local fishing community and have knowledge or experience of marine conservation. Subsection (3) enables subsection (2) to be amended by negative order. The House of Lords Delegated Powers and Regulatory Reform Committee has raised concerns that the Bill says nothing of the purpose of the order under clause 140(3) or the uses which are envisaged for it and that the Government does not attempt to justify the negative procedure proposed for this Henry VIII power.²⁹²

140. The Minister informed us that “we will ensure that the MMO, Natural England and the Environment Agency are there as well as the members for the local authority, fisherman and sea anglers. Local decision-making is essential for this to work”.²⁹³ However,

289 DMB 15

290 Q2

291 Q683

292 DMB 100

293 Q683

the National Federation of Sea Anglers stated that “the composition of the committees will need to be carefully looked at. They need to be quite clearly differentiated from the old SFCs. We feel that we do not need so many local authority representatives on these committees and that sometimes some of the local councillors do have pecuniary interests, either directly or indirectly, in the business of the committees. We need to make sure we have the right quality of people on these committees”.²⁹⁴

141. Similar concerns with regard to the composition of the IFCA were raised by several of the other angling and conservation interests.²⁹⁵ The Environment Agency also stated that the Authorities “will need an appropriate balance of membership to provide access to the knowledge, skills and experience needed to support good decision making”.²⁹⁶ By contrast, the National Federation of Fishermen’s Organisations stated that “we have seen the progressive reduction of the representation of the fishing industry on inshore bodies at the moment, the Sea Fishery Committees, and the new inshore bodies will be even less. I think that does raise issues of legitimacy when it comes to applying rules in the inshore waters, and it is a matter of concern to us”.²⁹⁷ **We welcome the creation of the Inshore Fisheries and Conservation Authorities and acknowledge the benefits of local level management such as local decision-making and participative management by people with detailed knowledge and experience. However, the Bill should contain an open and transparent mechanism by which the MMO will appoint the IFCA members and the qualifications required to be an IFCA member.**

Management of IFCA

142. Each IFCA must take such steps as it considers appropriate to co-operate both with neighbouring IFCAs and with other public authorities exercising regulatory functions in sea areas falling within IFCA districts.²⁹⁸ The appropriate national authority is to report on the conduct and operation of IFCAs every four years, with the report laid before Parliament.²⁹⁹ The Minister said that “there is a duty to co-operate with the MMO—IFCAs will have a duty to co-operate, and other organisations”.³⁰⁰ But the National Federation of Sea Anglers raised concerns that the Bill does not contain a function for making “middle-range decisions that might affect three or four Sea Committees”,³⁰¹ and highlighted the need for a body to oversee consistency of operation.³⁰² The World Wildlife Fund for Nature also highlighted that there was no provision in the draft Bill for a strategic approach by IFCAs or for co-ordination between them.³⁰³

294 DMB 29

295 DMB 19, DMB 27, DMB 39, DMB 45, DMB 54, DMB 60, DMB 28, DMB 102

296 DMB 76

297 Q220

298 Clause 160

299 Clause 166

300 Q684

301 Q236

302 Qq235-8

303 DMB 25

143. The Bill sets out the procedure to be followed by the IFCA when making byelaws; consultation requirements will be set out in secondary legislation.³⁰⁴ The policy paper indicates that there will be a requirement to consult Natural England, the Environment Agency, neighbouring IFCA and the MMO, as well as all stakeholders affected by that byelaw.³⁰⁵ There is no clear appeals mechanism against IFCA decisions to impose byelaws. Challenges to such decisions would have to be directly to the Secretary of State, who may revoke or amend any byelaw made by an IFCA.³⁰⁶ Judicial review is the only alternative and indeed the only option if an IFCA was, for example, not meeting the conservation objectives of an MCZ by not introducing or enforcing byelaws.³⁰⁷ The Minister reassured the Committee that “if a certain scenario occurs whereby a decision has been made and voted upon that is so clearly, demonstrably, out of line with the Marine Policy Statements that have been agreed at that local level, then it may be the case that we would have to look at it”.³⁰⁸ However, the National Federation of Sea Anglers raised concerns that the only recourse of appeal was to the Secretary of State: it seems a large step from the local IFCA decision to the Secretary of State.³⁰⁹ We considered whether the MMO could perform an appeals function before the Secretary of State is called upon or whether it would be more appropriate for the Bill to prescribe an oversight and coordination function for the MMO in connection with the IFCA, with the purpose of monitoring and improving the IFCA’s performance and ensuring consistency between them. **We recommend that the Bill give the MMO a duty to ensure a strategic approach to inshore fisheries, and powers to require the IFCA to work collaboratively to an agreed set of minimum standards, to monitor their performance and take steps to improve it where necessary.**

IFCA remit and objectives

144. The Bill states that an IFCA “must ensure that the exploitation of sea fisheries resources [...] is carried out in a sustainable way” and that the social and economic benefits of exploitation are balanced against the environmental impacts.³¹⁰ Evidence from the Environment Agency,³¹¹ the Wales Coastal & Maritime Partnership,³¹² the Moran Committee,³¹³ and Natural England³¹⁴ suggested that these duties should be strengthened to ensure effective management of the marine environment, with clearer commitments to sustainable development and conservation of the marine environment. The World Wildlife Fund,³¹⁵ Wildlife Link,³¹⁶ and Greenpeace suggested that there should be reference to the

304 Clause 149

305 Cm 7351, p42, para 3.93

306 Clause 148

307 Clause 143

308 Q684

309 Q235

310 Clause 142(2)

311 DMB 76

312 DMB 47

313 DMB 28

314 DMB 16

315 DMB 25

316 DMB 22, DMB 102

precautionary approach and the ecosystems approach to fisheries management.³¹⁷ Several submissions opposed the apparent ‘trade off’ between environmental impacts and socio-economic benefits.³¹⁸ **The Bill should be amended to give IFCA’s a clearer commitment to the achievement of sustainable development and a duty to further the conservation of coastal and marine fauna and flora.**

Jurisdiction and estuaries

145. The Government intends that the IFCA districts will extend out to six nautical miles around the entire coastline of England and also to estuaries, where IFCA’s will have responsibility for sea fisheries management previously carried out by the Environment Agency. The exact nature of the districts will be defined in secondary legislation. The Bill defines the sea as “any area submerged at mean high water spring tide, and the waters of every estuary, river or channel, so far as the tide flows at mean high water spring tide”.³¹⁹

146. The Local Government Association stated that

“there is liable to be quite a lot of confusion where MMO’s and IFCA’s jurisdiction stretches way up river up to the tidal limits and beyond navigable bridges, so that vessels cannot get up the river to do the enforcement. I find it quite difficult to understand why we do not choose a jurisdiction limit more like the cohesive settlement limit, wherever the appropriate historic bridge is, which limits the access upstream, and I think that would give you much more straightforward and much more transparent arrangements, and that could apply to both the IFCA arrangements and the MMO arrangements”.³²⁰

The Sea Anglers’ Conservation Network also predicted that “we are likely to end up with a mishmash of responsibilities of enforcement agencies all doing different tasks within the same estuary” and called for “a clear line drawn at every estuary where the commercial fishery ceases and above that line it is all for the Environment Agency”.³²¹

147. In addition, the Fisheries and Angling Conservation Trust said

“this is over-complex, we have got two agencies for this mix in water. Water does not recognise these boundaries, lots of fish do not recognise these boundaries, why are we creating them? If there is going to be the MMO and the Agency there needs to be a very distinctive line drawn as to who is responsible at what point. The Agency has been very successful in terms of managing our estuarine waters over the last few years. It has got a good record of taking people to court and prosecuting people who are in breach of the regulations and the byelaws. The Sea Fisheries Committees do not have that good record”.³²²

317 DMB 77

318 DMB 112, DMB 22

319 Clause 39

320 Q7

321 Q239

322 Q245

The Minister informed us that “[the IFCA]s are not going to go right up to the furthest point; it will be about what is needed and what is sensible”.³²³ The Association of Sea Fisheries Committees stated that “IFCAs will not have an everyday presence further up the geographical estuary than is warranted by the presence of significant commercial or recreational fisheries”,³²⁴ and “where enforcement activity is appropriate elsewhere in estuaries we would rely on cross warranting arrangements with the Environment Agency”.³²⁵ The Environment Agency suggested to us that the working boundaries between the EA and the IFCA[s] should be agreed on a case by case basis, but that there was a case for the Environment Agency to manage all fish in all estuaries. At present, the Environment Agency acts as the Sea Fisheries Committee for estuaries of most major salmon and sea trout rivers (amounting to 60 per cent of estuaries).³²⁶ The Sea Anglers’ Conservation Network stated that “if you look at the numbers of prosecutions for fishery offences, netting offences etcetera, particularly in the areas of patrol, the Environment Agency are a lot more robust on enforcement”.³²⁷ Figures supplied by the Association of Sea Fisheries Committees showed that the Sea Fisheries Committees undertook a total of 323 successful prosecutions between 2003 and 2007.³²⁸ **We believe there is a strong case for the Environment Agency to manage the majority of fisheries in estuaries but we would, in addition, support the establishment of working boundaries between the Environment Agency and IFCA[s] on a case by case basis in consultation with the relevant estuary or coastal partnership where they exist. In general these boundaries should be based on the upstream limit of commercial fishing interest, with the Environment Agency managing all fisheries upstream of this boundary (set out in secondary legislation) and migratory fisheries interest below out to six nautical miles. However, the Bill should allow the Environment Agency to retain management of the whole of estuaries where they are already acting as the Sea Fisheries Committee (under cross-warranting procedures) if this is the optimal local arrangement.**

148. The Fisheries and Angling Trust raised concerns that IFCA[s] would need to exercise their responsibilities in estuaries seriously and that they would “need to take a very robust line on enforcement, which is what the Environment Agency does”.³²⁹ They also suggested “it would simplify life if when an IFCA officer finds an offence against salmon and freshwater fisheries legislation at sea he can take enforcement action as if he was an Environment Agency officer”.³³⁰ Clause 142 specifically excludes IFCA[s] from enforcing this legislation, but not MMO officers. The Countryside Alliance also stated that there should be no dilution of the current protections afforded to migratory fish,³³¹ and the Moran Committee stated that the Environment Agency and IFCA[s] should co-operate in the sustainable management of fish stocks to ensure the most cost-effective use of limited

323 Q686

324 DMB 15

325 *Ibid.*

326 DMB 110 [not printed]

327 Q239

328 DMB 99

329 Q242

330 Q243

331 DMB 81

resources.³³² The Environment Agency has also suggested that a two-way approval of measures for fisheries byelaws for inshore waters (as is currently the case under the Salmon Act 1986), would allow for a more effective interaction between IFCAS and the Environment Agency than the consultation measures proposed in the Bill,³³³ as did the South West Rivers Association,³³⁴ and the Advisory Committees to the Environment Agency in the South West region.³³⁵ **Clause 157 of the bill should be amended to give IFC officers the power to enforce salmon and freshwater fisheries legislation and Environment Agency byelaws relating to fisheries. Secondary legislation should require that IFCA byelaws be subject to approval by the Environment Agency, and equally that statutory approval for Environment Agency byelaws be subjected to approval by the relevant IFCAs.**

Grandfather rights – IFCA byelaws

149. In the nought to six nautical mile zone around the coast of England and Wales, the Sea Fisheries (Regulation) Act 1966 enables Sea Fisheries Committees to legislate on conservation grounds. Sea Fisheries Committees have used these powers to introduce byelaws to restrict the size of vessels permitted to operate within their Districts. Typically, these byelaws provide for exemptions for vessels over the permitted size prior to the introduction of the byelaw to continue to operate until such a time as the ownership of the vessel changes. Such exemptions from byelaws are often referred to as ‘grandfather rights’. Clause 149 provides for the appropriate national authority (Secretary of State) to make regulations about the procedure to be followed by the IFCAs when making byelaws. It lists provisions which IFCAs can include but does not refer directly to byelaw exemption arrangements, as the future operation of byelaws are to be the responsibility of the IFCAs themselves.

150. Defra stated that “the Bill does not include any specific provision for ending so-called ‘grandfather’ rights” and “it will be a matter for each IFCA to decide whether to maintain any ‘grandfather’ rights that it inherits, that is a matter for them. However, one of the first jobs that we expect each IFCA to do is to review those byelaws that it is taking over to ensure that they are compatible with the clear duty that we will be putting on IFCAs which currently Sea Fisheries Committees do not have”.³³⁶ Councillor Humphrey Temperley, representing the Local Government Association, stated that “the fishermen in my area, and everybody else, would wholly support the abolition of ‘grandfather rights’”.³³⁷ **We recommend that Clause 149 should explicitly remove all existing exemptions in the form of ‘grandfather rights’ from Sea Fisheries Committees byelaws to ensure that all fisheries management measures are universally applied. The MMO should be given the power to revoke any exemptions made to future byelaws by IFCAs to ensure that nature conservation measures are universally applied.**

332 DMB 28

333 DMB 10

334 DMB 27

335 DMB 45

336 Q642

337 Q10

Capacity and funding

151. The Bill sets out funding arrangements for IFCAs, including the powers of local authorities in relation to budget setting. The existing Sea Fisheries Committees are funded by local authorities on a voluntary basis, but Clause 162 places a duty on the relevant council or councils funding IFCAs, thus making the provisions of funding compulsory for those local authorities. The order establishing the IFC district may provide for the portion of funding payable by each council to be calculated “by reference to any circumstance whatsoever”(for example, according to the length of coastline of each council).³³⁸

152. The Association of Sea Fisheries Committees stated that “in the explanatory material with the Marine Bill, Defra are now indicating new money in the range of four to six million [pounds]” and that “arrangements came in with this financial year whereby money is now identified, by a process short of ring-fencing, as belonging to the Sea Fisheries Committees or the IFCA and allocated only to the upper tier coastal authorities. So there is a clear chain where money leaves the central government budgets and should find its ways to the coast”.³³⁹ However, Councillor Temperley, who is an elected member for Devon County Council, stated as an example that

“there is currently no specific grant paid by central government towards the service, either direct to DSFC [the Devon Sea Fisheries Committee] or by Devon County Council. The levy share paid by Devon County Council is currently found from non-specific formula grant and council tax moneys. So there is an issue about where this money is actually going to come from. If there is a specific grant identified to cover the cost or contribute towards the costs of IFCAs, that would be very welcome, but I do not believe that mechanism is transparent at this moment”.³⁴⁰

153. Evidence from Essex County Council stated that the Defra funding commitment must be frequently reviewed and increased accordingly to ensure it is adequate to provide an efficient service and noted that “funds can often be diverted in the case of emergencies, such as Foot and Mouth”.³⁴¹ Whilst supporting the additional funding for IFCAs, WWF evidence suggested “it is essential that additional funding is used effectively, against operational targets which are measurable, so that benchmarking can be used to raise standards and consistency”.³⁴² Evidence from the Moran Committee stated that “the proposed changes would devolve significant powers to Ministers, IFCAs and the Environment Agency. There is an emphasis on flexibility to meet local conditions. This is welcome, but if it is to succeed, the Government and its subordinate bodies will need to ensure that the necessary resources are provided at local level, and that there is full involvement of local people in the decision making process”.³⁴³ **The additional central funding to IFCAs should be ring-fenced. These funds should be used to meet measurable operational targets set by the MMO, with appropriate benchmarking to raise standards and consistency.**

338 Cm 7351, explanatory notes, p204

339 Q5

340 *Ibid.*

341 DMB 53

342 DMB 25

343 DMB 28

Additional regulatory powers for IFCAs

154. Clause 142 (5) defines the “sea fisheries resources” whose exploitation IFCAs are responsible for managing in a sustainable way. This definition covers any living plants and animals, and other migratory freshwater fish that habitually live in the sea, including those cultivated in the sea. This effectively gives IFCAs the powers to regulate the commercial exploitation of any marine species, beyond those that have been traditionally commercially exploited on a large scale, and covers species that have previously fallen only within the remit of statutory nature conservation bodies.

155. The National Federation of Sea Anglers stated

“because there is a lot of focus now on shellfish, particularly potting, they are a good pot bait, so they put a net across the rivermouth, take pretty much every flounder that comes through, cut them in half and put them in the pot bait so they can catch lobster, which are of high value. Now they have never seen the market in that situation, and the same might be true of anything—dogfish, wrasse—all fish which, if you decide to, on a commercial method, are relatively easy to catch in some numbers. However, in fact, from a commercial value point of view all they are doing is cutting them in half and putting them in a pot so they can catch lobsters and crabs”.³⁴⁴

156. The Federation went on to express concern that “there is now nothing in the food chain they do not target, from cockles, which is pretty much the basic, lowest form of life in our part of the world, which drives hermit crabs, which drives the fish that feed on them, all the way up. They just take everything and there is no control over it”.³⁴⁵ The Advisory Committees to the Environment Agency in the South West Region recommended that there be a requirement for IFCAs “to show the results of research into the environmental impact of any fishing activity and a requirement for appropriate regulation thereafter”.³⁴⁶ Greenpeace evidence also suggested that an Environmental Impact Assessment should be compulsory for any new inshore fishery project.³⁴⁷ **A duty should be placed on IFCAs to ensure that an Environmental Impact Assessment is undertaken of any new fishing activity exploiting marine species for which there has not previously been a large scale commercial market or regulatory quotas, and a requirement for appropriate regulation thereafter.**

157. IFCAs may make provision:

- To set minimum and maximum size limits (for species harvested)
- To apply restrictions to nets and other fishing gear
- To charge for commercial fishing licences
- To restrict fishing for sea fish

³⁴⁴ Q224

³⁴⁵ Q225

³⁴⁶ DMB 27

³⁴⁷ DMB 77

- To make orders for shellfish
- To apply tolls, increase penalties for certain offences
- To cancel licences
- To protect private shellfish beds
- To specify implements of fishing
- To enable crabs and lobsters to be taken for scientific purposes
- To prohibit the taking and sale of certain lobsters
- To appoint inspectors.

Clause 145 sets out the provisions that can be the subject of IFCA byelaws but does not include a means of limiting permits issued for an inshore fishery. Evidence from the Countryside Council for Wales described limiting fishing effort as the key difficulty associated with sustainable management of fisheries.³⁴⁸ The National Federation of Sea Anglers stated that “the biggest issue for us is the fact that there is no control over effort. You hear of a lot of control about days at sea. Offshore there is but inshore there is not. The only control is the number of boats. So a boat could run as many pots as it likes, and if its catch drops it puts more pots out. A ten-metre boat can run 30 kilometres of nets; nobody knows how many miles of filament nets there are strung around our shore today; nobody can tell you. If their catch rate drops off and they are not earning any income they will double the amount of nets”.³⁴⁹ In addition, the RSBP, WWF and Wildlife Link evidence suggested that there should also be a provision to allow secondary legislation to allow commercial fishing license conditions for the under 10m fleet to be amended for marine environmental purposes.³⁵⁰ **Controlling inshore fishing effort will be critical to maintaining sustainable fisheries and will become an essential tool in areas where fishers are excluded under IFCA byelaws from Marine Conservation Zones or in areas in which wind-farms are to be placed. We recommend that IFCAs should be given the power to limit the number of permits issued for a specific fishery. In addition, we consider that the Bill should give the Government the ability to vary commercial fishing licence conditions for marine environmental purposes, devolving this to IFCAs if necessary, to allow further control over the amount of fishing effort exerted in order to reduce environmental impacts.**

Welsh Inshore Fisheries Management

158. The Welsh Assembly Government (WAG) is consulting on proposals to bring the existing sea fisheries management in-house to the WAG and integrating Sea Fisheries Committee (SFC) functions with those of the existing WAG sea fisheries enforcement team. This proposal involves abolishing SFCs and revoking some of the Environment Agency’s sea fishery powers, with SFC and EA sea fisheries byelaws converted “as

348 DMB 11

349 Q225

350 DMB 20, DMB 22, DMB 25, DMB 102

appropriate” into Welsh Statutory Instruments.³⁵¹ On the other hand, clauses 138 to 167 appear to be drafted on the basis that Welsh Ministers would be applying the IFCA model, and it is not clear how these provisions will now apply to Wales. Evidence from the National Trust raised concerns about the uncertainties arising from this situation, as did the RSPB and Wildlife and Countryside Link.³⁵² Evidence from the Countryside Council for Wales stated that this will add to the complexity in the management of cross-border areas, particularly the Dee and Severn Estuary.³⁵³ **In the absence of detailed proposals on the structure and function of inshore fisheries management in Wales, the Bill should give the duties and powers of the IFCAs to the relevant management body in Wales to avoid a legislative vacuum following the repeal of the Sea Fisheries Regulation Act.**

159. IFCA must exercise their powers to ensure that the conservation objectives of any MCZ within an IFC district are furthered, but this duty only applies to England, not in relation to Welsh waters.³⁵⁴ Evidence from the Countryside Council for Wales, the National Trust, the RSPB and Wildlife and Countryside Link stated that the equivalent duty must be provided for the body managing inshore fisheries in Wales, otherwise the possibility for meeting conservation objectives in Welsh Marine Conservation Zones will be undermined.³⁵⁵ **A duty to protect Marine Conservation Zones should be conferred on any Welsh Assembly Government inshore fisheries body, to ensure a consistently regulated MCZ system throughout English and Welsh waters.**

351 DMB 75

352 DMB 20-22, DMB 102

353 DMB 75

354 Clause 143

355 DMB 20-22, DMB 102

7 Marine enforcement and management

Enforcement

160. The enforcement provisions of the draft Bill are designed to streamline and modernise relevant enforcement powers.³⁵⁶ The draft Bill “introduces a common set of powers so that officers enforcing fisheries, nature conservation and licensing legislation will have access to a core set of enforcement powers for the purposes of inspection and investigation”.³⁵⁷ The enforcement measures (additional offences, administrative penalties, enforcement powers, including cross-warranting) in the marine, fisheries and conservation areas were broadly welcomed.³⁵⁸ However there are many uncertainties about the detail of the provisions. It is unclear from the Bill itself, and even from Defra’s explanations, who will enforce which provisions in relation to the range of enforcement powers, particularly where jurisdictions overlap.³⁵⁹ Defra said “the flexible arrangements in Part 1 Chapter 3 of the draft Bill are intended to enable the MMO to enter into agreements with other enforcement bodies to undertake enforcement in specified locations and for specified purposes. The MMO will be able to provide officers within those enforcement bodies with the necessary powers to undertake those functions—through cross-warranting”.³⁶⁰

161. The enforcement powers, offences and penalties provided for in the draft Bill themselves raise issues of transparency and appropriateness. One of the main reasons for these concerns is the substantial amount of secondary legislation, byelaws, orders and schemes necessary to complete the enforcement provisions as well as the ministerial discretion to make orders and delegate functions.³⁶¹ This uncertainty has been noted in several other contexts during our inquiry. Powers to issue fixed and variable penalties and accept undertakings all require the appropriate licensing authority to make orders (subject to the draft affirmative procedure) containing the details of those powers.³⁶² Similarly, Schedule 7 sets out provisions for orders which will relate to fixed penalties and undertakings on conservation provisions.³⁶³ IFCA’s will have to be established by order,³⁶⁴ and will make byelaws (subject to regulations made by the ‘appropriate national authority’ about the procedure for making such byelaws),³⁶⁵ breach of which constitutes an offence.³⁶⁶ New fisheries provisions in relation to size of fish, gear used, licensing restrictions etc. require orders to be made, while the Environment Agency will need to make additional byelaws regarding new species of fish and conservation objectives.³⁶⁷ New inland fisheries

356 Cm 7351, p14

357 *Ibid.*

358 DMB 112, Q23

359 Q328

360 DMB 107

361 DMB 35

362 Clauses 83, 85, 87; Schedule 6, Further provisions about civil sanctions under Part 3.

363 Clauses 127 and 129

364 Clause 138

365 Clause 149

366 Clauses 144-147, 152

367 Clauses 194-196

offences must also be made by regulation and the Fisheries and Angling Conservation Trust noted, for example, that in respect of the removal of fish and transfer to other waters, the effect of the Bill would vary depending on the application of secondary legislation or the byelaws introduced by the Agency.³⁶⁸

162. We think that the Bill’s provision for conservation offences is instructive: MCZs are designated by order of the Secretary of State,³⁶⁹ the MMO may then make orders for the purpose of furthering the conservation objectives of an MCZ (conservation orders, urgent conservation orders and interim orders)³⁷⁰ and those orders may provide that contravention of any of the provisions is a criminal offence.³⁷¹ The explanatory notes say of clause 123 (offences against conservation and interim orders) “an order may make a breach of any of its provisions a criminal offence. The MMO and Welsh Ministers will therefore have discretion to decide, when making an order, whether a breach of an order or part of it, should constitute a criminal offence”.³⁷² Professor Warren considered of clause 123 that “the inclusion of criminal offences is welcome but it is unfortunate that so much of the detail is left to ministerial discretion. The point would be stronger if there were to be something on the face of the Bill making it clear when criminal sanctions would apply”.³⁷³ We are uncomfortable about this chain of unknowns as a method of creating criminal offences. The result of reliance on so many additional regulations, byelaws and orders is that enforcement will be dependent on effective secondary legislation, and the resources and capacity of the IFCA and Environment Agency. **In principle, provisions creating criminal offences should be contained in primary legislation or subject to close definition by primary legislation. This principle is brought into question in the draft Bill and we recommend that when the substantive legislation is introduced, it provides much greater clarity and effective Parliamentary control of the offences which it is intended to create.**

Marine Enforcement Officers

163. The MMO may appoint Marine Enforcement Officers (MEOs) with enforcement powers in relation to marine licensing provisions, nature conservation provisions and fisheries legislation.³⁷⁴ Navy, Army and Airforce officers are empowered as MEOs.³⁷⁵ Given the Navy currently performs a significant enforcement role, it was thought that it might be likely to fulfil the role of MEOs to a large degree. However the MoD said in evidence that it would not expect to take on the primary enforcement role.³⁷⁶ Officials went on to suggest MoD would take on some enforcement, that discussions with Defra were ongoing and that arrangements to use military vessels were being discussed.³⁷⁷ It is MoD’s preference that

368 Q241

369 Clause 105

370 Clauses 113, 115 and 116

371 Clause 123

372 Cm 7351, explanatory notes p102, para 314

373 DMB 112

374 Clause 203

375 Clauses 211-113

376 Q255

377 Q280

‘service enforcement officers’ are used for enforcing from military vessels; however negotiations are underway with Defra to allow, in some circumstances, ‘civilian marine enforcement officers’ to accompany military enforcement officers.³⁷⁸ The implication is that marine enforcement officers will be both military and civilian, perhaps performing different roles. The question of who will be appointed by the MMO as ‘civilian’ MEOs remains unanswered.

164. The Chamber of Shipping told us that the level of powers given to MEOs, for example to board, take control of vessels and land them at the nearest port, requires skilled and experienced officers, such as Navy or MCA officers.³⁷⁹ Mr Brookes of the Chamber of Shipping said “If you delegated that power, say, to the Maritime and Coastguard Agency, you would have surveyors available who understood ships and had the authority and the badge to do it, and I think we would be comfortable with that”.³⁸⁰ The Royal Yachting Association considered the definition of a marine enforcement officer “very wide” and described the powers they are to have as “quite onerous for essentially anybody to be granted” adding “we would like to think there are professional qualifications or standards that are expected for those sorts of individuals”.³⁸¹ The British Marine Federation expressed the same view.³⁸² The MoD told us that where civilian MEOs accompany service enforcement officers on military vessels “there would have to be very specific guidance for commanding officers of vessels as to how that would work in practice and we would need to talk very carefully through those issues with the services”.³⁸³ The MoD went on to say that the aim is to “involve civilians with suitable background knowledge and experience to support and to assist the service enforcement officers in their duties where it was appropriate and feasible to do so”.³⁸⁴ The Secretary of State assured us that “the officers who will do the enforcement and the inspection will be people who are suitably qualified and appointed by those authorities”.³⁸⁵ All parties therefore seemed to agree that the enforcement roles are important and require officers of experience and skill. However, it is still unclear who the MEOs will actually be, what skills they will require, how they will be trained and regulated and to whom they will be accountable. **We recommend that the Bill require transparent criteria on the training and regulation of Marine Enforcement Officers to be set out in secondary legislation or guidance, having due regard to the wide-ranging and significant powers of the role.**

Maritime and Coastguard Agency

165. The MCA will have an important role in the enforcement process, but does not have a high profile in the Bill. It is unclear whether its role will change; the Department for Transport told us that there is no current plan to change the MCA’s responsibility from that of maritime safety and prevention of pollution from ships, but discussions are ongoing

378 Q280

379 DMB 34

380 Q185

381 *Ibid.*

382 DMB 46

383 Q280

384 *Ibid.*

385 Q640

regarding how the MMO and MCA can offer “mutual assistance”.³⁸⁶ This may include use of the cross-warranting provisions in the future.³⁸⁷ Defra noted that “in considering enforcement arrangements, it will be important to recognise the MCA’s role of providing maritime safety advice and consider the potential risk of individuals being reluctant to approach the MCA for this advice, if the MCA officers were to take on enforcement roles in relation to non-safety legislation”.³⁸⁸ The North Devon UNESCO Biosphere Reserve emphasised the importance of the MCA and the need for role to be properly addressed in the Bill.³⁸⁹ **Whilst we recognise that enforcement provisions are not finalised, and will in any event require coordination between bodies in practice, we recommend that the Government reviews the role of the Maritime and Coastguard Agency before the Bill is published and reflects its role explicitly in the Bill if appropriate.**

MMO prosecutors

166. The MMO has the power to prosecute criminal proceedings and recover civil debts.³⁹⁰ Those authorised by the MMO to prosecute and appear in civil proceedings on the MMO’s behalf do not have to be legally qualified.³⁹¹ It appears that the MMO will have jurisdiction over offences punishable by up to two years imprisonment and unlimited fines.³⁹² We have not had time to examine this issue in depth, but there are questions as to who these prosecutors will be, of what their training will comprise and who will regulate them.

167. Section 19 of the Legal Services Act 2007 allows persons exempted under any enactment to exercise a right of audience before a court, where that person would otherwise not be authorised. It appears that clause 28 of the draft Bill seeks to bring MMO appointees within that exemption. The explanatory notes say that this provision will “enable the MMO to have prosecutors on its staff in the same way as do organisations such as the Environment Agency and local authorities”,³⁹³ Until the Legal Services Act 2007 comes into force, section 54 of the Environment Act 1995 says “a person who is authorised by the [Environment] Agency to prosecute on its behalf in proceedings before a magistrates’ court shall be entitled to prosecute in any proceedings *although not of counsel or a solicitor*”. The italicised words were repealed by the Legal Service Act 2007 and will be removed when it comes into force. Several other Acts with similar provisions also have that wording repealed by the Legal Services Act 2007.³⁹⁴ It is therefore odd that essentially the same words are being inserted in this Bill.

168. There has recently been substantial debate on the regulation of non-legally qualified Crown Prosecution Service caseworkers in court proceedings during the passage of the

386 Q645

387 Q645

388 DMB 107

389 DMB 59

390 Clause 28

391 Clause 28(3) and (4)

392 Offences under clause 76(4) (punishments for breach of condition of marine licence or engaging in licensable marine activity without a licence), 82(4) (punishments for failure to comply with a compliance or remediation notice) and 97(4) (punishments for failure to comply with a stop notice).

393 Cm 7351, explanatory notes, p50, para 82

394 Legal Services Act 2007, Schedule 23

Criminal Justice and Immigration Act 2008. In that instance, concerns about external regulation of those caseworkers resulted in the agreement that they will be granted special membership of the Institute of Legal Executives and therefore will be regulated by that body.³⁹⁵ **We would like the Government to provide further detail on the policy behind clause 28 and the consideration given to the use of non-legally qualified prosecutors and their regulation.**

Administrative penalties

169. The Regulatory Impact Assessment states that the proposed “system of administrative penalties will increase consistency, transparency and effectiveness of sanctions for minor offending [will save legal costs of fishermen and government and that] strengthened enforcement officer powers will result in speedier investigations and act as a greater deterrent to illegal fishing”.³⁹⁶ Professor Warren said “fixed penalty notices are OK but it must be recognised that operating the system incurs administrative costs and these will need to be met either directly or by hypothecation”.³⁹⁷ The powers of enforcement authorities to issue administrative penalties for breaches of marine licensing or conservation provisions will be made by regulation and must include the requirement that the enforcement authorities “are satisfied beyond reasonable doubt” that the person has committed an offence before issuing the notice.³⁹⁸ An enforcement authority may not issue a penalty notice where the authority “is satisfied that the person would not, by reason of any defence raised by that person, be liable to be convicted of the offence”.³⁹⁹ Fixed penalty notices may be for up to £50,000.

170. The Secretary of State anticipates fixed penalty notices “being used for mainly technical offences, things like failing to let the licensing authority know when you are starting a project or other sort of reporting-type failures” and that the scheme would “start at about £100” with a “scale of fixed penalties up to about £1,000”.⁴⁰⁰ The Secretary of State said of the variable monetary penalties: “those will be much more tailorable to cases where somebody has caused damage or done something more seriously wrong and so we will be able to take into account the size of the project that is in question, the size of the business and the amount of damage done”.⁴⁰¹

171. The Royal Yachting Association emphasised the “onerous powers” and high penalties involved in the issuing of these fixed penalty notices and the fact that it is not known who will be issuing the notices and what their training and regulation will be. Marine Enforcement Officers will be able to issue compliance and stop notices regarding licensable marine activities. The Royal Yachting Association also noted that there is no clear mechanism for how to appeal a fixed penalty notice.⁴⁰² It stated “we consider that a person

395 The Attorney-General, Baroness Scotland of Asthal, HL Deb, 27 February 2008, column 740

396 Cm 7351, Impact Assessment, p 48

397 DMB 112

398 Clauses 83 and 127

399 Clause 86

400 Q643

401 *Ibid.*

402 Q328

accused of an offence in relation to whom the appropriate authority decides to impose a fixed monetary penalty should have the right to require the appropriate authority to prosecute that person instead”.⁴⁰³ Indeed the Bill restricts the capacity for orders on penalty notices and enforcement to provide for appeals “other than to the First-Tier Tribunal, or another tribunal created under an enactment”.⁴⁰⁴ It specifically excludes appeal to an “ordinary court of law”. The same applies for fixed penalty notices and undertakings regarding conservation provisions.⁴⁰⁵

172. Usually, it is an independent judge who decides whether an offence is proven “beyond reasonable doubt” and whether a defence is valid. There is no guidance on what those terms will mean in practice, who will make such determinations, what their training will be and how a person will be able to challenge a penalty notice. **The process of administrative penalties and the appeals mechanism is not sufficiently transparent—a clear appeals mechanism should be spelt out in the Bill and there must be published guidance on the proposed scheme as well as on the qualifications of those who will be empowered to make the relevant judgment and issue penalty notices. We question the need for fixed penalty notices to go up to £50,000.**

Parliamentary scrutiny of fixed monetary penalties and undertakings

173. In the case of marine licences, the ‘appropriate licensing authority’ (Secretary of State in England) will be able to confer on the ‘appropriate enforcement authority’ (again the Secretary of State in England, although likely to be delegated to the MMO) the power to impose a fixed monetary penalty on a person whom it is satisfied beyond reasonable doubt has committed an offence by conducting an activity without, or in breach of conditions in, a licence.⁴⁰⁶ The House of Lords Committee on Delegated Powers and Regulatory Reform considered that the exercise of this power is “rightly subject to the draft affirmative procedure”.⁴⁰⁷ The licensing authority may also provide, by order subject to the draft affirmative procedure, for the enforcement authority to accept undertakings from a person it reasonably suspects of having committed an offence.⁴⁰⁸ Almost identical provision exists in relation to enforcement of MCZ prohibitions and obligations.⁴⁰⁹ However, those powers are only subject to the negative procedure. The Delegated Powers and Regulatory Reform Committee stated “we consider that the affirmative procedure is the appropriate procedure for both regimes”.⁴¹⁰ **We recommend that the powers to enable enforcement authorities to issue fixed monetary penalties and accept undertakings regarding MCZ prohibitions and obligations be subject to the same draft affirmative procedure as the equivalent provisions relating to marine activities.**

403 DMB 38

404 Schedule 6, para 7

405 Para 4, Schedule 7 restricts in the same way appeals provided for in any order made under clause 127 or 129.

406 Clause 83

407 Annex 4

408 Clause 87

409 Clauses 127 and 130

410 DMB 100

Remediation, compliance and stop notices

174. The appropriate enforcement authority has the power to issue a compliance notice to a person holding a marine licence if they fail to comply with a condition of that licence and the activity has not caused “serious harm” to the environment or human health, or “serious interference with legitimate uses of the sea”.⁴¹¹ Similarly, a remediation notice may be issued to a person who is carrying on a licensable marine activity, involving the commission of an offence under clause 76 (carrying on a licensable activity without a licence or in breach of a licence), and the activity caused or is likely to cause “serious harm” to the environment or human health, or “serious interference with legitimate uses of the sea”.⁴¹² Failure to comply with a compliance or remediation notice is an offence punishable by up to two years imprisonment and an unlimited fine if convicted on indictment, or up to £50,000 fine on summary conviction.⁴¹³ A stop notice can prohibit the carrying on of a licensable marine activity if that activity is causing or will imminently cause “serious harm” to the environment or human health or “seriously interfere with legitimate uses of the sea”.⁴¹⁴ Failure to comply with a stop notice is an offence punishable by up to two years imprisonment and an unlimited fine, and a fine up to £50,000 on summary conviction.⁴¹⁵ For the purposes of compliance notices and stop notices, the ‘appropriate enforcement authority’ includes a Marine Enforcement Officer.⁴¹⁶

175. Whilst these notices were welcomed by some submitting evidence,⁴¹⁷ there were concerns that key terms within these offences are not defined in the draft Bill: “serious harm”, “serious interference” and “legitimate uses of the sea”.⁴¹⁸ This lack of clarity and certainty invites legal challenge.⁴¹⁹ Additionally, there is no mechanism contained in the provisions to enable a person to challenge the decision that they have breached a condition of their marine licence or that an activity is causing or will cause serious harm. **We support the principle of compliance, remediation and stop notices as measures designed to deal expeditiously with marine licensing breaches. However, we recommend that the Bill define ‘serious harm’, ‘serious interference’ and ‘legitimate uses of the sea’ and that an appeal mechanism is included.**

Emergency fisheries byelaws and urgent and interim conservation orders

176. Broadly, the provisions for urgent protection of the marine environment through emergency byelaws and urgent and interim orders were welcomed by those giving

411 Clause 80

412 Clause 81

413 Clause 82

414 Clause 96

415 Clause 97

416 Clause 103

417 e.g. DMB 91

418 British Energy notes that the draft regulations transposing the Environmental Liability Directive include proposed definitions for ‘environmental damage’: DMB 76, DMB 102.

419 DMB 102

evidence to us.⁴²⁰ However, there were concerns regarding a lack of clarity and certainty in the drafting and the amount of discretion given to the MMO.

177. Where it thinks there is an urgent need to protect an MCZ, the MMO may make Urgent Conservation Orders, and an interim order (not exceeding 18 months after extension) in relation to MCZs without having to comply with all the consultation and publication requirements applicable to standard conservation.⁴²¹ The British Ports Association expressed concern in this regard and noted there should be clear and compelling reasons for bypassing those requirements.⁴²² This is of particular concern because of the potential for the designation of an MCZ itself to bypass the consultation process “where the appropriate authority thinks that there is an urgent need to protect the area proposed to be designated”.⁴²³ The Renewable Energy Association noted that although an urgent conservation order could only last 18 months, such delays would be enough to “extinguish economic viability of a proposed marine renewable energy development”.⁴²⁴ The Royal Yachting Association drew attention to regarding the subjective nature of the provisions, such as the requirement to “publish in such manner *as the MMO thinks* is most likely to bring the order to the attention of all persons”.⁴²⁵ [Our italics]

178. The Secretary of State may revoke an urgent conservation order or an interim order,⁴²⁶ and the MMO must keep under review the need for an urgent or interim order to remain in force.⁴²⁷ These appear to be the only review or appeal options, aside from judicial review: there is no explicit mechanism for making appeals or representations. Similarly, where the Environment Agency makes emergency fisheries byelaws, the only apparent review mechanism provided for is the amendment or revocation of byelaws by decision of the national authority.⁴²⁸ **We welcome urgent and interim conservation orders as useful measures for protecting the marine environment. We understand the need for some subjectivity—if all criteria were completely “objective” it would allow for argument and challenge on the grounds of insufficient evidence and thus undermine the potential for urgent action. However, where there is provision for bypassing consultation and publication requirements, in particular where an offence is thereby created without fulfilling such requirements (and without parliamentary scrutiny in the case of conservation orders as they currently stand), criteria for making the orders must be clearly set out in the Bill or secondary legislation. An appeals mechanism should also be set out on the face of the Bill.**

420 DMB 112

421 Clauses 115 and 117-6

422 DMB 32

423 Clause 107, DMB 31

424 DMB 89

425 DMB 38

426 Clauses 115(5) and 116(8)

427 Clauses 115(6) and 116(9)

428 Clause 196

Conservation offences

General MCZ offences

179. As mentioned in paragraph 133, Natural England argued that a general offence of damaging or destroying the nature conservation features of an MCZ be included in the Bill. Its submission notes that such an offence was in the 2007 Marine Bill White Paper but is absent from the draft Bill, and that the equivalent SSSI offence in the Wildlife and Countryside Act 1981 provided a strong deterrent to carrying out damaging activities.⁴²⁹ Natural England further argues for a lesser general offence of “disturbing” an MCZ feature.⁴³⁰ Wildlife and Countryside Link supports this position.⁴³¹ It appears to us that this is a significant oversight and the inclusion of such a general offence, with the defences listed in the White Paper, would be helpful in protecting MCZs. **We recommend that the Government insert the general offence referred to in the Marine Bill White Paper of damaging or destroying any species or habitat or other feature, for which a site has been designated an MCZ. This must be mirrored by a duty on the agencies involved to explain clearly to the public what is not permissible and where any new prohibitions apply.**

Parliamentary Scrutiny

180. Marine Conservation Orders (MCOs) are not statutory instruments but must be confirmed by the Minister.⁴³² Urgent or interim conservation orders do not require Ministerial confirmation but may also create offences.⁴³³ None of these orders require any Parliamentary scrutiny. The House of Lords Delegated Powers and Regulatory Reform Committee notes that the delegated powers memorandum contains no explanation about the absence of scrutiny arrangements in relation to offences created in conservation orders or interim orders.⁴³⁴ MCOs (or urgent or interim conservation orders) may provide that a person contravening a provision of the order is guilty of an offence (which may be triable summarily or either way) and liable to a fine specified in the order of up to £50,000 on summary conviction, unlimited on conviction on indictment. This means that neither the particulars of an offence created by an MCO, nor the applicable mode of trial are subject to Parliamentary scrutiny. **Marine Conservation Orders and urgent and interim orders should be statutory instruments.**

Fisheries offences: Keeping, introduction and removal of fish

181. Clause 200 enables the Government to introduce comprehensive regulations controlling the keeping, introduction and removal of fish. The intention is to produce a comprehensive scheme covering both non-native fish (currently covered by regulations made under the Import of Live Fish Act 1980) and native fish. This is intended to halt the

429 DMB 16

430 *Ibid.*

431 DMB 102

432 Clause 113

433 Clauses 115 and 116

434 Annex 4

movement of fish that could threaten the genetic integrity of stocks in the receiving water or spread disease and parasites. The policy paper explains that proposals in the Bill would “expand the scope of the offence of introduction of fish [and possession 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”.⁴³⁵ The provisions allow the Secretary of State (and Welsh Ministers) to make regulations in this regard and create offences for breaches.

182. There was support for the principles underlying the proposals but concerns were raised with the detail of the provisions and their enforcement.⁴³⁶ Professor Warren stated that there was a need to address these issues but that the proposals appear highly complex and needed to be simplified in some way.⁴³⁷ The Fisheries and Angling Conservation Trust said that “there are some instances where the removal of fish and transfer to other waters perhaps is being made easier” but that it will depend on how easy to apply the secondary legislation or byelaws introduced by the Environment Agency will be.⁴³⁸ The Coarse Fish Trade Association stated that the current regulation is sufficient to control the fish farming and fish transport industry, and that the proposed system would result in Cefas and the Environment Agency duplicating regulatory requirements.⁴³⁹

183. We received evidence that the current provisions could see individuals (as opposed to bodies corporate), many of them volunteers, liable to criminal prosecution because they reasonably suspect fish are being introduced into their waters but cannot stop that introduction,⁴⁴⁰ or because many volunteers are simply not aware of regulatory requirements to seek consents.⁴⁴¹ The Fisheries Angling Conservation Trust said there were some “fairly drastic criminal possibilities” for those held responsible “in terms of having knowledge”.⁴⁴² Others argued that the regulations may force otherwise law-abiding people ‘underground’,⁴⁴³ as well as inadvertently increase illegal activity,⁴⁴⁴ or simply burden fisheries owners with disproportionate bureaucracy.⁴⁴⁵ The Coarse Fish Trade Association argued that “to proceed with the legislation as proposed will increase the bureaucracy and financial burden on those trading legitimately. Therefore illegal traders can afford to sell fish at a much reduced price leading to those trading legally either going out of business or forcing more illegal fish movements”.⁴⁴⁶

184. On the potential for the proposed system to be overly bureaucratic, the Moran Committee said “Stocking enclosed waters with native coarse fish poses few if any risks to

435 Cm 7351, p49, para 3.131

436 DMB 28

437 DMB 112

438 Q241

439 DMB 49

440 Q241

441 DMB 49

442 Q241

443 For example, DMB 42

444 DMB 13

445 DMB 28

446 DMB 49

biodiversity in most parts of the country, and should be permitted with minimal restriction under the proposed regulations. While in our view priority must be given to protecting biodiversity and, where appropriate, the genetic integrity of fish stocks, this should not mean applying uniform levels of control for widely differing levels of risk”.⁴⁴⁷ The Ornamental Aquatic Trade Association Ltd also raises concerns that the Bill could affect the hobby of fish keeping.⁴⁴⁸

185. The Fisheries and Angling Conservation Trust emphasised difficulties with the enforceability of the current proposals, for example the potential for regulations requiring a fisheries owner to remove fish, and noted that critical to the success of these provisions would be the Environment Agency’s sensible use of its discretion in making decisions whether to enforce regulations.⁴⁴⁹ The Quiet Sports Fishery Management specifically commented that despite detailing the above concerns during consultations with Defra and the Environment Agency they did not believe that the problems with the system proposed by the Bill have been acknowledged.⁴⁵⁰ **Defra should give careful consideration to the practicalities of the offences involving the introduction and removal of fish, and the parties who would be liable. The Bill should ensure that any secondary legislation under the Bill will be proportionate to the risks—it should not be within the discretion of the Environment Agency (or any other body) to enforce regulations unreasonably or unfairly against individuals. Further, Defra must bear in mind that regulation of fisheries must not be so burdensome as to encourage non-compliance.**

447 DMB 28

448 DMB 1

449 Qq241, 250

450 DMB 13

8 Fisheries

186. Clauses 185 to 201 of the Bill amend legislation relating to migratory and freshwater fish. These sections address many of the recommendations of the Review of Salmon and Freshwater Fisheries chaired by Professor Lynda Warren in 2000, in response to which Government undertook to bring legislation forward eight years ago.⁴⁵¹

187. The Fisheries and Angling Trust stated that “what freshwater anglers’ are looking for is for that commitment to be met and the key recommendations of the Salmon and Freshwater Fisheries Review, which the Government accept, to be implemented”.⁴⁵² In addition, it said

“it is absolutely vital that we get new freshwater legislation fairly soon. Freshwater is increasingly under pressure from population growth and water resources are a big issue, certainly in the south east. Our fisheries will come under increased pressure because of that and because of development and climate change. The Environment Agency needs modern tools to deal with fisheries in the 21st Century and this Bill goes a long way to providing a lot of that opportunity for us. It is proposing better controls on the taking of fish, which is a key issue. It proposes better mechanisms for introducing byelaws, and particularly emergency byelaws, to deal with short-term issues in particular catchments. It gives the Agency more freedom in terms of determining the need for and application of close seasons on various fisheries in various locations and it gives better enforcement on fish transfers in and out of waters.”⁴⁵³

We welcome the long overdue changes to the regulation of freshwater and migratory fisheries contained in the Bill.

Prohibited Instruments

188. Clause 185 broadens the scope of the Salmon and Freshwater 1975 Act to include other species and to extend the list of prohibited instruments. In her response to the Government consultation on the draft Bill, Professor Lynda Warren stated that “I question whether [clause 185] is consistent with clause 187. The Salmon and Freshwater Fisheries Review recommendation, which was accepted by Government, was that the use of instrument, other than rod or line should be prohibited unless authorised by the Environment Agency. This could form the basis of a simpler clause”.⁴⁵⁴ **Clause 185 of the Bill should be simplified in line with the original Salmon and Freshwater Fisheries Review recommendation.**

451 Review of Salmon and Freshwater Fisheries. Government Response, 2001, PB 5352

452 Q245

453 *Ibid.*

454 DMB 112

Repeal of Section 212 of the Water Resources Act

189. Clause 187 introduces a new concept of licensable means of fishing, with three separate licences for rod and line fishers—salmon, trout, smelt and coarse fish, trout and coarse fish and eels and lamprey. It will be an offence to take a fish by any other means of fishing without specific authorisation from the Environment Agency, as it will be to use a licensable means of fishing without a licence. Clause 187(6) explicitly provides for the Environment Agency to impose conditions on a licence to use a historic installation, which consist of fixed nets and traps operated under certificates of Privilege.

190. At present, historic installations fall outside the Environment Agency’s regulatory framework and these changes will allow for catches to be limited and other conservation byelaws to be applied to them. However, both Professor Warren and the Moran Committee have stated that the Environment Agency would be unlikely to use these powers unless the issue of compensation is addressed.⁴⁵⁵ The Moran Committee noted that Section 212 of the Water Resources Act 1991 provides for compensation to be paid to fisheries owners whose interests are adversely affected by a byelaw restricting the use or design of any instrument for taking fish.⁴⁵⁶ The Fisheries and Angling Trust stated that

“It is also rather inconsistent with another provision in the Bill which provides for the Environment Agency to compensate on a discretionary basis netsmen who lose their licence. It seems to us that the two ought to be put on the same footing, so if it is discretionary as far as netsmen are concerned it should also be discretionary so far as fisheries owners are concerned and we do not think anybody should be compensated if a measure is taken for conservation reasons. It does not happen over the sea and it should not happen on rivers either”.⁴⁵⁷

The Bill should amend section 212 of the Water Resources Act to provide that no compensation should be paid to fisheries owners if a byelaw is implemented for conservation reasons.

Definitions relating to fish

191. Clause 193 amends section 41 of the Salmon and Freshwater Fisheries Act 1975 (SFFA), clarifying the definitions of the fish to which it refers. Although shad is mentioned in other clauses, it is not defined in Clause 193. The definitions in section 41 of the SFFA can be specified by order under section 40A, which is used as the basis for defining the duty of the Environment Agency in clause 198. The Environment Agency stated in evidence “we are disappointed that the extension of our fisheries duties does not include allis and twaite shad as this means there will be continued split regulation of migratory fisheries”.⁴⁵⁸ **The definitions in Clause 193 should include allis and twaite shad to ensure there is no split in the regulation of migratory species.**

455 DMB 28

456 *Ibid.*

457 Q249

458 DMB 10

Environment Agency's Fishery Duty

192. The Environment Agency's fisheries duty is set out in the Environment Act 1995.⁴⁵⁹ Clause 198 extends the duties of the Environment Agency in relation to migratory and freshwater fisheries. Professor Warren told the Government consultation that although this clause extends the scope of the fisheries duty to more fish, it does not touch on the nature of the duty itself.⁴⁶⁰ The Salmon and Freshwater Fisheries Review recommended an amendment to the statutory fisheries duty

- a) to ensure the conservation and maintain the diversity of freshwater fish, salmon, sea trout and eels and to conserve their aquatic environment;
- b) to enhance the contribution salmon and freshwater fisheries make to the economy, particularly in remote rural areas and in areas with low levels of income; and
- c) to enhance the social value of fishing as a widely available and healthy form of recreation.⁴⁶¹

193. In its response to the review, the Government accepted this recommendation and agreed to create this duty at the first available opportunity; the wording above is included in the statutory guidance issued to the Agency on its objectives and contribution to sustainable development.⁴⁶² The South West Rivers association also stated that there should be statutory fisheries duties and that it does "not believe it is adequate to rely on Ministerial Guidance on environmental and socio-economic requirements but that it should be in the Bill as a requirement of Parliament".⁴⁶³ It is notable that the bill does set out fisheries duties for IFCAs. **Clause 198 on the fisheries duties of the Environment Agency should amend section 6(6) of the Environment Act 1995 using the wording set out in the recommendation made by the Salmon and Freshwater Fisheries Review, previously accepted by the Government.**

459 Environmental Act 1995, Section 6(6)

460 DMB 112

461 *Ibid.*

462 DMB 28

463 DMB 45

9 The devolved administrations

Scotland

194. The Scottish Government—which is seeking devolution of marine nature conservation and marine planning responsibilities to the limit of Scottish offshore waters—suggested that the draft Bill “does not provide mechanisms for encouraging cooperation between the UK and Scottish Governments”.⁴⁶⁴ It is developing its own legislation, which it suggested to us will reflect many of the proposals in the Marine Bill but with “distinctive elements of the Scottish approach”.⁴⁶⁵ As the inshore waters are devolved, a key area of difficulty is that no single body is given the responsibility of enforcing Marine Conservation Zones in the offshore waters adjacent to Scotland.⁴⁶⁶

195. In its response to the Government’s consultation, the Royal Society of Edinburgh noted that “the current proposal seems to be the establishment of two different pieces of legislation to govern Scottish Waters to 12 nm and from 12 to 200 nm. While this may represent a current political stand-off between the UK and Scottish Governments, it makes little sense in the long-term. If these issues are not resolved soon, we are in great danger of implementing legislation that is unworkable, at least for the region around Scotland”.⁴⁶⁷ For the JNCC this had “knock-on” effects as “the draft Bill has no provisions for the MMO to make conservation orders for the purpose of furthering the conservation objectives of MCZs in UK offshore waters (beyond 12 miles). Provisions are made for orders in inshore waters of England and Wales, but not for UK offshore waters. Whilst we accept that there are difficult legal matters concerning the management of some activities in the offshore zone, [we] feel that the lack of any power to make conservation orders may seriously compromise the management of any offshore MCZ and its future status”.⁴⁶⁸ For commercial interests equally, the potential for different regimes of planning, licensing and enforcement in different sections of the UK territorial waters was a cause of concern.⁴⁶⁹

196. The Royal Society of Edinburgh concluded from this that there was a need for either a single UK Marine Bill, probably with a single UK MMO, or for responsibility for management from 12-200 nm to be devolved: “The dangers of a half-way house should be clear to most people, whatever their politics”.⁴⁷⁰ The Secretary of State recognised that devolution was a “very, very important question”.⁴⁷¹ He did not think the Marine Bill an appropriate vehicle for re-examination of the devolution settlement, but instead looked towards the implementation of “an effective system for achieving the aims of the Bill [...]”

464 DMB 97

465 *Ibid.*

466 DMB 43

467 DMB 111

468 DMB 17

469 Q205

470 DMB 111

471 Q670

How it exactly works on the edges is something that we are going to have to sort out in the process, but I am committed to making it work as effectively as possible”.⁴⁷²

197. We did not have the opportunity to consider the Scottish Government’s proposals in any detail but note that the UK collectively is subject to the conservation objectives of the MSD and other international agreements. Carrying this through will require joint planning for marine areas between the UK and devolved governments and practical measures for enforcement. We note the willingness of the Scottish Government to “deliver a joined-up system of marine planning and management in waters around the UK and [its] wish to agree mechanisms with the UK Government which respect constitutional differences but deliver effective management”.⁴⁷³ **We recommend that the Government carry out a review of the practical implications of the proposed arrangements under the draft Bill in respect to the devolved governments and we urge Scottish Ministers to participate fully in marine planning for the offshore zones.**

Wales

198. The introduction to the draft Bill states that “the Welsh Assembly Government is supportive of the need for a Marine Bill to better manage our shared sea resources, and has been working with Defra throughout”.⁴⁷⁴ In its written memorandum, the Countryside Council for Wales (CCW) noted that the key issue for the implementation of the Marine Bill relates to delivery. Some of the functions of the MMO in England will be delivered by the Welsh Assembly Government so it is, according to CCW, imperative that whatever functions the WAG chooses to exercise are integrated adequately with non-devolved functions and those exercised by the IPC.⁴⁷⁵

199. The Welsh Assembly’s Sustainability Committee held a one-off evidence session on the draft Marine Bill, a summary of and recommendations from which were sent to us in the form of a written memorandum.⁴⁷⁶ The Sustainability Committee reported that the Minister for Environment, Sustainability and Housing had been closely involved with the drafting of the Marine Bill and was broadly content with its provisions. The Committee made several recommendations, many of which related to publication of statutory guidance.

Northern Ireland

200. In its introduction to the draft Bill, Defra states that “Northern Ireland is fully committed to the policy aims underpinning the draft UK Bill”.⁴⁷⁷ Marine responsibilities will be spread across government departments and there will be a complex mix of devolved and reserved responsibilities. For the purposes of the Marine Policy Statement, offshore planning and aspects of licensing relating to the Food and Environmental Protection Act 1985 and marine aggregate extraction, Northern Ireland will be included in the UK Bill,

472 Q670

473 DMB 97

474 Cm 7351, p 62, annex B

475 DMB 11

476 DMB 86

477 Cm 7351, p 64, Annex C

but in all other areas separate legislation will be brought forward in the Assembly in consultation with stakeholders.

Cooperation between authorities

201. Complex arrangements will be needed for planning and managing activities in the shared waters of the Bristol Channel, the Solway Firth and the Irish Sea. Management of the Irish Sea will require agreement between two countries (UK and the Republic of Ireland), three devolved Governments (Wales, Northern Ireland and Scotland) and one Crown Dependency (Isle of Man), each with their own marine management regimes.⁴⁷⁸ It will also require agreement, through the EU Fisheries Council, of countries with fishing rights in UK waters beyond six nautical miles. We note that there have been successful programmes for managing shared seas through the creation of regional seas commissions, of which OSPAR is a good example, and that these are embraced by the Marine Strategy Directive. In the case of the Irish Sea, we note the success of the Irish Sea Pilot project on data gathering for marine spatial planning.⁴⁷⁹ Similarly, the Water Framework Directive encourages the creation of joint commissions for river basins and estuaries (defined as “River Basin Districts”). On a smaller scale, cooperative arrangements have also been established in respect of cross-border issues raised in the Solway Firth and River Tweed. **We suggest that the Government consider cooperative approaches towards the Irish Sea, similar to those of existing regional seas commissions, involving the UK and relevant devolved administrations (and the governments of Ireland and the Isle of Man), to work together collectively to produce agreement on the coordination of spatial planning, fisheries and nature protection issues in the Irish Sea, the Solway Firth and Bristol Channel.**

202. **More specifically, we see merit in establishing a regional sea commission for the Irish Sea with authority to coordinate spatial planning, fisheries and nature protection issues. Smaller scale commissions could also be established for the Bristol Channel and the Solway Firth.** We would envisage these commissions to be established in the context of the Marine Strategy Directive and Water Framework Directive respectively.

Devolved administrations and the MMO

203. As discussed fully in Chapter Eight, the role of the devolved administrations in the success of the new marine planning system is critical. The Marine Management Organisation will have some responsibilities for non-devolved activities, resulting in a complicated mix of reserved and devolved functions in the territorial waters of Wales, Scotland and Northern Ireland. It is unclear how the MMO will work with organisations with equivalent roles in Scotland, Wales and Northern Ireland,⁴⁸⁰ although Schedule 5 to the Bill requires the authorities to take “all reasonable steps to ensure that plans on either side of the border are compatible”. Evidence from those concerned with Scotland and Wales suggested that the relationships between the MMO, Welsh Ministers and the equivalent Scottish MMO must be formalised in the Bill; one suggested that the Bill should

478 DMB 73

479 Q547

480 DMB17, DMB 86, DMB 21, DMB 22

be amended to add a duty to work with “any body established with similar or the same functions as the MMO”.⁴⁸¹ Effective and integrated spatial plans are needed for key marine areas in the UK where devolutionary issues will arise, such as the Severn Estuary, the Firth of Forth and the Irish Sea.⁴⁸² We repeat the concerns about the need for fully joined-up decision making that we expressed in paragraphs 87-91. **It is imperative that Marine Plans are compatible in cross-border areas and the Bill must be strengthened to reflect this. The relationships between the MMO, the Welsh Assembly Government and the equivalent Scottish body should be formalised in the Bill.**

481 DMB 43

482 DMB 64

10 Coastal Access

204. As we mentioned in our introduction, the EFRA Committee carried out an inquiry into Part 9 of the draft Bill.⁴⁸³ Although we took evidence on the subject of coastal access, we are aware that the EFRA Committee was able to devote far greater attention to the subject, and that its Report covers the issue in greater detail than we do here. We were able to make use of the evidence submitted to the EFRA Committee in our consideration of the Bill.

205. Defra included improved coastal access in its Five Year Strategy of December 2004 and in April 2005, the Labour Party made an election manifesto commitment to improve coastal access.⁴⁸⁴ The proposals for delivering coastal access will enable a coastal route and accompanying access land for outdoor recreation (“spreading room”) by combining the long-distance route proposals under the National Parks and Access to the Countryside Act 1949 (“the 1949 Act”) and the access provisions of the Countryside and Rights of Way Act 2000 (“the CROW Act”). Natural England (NE) will be responsible for negotiating the route and spreading room with interested owners, occupiers and businesses, for subsequently proposing the path and spreading room (with any exemptions or restrictions) to the Secretary of State for designation, and for implementing access in practice.

The principle of a continuous English coastal path

206. The policy paper quotes the Government’s union of a “coastal environment”, including “rights to walk along the length of the English coast”.⁴⁸⁵ Most of the evidence was supportive of improved coastal access, with many submissions citing the health benefits to users and the economic benefits to coastal areas.⁴⁸⁶ Some local authorities and Devon Countryside Access Forum said that in their experience, a commitment to improve coastal access, such as through better transport links and resolving gaps in existing paths, would be a more effective focus than a commitment to a coastal route.⁴⁸⁷ The Country Land and Business Association (CLA) and the National Farmers’ Union said the Government and Natural England had not shown evidence of a demand for a continuous route.⁴⁸⁸ The Government commissioned a poll by Ipsos Mori in 2006 which found that “nine per cent of respondents said they would visit the coast more regularly if a clear path existed around the coast” and “six per cent said they would visit more regularly if more area access were available”.⁴⁸⁹ The Ramblers’ Association noted that these figures are for those who “would definitely visit more often” and that the same report found that 37 per cent of those surveyed *would like to* visit the coast more if there was a continuous path.⁴⁹⁰ The CLA

483 HC 656

484 Cm 7351, p55

485 *Ibid.*

486 There was opposition from some individuals who felt increased access, in particular the ‘spreading room’ would threaten the preserved nature of the countryside in their area: DMB 2.

487 DMB 53, DMB 74, HC 656-II (DMB 49) [Devon Countryside Access Forum]

488 HC 656-II (DMB 04); DMB 70

489 Quoted by Defra in its Response to Committee Request for Further Information, emailed to EFRA 3 July 2007.

490 HC 656-II (DMB 26); HC 656-II, Q210

quotes the same report's summary and conclusions: "overall, there appears to be good access to the coast" and "indeed, many questioned the need for new paths and areas, and would prefer to see budgets prioritising the maintenance of the current paths and facilities".⁴⁹¹ Natural England and the Ramblers' Association strongly supported the principle of a continuous coastal path, noting that although 70 per cent of the coast is currently accessible, there are many breaks in the paths which currently inhibit its enjoyment.⁴⁹² The Ramblers' Association said "it is vitally important that the route is continuous"⁴⁹³ because it would give the public the "security" of knowing that they can go anywhere on the coast and have access.⁴⁹⁴ **We welcome the principle of increased access to the coast and that of the 'spreading room' for outdoor, coastal recreation.**

207. There are however limits on what is practically achievable, given the number of inevitable interruptions to the path, and we do have concerns about whether unrealistic expectations have been created by the description of a continuous coastal path. The MoD has an exemption wherever necessary, though it told us "the number of exemptions that we are actually looking for on the face of the Bill are really very small—we are talking about three or four areas where we have some concerns".⁴⁹⁵ Eroding coast and flood risk may present a safety and practicality problem—the EFRA Committee heard evidence from the National Farmers' Union (NFU) and CLA of some areas of coast eroding at the rate of 20m per year⁴⁹⁶ and other evidence from local authorities of extremely rapid rates on the South West Path and elsewhere.⁴⁹⁷ While the draft Bill provides for 'rollback' of the coastal path to accommodate erosion, it is clear that in some areas erosion will make it difficult or very expensive, and may make it inappropriate, to facilitate coastal access.⁴⁹⁸

208. Estuaries are exempt from access under the draft Bill unless the Secretary of State orders otherwise in particular cases. The intention is that, where possible, the coastal path will follow the first crossing and back to the coast. Natural England accept that where the first crossing is a very long way inland access will simply not be possible. Witnesses broadly agreed that this is the right approach.⁴⁹⁹ There will also be sensitive habitats which require either permanent or seasonal restriction of access.⁵⁰⁰ The other main interruption to the path will come in the form of commercial businesses and private properties, of which there are many along the coast, in contrast to other types of access land under CROW.⁵⁰¹ The number of industrial installations, such as ports, and of parks and gardens around the coast makes it difficult to see how the aim in the draft Bill of keeping the route close to the coast

491 HC 656-II (DMB 04)

492 Natural England, Advice, pp27-28, DMB 16; HC 656-II (DMB 26)

493 HC 656-II (DMB 26)

494 DMB 09; HC 656-II (Q214)

495 Q276

496 HC 656-II (Q109)

497 DMB 53, HC 656-II (Q352)

498 DMB 76; HC 656-II (Qq352-3)

499 HC 656-II (Qq358-9) [Cumbria County Council and Devon County Council]

500 DMB 80, DMB 53. The Minister said that in such cases 'the national environment has to come first': HC 656-II (Q449).

501 HC 656-II (Qq108, 396). In particular, commercial developments such as marinas, boatyards, ports and other operational sites in which heavy machinery is used can pose safety risks and also contain expensive equipment: DMB 46. Further, industry is concerned that land held for future development, for example for ports, must be safeguarded for that future development: DMB 31.

and with views of the sea can be realised in all cases. Despite the difficulties facing the alignment of the path, **we think the aim of a continuous coastal route around the length of the English coast is laudable. We support the intention of Natural England and Defra to ensure so far as is possible the continuity of the path.**

The exemption of parks and gardens

209. Natural England, as the body responsible for delivery of coastal access, and specifically for negotiating exemptions and restrictions with owners and occupiers and proposing the route, told us that it wanted the parks and gardens blanket exemption lifted for coastal access, not in order to impose access through small, private gardens, but to provide the capacity to negotiate access through large parks and gardens.⁵⁰² Natural England's position has caused concern for the CLA and NFU.⁵⁰³ The Historic Houses Association has also expressed concern.⁵⁰⁴

210. The Government has said that the blanket exclusion for parks and gardens under CROW will remain for coastal margin land. The capacity for people to 'dedicate' land under CROW and for voluntary arrangements for access through private land remains.⁵⁰⁵ When pressed in oral evidence before the EFRA Committee on whether the Government might change its mind on this point, the Minister said "we have published the Bill, how much more explicit would you have us be [...] I am here saying parks and gardens are exempted".⁵⁰⁶ He further said that he took the decision to exclude parks and gardens because there would be problems defining them, and that their inclusion "would generate a great deal of uncertainty and [...] legal challenge".⁵⁰⁷ He repeated that conclusion in evidence to us, though he pointed out that if Natural England "come up against a park or garden the landowner will be able to consent to his or her park or garden being part of the route; they can get engaged and be involved if they want to, but clearly if they do not then the route will have to go round".⁵⁰⁸

211. Some of us were not clear why exemptions for large parks are necessary, and saw merit in Natural England's view that the current blanket 'parks and gardens' exemption may be too wide. Others felt that the exemption should remain as it stands. We also note that informal negotiation regarding individual cases has proved effective in Scotland, following the passing of the Land Reform (Scotland) Act 2003 which gave the public the 'right to roam'. **We support the need to ensure that individuals' property rights and privacy are protected. The majority of us felt that the Government should give careful thought to what is included in the 'parks and gardens' exemption, but this was not the view of all; some welcomed the exemption as it stands. This is clearly an issue to which Parliament will wish to return when the Bill is introduced. But in any event we**

⁵⁰² This was also outlined in Natural England's written evidence: DMB 16, and evidence to EFRA Committee: HC 656-II (Q16-23) and HC 656-II (DMB 56a)

⁵⁰³ See for example, article in *The Times*, 9 June 2008, 'Coastal landowners prepare to repel Ramblers'; Q342 and Q344.

⁵⁰⁴ HC 656-II (DMB 66a)

⁵⁰⁵ HC 656-II (Q440); Q696

⁵⁰⁶ HC 656-II (Q432)

⁵⁰⁷ HC 656-II (Q408)

⁵⁰⁸ Qq695-6

encourage the Government and Natural England to co-operate with owners and occupiers in voluntary agreements outwith the legislation.

Independent appeals process

212. The Bill contains no mechanism for appeal against decisions by the Secretary of State to designate land as coastal margin. The CROW appeals mechanism regarding mapping will not apply as there is no mapping process and Defra has confirmed that the Secretary of State intends to use powers in the Bill to disapply the CROW appeals mechanism for exclusions and restrictions. Under the draft Bill, the Secretary of State may by regulation make provision for interested persons or organisations “to be given an opportunity to make representations to Natural England about matters which relate to coastal access reports and are of a kind specified in the regulations”.⁵⁰⁹ In preparing its recommendation on the route, Natural England must consider the representations and send a copy of them to the Secretary of State, who must also consider them when deciding whether to approve the proposal.⁵¹⁰ Evidence from the CLA and NFU strongly argued for the need for an independent appeals mechanism, suggesting that the current mechanism under CROW using the Planning Inspectorate works well.⁵¹¹ Other witnesses supported the need for an independent appeals mechanism as exists in CROW and other access legislation, such as the Highways Act 1980.⁵¹²

213. The only legal redress for dissatisfied owners and occupiers in the absence of such an appeals mechanism will be judicial review. The representations process in the Bill does not provide for any ‘third party’ consideration or independent appeals process. Even the CROW appeals mechanisms would not provide this if applied in its current form to the coastal access provisions, as the Secretary of State would be both designating land (including exclusions and restrictions) and then deciding an appeal on that designation.⁵¹³ Further thought is therefore needed to ensure that costly recourse to judicial review is not the only option to challenge the alignment, spreading room and exclusions and restrictions. **We recommend that the designation of the route and spreading room, and decisions on exclusions and restrictions, be subject to an independent appeals mechanism.**

Compensation

214. There is no express provision in the draft Bill for compensation for owners and occupiers where loss is suffered due to their land being designated coastal margin land and therefore accessible to the public. The Government insists there will be no compensation available, saying it will not be needed because Natural England will consult and negotiate fully with owners and occupiers. On the other hand, Natural England has said compensation will “not normally” be necessary,⁵¹⁴ and the Ramblers’ Association implied

509 Countryside and Rights of Way Act 2000, Section 55C(2)

510 Countryside and Rights of Way Act 2000, Section 55C(4)-(6)

511 HC 656-II (Qq113, 144), Q340

512 Evidence to the EFRA Committee, HC 656-II (Q346) (Devon County Council)

513 As the Ramblers’ Association acknowledged: EFRA Q224

514 HC 656-II (Q60)

they thought there may be payments in some cases.⁵¹⁵ It is therefore unclear what the compensation situation will be in practice but it seems there will be no transparent scheme to govern when and how compensation should be paid. **If the Government intends to make payments of any kind for those suffering loss from the designation of the coastal route, there must be an open and transparent process.**

215. Most interested parties agreed that compensation should be available in particular cases of demonstrable loss, but there was also agreement that there should not be a presumption of compensation for all owners and occupiers.⁵¹⁶ Some noted that the absence of the availability of compensation may make “a positive partnership approach” between Natural England and owners difficult to engender.⁵¹⁷ Existing coastal access has been negotiated with the availability of compensation, for example in respect of the South West Path⁵¹⁸ and the Essex Coast Environmentally Sensitive Area.⁵¹⁹ We agree that compensation should not normally be payable, and support the intention of the Government and Natural England to align the route carefully to avoid conflict.

Costs

216. Much of the evidence received, including that from local authorities, predicted that the allocation of £50 million over 10 years will be insufficient to fund the proposed scheme,⁵²⁰ and queried that there was sufficient provision set aside for on-going maintenance, even in the first 10 years, let alone beyond that.⁵²¹ Local authorities are concerned that they will be responsible for maintenance, but will not receive adequate funding in the medium to long term.⁵²² The budgeted £50 million over 10 years is to come out of Natural England’s existing budget, but neither we nor the EFRA Committee heard any evidence on what currently funded programmes will lose priority to enable coastal access. There is no detailed breakdown in the Impact Assessment to enable us to scrutinise how funding has been allocated and whether maintenance has been properly provided for. Local Authorities noted this when attempting to assess whether the budget would be sufficient—as Devon County Council said “it depends what it covers”.⁵²³ In response, the Government said that that the figures were “robust” and that it trusted Natural England’s calculations.⁵²⁴ **We note the widespread concern that the estimated funding of £50 million over 10 years for the coastal path is inadequate and that local authorities may be left with the significant maintenance costs. We recommend that the Government produce a detailed estimate of the costs of both establishing and maintaining the coastal path, and subject this analysis to concerned parties for consultation.**

515 HC 656-II (Qq53-256, 262)

516 For example, DMB 21, Country Land and Business Association HC 656-II (DMB 4), Ramblers’ Association HC 656-II (Q256), DMB 90

517 DMB 53, DMB 4

518 HC 656-II (Qq321, 331) [Devon County Council]

519 DMB 53

520 For example, DMB 53, Marine Conservation Society, HC 656-II (DMB 62), DMB 21

521 DMB 53; HC 656-II (Q349)

522 *Ibid.*

523 HC 656-II (Q347)

524 Q633, HC 656-II (Qq381, 401)

11 Conclusion

217. We are pleased to see that the Government has finally brought forward marine legislation, and that it sought to build upon the extensive consultation already undertaken by producing this Bill in draft form. We therefore reiterate our disappointment that we were given such a short time to carry out our scrutiny of such a substantial and important piece of legislation.

218. We have commented on the framework nature of this Bill, and the reliance on guidance to fill out the detail of its provisions. We think it is essential that when the Bill is published, it should provide greater certainty regarding how and when its provisions will be implemented, and must contain more and stronger statutory duties to safeguard the effective execution of its proposals. We note that post-legislative scrutiny may well provide a welcome opportunity for Parliament to examine how well the legislation has been able to meet its objectives.

219. For successful implementation of the Marine Bill, co-operation across Whitehall, across the UK administrations and with Europe will be essential. We hope that the political will to see the Marine Bill succeed will encourage the Government to pursue the necessary agreements with due perseverance. As the Secretary of State told us

“This is a very high priority. I suppose we have waited 2000 years or five million years for a Marine Bill to come along and we have got one in draft. I think we are making reasonable progress [...] The Government is very, very committed to it. That is why we are publishing it and why it is in the draft legislative programme and we want to get on and make it happen”.⁵²⁵

We look forward to seeing his words put into action.

Conclusions and recommendations

- 1.** Serious and productive pre-legislative scrutiny ideally requires at least 12 sitting weeks, and more if possible, and we recommend that the Government commit itself to providing this in future when publishing draft Bills and establishing ad-hoc Joint Committees. (Paragraph 4)
- 2.** We note and agree with the Minister for Energy's comments that implementing a Marine Act will take significant effort from across Whitehall. It is vital that Defra gets other departments 'on board' with its proposals. (Paragraph 16)
- 3.** We recommend that the Government re-examine the amount of detail contained in guidance in advance of publication and consider moving material currently contained in or planned for guidance into the Bill itself on the grounds of transparency and simplicity. (Paragraph 17)
- 4.** We are concerned that the Bill places very few statutory duties on the Secretary of State or other bodies. We recommend that the Government make more explicit which organisations it expects to implement the Bill, and that the Bill should impose appropriate duties. (Paragraph 18)
- 5.** We are concerned that proposed funding provision for the Marine Management Organisation (MMO), the development of marine plans, the operation of Inshore Fisheries Conservation Authorities and the development of the coastal path appears inadequate. Defra must ensure it is able to allocate funding to these initiatives and tasks on a scale that will enable them to be realised successfully. A detailed analysis of the requirements and arrangements for the proposals contained in the Bill should be published alongside the Bill. (Paragraph 19)
- 6.** There is, by the Government's own admission, a great degree of uncertainty in the Regulatory Impact Assessment. We welcome the commitment to publish a revised RIA when the Bill is introduced, but are concerned that the true costs and benefits may not be available for Parliament to scrutinise at the same time as the Bill itself. (Paragraph 20)
- 7.** We welcome the prospect of post-legislative scrutiny on the Bill. Given the issues we have identified, including the lack of statutory duties in the Bill and the incomplete nature of the draft Regulatory Impact Assessment, it will be helpful to see which policy objectives the Government considers to be most useful in measuring the success of the legislation, and it is a good opportunity for further Parliamentary scrutiny once the content of the Bill is clearer. (Paragraph 22)
- 8.** We received no evidence that the draft Bill itself contains any provisions which would make it more difficult to implement international obligations to which the UK is subject, but we share the concerns expressed to us that without a strong commitment to cooperation and consultation, which will take time and resources, there is a danger of the introduction of new and overlapping requirements at local, regional, national and international levels. We draw attention to some of these in our

discussion of the marine planning system, but we ask the Government to set out in guidance how responsibilities under the Marine Strategy Directive will be allocated if the Bill is enacted. (Paragraph 27)

9. We think that there is potential for overlap and lack of clarity in respect of the duties under the Water Framework and Marine Strategy Directives. These should be clearly allocated between the Marine Management Organisation, Environment Agency and Inshore Fisheries and Conservation Authorities (IFCAs) to ensure implementation of the relevant UK obligations under these Directives and the agreed guidance on Integrated Coast Zone Management. Although clause 160 places a statutory duty on IFCAs to co-operate with the Agency, we recommend that the Bill makes it explicit that the Environment Agency remains the competent body for the implementation of the Water Framework Directive (WFD), and we agree with those who argued that IFCAs should be given an additional duty to directly contribute to the attainment of the WFD. (Paragraph 31)
10. We believe the Government should negotiate the removal of historic fishing rights in UK waters with EU Member States to ensure that enforcement of nature conservation regulations are universally applied to UK national and other Member State fishing vessels in the six to 12 nautical mile zone. (Paragraph 35)
11. We have no doubt, from the weight of the evidence received, that the statement of purpose of the MMO is ambiguous both in terms of the draft Bill and in the policy framework which the Government envisages. We would like to assist in the resolution of that ambiguity. In our view the MMO should be, and be seen to be from the outset, the owner of the public interest in the UK marine environment. (Paragraph 39)
12. Beyond this high-level objective, we also consider that clear duties should be set out on the face of the Bill to ensure that the new organisation works to meet the aspirations which Parliament has set for it. We recommend that these include a duty to further sustainable development and we suggest that this be based on the ecosystem approach to managing the marine environment. (Paragraph 40)
13. A definition of ‘sustainable development’ should be included on the face of the Bill. Defra should also set out, in policy documents and guidance, associated sustainable development metrics against which progress in managing the marine environment might be judged. (Paragraph 43)
14. We did not examine this issue in any detail, but we regard it as vital that the new organisation is able to get up and running quickly (a shadow body such as that established for the Committee on Climate Change could be helpful) and that it is able to attract and retain the quality of staff it needs to perform its functions effectively. Relevant analogies appear to us to be the Food Standards Agency and the Environment Agency, and we encourage the Government to consider whether there are lessons to be drawn from the constitution of those organisations which might inform the establishment of the MMO. (Paragraph 45)
15. We recommend that the requirement for the Secretary of State to ‘have regard to the desirability’ of ensuring a variety of skills and expertise on the MMO board be

strengthened to reflect the necessity of including skills and expertise from the ‘three pillars’ of sustainable development. (Paragraph 47)

- 16.** Defra should provide, in a policy document, a clear and full justification for both the Secretary of State’s powers to add ‘designated bodies’ to the list in the draft Bill and the powers of the MMO under Clause 15, including examples of the expected use of these powers. (Paragraph 53)
- 17.** Without designation of specific regulatory functions on the face of the Bill proper scrutiny of the ability of the MMO to meet its responsibilities will not be possible, either by Parliament when the Bill is introduced, or by the public. We think this will undermine the Government’s intention that the MMO should be an open and transparent organisation which commands public confidence. The Government should reflect on its approach further, with a view to providing greater clarity in the Bill of the intended functions of the MMO. (Paragraph 54)
- 18.** We are not convinced that a net addition of 40 staff to those allocated to the MFA will be sufficient to enable the MMO to deliver even the duties set out in the Bill, in particular the requirement to implement an entirely new system of marine planning, let alone to meet the aspirations which we and the Government share to create a strong advocate for the UK’s marine area. The Government should revisit its staff planning for the MMO and we recommend that, before the Bill is introduced, it should subject its analysis of the number of extra staff required to independent audit and make the findings public to inform the scrutiny of the Bill as it passes through Parliament. (Paragraph 55)
- 19.** We draw the Government’s attention to the potential for conflict between the MMO’s policy and decision-making roles, but note that it is difficult properly to scrutinise the interaction of those roles due to the lack of clarity in the draft Bill as to what those roles will be in practice. (Paragraph 56)
- 20.** We recommend that the Bill provide a clear mechanism for appealing licensing decisions of the appropriate licensing authority, whether to the Secretary of State or the Marine Management Organisation, and that a timeframe for decision-making is set out in the Bill. (Paragraph 57)
- 21.** We recommend that the Government create statutory consultees where appropriate for decisions to be made by the Marine Management Organisation. We believe that this would assist effective cooperation with the many bodies with which the MMO will need to work, and streamline potentially difficult decision-making processes. (Paragraph 59)
- 22.** We consider that scientific input is of sufficient importance to be reflected explicitly in the Bill. The MMO should establish a scientific advisory panel to examine the quality of science used by the MMO and to ensure that it is making best use of available information and technology. The panel should report to the MMO board. The MMO should also have a statutory duty to play a strategic role in defining marine science through mechanisms such as the Marine Science Coordinating Committee. (Paragraph 64)

- 23.** The MMO should have a duty under the Bill to promote the publicly-funded production of marine data, to collect such data and to make them publicly available. In order to do this it will need to have the right levels of scientific expertise to be able both to commission research from other organisations and to be an intelligent interpreter of scientific evidence. (Paragraph 65)
- 24.** The MMO will need to be funded adequately to enable it to access privately owned and public data alike, on the current public funding models. Alternatively, and for us preferably, the MMO should be empowered to collect data on a cost-free basis from any public body. The Bill also empowers (but does not require) the MMO to charge for sharing the results of research it undertakes or commissions itself. It follows that we think it inappropriate for any recharges to be made by the MMO for such research other than for the marginal costs involved in retrieving and reproducing the information. (Paragraph 66)
- 25.** In order to integrate the MMO into the wider international network of marine policy, we recommend that an MMO representative be included on the UK delegation to the Intergovernmental Oceanographic Commission. (Paragraph 67)
- 26.** For commercial interests it is particularly important to establish predictability and stability. We therefore invite the Government to set out its timetable for the handover of specific functions in the transition to the MMO, to ensure that there is minimal disruption to developments, either existing or about to enter the licensing system. (Paragraph 69)
- 27.** We believe it is critical that the Government put in place guidelines for all relevant departments and licensing bodies as soon as possible, from now until the functioning of the new planning and licensing systems, in order to ensure the integrity of the process and outcomes. (Paragraph 70)
- 28.** In cases where the Bill creates open-ended powers by which the MMO may come to exercise functions (in particular clauses 14 and 35(2)) Defra should set out a clear and full justification for such powers, including examples of their expected use. The Government should also explain how it envisages secondary legislation being used to augment the powers of the MMO. (Paragraph 71)
- 29.** Dredging is an unglamorous but very necessary activity and we recommend that the concern of the industry is given due consideration by the Government. It may be that timescales for licensing decision-making should be built into the Bill to ensure industry is not disadvantaged by the increased administrative burden of applying for licences for previously unlicensed activity, and subsequently then applying for exemptions. (Paragraph 72)
- 30.** We recommend that the Government formalise in the Bill the consultation requirements between the Maritime and Coastguard Agency and the Marine Management Organisation. (Paragraph 73)
- 31.** Given the clear desirability both of subjecting the Marine Policy Statement to Parliamentary scrutiny, and that this scrutiny be as high level as possible, we recommend that the Marine Policy Statement be subject to the same Parliamentary

scrutiny as will apply to National Policy Statements made under the Planning Bill. We note however that scrutiny does not require approval by both Houses and so we would go further. We recommend that the Marine Policy Statement be laid before both Houses in draft form, be subject to affirmative procedure, and be subject to scrutiny by the appropriate select committees. (Paragraph 77)

- 32.** We recommend that the Bill contain a greater level of detail about the proposed structure and content of the Marine Policy Statement, in order to clarify exactly how the Government intends it to achieve its objective and balance its priorities. At the very least we would expect the Bill to set out criteria analogous to those contained in the Planning Bill for National Policy Statements. (Paragraph 81)
- 33.** Although we do not consider there is a need to put a deadline for the publication of the Marine Policy Statement on the face of the Bill, it is clear to us that it should be produced as soon as possible, and certainly within two years of Royal Assent. (Paragraph 84)
- 34.** The Government should give thought to designating certain key bodies as statutory consultees in respect of the preparation or revision of the Marine Policy Statement, in order to strengthen the consultation and make it more transparent. (Paragraph 86)
- 35.** We recommend that the provision in clause 41, which enables the Secretary of State to adopt the Marine Policy Statement without full agreement from the other policy authorities, be made conditional upon specified measures designed to facilitate agreement between policy authorities failing to produce an initial agreed statement. (Paragraph 89)
- 36.** We believe it is essential that an MPS has the active support and approval of all the devolved administrations, just as it is equally important that the UK Government participates in the Scottish proposals. We regard the production of an agreed Marine Policy Statement that has consensus across the devolved administrations, including Scotland, as an imperative, and consider that the designation of machinery to achieve this if at all possible should be placed on the face of the Bill. (Paragraph 91)
- 37.** We invite the Government to strengthen the duty on marine plan authorities to ensure that marine plans are compatible with other plans, both marine and terrestrial. (Paragraph 95)
- 38.** We recommend that the Government revisit the dual-body regulatory structure for offshore energy installations. The current situation is very unsatisfactory. Were the dual-body structure to be maintained, we recommend that the rationale for the division of responsibilities be better defined on the face of the Bill and that where an application to the IPC concerns the marine area the MMO be given a statutory advisory role. Further, we recommend that in all applications relating to the marine area, the IPC have a duty to act in accordance with relevant marine plans. (Paragraph 101)
- 39.** We recommend that the MMO should have a defined role on the face of the Bill as a statutory consultee within coastal planning processes, including changes to national

coastal planning guidance, relevant regional spatial strategies, local development documents, and shoreline management plans. (Paragraph 104)

- 40.** We think it is essential that the Government explain in detail how it envisages that integrated coastal management will be taken forward through the provisions in the Bill. We welcome the provisions in the Bill for simplified licensing of some of the activities being undertaken by these sectors such as harbour dredging and the laying of submarine cables but believe that promoting integrated coastal management would improve the situation for many more sectors. As the Bill enables the creation of 'nested plans', we recommend that priority is given to producing plans for an inshore/coastal zone. The Bill should impose a duty on plan producers to have regard to each others' plans. (Paragraph 105)
- 41.** We are disappointed by the lack of mention of coastal and estuary partnerships and the role they can play in helping to support Marine Planning at local level. (Paragraph 106)
- 42.** The Marine Management Organisation should be given a duty to work with coastal partnerships and estuary forums where they exist and to promote new coastal and estuary forums where they do not. Such forums must be adequately resourced and should be given a specific role in the marine planning process—including objective setting, consultation, reporting and review. (Paragraph 106)
- 43.** We welcome the establishment of Marine Conservation Zones and recognise they are needed to make an essential contribution to the UK commitment to sustainable development, as well as fulfilling specific international commitments on Marine Protected Areas. (Paragraph 110)
- 44.** It is essential that Marine Conservation Zones are developed as a network rather than as isolated areas; this should be explicit in the Bill. (Paragraph 111)
- 45.** We agree that it is vital for the designation of Marine Conservation Zones to be underpinned by scientific criteria. (Paragraph 113)
- 46.** We recommend that the scoping of potential locations for Marine Conservation Zones should be based on the best scientific evidence, taking into account their representative nature, uniqueness, threat and sensitivity. We also emphasise the need to pay regard to existing international obligations (not least in respect of the International Right of Passage), the socio-economic costs and benefits of MCZs, and the ability of zones to accommodate other forms of use without harming their integrity, once the potential sites have been identified. (Paragraph 115)
- 47.** We recommend that clear, comprehensive objectives for MCZs should be included in the Bill and that it should also include specific mention of the need for MCZs to contribute to an ecologically coherent representative network of Marine Protected Areas, with one objective being recovery and restoration. (Paragraph 117)
- 48.** We believe that the provisions in the Bill regarding Marine Conservation Zones should be strengthened and recommend a duty on the Secretary of State to designate

a network of MCZs including some Highly Protected Marine Reserves. (Paragraph 120)

- 49.** We recommend that the Bill should include a timetable for designation of the MCZ network. (Paragraph 122)
- 50.** We support the opportunity for at least some MCZs, particularly where they are highly protected, to be designated as areas to improve our scientific understanding of the marine environment and of the effects of human activities on marine biodiversity. (Paragraph 123)
- 51.** We recommend that the Bill should include a requirement to monitor and assess MCZs and that responsibility for this should lie with Natural England, the Countryside Council for Wales and the Joint Nature Conservation Committee. Their reports should be submitted to the Secretary of State and laid before Parliament as well as being reported to the Welsh Assembly Government. (Paragraph 124)
- 52.** We recommend that where there is limited knowledge some locations may need to be designated on a precautionary basis, for example to avoid the potential for environmental damage or to support an effective MPA network under a scenario of climate change. (Paragraph 126)
- 53.** We recommend specific mention in the Bill that the management measures within MCZs will range from multiple-use through to highly protected. (Paragraph 127)
- 54.** We do not think it is appropriate to place any set percentage for highly protected areas on the face of the Bill. However, we recommend that the Bill sets out the need to establish Highly Protected Marine Reserves, and that their contribution to the overall Marine Protected Areas network and UK biodiversity targets should be reviewed after a stated period of time. (Paragraph 130)
- 55.** An Environmental Impact Assessment of planned and existing activities within proposed MCZs should be undertaken and this should form the basis of decisions on activities that might be restricted in MCZs. (Paragraph 131)
- 56.** We recommend a clear statement in the Bill to the effect that the assessments within MCZs must include fishing activity. (Paragraph 132)
- 57.** We recommend the Bill confer a duty on a lead agency to enforce Marine Conservation Zones and that the Government should set out, in the Bill or in guidance, what arrangements will be necessary for the lead body to work co-operatively with others. (Paragraph 133)
- 58.** We consider the role of statutory consultee in the designation of Marine Conservation Zones to be the most appropriate for the MMO. (Paragraph 134)
- 59.** We do not think that the designation of Marine Conservation Zones should be delayed, but we recommend that the coordination of the planning system be given more thought, and provision be made to accommodate the fact that the MMO and indeed the Marine Policy Statement may not exist in time for the first designations. (Paragraph 135)

- 60.** We welcome the creation of the Inshore Fisheries and Conservation Authorities and acknowledge the benefits of local level management such as local decision-making and participative management by people with detailed knowledge and experience. However, the Bill should contain an open and transparent mechanism by which the MMO will appoint the IFCA members and the qualifications required to be an IFCA member. (Paragraph 141)
- 61.** We recommend that the Bill give the MMO a duty to ensure a strategic approach to inshore fisheries, and powers to require the IFCAs to work collaboratively to an agreed set of minimum standards, to monitor their performance and take steps to improve it where necessary. (Paragraph 143)
- 62.** The Bill should be amended to give IFCAs a clearer commitment to the achievement of sustainable development and a duty to further the conservation of coastal and marine fauna and flora. (Paragraph 144)
- 63.** We believe there is a strong case for the Environment Agency to manage the majority of fisheries in estuaries but we would, in addition, support the establishment of working boundaries between the Environment Agency and IFCAs on a case by case basis in consultation with the relevant estuary or coastal partnership where they exist. In general these boundaries should be based on the upstream limit of commercial fishing interest, with the Environment Agency managing all fisheries upstream of this boundary (set out in secondary legislation) and migratory fisheries interest below out to six nautical miles. However, the Bill should allow the Environment Agency to retain management of the whole of estuaries where they are already acting as the Sea Fisheries Committee (under cross-warranting procedures) if this is the optimal local arrangement. (Paragraph 147)
- 64.** Clause 157 of the bill should be amended to give IFC officers the power to enforce salmon and freshwater fisheries legislation and Environment Agency byelaws relating to fisheries. Secondary legislation should require that IFCA byelaws be subject to approval by the Environment Agency, and equally that statutory approval for Environment Agency byelaws be subjected to approval by the relevant IFCAs. (Paragraph 148)
- 65.** We recommend that Clause 149 should explicitly remove all existing exemptions in the form of 'grandfather rights' from Sea Fisheries Committees byelaws to ensure that all fisheries management measures are universally applied. The MMO should be given the power to revoke any exemptions made to future byelaws by IFCAs to ensure that nature conservation measures are universally applied. (Paragraph 150)
- 66.** Additional central funding to IFCAs should be ring-fenced. These funds should be used to meet measurable operational targets set by the MMO, with appropriate benchmarking to raise standards and consistency. (Paragraph 153)
- 67.** A duty should be placed on IFCAs to ensure that an Environmental Impact Assessment is undertaken of any new fishing activity exploiting marine species for which there has not previously been a large scale commercial market or regulatory quotas, and a requirement for appropriate regulation thereafter. (Paragraph 156)

- 68.** Controlling inshore fishing effort will be critical to maintaining sustainable fisheries and will become an essential tool in areas where fishers are excluded under IFCA byelaws from Marine Conservation Zones or in areas in which wind-farms are to be placed. We recommend that IFCA should be given the power to limit the number of permits issued for a specific fishery. In addition, we consider that the Bill should give the Government the ability to vary commercial fishing licence conditions for marine environmental purposes, devolving this to IFCA if necessary, to allow further control over the amount of fishing effort exerted in order to reduce environmental impacts. (Paragraph 157)
- 69.** In the absence of detailed proposals on the structure and function of inshore fisheries management in Wales, the Bill should give the duties and powers of the IFCA to the relevant management body in Wales to avoid a legislative vacuum following the repeal of the Sea Fisheries Regulation Act. (Paragraph 158)
- 70.** A duty to protect Marine Conservation Zones should be conferred on any Welsh Assembly Government inshore fisheries body, to ensure a consistently regulated MCZ system throughout English and Welsh waters. (Paragraph 159)
- 71.** In principle, provisions creating criminal offences should be contained in primary legislation or subject to close definition by primary legislation. This principle is brought into question in the draft Bill and we recommend that when the substantive legislation is introduced, it provides much greater clarity and effective Parliamentary control of the offences which it is intended to create. (Paragraph 162)
- 72.** We recommend that the Bill require transparent criteria on the training and regulation of Marine Enforcement Officers to be set out in secondary legislation or guidance, having due regard to the wide-ranging and significant powers of the role. (Paragraph 164)
- 73.** Whilst we recognise that enforcement provisions are not finalised, and will in any event require coordination between bodies in practice, we recommend that the Government reviews the role of the Maritime and Coastguard Agency before the Bill is published and reflects its role explicitly in the Bill if appropriate. (Paragraph 165)
- 74.** We would like the Government to provide further detail on the policy behind clause 28 and the consideration given to the use of non-legally qualified prosecutors and their regulation. (Paragraph 168)
- 75.** The process of administrative penalties and the appeals mechanism is not sufficiently transparent—a clear appeals mechanism should be spelt out in the Bill and there must be published guidance on the proposed scheme as well as on the qualifications of those who will be empowered to make the relevant judgment and issue penalty notices. We question the need for fixed penalty notices to go up to £50,000. (Paragraph 172)
- 76.** We recommend that the powers to enable enforcement authorities to issue fixed monetary penalties and accept undertakings regarding MCZ prohibitions and obligations be subject to the same draft affirmative procedure as the equivalent provisions relating to marine activities. (Paragraph 173)

- 77.** We support the principle of compliance, remediation and stop notices as measures designed to deal expeditiously with marine licensing breaches. However, we recommend that the Bill define ‘serious harm’, ‘serious interference’ and ‘legitimate uses of the sea’ and that an appeal mechanism is included. (Paragraph 175)
- 78.** We welcome urgent and interim conservation orders as useful measures for protecting the marine environment. We understand the need for some subjectivity—if all criteria were completely “objective” it would allow for argument and challenge on the grounds of insufficient evidence and thus undermine the potential for urgent action. However, where there is provision for bypassing consultation and publication requirements, in particular where an offence is thereby created without fulfilling such requirements (and without parliamentary scrutiny in the case of conservation orders as they currently stand), criteria for making the orders must be clearly set out in the Bill or secondary legislation. An appeals mechanism should also be set out on the face of the Bill. (Paragraph 178)
- 79.** We recommend that the Government insert the general offence referred to in the Marine Bill White Paper of damaging or destroying any species or habitat or other feature, for which a site has been designated an MCZ. This must be mirrored by a duty on the agencies involved to explain clearly to the public what is not permissible and where any new prohibitions apply. (Paragraph 179)
- 80.** Marine Conservation Orders and urgent and interim orders should be statutory instruments. (Paragraph 180)
- 81.** Defra should give careful consideration to the practicalities of the offences involving the introduction and removal of fish, and the parties who would be liable. The Bill should ensure that any secondary legislation under the Bill will be proportionate to the risks—it should not be within the discretion of the Environment Agency (or any other body) to enforce regulations unreasonably or unfairly against individuals. Further, Defra must bear in mind that regulation of fisheries must not be so burdensome as to encourage non-compliance. (Paragraph 185)
- 82.** We welcome the long overdue changes to the regulation of freshwater and migratory fisheries contained in the Bill. (Paragraph 187)
- 83.** Clause 185 of the Bill should be simplified in line with the original Salmon and Freshwater Fisheries Review recommendation. (Paragraph 188)
- 84.** The Bill should amend section 212 of the Water Resources Act to provide that no compensation should be paid to fisheries owners if a byelaw is implemented for conservation reasons. (Paragraph 190)
- 85.** The definitions in Clause 193 should include allis and twaite shad to ensure there is no split in the regulation of migratory species. (Paragraph 191)
- 86.** Clause 198 on the fisheries duties of the Environment Agency should amend section 6(6) of the Environment Act 1995 using the wording set out in the recommendation made by the Salmon and Freshwater Fisheries Review, previously accepted by the Government. (Paragraph 193)

- 87.** We recommend that the Government carry out a review of the practical implications of the proposed arrangements under the draft Bill in respect to the devolved governments and we urge Scottish Ministers to participate fully in marine planning for the offshore zones. (Paragraph 197)
- 88.** We suggest that the Government consider cooperative approaches towards the Irish Sea, similar to those of existing regional seas commissions, involving the UK and relevant devolved administrations (and the governments of Ireland and the Isle of Man), to work together collectively to produce agreement on the coordination of spatial planning, fisheries and nature protection issues in the Irish Sea, the Solway Firth and Bristol Channel. (Paragraph 201)
- 89.** More specifically, we see merit in establishing a regional sea commission for the Irish Sea with authority to coordinate spatial planning, fisheries and nature protection issues. Smaller scale commissions could also be established for the Bristol Channel and the Solway Firth. (Paragraph 202)
- 90.** It is imperative that Marine Plans are compatible in cross-border areas and the Bill must be strengthened to reflect this. The relationships between the MMO, the Welsh Assembly Government and the equivalent Scottish body should be formalised in the Bill. (Paragraph 203)
- 91.** We welcome the principle of increased access to the coast and that of the 'spreading room' for outdoor, coastal recreation. (Paragraph 206)
- 92.** We think the aim of a continuous coastal route around the length of the English coast is laudable. We support the intention of Natural England and Defra to ensure so far as is possible the continuity of the path. (Paragraph 208)
- 93.** We support the need to ensure that individuals' property rights and privacy are protected. The majority of us felt that the Government should give careful thought to what is included in the 'parks and gardens' exemption, but this was not the view of all; some welcomed the exemption as it stands. This is clearly an issue to which Parliament will wish to return when the Bill is introduced. But in any event we encourage the Government and Natural England to co-operate with owners and occupiers in voluntary agreements outwith the legislation. (Paragraph 211)
- 94.** We recommend that the designation of the route and spreading room, and decisions on exclusions and restrictions, be subject to an independent appeals mechanism. (Paragraph 213)
- 95.** If the Government intends to make payments of any kind for those suffering loss from the designation of the coastal route, there must be an open and transparent process. (Paragraph 214)
- 96.** We note the widespread concern that the estimated funding of £50 million over 10 years for the coastal path is inadequate and that local authorities may be left with the significant maintenance costs. We recommend that the Government produce a detailed estimate of the costs of both establishing and maintaining the coastal path, and subject this analysis to concerned parties for consultation. (Paragraph 216)

Annex 1: List of acronyms

AFBI	Agri-food and Biosciences Institute
AGMACS	Advisory Group on Marine & Coastal Strategy
ASCOBANS	Agreement on the Conservation of Small Cetaceans of the Baltic and North Seas
ASFC	Association of Sea Fisheries Committees
ASSI	Area of Special Scientific Interest
BSFO	British Sea Fisheries Officer
CCS	Carbon Capture and Storage
CE FAS	Centre for Environment Fisheries and Aquaculture Science
CFP	Common Fisheries Policy
CLG	Communities and Local Government (formerly Office of the Deputy Prime Minister)
CPA	Coast Protection Act 1949
CROW	The Countryside and Rights of Way Act 2000
DAC	UK Marine Data Archive Centre
DARD	Department of Agriculture and Rural Development (NI)
DCAL	Department of Culture, Arts and Leisure (NI)
DCMS	Department for Culture, Media and Sport
Defra	Department for Environment, Food and Rural Affairs
DETI	Department of Enterprise, Trade and Investment (NI)
DfT	Department for Transport
DOE	Department of the Environment (NI)
DRD	Department for Regional Development (NI)
DTI	Department of Trade and Industry
EA	Environment Agency
EEZ	Exclusive Economic Zone
EH	English Heritage
EHS	Environment & Heritage Service (NI)
EIA	Environmental Impact Assessment
EPP	Environmental Permitting Programme

EU	European Union
FAPS	Financial Administrative Penalties
FEPA	Food and Environment Protection Act 1985
GV	Government View Procedure
HPMR	Highly Protected Marine Reserve
ICES	International Council for the Exploration of the Sea
ICZM	Integrated Coastal Zone Management
INSPIRE	EC Directive on Spatial Formation in the Community
IPCC	Intergovernmental Panel on Climate Change
IUCN	World Conservation Union (also known as The International Union for the Conservation of Nature and Natural Resources)
IUU	Illegal, Unreported and Unregulated
JNCC	Joint Nature Conservation Committee
LDD	Local Development Document
LDF	Local Development Framework
LGA 2000	Local Government Act 2000
LSP	Laboratory Strategy Programme
MCA	Maritime and Coastguard Agency
MCEU	Marine Consents and Environment Unit
MCZ	Marine Conservation Zone
MDIP	Marine Data and Information Partnership
MEDAG	Marine Environmental Data Action Group
MEO	Marine Ecosystem Objective
MESH	Mapping European Seabed Habitats project
MFA	Marine Fisheries Agency
MHWS	Mean High Water Springs
MLWM	Mean Low Water Mark
MLWS	Mean Low Water Springs
MMO	Marine Management Organisation (previously referred to as a 'marine agency')
MNR	Marine Nature Reserves
MoD	Ministry of Defence

MPA	Marine Protected Area
NDPB	Non-Departmental Government Body
NE	Natural England
NERC	National Environment Research Council
NM	Nautical Miles
OSPAR	Convention for the Protection of the Marine Environment of the North East Atlantic
RBMP	River Basin Management Plan
REZ	Renewable Energy Zone
RIA	Regulatory Impact Assessment
RMNC	Review of Marine Nature Conservation
RN	Royal Navy
RSA	Recreational Sea Angling
RSS	Regional Spatial Strategy
SAC	Special Area of Conservation
SCG	Streamlined Consents Group
SEA	Strategic Environmental Assessment
SFC	Sea Fisheries Committee
SFI	Sea Fisheries Inspectorate, Northern Ireland
SFPA	Scottish Fisheries Protection Agency
SME	Small and Medium-sized Enterprise
SPA	Special Protection Area
SSSI	Site of Special Scientific Interest
TWA	Transport & Works Act 1992
UKHO	UK Hydrographic Office
UKMMAS	UK Marine Monitoring and Assessment Strategy
UNCLOS	United Nations Convention on the Law of the Sea
VMS	Vessel Monitoring System
WCMP	Wales Coastal & Maritime Partnership
WFD	Water Framework Directive

Annex 2: Glossary

Administrative Penalty

A means of imposing a sanction for an offence without commencing criminal proceedings in the courts against the offender, for example by issuing a fixed penalty notice.

Aggregate

The mixture of minerals commonly used in the construction industry, that may be sourced from the seabed.

Agreement on the Conservation of Small Cetaceans of the Baltic and North Seas (ASCOBANS)

An agreement, open to participation by any range State (i.e. any state that exercises jurisdiction over any part of the range of a species covered by the Agreement or whose flag vessels engage in operations adversely affecting small cetaceans in the Agreement area) and by regional economic integration organisations, to promote close cooperation in order to achieve and maintain a favourable conservation status for small cetaceans (whales, dolphins and porpoises) in the Baltic and North Seas.

Alien Species

A species that has been transported by human activity, intentionally or accidentally, into a region where it does not occur naturally.

Appropriate Assessment

The assessment that is required to determine the potential effect of a project or plan on an SPA or SAC.

Bag Limits

A means of limiting exploitation of a stock. Generally used to refer to limits placed on the number of fish that may be retained by non-commercial fishermen on a daily or weekly period.

Baselines

Lines from which the breadth of the Territorial Sea is measured pursuant to the Territorial Sea Act 1987 and determined in accordance with international law (as set out in UNCLOS). British fishery limits are also measured from these baselines.

Benthic

A description for animals, plants and habitats associated with the seabed. All plants and animals that live in, on or near the seabed are benthos.

Bequest value

The value an individual places on ensuring the availability of a natural resource to future generations.

Better Regulation

A series of principles for Government regulation, which should be proportionate, accountable, consistent, transparent and targeted and facilitate the implementation of policy in efficient and effective ways.

Biodiversity

The variability among living organisms from all sources including, among others, terrestrial, marine and other aquatic ecosystems and the ecological complexes of which they are part.

Biodiversity Action Plan

A national plan for a key habitat or species, approved by Government, as part of the overall UK Biodiversity Action Plan.

British Fisheries Limits

The marine area within British Fishery Limits is defined by the Fishery Limits Act 1976.

British Sea Fishery Officer (BSFO)

Section 7 of the Sea Fisheries Act 1968 provides that the following are British Sea Fishery Officers for the purposes of the Sea Fisheries Acts:

- Officers of the sea-fisheries inspectorates of each of the appropriate ministers other than assistant fishery officers;
- Commissioned officers of any of Her Majesty's ships;
- Persons in command or charge of any aircraft or hovercraft of the Royal Navy, the Army or the Royal Air Force;
- Officers of the fisheries protection service of the Secretary of State holding the rank of Commander first officer or second officer;
- Other persons appointed as British sea-fisheries officers by one of the appropriate ministers.
- The appropriate minister in relation to England is the Secretary of State.

Bycatch

The catch of non-target species and undersized fish of the target species. Bycatch of commercial species may be retained or discarded along with non-commercial bycatch.

By-law

Legislation introduced at a local level to meet a specified need. Local authorities, Sea Fisheries Committees, ports and harbour authorities, for example, all have the power to

introduce and enforce by-laws that can have a bearing on the marine environment and its resources.

Carbon Sequestration

The capture and subsequent storage of carbon dioxide from large point sources such as fossil-fuelled power stations.

Climate regulation

Maintaining a suitable climate to allow the growth and development of all living resources.

Closed area

An area within which fishing by one or more methods of fishing, or fishing for one or more species of fish, is prohibited. Such areas may be permanently closed or be subject to closed seasons.

Closed season

A period during which fishing for a particular species, often within a specified area, is prohibited.

Common Fisheries Policy

Provides the framework for the management of the EC fisheries and Aquaculture sector including all marine fisheries within 200 miles of member states baselines.

Community

The grouping of animals and plants that are found living together in a particular place, habitat or environment.

Continental shelf

The area of seabed extending from the shoreline to a depth of about 200 metres or where the slope increases sharply to abyssal depths. In the UK, it is defined by the Continental Shelf Act 1964 and generally extends from the edge of the territorial sea to 200 nautical miles from the prescribed baseline in most cases.

Convention on Biological Diversity (CBD)

Convention dedicated to promoting sustainable development. Signed by 150 government leaders at the 1992 Rio Earth Summit.

Cross warranting

This is the practice whereby one public body appoints another body's enforcement officer as its own and vice versa.

Crown Dependencies

Crown dependencies are possessions of the British Crown, as opposed to overseas territories or colonies. They include the Channel Islands of Jersey and Guernsey and the

Isle of Man in the Irish Sea. None forms a part of the United Kingdom, being separate jurisdictions, nor do they form part of the European Union, instead having associate member status.

Crown Exemption

The usual constitutional position is that the Crown is exempt from all statutory provisions, unless they state to the contrary. For this purpose, the Crown includes the Queen, the Prince of Wales in right of the Duchy of Cornwall, the Crown Estate and Government departments. Under the Parliamentary Corporate Bodies Act 1992, Parliament too is a Crown body for the purposes of some legislation.

Devolution

Transfer of responsibility from the UK Government to a devolved administration.

Devolved administrations

A collective reference to the Scottish Parliament and Welsh and Northern Ireland Assemblies, and the ministers and administrations working alongside them as the devolved administrations.

Dredging

The removal of material from the seabed, for a variety of purposes, including the clearing of channels for navigation, or the extraction of minerals.

Ecosystem

A community of organisms interacting with one another and with the chemical and physical factors making up their environment. It is a discrete unit comprising both living and non-living parts; it can range in size from something as small and ephemeral as an intertidal pool to something larger such as the North Sea or the Earth's oceans.

Ecosystem-based Approach / Ecosystem Approach

The integrated management of human activities based on knowledge of ecosystem dynamics to achieve sustainable use of ecosystem goods and services, and maintenance of ecosystem integrity.

Ecosystem functioning

The sum of the interactions between the plants, animals, micro-organisms and physical and chemical environments that make up the ecosystem.

Ecosystem goods and services

Indirect or direct benefits to human society that derive from the marine ecosystem. Examples would include food provision, nutrient cycling, gas and climate regulation.

Environmental Impact Assessment

A procedure that ensures that the environmental implications of decisions are taken into account before the decisions are made.

Environmental Limits

The limit to which an environment or ecosystem can cope with the population, resource exploitation and pollution pressures placed on it. Beyond the environmental limit, there is a risk of causing long-term damage to the health and productivity of an environment.

Eutrophication

The enrichment of water by nutrients causing an accelerated growth of algae and higher forms of plant life to produce an undesirable disturbance to the balance of organisms present in the water and to the quality of the water concerned (as defined by OSPAR).

Exclusive Economic Zone

In international maritime law, an Exclusive Economic Zone is a sea zone extending from a state's baselines over which the state has special right over the exploration and use of marine resources. Generally, a state's Exclusive Economic Zone extends 200 nautical miles (370.4 kilometres) out from the baselines, except where resulting points would be closer to another country.

Existence value

The value gained from the knowledge that there will be continued existence of habitats and wildlife, as they have significant value and contribute to global biodiversity.

Favourable conservation status

A basic requirement of the Habitats Directive. The conservation status of a habitat is favourable when, the natural range of the habitat and the area that it covers are stable or increasing; and the specific structure and functions that are necessary for its long-term maintenance are likely to continue for the foreseeable future; and the conservation status of its typical species are similarly stable or increasing.

The conservation status of a species is favourable when, the species' population dynamics indicate that it is maintaining itself on a long term basis as a viable component of its natural habitat; the species natural range is neither being reduced nor is it likely to be reduced for the foreseeable future; there is, and will probably continue to be, a sufficiently large habitat to maintain its populations on a long term basis.

Fisheries No Take Zone

Area of the sea closed to some or all types of fishing activity on a permanent or temporal basis.

Fixed penalty notice

A fixed penalty notice issued to a person committing an offence. If accepted, no criminal prosecution follows.

Gear restriction

A fishery management measure, widely adopted by Sea Fisheries Committees that prohibits or otherwise restricts the use of particular fishing equipment in a specified area or season.

Geomorphology

The study of the evolution and configuration of landforms.

Good Governance

Effective participation systems of governance in all levels of society, which engage people's creativity, energy and diversity.

Government view system

Process that provides Government with an opportunity to consider the environmental effects of a dredging proposal before the Crown Estate issue a licence.

Habitat

The place where an organism lives, as characterised by the physiographic features and the physical and chemical environment such as salinity and wave exposure.

Highly Protected Marine Reserve

An area of sea where all exploitative activities are excluded and other significant disturbances minimised in order to aid the recovery marine wildlife and ecosystems.

Imposex

Imposex is the adoption of non-functional male characteristics, eventually leading to sterilisation. It is usually caused by pollution.

Indicator species

A species that can be monitored as a representative of a broader community of species or one whose abundance gives an indication of the status (health) of a particular habitat, ecosystem or environment.

Innocent Passage

The right of ships of all states to navigate through the territorial seas of coastal states, as set out in article 17 of UNCLOS.

Inshore Waters

Can be used to refer to waters within 12 nautical miles of the baselines. It is also used more generally to refer to areas of sea close to the coast.

Integrated Coastal Zone Management (ICZM)

The coordination of all activities, regulatory and management functions to safeguard all natural resources and processes found in and affecting coastal zone. ICZM aims to integrate the various management systems and organisations, and encourage public participation, to create a sustainable management approach for the coastal zone.

Internal Waters

Internal waters are UK marine waters on the landward side of the baseline from which the extent of the territorial sea is measured.

International Council for the Exploration of the Sea

Independent international scientific advisory body founded in 1902, funded by 19 member states.

Intertidal area

The foreshore or area of seabed between the high water mark and low water mark which is exposed each day as the tide rises and falls. Also called the littoral zone.

Jurisdiction

The territorial range of authority or control.

Keystone Species

A species that forms an essential part of a community of assemblage of species without which the rest of the community cannot exist.

Lowest Astronomical Tides

Lowest Astronomical Tides are the lowest level that can be expected to occur under average meteorological conditions and under any combination of astronomical conditions.

Management scheme

A plan, prepared by the relevant authorities, that sets the framework within which activities will be managed to achieve the conservation objectives of a European marine site.

Marine Area

Broad term used to imply a geographic area & UK waters.

Marine Data and Information Partnership

Expert group examining ways in which to achieve greater harmonisation and coordination of marine data and information through long-term stewardship and access, so as to facilitate its use by marine decision makers and users.

Marine Environment

Broad term used to imply a three dimensional area of UK waters.

Marine Management Organisation

The working title for the new body that will be created to undertake new activities and existing marine activities. Previously referred to as a “marine agency” in several marine reports and reviews.

Marine Spatial Planning

Proposed system for strategically managing activities in the marine area.

Marine Minerals

Minerals and aggregates such as sand and gravel extracted from seabed.

Marine Nature Reserve

An area of the sea (or land that is covered by tidal waters) within 3nm of baselines that is designated by the government under Section 36 of the Wildlife and Countryside Act 1981.

Marine Protected Area

An area of the sea subject to one or more forms of environmental control.

Marine Stewardship

Exercising responsibility for the management and well-being of the marine environment.

Mean High Water Springs

The mean high water spring is the highest level to which spring tides reach on average over a period.

Mean Low Water Mark

The average of all low water heights observed over a period.

Mean Low Water Springs

The mean low water spring is the lowest level to which spring tides retreat on average over a period.

Natura 2000

The European network of protected sites that represent areas of the highest value for natural habitats and species of plants and animals, which are rare, endangered or vulnerable in the European Community. The network is made up of Special Areas of Conservation and Special Protection Areas for birds.

Natural Resource Protection

The protection of natural resources such as biodiversity (including habitats and ecosystems), water quality and supply, the soil environment, air quality, landscape, recreation and access to the natural environment and the benefits we receive from ecosystems.

Nautical Miles

A unit of length used in marine navigation that is equal to a minute of arc of a great circle on a sphere. One international nautical mile is equivalent to 1,852 metres or 1.151 statute miles.

Nutrient cycling

The continuous cycling through an ecosystem of minerals, compounds or elements that promote biological growth or development.

Nutrient enrichment

The addition of nutrients, mostly nitrogen and phosphorus, to the marine environment as a result of man's activities.

Offshore Waters

Can be used to refer to waters more than 12 nautical miles from the baselines although "offshore" is also used to refer to marine areas not connected to the coast.

OSPAR Convention for the North-East Atlantic

The current instrument guiding international cooperation Protection of the Marine on the protection of the marine environment of the North-Environment of the East Atlantic.

Pinger

A device used underwater to produce pulses of sound, as for an echo sounder.

Polluter-pays Principle

The principle by which those causing the pollution are expected to bear the full costs of any measures required to protect the environment as a result of their actions.

Precautionary Principle

Where there are threats of serious or irreversible environmental damage, lack of full scientific certainty shall not be used as a reason for postponing cost effective measures to prevent environmental degradation (as defined in the 1992 Rio Declaration on Environment and Development).

Regional Spatial Strategies

Terrestrial spatial strategies prepared at regional level, in line with national policy and guidance.

Regulatory Impact Assessment

A policy tool that assesses the impact in terms of costs, benefits and risks of a proposed regulation.

Relevant authority

A body that has functions in relation to land or waters within or adjacent to a marine area or European marine site.

Renewable Energy Zone

The UK's "Renewable Energy Zone" as prescribed for the purposes of renewable energy generation beyond territorial waters (designated through the Energy Act 2004, under provisions in UNCLOS).

Review of Marine Nature Conservation

The process set up in 1999 to review the options for improving protection for marine sites and species, which brought together marine industries and nature conservation organisations with representatives of Government departments and agencies.

Scottish Zone

The sea area where fisheries regulation has been devolved to the Scottish ministers.

Sea Fisheries Committee

Sea Fisheries Committee is a local fishery committee constituted under Section 2 of the Sea Fisheries Regulation Act 1966 for the purpose of regulating fishing for sea fish (except for salmon and migratory trout) out to 6nm.

Seascapes

Areas of any extent or scale that include the sea as a key feature. Seascapes have physical and experiential attributes, encompass the interrelationship between the sea and the sky, and may include land.

Sedentary species

A species that is attached to the substratum but capable of moving across it.

Sessile species

A species that is permanently attached to the substratum.

Seismic survey

Modern large-scale seismic surveys are conducted using a towed array of 'airguns'—cylinders of compressed air. The array, typically containing tens of such cylinders, is discharged simultaneously, to generate a pressure pulse which travels downwards into the seabed. The pulses, reflected back from the seabed and underlying strata, are recorded, interpreted and plotted.

Several and Regulating Orders

Several and Regulating Orders are orders made under Section 1 of the Sea Fisheries (Shellfish) Act 1967 for the purpose of the establishment or improvement and for the maintenance and regulation of a fishery for the type of shellfish specified in the order over an area of the shore, seabed or tidal waters.

Special Area of Conservation

European protected area established to protect species or habitats listed in the annexes of the Habitats Directive.

Special Protection Area

European protected area established to protect species listed in the annexes of the Birds Directive.

Site of Special Scientific Interest

A site notified under Section 28 of the Wildlife and Countryside Act 1981 because it is of special interest by reason of the flora, fauna, geological or physiographical features.

Statutory Instrument (SI)

A form of delegated legislation. Ministers can be given powers by an Act of Parliament to make SIs in order to supplement the rules contained.

Strategic Environmental Assessment

Is an assessment required under the Strategic Environmental Assessment Directive of certain plans and programmes that are likely to have significant effects on the environment.

Sustainable Development

Development that enables all people throughout the world to satisfy their basic needs and enjoy a better quality of life without compromising the quality of life of future generations.

Territorial Waters

Identified under the Territorial Sea Act 1987. In general, the area extends to a maximum of 12 nautical miles from a prescribed baseline, or to the median line between adjacent states.

Trophic Level

A group of organisms that occupy the same position in a food chain.

UK Internal Waters

UK internal waters are marine waters on the landward side of the baselines from which the width of the territorial sea is measured.

UK Territorial Sea

The UK territorial sea is the sea adjacent to the UK identified under the Territorial Sea Act 1987 as extending to a maximum of 12 nautical miles from the prescribed baselines or (if less) the median line between adjacent nautical states.

UK Waters

UK internal waters, the UK territorial sea, and the sea within the area of the continental shelf or (where applicable) the area over which the UK otherwise enjoys rights in relation to the exploitation of certain marine resources.

Viable populations

Self-sustaining populations with a high probability of survival despite the foreseeable effects of demographic, environmental and genetic variability and of natural disasters

Waste assimilation

The capacity of the receiving environment to neutralise human-derived wastes via biological, physical or chemical processes such as the adsorption, transformation, breakdown or dilution of compounds.

Annex 3: RIA – Scrutiny Unit Review

Scrutiny Unit Review of the Draft Marine Bill Impact Assessment

Introduction

The Department for Environment, Food and Rural Affairs (Defra) published the Draft Marine Bill Impact Assessment (IA) in April 2008 as part of the draft Marine Bill.⁵²⁶ The main policy areas for this draft Bill are planning, licensing, nature conservation, marine fisheries, the Marine Management Organisation (MMO), migratory and freshwater fisheries management, and access to the English Coast.

An IA provides a framework for departments to analyse the likely impacts of policy changes and draft bills. Department for Business, Enterprise and Regulatory Reform (BERR) guidance outlines a number of minimum requirements for an IA.⁵²⁷ These include: the rationale for the proposal; details of the costs and benefits of the policy change; consideration of the options; and the consultation summary.

The following section summarises the results of Defra's IA for the draft Marine Bill. The subsequent section, 'Analysis of the IA', includes an analysis of Defra's assumptions and results, and possible questions the Committee may wish to ask Defra.

Summary of Impact Analysis

The IA concludes that the benefits of implementing the Marine Bill proposals outweigh the costs of implementation. It also concludes that opting not to intervene would present "a considerable risk to the future health and sustainability of the marine environment, to ecosystem conservation and to human activity in and relating to the marine environment". Defra expects the draft Bill to reduce overall administrative burdens on industry and government.

However, the impacts of the draft Marine Bill are highly uncertain for two broad reasons. First, its implementation is uncertain. As enabling legislation, it does not specify all parameters. For example, the legislation will provide tools to establish Marine Conservation Zones (MCZs), but MCZ designation and protection levels will not be determined until the end of 2012. Also, it is not yet clear what the devolved administrations will do. It appears there will not be a UK-wide marine plan, as envisaged. The devolved administrations may choose a marine bill quite different, or implement the Marine Bill, if they come 'on board', quite differently. Second, Defra had difficulty quantifying the impacts even for those areas with greater implementation certainty. Defra used available studies to assess impacts but acknowledge the unreliability of their estimates. As a result, detailed analysis of costs and benefits is difficult.

⁵²⁶ Defra completed a separate IA for the coastal access part of the draft Bill (see Annex 4 of the main IA). The results of these two separate assessments have been combined for this analysis.

⁵²⁷ <http://www.berr.gov.uk/files/file44544.pdf>

Defra therefore presents a range of assumptions and implementation scenarios for the policy areas. The IA states many of the impacts in wide ranges, reflecting the inherent uncertainty of the estimates.

Defra estimates that the total monetised **costs** of the draft Marine Bill (including coastal access) range from **£740m to £1,649m**. The **benefits** range from **£1,954m to £4,456m**. Table 1 shows the estimated costs and benefits by policy area, broken down by costs to government and industry.

Table 1 - Summary of key monetised costs and benefits of draft Marine Bill

£millions, present value terms over 20 years, rounded to nearest £million

Policy area		Costs	Benefits
Planning		118	0
Licensing	government	0.51	
	industry	2.49	8.8 to 17.7
Nature conservation	industry	440 to 1,230	
	government (enforcement)	10.5 to 20.3	
	government (MCZs)	28 to 32	
	environmental		1,794 to 4,060
Marine fisheries	government	59.5 to 89	
	industry		16.2
MMO		48.92	
Migratory and freshwater fisheries		1.33 to 1.75	5
Carbon saving benefit			72.5
Coastal access		31 to 106	57 to 285
Totals (minimum possible)		740	1,954
Totals (maximum possible)		1,649	4,456
Net benefit (minimum)	305		
Net benefit (maximum)	3,716		

Source: derived from the Draft Marine Bill Impact Assessment, April 2008, Table 23 and Annex 4 Table 2

Scrutiny Unit calculations (above) show that if costs are maximised and benefits minimised, the net benefit of the draft Bill over 20 years would be £305m. Conversely, if costs are the lowest of the range and benefits the highest, the net benefit over 20 years would be £3.7bn.

Defra estimates that the coastal access elements of the draft Bill will have a net present value (NPV) of £89m. All other elements will have an estimated NPV of £1.908bn. **Note that Defra bases these best estimates on costs and benefit estimates with a high degree of uncertainty, reflected in the ranges in Table 1.**

Defra will update this IA prior to introduction of the final Marine Bill to Parliament to take account of ongoing research and scrutiny of the draft Bill.

Analysis of the IA

The structure of this IA conforms to BERR guidance in that it clearly sets out major headings, policy options and ranges for impacts. Defra has gone to efforts to quantify the impacts of the draft Bill amid substantial uncertainty. The Evidence Base narrative, at approximately 90 pages,⁵²⁸ is detailed and reasonably clear given the complexity of the draft legislation.

However, this IA could more clearly state some of the calculations underlying the benefits and costs in some areas and provide more details. The following sections identify some aspects of the IA that Defra could improve and suggests some questions that the Committee may wish to ask Defra.

Summary: Analysis & Evidence

Defra has calculated NPV estimates according to Treasury Green Book guidance, including presenting cost and benefit figures in constant prices. However, while Defra produces ranges for estimated costs and benefits, its best estimate for net benefit is simply an average of the range. This highlights Defra's substantial uncertainty regarding the impacts of this Bill. **Can Defra do better at assessing the likelihood of the costs and benefits that will be realised?**

Defra indicates that the Marine Bill implementation will exceed minimum EU requirements, but provides no further details. BERR guidance states: "If the selected policy option involves over-implementation, it should be justified by a strong cost-benefit analysis and extensive consultation with business."⁵²⁹ **Defra provides no justification in the Evidence Base for exceeding minimum EU requirements. Can Defra explain in what ways the draft Bill exceeds these requirements and why this was necessary?**

According to BERR guidance, "Departments must actively look for opportunities to simplify or remove existing requirements when they want to introduce new regulation. The aim is to achieve a better balance between the creation of new measures and reducing existing requirements." Defra has quantified such offsetting measures in the summary section, but does not clearly state in the Evidence Base or elsewhere how the Department derived these figures (£1.9m to £2.5m). **Can Defra please explain the basis for the value of the proposed offsetting measures?**

Defra balances describing the impacts of a complex draft Bill with restricting the summary section to a manageable length. However, Defra might have included some additional details in the summary section, as follows:

- Given the number of discrete policy areas covered by the draft Bill, Defra should have ideally identified the key monetised costs and benefits accrued by the main groups affected.

⁵²⁸ According to BERR guidance, policy makers should limit the Evidence Base section to a maximum length of 30 pages.

⁵²⁹ BERR Impact Assessment Toolkit, available at: <http://www.berr.gov.uk/bre/policy/scrutinising-new-regulations/preparing-impact-assessments/toolkit/page44257.html> as at 2 June 2008

- Defra observes that the worst case scenario analysis “significantly reduces benefits and increases the costs” but does not quantify the NPV of that analysis. Considering the substantial uncertainty associated with the Bill, it would be helpful if Defra were to state the range of the uncertainty in this section.
- Defra could provide more detail on implementation in the summary. “To be confirmed” does not adequately summarise the implementation and delivery plan outlined in the IA.

Evidence base

1. Coastal access

Impact Assessments are meant to inform and challenge decision making. However, it is not clear how the IA influenced decision making for coastal access. Defra looked at the benefit to cost ratios for four options. Of these, option 4 is the nearest approximation of the coastal access provisions of the draft Bill. Both option 1 and option 2 have higher benefit to cost ratios than option 4. Also, option 4 has a greater level of uncertainty than option 2, reflected in the large difference between the upper and lower limits of estimates. **Can Defra please clarify how the analysis of benefit/cost ratios informed Defra’s choice of preferred option?**

It is important to note that the cost and benefit figures for the coastal access provisions of the draft Bill are highly sensitive to changes in the number of visitors that might arise. **A 1 per cent shift in the numbers changes benefits by £28 million over the 20-year period.** Since the benefits from visitor access are expected to be £152m, it seems the benefits from visitors could be eliminated with a 6 per cent decrease in visitor numbers. **Coastal access benefits are highly sensitive to the number of visitors. Can Defra estimate the level at which the increase in visitor numbers would result in no net benefit from this policy option?**

It is unclear how Defra arrived at its best estimate NPV values for coastal access. For the other elements of the draft Bill, Defra used the average of the range bracketing the uncertainty. Defra has not used averages for the coastal access figures and has not explained how the NPV values were chosen. **Can the Department explain how it arrived at its best estimates (NPV) for the costs and benefits of coastal access?**

The IA makes no allowance for costs associated with compensation of landowners or businesses. At the same time, Defra acknowledges that there “may be a negative impact on the small number of businesses which derive competitive benefit from availability of exclusive access”.⁵³⁰ **Does Defra anticipate that there will be any costs associated with compensation of businesses or landowners affected by coastal access and if so, how much?**

Defra estimates that the coastal access provisions of the Bill will have a minimal impact on greenhouse gas emissions. However, Defra bases the benefit calculations on the assumption that almost 5 million additional users will access the coast each year. This access would presumably increase transport emissions. However, Defra did not do a

530 *ibid.*, p119

carbon assessment for the coastal access portion of the draft Bill. **Why did Defra opt to forgo a carbon assessment for the coastal access elements of the draft Bill?**

2. Planning

In assessing planning costs to industry, Defra states that the introduction of marine planning “will not lead to any direct costs to industry or the wider public”.⁵³¹ Defra considers the potential costs of delays to investment to be insignificant. However, it is not clear that Defra has considered the costs to industry of participating in public consultations. **What costs might public consultations for planning impose on industry?**

3. Licensing

Defra cites studies to develop evidence of benefits and costs, but in some cases does not provide relevant details. For example, citing a survey to quantify the benefits of streamlined licensing arrangements, Defra fails to provide details on the size of the survey and number of respondents. Defra reports “it is clear from the survey evidence that uncertainty is an issue for a significant portion of businesses and industry comments suggest that these are having adverse impacts on businesses”, but does not quantify what a “significant” portion would be.⁵³²

4. Nature conservation

Defra acknowledges that nature conservation enforcement may affect recreational sectors. For example, MCZs may restrict boat access to new no-mooring zones. Defra states that such measures would only apply locally but is unable to provide a cost analysis due to a lack of evidence. Defra also indicates that the third sector (Wildlife Trusts, etc.) may incur costs relating to producing evidence of impacts of activities in MCZs, but has not provided cost estimates as it has for other sectors. **The Department has been able to extrapolate estimated MCZ costs for most industry sectors. Can Defra quantify costs to recreational and the third sectors, using ranges to express uncertainty as needed?**

Defra apparently has not commissioned studies specific to this draft Bill, but rather, has estimated impacts by extrapolating from existing studies. While this is in part understandable due to the uncertainty surrounding implementation of the Bill, it does call into question the validity of the estimates. Defra states: “until MCZ sites are selected there cannot be precise estimation of costs and benefits”.⁵³³

For the largest benefits attributed to the Marine Bill—those associated with the environmental benefits of the MCZs—Defra notes that “no primary economic valuation studies were carried out”.⁵³⁴ Instead, Defra used the Benefits Transfer method to transfer values from existing studies to estimate environmental benefits. In one aspect of the study, Defra derived the estimates from a single study of a Spanish marine reserve. Defra states that “regulatory efficiency savings to marine developers and MCZ network scenarios can only be considered as illustrative”.⁵³⁵ **Considering the indirect methods used to quantify**

531 *Draft Marine Bill Impact Assessment*, p25

532 *ibid.*, pp52-53

533 *ibid.*, p75

534 *ibid.*, p56

535 *ibid.*, p4

the benefits attributed to MCZs, how confident is Defra that these benefits will be realised?

Defra assumes there would be no benefits to the marine environment from the status quo in the absence of the Marine Bill. As such, the benefits analysis “does not account for measures which could be undertaken to protect areas of the marine environment in the absence of the Marine Bill”.⁵³⁶ **In the absence of the Marine Bill, what is the likelihood that there will be no changes to marine environment protection over the next 20 years (the time period examined in the IA)?**

The March 2006 consultation resulted in some expressions of concern about the impact of the nature conservation elements of the draft Bill on the commercial viability of businesses. Other responses noted that onerous regulations could affect the UK’s ability to attract new oil, gas and offshore renewable energy investment. **What assurances can the Department provide that the nature conservation regulatory regime will not adversely affect the competitiveness of UK businesses, particularly in the oil, gas and offshore renewable energy sectors?**

5. MMO

Defra includes a 10 per cent contingency allowance in estimating the costs of establishing the MMO to account for optimism bias. What is the basis for the 10 per cent contingency allowance added on to the MMO set-up costs for optimism bias and was any consideration given to including a contingency allowance for other costs of the draft Bill?

6. Migratory and freshwater fisheries

The draft Bill would allow a Net Limitation Order to be introduced even if it reduces fishing opportunities for a net/fisherman who has fished in recent years and who is dependent on that fishing for their livelihood. As the current law prevents this, the Environment Agency will be empowered to pay compensation if passage of the draft Bill leads to the imposition of these Orders in certain cases. **Can Defra provide an estimate of the amount of compensation that might be due if net/fishermen were to become subject to Net Limitation Orders through the draft Bill?**

7. Uncertainty in the impact assessment

Defra provides sensitivity analysis for the policy areas covered by the draft Bill and outlined ranges of impacts. However, the sensitivity analysis was selective. Defra explains that “given the size of the IA it is not possible to conduct sensitivity analysis on all of the assumptions”.⁵³⁷ **How did Defra choose which assumptions and scenarios to test for sensitivity analysis?**

Defra’s worst-case and best-case scenarios fail to actually analyse the worst possible and best possible scenarios. Instead, Defra calculates NPV using the low end of the cost range and the low end of the benefit range. A true worst-case scenario would instead calculate the NPV based on the highest costs and the lowest benefit. Similarly, in the absence of better information, best-case scenarios should use the lowest costs and the highest benefits.

⁵³⁶ *ibid.*, p60

⁵³⁷ *ibid.*, p72

Defra estimates that the ‘worst case scenario’ from the sensitivity analysis would still yield a positive NPV at £402m. This figure is the average of a range between £257 and £546m. However, a true ‘worst case scenario’—higher than expected costs, and lower than expected benefits—would yield a *negative* NPV at almost -£600m (not including coastal access provisions). **Can Defra explain why the sensitivity analysis scenarios fail to examine a true ‘worst case scenario’, in which higher than expected costs coincide with lower than expected benefits?**

8. Other general observations

In the Small Firms Impact Test annex, Defra observes that an analysis of the impact of marine biodiversity policies on businesses shows that there could be “significant costs at a local level for businesses”, although “this would be unlikely to occur at a national level”. **Could Defra provide details on the impact of marine conservation on small businesses, as referred to in the Small Firms Impact Test annex?**

Defra estimates that by reducing unnecessary delays in licensing applications for renewable projects, an additional 150MW of capacity will be brought forward annually, yielding a £72.5m benefit in carbon savings. **How robust is the shadow price of carbon used to calculate this benefit? Can Defra quantify the uncertainty associated with this benefit?**

Defra indicates that it is unable to “calculate estimates for administrative burdens until the detail of secondary legislation has been developed”, but anticipates that the draft Bill will decrease administrative burdens to industry.⁵³⁸ **What level of certainty does Defra have that the draft Bill will decrease administrative burdens to industry, particularly during implementation of the Bill?**

Defra does not fully address compliance, but this may be because so many aspects of implementation have yet to be determined. For the same reason, Defra has not examined the unintended consequences of the policy in the IA.

3 June 2008

Annex 4: Delegated Powers Memorandum

This memorandum responds to your invitation of 19 June to the Delegated Powers Committee to contribute to your Committee’s scrutiny of the draft Marine Bill. The Committee considered the draft bill at its meeting this morning. We have been assisted by a memorandum by the Department for Environment, Food and Rural Affairs which identifies and explains most, but not all, of the delegations in the bill. Perhaps we might note that the memorandum for the bill itself ought to address all of the delegations.

We value the opportunity to contribute to the pre-legislative scrutiny of this draft bill and set out below an overview of our opinion on the proposed delegations. In making these observations, our opinion should not be taken to prejudge our position should a bill be introduced: we will report to the House at that stage on whether its provisions inappropriately delegate legislative power or whether they subject the exercise of legislative power to an inappropriate degree of parliamentary scrutiny. I should also note that we have considered each issue purely as a question of delegation and not of policy.

At this stage, we suggest that the following provisions require at least further explanation.

Special procedure for applications relating to harbour works—clauses 72 and 73

Clauses 72 and 73 enable the Secretary of State, by order subject to negative procedure, to disapply the licensing procedure set out in the bill and instead to apply, with modifications, the procedure set out in the Harbours Act 1964 or, as the case may be, the Electricity Act 1989. It was not clear to us (and we believe it should be clarified) whether such orders would be general or would relate to individual applications. If the latter, we see no need for the order to be exercised by statutory instrument subject to a parliamentary procedure.

Offences — clause 123

Part 4 of the draft bill provides for areas of the sea or seabed to be designated as marine conservation zones (‘MCZs’). The Marine Management Organisation (‘MMO’) established under Part 1 may make conservation orders under clause 113 for the purpose of furthering the conservation objectives of an MCZ in England. A conservation order is not a statutory instrument, but must (unless it is an urgent conservation order, to which clause 115 applies) be confirmed by the Secretary of State before it may come into force. Clause 116 enables the MMO to make an interim order (which may contain substantially the same kind of provision as a conservation order) in relation to an area under consideration for designation as an MCZ.

Clause 123 enables a conservation order or an interim order to provide that a person contravening a (we assume, specified) provision of the order is to be guilty of an offence (which may be triable summarily, or either summarily or on indictment) and liable to a fine specified in the order which, on summary conviction, may not exceed £50,000, and which, on conviction on indictment, is unlimited. Neither the particular ingredients of the offence (or of the provision whose breach gives rise to it) nor the chosen mode of trial, are to be subject to any form of parliamentary scrutiny; nor, in the case of an offence created by an urgent conservation order or an interim order, do they require confirmation by a Minister before they may take effect. The memorandum contains no explanation about the

absence of scrutiny arrangements in relation to offences created in conservation orders or interim orders. You may wish to invite the department to justify the arrangements which they have proposed.

Penalties and undertakings — clauses 127 to 130

Clause 83 enables a licensing authority (Ministers or a Northern Ireland department) to confer on an enforcement authority as respects the licensing of marine activities (defined in clause 60) power to impose a fixed monetary penalty on a person whom it is satisfied beyond reasonable doubt has committed an offence by conducting an activity without, or in breach of conditions in, a licence. Detailed provision is made in clause 84 and Schedule 6 with respect to the exercise of this power which is rightly subject to the draft affirmative procedure. The imposition of a fixed monetary penalty must have the effect of removing the person's criminal liability in respect of the relevant conduct (Schedule 6, paragraph 2), and the amount of the penalty specified in the order may not exceed the maximum fine on summary conviction for the offence (which is £50,000 – clause 76). Clause 87 enables the licensing authority to provide by affirmative order for the enforcement authority to accept, from a person it reasonably suspects of having committed an offence, an undertaking which if complied with removes the person's criminal liability for the conduct in question.

The powers in clauses 83 to 87 are closely reflected in clauses 127 to 130, which are about the enforcement of prohibitions and obligations under Part 4 as respects MCZs. Clauses 127 and 128 and Schedule 7 confer powers to make orders about fixed monetary penalties in terms which are almost identical to those conferred by clauses 83 and 84 and Schedule 6. Even the maximum penalty that may be specified (by reference to the maximum fine on summary conviction) is the same (£50,000). Similarly, clause 129 and Schedule 7 enable an order to be made conferring power on the enforcement authority to accept undertakings; and, again, the provision is almost identical to that in clause 87. The only significant difference is that orders under clauses 127 and 129 are subject to the negative procedure, whereas those under clauses 83 and 87 are affirmative.

In paragraph 143 of its memorandum, the department suggests that the negative procedure is appropriate for the exercise of powers in clauses 127 and 129; but in paragraph 106 the department says that the affirmative procedure is appropriate for orders under clauses 83 and 87 (as well as for orders under clause 85 providing for variable monetary penalties, but not replicated in the MCZ enforcement regime). You may wish to invite the department to justify the difference in the level of parliamentary control for the powers at clauses 83 to 87 and 127 to 129. For our part, we consider that the affirmative procedure is the appropriate procedure for both regimes.

IFC authorities: membership — clause 140

Part 6 of the draft bill is concerned with regulating the exploitation of inshore fisheries resources and furthering the conservation objectives of MCZs. These functions are to be the responsibility of inshore fisheries and conservation authorities ('IFC authorities') established by orders under clause 138 for IFC districts also established by such orders. Clause 140 deals in detail with the provision that the orders may make about membership of IFC authorities: in particular subsection (2) requires that persons appointed as members under subsection (1)(b) must be acquainted with the local fishing community and have

knowledge or experience of marine conservation. Subsection (3) enables subsection (2) to be amended by negative order.

The purpose of this power is explained in paragraph 156 of the memorandum as being to 'provide flexibility ... if the nature of the marine environment changes'. The memorandum does not sufficiently justify this power: it says nothing of its purpose or the uses which are envisaged for it; it does not attempt to justify the negative procedure proposed for this Henry VIII power. While paragraph 158 of the memorandum addresses the appropriate procedure for an order under clause 138, it does not deal with that for the order under clause 140(3). You may wish to invite the department to justify the arrangements which they have proposed. If a bill were to be introduced, the department would need to make a compelling case if we were to be persuaded that exercise of this power should attract only the negative procedure.

Byelaws — clause 149(2)

Clauses 144 – 151 are concerned with byelaws made by the IFC authority about the matters set out in heads 1 to 5 in clause 145(3)-(7). Most byelaws are subject to confirmation by Ministers, possibly after a local inquiry has been held, before they can take effect (clause 144(3)-(5)), and there are requirements in clause 150 about the publication and display of byelaws. Significantly, breach of a byelaw amounts to an offence for which a person may be liable, on summary conviction, to a fine of up to £50,000 and forfeiture of equipment (clauses 152 & 153).

Clause 146 provides that byelaws made in response to an unforeseeable and urgent need ('emergency byelaws') may take effect for up to 12 months without confirmation by Ministers, and that the IFC authority may extend that period for up to six further months, but with the written approval of Ministers. Negative regulations under clause 149 may make procedural provision in relation to byelaws, and in particular for matters mentioned in subsection (2). Subsection (2)(d) enables provision to be made 'treating a byelaw that extends the period for which an emergency byelaw is to remain in force as if it were an emergency byelaw'. It was not clear to us whether these words are intended to include a power to allow the written approval process required by clause 146(4) to be dispensed with. If that were the case, it would seem possible for an emergency byelaw to remain in force for 18 months without Ministerial confirmation or approval. You may wish to invite the department to clarify the position.

Inshore fisheries and conservation officers — clause 157

Clause 156 provides for an IFC authority to appoint inshore fisheries and conservation officers ('IFC officers') to be responsible for the enforcement of prohibitions and obligations imposed in connection with fisheries and conservation. The range of matters in respect of which the IFC officers are to exercise functions is set out in clause 157(1) by reference to a list of statutory provisions. The enforcement powers themselves and the geographical jurisdiction of the IFC officers are identified in, respectively, subsections (2) and (3). Subsection (4) confers power on the appropriate national authority to amend subsection (1) by negative order.

The department's memorandum does not deal with clause 157, so there is no explanation of the purpose of this delegation, or in particular why this Henry VIII power is subject only

to the negative procedure. IFC officers will be permitted to exercise the range of enforcement powers conferred by Part 8 of the draft bill as well as additional powers of seizure under clauses 236, 240 and 241, so the ambit of their functional (as opposed to geographical) jurisdiction is a matter of some significance. You may wish to invite the department to provide further information about the way in which they envisage the power would be exercised. As with the provision at clause 140, the department will need to make a compelling case if we are to be persuaded that exercise of the Henry VIII power should attract only the negative procedure.

Amendment of Acts by instruments — clause 295(2)

Clause 295(1) provides that a power conferred in the draft bill on Ministers or a Northern Ireland department to make orders or regulations includes power to make incidental, consequential, supplementary or transitional provision or savings, and also power (subsection (2)) to amend enactments whenever passed or made. The memorandum does not deal with clause 295, save in passing at paragraph 34, and so there is no explanation, which we would usually expect to see, why it is thought necessary to include power to amend future Acts.

The exercise of the power in subsection (2) by statutory instrument attracts the draft affirmative procedure under subsection (6)(a); but this raises two further points. First, if, as may be inferred from the word “made” in subsection (2), an ‘enactment’ includes an enactment in subordinate legislation, subsection (6)(a) might be considered too onerous, and burdensome on the House, given that we usually expect that the affirmative procedure should apply only where an instrument amends an Act. Secondly, subsection (6)(a) applies only to orders or regulations made by statutory instrument. But orders made by Ministers under clauses 105 to 120 (about marine conservation zones) are not, by virtue of subsection (4), to be made by statutory instrument; yet they still attract the Henry VIII power in subsection (2). As a result, the amendment of an Act by such an order would be subject to no parliamentary procedure which would in our opinion be inappropriate.

We suggest that the department be invited to justify the inclusion of the power to amend future Acts; that the draft bill should be revised to require orders or regulations which amend an Act by virtue of clause 295(2) to be made by statutory instrument subject to the draft affirmative procedure; and that statutory instruments which amend only subordinate legislation should attract the negative procedure only.

25 June 2008

Formal minutes

Extract from the House of Lords Minutes of Proceedings of Wednesday 2 April 2008

Marine - The Lord President (Baroness Ashton of Upholland) moved that it is expedient that a Joint Committee of Lords and Commons be appointed to consider and report on any draft Marine Bill presented to both Houses by a Minister of the Crown. The motion was agreed to and a message was sent to the Commons.

Extract from the Votes and Proceedings of the House of Commons of Thursday 8 May 2008

Draft Marine Bill (Joint Committee),—Resolved, That this House concurs with the Lords Message of 2nd April, that it is expedient that a Joint Committee of Lords and Commons be appointed to consider and report on any draft Marine Bill presented to both Houses by a Minister of the Crown.

Ordered, That a Select Committee of eleven Members be appointed to join with the Committee appointed by the Lords to consider the draft Marine Bill (Cm. 7351).

That the Committee should report on the draft Bill by 22nd July 2008.

That the Committee shall have power—

- i) to send for persons, papers and records;
- b) to sit notwithstanding any adjournment of the House;
- c) to report from time to time;
- d) to appoint specialist advisers; and
- e) to adjourn from place to place within the United Kingdom.

That Linda Gilroy, Nia Griffith, Anne Main, Martin Salter, Sir Peter Soulsby, Mr Robert Syms, Paddy Tipping, Mr Charles Walker, Joan Walley, Dr Alan Whitehead and Mr Roger Williams be members of the Committee.—(Liz Blackman.)

Extract from the House of Lords Minutes of Proceedings of Tuesday 13 May 2008

Marine - The Chairman of Committees moved that the Commons message of 8 May be considered and that a Committee of eleven Lords members be appointed to join with the Committee appointed by the Commons to consider and report on the draft Marine Bill presented to both Houses on 3 April (Cm 7351) and that the Committee should report on the draft Bill by 22 July 2008;

That the following members be appointed to the Committee:

Baroness Byford	Baroness Jones of Whitchurch
Earl of Caithness	Lord Lewis of Newnham
Lord Greaves	Lord MacKenzie of Culkein
Lord Greenway	Baroness Miller of Chilthorne Domer

Lord Haworth Earl of Selborne
 Lord Hunt of Chesterton

That the Committee have power to agree with the Committee appointed by the Commons in the appointment of a Chairman;

That the Committee have power to appoint specialist advisers;

That the Committee have power to adjourn from place to place within the United Kingdom;

That the Committee have leave to report from time to time;

That the reports of the Committee from time to time shall be printed, regardless of any adjournment of the House;

That the evidence taken by the Committee shall, if the Committee so wishes, be published; and

That the Committee meet with the Committee appointed by the Commons tomorrow at 10.00 am in the Boothroyd Room, Portcullis House.

Wednesday 14 May 2008

Present:

Baroness Byford	Linda Gilroy MP
Earl of Caithness	Nia Griffith MP
Lord Greaves	Martin Salter MP
Lord Greenway	Sir Peter Soulsby MP
Lord Haworth	Paddy Tipping MP
Lord Hunt of Chesterton	Joan Walley MP
Baroness Jones of Whitchurch	Dr Alan Whitehead MP
Lord Lewis of Newnham	
Lord Mackenzie of Culkein	
Baroness Miller of Chilthorne	
Domer	
Earl of Selborne	

Members' interests: The full lists of Members' interests as recorded in the Commons Register of Members' Interest and the Lords Register of Interests are noted.

The Earl of Caithness declared an interest as a former Minister for Shipping.

Baroness Miller declared an interest as a member of the Rural Advisory Group at the University of Exeter.

Lord Haworth declared interests as a member of the Marine Conservation Society, the Mountaineering Council of Scotland, the Scottish Wild Land Group, the John Muir Trust,

the Woodland Trust, the Monro Society, the RNLI, the Youth Hostel Association, the National Trust for Scotland, the Scottish Rights of Way Society, the RSPB and the Knoydart Foundation.

Lord Greaves declared an interest as a member of the Access Group at the British Mountaineering Council.

Paddy Tipping declared his position as Vice President of the Ramblers' Association.

Lord Mackenzie declared his membership of the Marine Society.

Baroness Byford declared her membership of the Country Land & Business Association.

The Earl of Selborne declared his Chairmanship of the Living with Environmental Change Partners' Board and the National Oceanography Centre Southampton Advisory Council.

Nia Griffith, Lord Greaves and Baroness Byford declared their membership of the National Trust.

Baroness Jones, Lord Haworth and Linda Gilroy declared their membership of the Ramblers' Association.

It is moved that Lord Greenway do take the Chair.—(Earl of Caithness.)

The same is agreed to.

The Orders of Reference are read.

The Joint Committee deliberate.

Ordered, That Professor Laurence Mee and Dr Susan Gubbay be appointed Specialist Advisers.

Ordered, That the Lords Delegated Powers and Regulatory Reform Committee be invited to submit a memorandum to the Committee.

Ordered, That Committee staff visit Edinburgh to discuss the draft Bill with Scottish stakeholders.

Ordered, That the Joint Committee be adjourned to Wednesday 21 May at half-past Nine o'clock.

Wednesday 21 May 2008

Present:

Baroness Byford	Linda Gilroy MP
Earl of Caithness	Nia Griffith MP
Lord Greaves	Anne Main MP
Lord Haworth	Martin Salter MP
Lord Hunt of Chesterton	Sir Peter Soulsby MP
Baroness Jones of Whitchurch	Paddy Tipping MP
Lord Lewis of Newnham	

Lord Mackenzie of Culkein	Joan Walley MP
Baroness Miller of Chilthorne	Dr Alan Whitehead MP
Domer	Mr Roger Williams MP
Earl of Selborne	

Lord Greenway (in the Chair)

The Order of Adjournment is read.

The proceedings of Wednesday 14 May are read.

The Joint Committee deliberate.

Ordered, That written evidence received be shared with the Environment, Food and Rural Affairs Committee in the House of Commons, pursuant to Standing Order No 137A.

The Call for Evidence is agreed to.

Ordered, That the public be admitted during the examination of witnesses unless otherwise ordered.

Ordered, That written evidence received be published, and that the uncorrected transcripts of evidence given, unless the Committee otherwise orders, be published on the internet.

Ordered, That the Joint Committee be adjourned Tuesday 3 June at half-past Nine o'clock.

Tuesday 3 June 2008

Present:

Baroness Byford	Linda Gilroy MP
Earl of Caithness	Anne Main MP
Lord Haworth	Martin Salter MP
Lord Hunt of Chesterton	Sir Peter Soulsby MP
Baroness Jones of Whitchurch	Mr Robert Syms MP
Lord Lewis of Newnham	Paddy Tipping MP
Lord Mackenzie of Culkein	Joan Walley MP
Baroness Miller of Chilthorne	Mr Charles Walker MP
Domer	Mr Roger Williams MP
Earl of Selborne	

Lord Greenway (in the Chair)

The Order of Adjournment is read.

The proceedings of Wednesday 21 May are read.

The Joint Committee deliberate.

Ordered, That Memoranda numbers DMB 1-14 submitted to the Joint Committee be reported to the House for publication on the internet.

The following witnesses are examined:

Baroness Miller of Chilthorne Domer declared an interest as the spouse of Councillor Humphrey Temperley.

Baroness Byford declared an interest as a member of the CLA.

Linda Gilroy declared an interest as having a working relationship with the Plymouth Marine Science Partnership.

Councillor Humphrey Temperley, Devon County Council, Local Government Association, Peter Winterbottom, Association of Sea Fisheries Committees, David King, Director, Water Management, Pam Gilder, Head, Wildlife, Recreation and Marine Environment Agency.

Angela Moffat, Marine Bill Major Project Manager, Natural England, Mary Lewis, Marine Bill Advisor, Countryside Council for Wales (CCW), Rob Hastings, Director Marine Estate, The Crown Estate.

Nigel Gooding, Chief Executive, Neil Wellum, Deputy Chief Inspector, South, Marine and Fisheries Agency, Mark Tasker, Head of Marine Advice, Dr Jon Davies, Marine Protected Sites Team Leader, Joint Nature Conservation Committee (JNCC).

Ordered, That the Joint Committee be adjourned to Thursday 5 June at Ten o'clock.

Thursday 5 June 2008

Present:

Lord Haworth	Linda Gilroy MP
Lord Hunt of Chesterton	Nia Griffith MP
Baroness Jones of Whitchurch	Martin Salter MP
Lord Lewis of Newnham	Joan Walley MP
Lord Mackenzie of Culkein	Mr Charles Walker MP
Baroness Miller of Chilthorne Domer	Dr Alan Whitehead MP
	Mr Roger Williams MP

Lord Greenway (in the Chair)

The Order of Adjournment is read.

The proceedings of Tuesday 3 June are read.

The Joint Committee deliberate.

Ordered, That Memoranda numbers DMB 15-33 submitted to the Joint Committee be reported to the House for publication on the internet.

The following witnesses are examined:

Lord Greenway declared an interest as having been associated for a number of years with a company working in the ports business.

Lord MacKenzie of Culkein declared an interest as a former employee of one of the predecessor bodies of Clyde Port.

Lord Hunt of Chesterton declared an interest as the President of the Advisory Committee on Oil Pollution of the Sea, and as a Fellow of Trinity College, Cambridge, a substantial owner of Felixstowe Port.

David Whitehead, Director, British Ports Association, Peter Barham, Sustainable Development Manager, Associated British Ports, Richard Bird, Associated British Ports.

Linda Gilroy declared an interest as Vice President of the Marine Industrial Society and having an association with Plymouth Marine Science Partnership.

John Miller, Chairman and Director/General Manager of CEMEX UK, Kevin Seaman, previous Chairman and Managing Director of United Marine Dredging Marine, Mark Russell, Director, British Marine Aggregate Producers Association,

Mark Brownrigg, Director General, Edmund Brookes, Deputy Director General, Chamber of Shipping.

Ordered, That the Joint Committee be adjourned to Wednesday 11 June at half-past Nine o'clock.

Wednesday 11 June 2008

Present:

Baroness Byford	Linda Gilroy MP
Lord Haworth	Nia Griffith MP
Lord Hunt of Chesterton	Anne Main MP
Baroness Jones of Whitchurch	Martin Salter MP
Baroness Miller of Chilthorne	Sir Peter Soulsby MP
Domer	Paddy Tipping MP
Earl of Selborne	Mr Charles Walker MP
	Dr Alan Whitehead MP
	Mr Roger Williams MP

Lord Greenway (in the Chair)

The Order of Adjournment is read.

The proceedings of Thursday 5 June are read.

The Joint Committee deliberate.

Ordered, That Captain Dennis Barber be appointed a Specialist Adviser.

Ordered, That Memoranda numbers DMB 34-43 submitted to the Joint Committee be reported to the House for publication on the internet.

The following witnesses are examined:

Baroness Miller of Chilthorne Domer declared an interest as the spouse of a member of the Devon Sea Fisheries' Committee.

Barrie Deas, National Federation of Fishermen's Organisations, Sarah Horsfall, Phil MacMullen, Seafish Industry Authority, Bertie Armstrong, Scottish Fisherman's Federation.

Richard Ferre, Chairman, and Alan Brothers, National Federation of Sea Anglers, Leon Roskilly and Peter MacConnell, Sea Anglers' Conservation Network

Ivor Llewellyn and Michael Heylin, Fisheries and Angling Conservation Trust.

The Joint Committee further deliberate.

Ordered, That the Joint Committee be adjourned to Thursday 12 June at Ten o'clock.

Thursday 12 June 2008

Present:

Baroness Byford	Linda Gilroy MP
Lord Greaves	Anne Main MP
Lord Haworth	Sir Peter Soulsby MP
Lord Hunt of Chesterton	Joan Walley MP
Baroness Jones of Whitchurch	Dr Alan Whitehead MP
Lord Lewis of Newnham	Mr Roger Williams MP
Baroness Miller of Chilthorne Domer	
Earl of Selborne	

Lord Greenway (in the Chair)

The Order of Adjournment is read.

The proceedings of Wednesday 11 June are read.

The Joint Committee deliberate.

Ordered, That Memoranda numbers DMB 44-50 submitted to the Joint Committee be reported to the House for publication on the internet.

The following witnesses are examined:

Lord Greenway declared an interest as Commodore of the House of Lords Yacht Club and having been advised by the Royal Yachting Association and the British Marine Federation.

Baroness Miller of Chilthorne Domer declared an interest as a member of the North Devon Yacht Club.

Joanna Hole, Director, Safety and Claims/Business Continuity and Richard Bowles, Subject Expert, Environment I Directorate of Safety and Claims, Ministry of Defence.

Howard Pridding, British Marine Federation, Marcus Allen, Chairman, British Sub Aqua Club, Gus Lewis, Legal and Government Affairs Manager, Royal Yachting Association.

The Earl of Selborne, Mr Roger Williams, and Baroness Byford declared their membership of the CLA.

Lord Haworth and Baroness Jones of Whitchurch declared their membership of the Ramblers' Association.

Lord Greaves declared his membership of the British Mountaineering Council and his involvement in its Access and Conservation Committee.

Sir Henry Aubrey-Fletcher, President, and Andrew Shirley, National Access Adviser Country Land and Business Association, Tom Franklin, Chief Executive, and Kate Ashbrook, Chair, The Ramblers' Association.

Ordered, That the Joint Committee be adjourned to Wednesday 18 June at half-past Nine o'clock.

Wednesday 18 June 2008

Present:

Earl of Caithness	Linda Gilroy MP
Lord Greaves	Nia Griffith MP
Lord Haworth	Anne Main MP
Lord Hunt of Chesterton	Sir Peter Soulsby MP
Lord Mackenzie of Culkein	Paddy Tipping MP
Baroness Miller of Chilthorne	Joan Walley MP
Domer	Dr Alan Whitehead MP
Earl of Selborne	Mr Robert Syms MP

Lord Greenway (in the Chair)

The Order of Adjournment is read.

The proceedings of Thursday 12 June are read.

The Joint Committee deliberate.

Ordered, That Memoranda numbers DMB 51-62 submitted to the Joint Committee be reported to the House for publication on the internet.

The following witnesses are examined:

Mick Borwell, Environmental Issues Manager, Chris Allen, Health, Safety, Social and Environment Director, Oil and Gas UK, Colin Taylor, Marine Ecologist, Nigel Knee, Strategy and Business Development Manager, British Energy, Charles Anglin, Director of Communications, British Wind Energy Association.

Malcolm Wicks MP, Minister of State for Energy, Tony Keegan (Offshore Windfarm Consents), Kevin O'Carroll (Oil and Gas), Duarte Figueira (Future Renewables Deployment), Department for Business, Enterprise and Regulatory Reform.

Jeff Chapman, Chief Executive, Carbon Capture and Storage Association, Steph Merry, Head of Marine, Max Carcas, Business Development Director, Pelarmis Wave Limited, Renewable Energy Association.

Ordered, That the Joint Committee be adjourned to Thursday 19 June at Ten o'clock.

Thursday 19 June 2008

Present:

Baroness Byford	Linda Gilroy MP
Earl of Caithness	Nia Griffith MP
Lord Haworth	Anne Main MP
Lord Hunt of Chesterton	Martin Salter MP
Lord MacKenzie of Culkein	Mr Charles Walker MP
Baroness Miller of Chilthorne	Dr Alan Whitehead MP
Domer	Mr Roger Williams MP
Earl of Selborne	

Lord Greenway (in the Chair)

The Order of Adjournment is read.

The proceedings of Wednesday 18 June are read.

The Joint Committee deliberate.

Ordered, That Memoranda numbers DMB 63-86 submitted to the Joint Committee be reported to the House for publication on the internet.

The following witnesses are examined:

Stuart Rodgers and Mike Waldock, Centre for Environment, Fisheries and Aquaculture, Dr Matthew Frost, Marine Biological Association of the United Kingdom, Dr Michael Burrows, Scottish Association for Marine Science.

The Earl of Selborne declared his Chairmanship of the National Oceanography Centre Southampton Advisory Group.

Dr Mike Bell, Head, National Centre for Ocean Forecasting, Andrew Willmott, Director, Proudman Oceanographic Laboratory, Dr Melanie Austen, Head of Science: Biodiversity & Ecosystem Function, Plymouth Marine Laboratory.

Professor Janet Sprent and Tom Eddy, Royal Commission on Environmental Pollution, Professor Ed Hill, Natural Environmental Research Council.

Ordered, That the Joint Committee be adjourned to Wednesday 25 June at half-past Nine o'clock.

Wednesday 25 June 2008

Present:

Baroness Byford	Linda Gilroy MP
Earl of Caithness	Nia Griffith MP
Lord Haworth	Martin Salter MP
Lord Hunt of Chesterton	Sir Peter Soulsby MP
Lord Lewis of Newnham	Paddy Tipping MP
Lord Mackenzie of Culkein	Joan Walley MP
Baroness Miller of Chilthorne	Mr Charles Walker MP
Domer	Dr Alan Whitehead MP
Earl of Selborne	Mr Roger Williams MP

Lord Greenway (in the Chair)

The Order of Adjournment is read.

The proceedings of Thursday 19 June are read.

The Joint Committee deliberate.

Ordered, That Memoranda numbers DMB 87-96 submitted to the Joint Committee be reported to the House for publication on the internet.

The following witnesses are examined:

John Richardson, Director, DG Marine and Fisheries, European Commission, Aaron McLoughlin, Head of European Marine Programme, WWF European Policy Office.

Joan Edwards (Chair of Marine Task Force and Head of Marine Policy, Wildlife Trusts), Dr Sharon Thompson (Vice-Chair of Marine Task Force and Senior Marine Policy Officer, RSPB), Melissa Moore (Senior Marine Policy Officer, Marine Conservation Society), Dr Lyndsey Dodds (Marine Policy Officer, WWF Cymru), Wildlife and Countryside Link

Ordered, That the Joint Committee be adjourned to Wednesday 2 July at Nine o'clock.

Wednesday 2 July 2008

Present:

Baroness Byford	Linda Gilroy MP
Earl of Caithness	Nia Griffith MP
Lord Greaves	Anne Main MP
Lord Haworth	Martin Salter MP
Lord Hunt of Chesterton	Paddy Tipping MP
Baroness Jones of Whitchurch	Joan Walley MP
Lord Lewis of Newnham	Mr Charles Walker MP

Lord Mackenzie of Culkein Mr Roger Williams MP
 Baroness Miller of Chilthorne
 Damer
 Earl of Selborne

Lord Greenway (in the Chair)

The Order of Adjournment is read.

The proceedings of Wednesday 25 June are read.

The Joint Committee deliberate.

Ordered, That Memoranda numbers DMB 97-102 submitted to the Joint Committee be reported to the House for publication on the internet.

The following witnesses are examined:

Heloise Tierney, Trevor Hutchings, Ian Barrett and Diana Linskey, Gillian Tuson, Karen Morgan, Simon Crabbe and Theresa Crossley, Department for Environment, Food and Rural Affairs

Rt Hon Hilary Benn MP, Secretary of State, Jonathan Shaw MP, Parliamentary Under-Secretary of State, Diana Linskey, Trevor Hutchings, Department for Environment, Food and Rural Affairs

The Joint Committee further deliberate.

Ordered, That the Joint Committee be adjourned to Wednesday 16 July at half-past Nine o'clock.

Wednesday 16 July 2008

Present:

Baroness Byford	Linda Gilroy MP
Earl of Caithness	Nia Griffith MP
Lord Greaves	Anne Main MP
Baroness Jones of Whitchurch	Martin Salter MP
Lord Mackenzie of Culkein	Paddy Tipping MP
Baroness Miller of Chilthorne	Joan Walley MP
Damer	Mr Charles Walker MP
Earl of Selborne	Dr Alan Whitehead MP

Lord Greenway (in the Chair)

The Order of Adjournment is read.

The proceedings of Wednesday 2 July are read.

The Joint Committee deliberate.

A draft Report is proposed by the Chairman.

It is moved that the draft Report before the Committee be read.

The same is agreed to.

Paragraphs 1 to 219 are agreed to.

The Abstract is agreed to.

The following annexes to the Report are agreed to:

List of acronyms used in the Report

Glossary of technical terms

Analysis of the Regulatory Impact Assessment

Memorandum from the Delegated Powers and Regulatory Reform Committee.

The Committee agreed that the draft Report be the report of the Joint Committee.

Ordered, That certain papers be appended to the Minutes of Evidence.

Ordered, That the provisions of Standing Order 134 (Select Committee (reports)) of the House of Commons apply to the report.

Ordered, That the Chairman make the report to the House of Lords and Joan Walley make the report to the House of Commons.

Ordered, That the Joint Committee be now adjourned.

Witnesses

Tuesday 3 June 2008

Councillor Humphrey Temperley, Devon County Council, Local Government Association, **Mr Peter Winterbottom**, Chief Executive, Association of Sea Fisheries Committees of England and Wales, **Mr David King**, Director, Water Management, and **Ms Pam Gilder**, Head, Wildlife, Recreation and Marine, Environment Agency;

Dr Angela Moffat, Marine Bill Major Project Manager, Natural England, **Dr Mary Lewis**, Marine Bill Advisor, Countryside Council for Wales (CCW), **Mr Rob Hastings**, Director Marine Estate, The Crown Estate;

Mr Nigel Gooding, Chief Executive, and **Mr Neil Wellum**, Deputy Chief Inspector, South, Marine and Fisheries Agency, **Mr Mark Tasker**, Head of Marine Advice, and **Dr Jon Davies**, Marine Protected Sites Team Leader, Joint Nature Conservation Committee (JNCC).

Tuesday 5 June 2008

Mr David Whitehead, Director, British Ports Association, **Mr Peter Barham**, Sustainable Development Manager, Associated British Ports, **Mr Richard Bird**, United Kingdom Major Ports Group;

Mr John Miller, current Chairman and Director/General Manager of CEMEX UK Marine, **Mr Kevin Seaman**, previous Chairman and Managing Director of United Marine Dredging, **Mr Mark Russell**, Director, British Marine Aggregate Producers Association;

Mr Mark Brownrigg, Director General, and **Mr Edmund Brookes**, Deputy Director General, **Mr David Asprey**, Head of Policy Department, Chamber of Shipping.

Wednesday 11 June 2008

Mr Barrie Deas, National Federation of Fishermen's Organisations, **Ms Sarah Horsfall**, and, **Mr Phil MacMullen**, Head of Environment, Seafish Industry Authority, **Mr Bertie Armstrong**, Scottish Fisherman's Federation;

Mr Richard Ferre, Chairman, and **Mr Alan Brothers**, National Federation of Sea Anglers, **Mr Leon Roskilly** and **Mr Peter MacConnell**, Sea Anglers' Conservation Network;

Mr Ivor Llewelyn and **Mr Michael Heylin**, Fisheries and Angling Conservation Trust and Moran Committee.

Thursday 12 June 2008

Mrs Joanna Hole, Director, Safety and Claims/Business Continuity and **Mr Richard Bowles**, Subject Expert, Environment I Directorate of Safety and Claims, Ministry of Defence;

Mr Howard Pridding, British Marine Federation, **Mr Marcus Allen**, Chairman, British Sub Aqua Club, **Mr Gus Lewis**, Legal and Government Affairs Manager, Royal Yachting Association;

Sir Henry Aubrey-Fletcher, President, and **Mr Andrew Shirley**, National Access Adviser, Country Land and Business Association, **Mr Tom Franklin**, Chief Executive, and **Ms Kate Ashbrook**, Chair, Ramblers' Association.

Wednesday 18 June 2008

Mr Mick Borwell, Environmental Issues Manager, and **Mr Chris Allen**, Health, Safety, Social and Environment Director, Oil and Gas UK, **Mr Colin Taylor**, Marine Ecologist, and **Mr Nigel Knee**, Strategy and Business Development Manager, British Energy, **Mr Charles Anglin**, Director of Communications, British Wind Energy Association;

Malcolm Wicks MP, Minister of State for Energy, **Mr Tony Keegan**, and **Mr Kevin O'Carroll**, Department for Business, Enterprise and Regulatory Reform;

Mr Jeff Chapman, Chief Executive, Carbon Capture and Storage Association, **Dr Stephanie Merry**, Head of Marine, Renewable Energy Association, and **Mr Max Carcas**, Business Development Director, Pelarmis Wave Power Limited.

Thursday 19 June 2008

Mr Stuart Rodgers and **Mr Mike Waldock**, Centre for Environment, Fisheries and Aquaculture Science, **Dr Matthew Frost**, Marine Biological Association of the United Kingdom, **Dr Michael Burrows**, Scottish Association for Marine Science;

Dr Mike Bell, Head, National Centre for Ocean Forecasting, **Mr Andrew Willmott**, Director, Proudman Oceanographic Laboratory, **Dr Melanie Austen**, Head of Science: Biodiversity & Ecosystem Function, Plymouth Marine Laboratory;

Professor Janet Sprent and **Mr Tom Eddy**, Royal Commission on Environmental Pollution, **Professor Ed Hill**, Natural Environmental Research Council.

Wednesday 25 June 2008

Mr John Richardson, Director, Directorate General for Maritime Affairs and Fisheries, European Commission, **Mr Aaron McLoughlin**, Head of European Marine Programme, WWF European Policy Office;

Ms Joan Edwards, Chair of Wildlife and Countryside Link's Marine Task Force and Head of Marine Policy, Wildlife Trusts, **Dr Sharon Thompson**, Vice-Chair of Wildlife and Countryside Link's Marine Task Force and Senior Marine Policy Officer, RSPB, **Mrs Melissa Moore**, Senior Marine Policy Officer, Marine Conservation Society, **Dr Lyndsey Dodds**, Marine Policy Officer, WWF Cymru.

Wednesday 2 July 2008

Ms Diana Linskey, **Mr Ian Barrett**, **Mr Trevor Hutchings** and **Ms Heloise Tierney**, Department for Environment, Food and Rural Affairs;

Ms Diana Linskey, **Ms Gillian Tuson**, **Ms Karen Morgan**, **Mr Simon Crabbe** and **Ms Theresa Crossley**, Department for Environment, Food and Rural Affairs and the Department for Transport;

Rt Hon Hilary Benn MP, Secretary of State, **Jonathan Shaw MP**, Parliamentary Under-Secretary of State, **Ms Diana Linskey** and **Mr Trevor Hutchings**, Department for Environment, Food and Rural Affairs.

List of written evidence

Volume II

- 1 Ornamental Aquatic Trade Association (DMB 1)
- 2 Mrs P Van der Hoff (DMB 2)
- 3 Dr P Jones (DMB 3)
- 4 Mr G Winn-Darley (DMB 4)
- 5 Mr R Gilbert (DMB 5)
- 6 Mr P Millmore (DMB 6)
- 7 The Kennel Club (DMB 7)
- 8 Marinet (DMB 8)
- 9 Dee Caldwell (DMB 9)
- 10 Environment Agency (DMB 10)
- 11 Countryside Council for Wales (DMB 11)
- 12 CoastNet (DMB 12)
- 13 Quiet Sports Fishery Management (DMB 13)
- 14 John and Gillian Cooke (DMB 14)
- 15 The Association of Sea Fisheries Committees (DMB 15)
- 16 Natural England (DMB 16)
- 17 Joint Nature Conservation Committee (DMB 17)
- 18 J Cartwright (DMB 18)
- 19 Sea Anglers' Conservation Network (DMB 19)
- 20 RSPB (DMB 20)
- 21 National Trust (DMB 21)
- 22 Wildlife and Countryside Link (DMB 22)
- 23 Northern Ireland Marine Task Force (DMB 23)
- 24 Wales Environment Link (DMB 24)
- 25 WWF-UK (DMB 25)
- 26 The Wildlife Trusts (DMB 26)
- 27 Advisory Committees to the Environment Agency - South West Region (DMB 27)
- 28 Moran Committee (DMB 28)
- 29 National Federation of Sea Anglers (DMB 29)
- 30 International Fund for Animal Welfare (DMB 30)
- 31 UK Major Ports Association (DMB 31)
- 32 British Ports Association (DMB 32)
- 33 Ramblers' Association (DMB 33)
- 34 Chamber of Shipping (DMB 34)
- 35 British Marine Aggregate Producers Association (DMB 35)
- 36 British Wind Energy Association (DMB 36)
- 37 Association of Chief Police Officers - England, Wales and Northern Ireland (DMB 37)
- 38 Royal Yachting Association (DMB 38)
- 39 CCPR (DMB 39)
- 40 Devon County Council (DMB 40)
- 41 Europarc Atlantic Isles (DMB 41)

- 42 Institute of Fisheries Management (DMB 42)
- 43 Scottish Environment LINK (DMB 43)
- 44 Further memorandum Marinet (DMB 44)
- 45 South West Rivers Association (DMB 45)
- 46 British Marine Federation (DMB 46)
- 47 Wales Coastal and Maritime Partnership (DMB 47)
- 48 Devon Countryside Access Forum (DMB 48)
- 49 Coarse Fish Trade Association (DMB 49)
- 50 Country Land and Business Association (DMB 50)
- 51 Intergovernmental Oceanographic Commission of UNESCO (DMB 51)
- 52 Byways and Bridleway Trust (DMB 52)
- 53 Essex County Council (DMB 53)
- 54 Mr T Appleby (DMB 54)
- 55 Institute of Field Archaeologists (DMB 55)
- 56 Trinity House (DMB 56)
- 57 East Riding of Yorkshire and Kinston Upon Hull Joint Local Access Forum (DMB 57)
- 58 Centre for Environment, Fisheries and Aquaculture Science (DMB 58)
- 59 North Devon UNESCO Biosphere Reserve Partnership (DMB 59)
- 60 Mr B Bullimore (DMB 60)
- 61 Department for Business, Enterprise and Regulatory Reform (DMB 61)
- 62 National Oceanography Centre (DMB 62)
- 63 Mrs V King (DMB 63)
- 64 The Crown Estate (DMB 64)
- 65 Oil and Gas UK (DMB 65)
- 66 The Lulworth Trust (DMB 66)
- 67 Mr R Adam (DMB 67)
- 68 SeaZone Solutions Limited (DMB 68)
- 69 Historic Houses Association (DMB 69)
- 70 National Farmers Union (DMB 70)
- 71 Campaign for National Parks (DMB 71)
- 72 Solent Protection Society (DMB 72)
- 73 All Party Parliamentary Group on Coastal and Marine Issues (DMB 73)
- 74 Hampshire County Council (DMB 74)
- 75 Supplementary memorandum Countryside Council for Wales (DMB 75)
- 76 Supplementary memorandum Environment Agency (DMB 76)
- 77 Greenpeace (DMB 77)
- 78 RWE npower and RWE Innogy (DMB 78)
- 79 British Energy (DMB 79)
- 80 Marine Conservation Society (DMB 80)
- 81 Countryside Alliance (DMB 81)
- 82 Canoe England (DMB 82)
- 83 Hayle Harbour Management (DMB 83)
- 84 Rt Hon Eliot Morley MP (DMB 84)
- 85 Marine Biological Association (DMB 85)
- 86 Welsh Assembly - Sustainability Committee (DMB 86)

- 87 Plymouth Marine Laboratory (DMB 87)
- 88 Scottish Association for Marine Science (DMB 88)
- 89 Renewable Energy Association (DMB 89)
- 90 Northumberland National Park & Countryside Local Access Forum (DMB 90)
- 91 English Heritage (DMB 91)
- 92 Association for Geographic Information (DMB 92)
- 93 Public and Commercial Services Union (DMB 93)
- 94 Supplementary memorandum Joint Nature Conservation Committee (DMB 94)
- 95 Further memorandum Mr T Appleby (DMB 95)
- 96 Mr D Brinkman (DMB 96)
- 97 The Scottish Government (DMB 97)
- 98 Supplementary memorandum Marine Fisheries Agency (DMB 98)
- 99 Supplementary memorandum Association of Sea Fisheries Committees (DMB 99)
- 100 Delegated Powers and Regulatory Reform Committee (DMB 100)
- 101 Save our Seabirds (DMB 101)
- 102 Supplementary memorandum Wildlife and Countryside Link (DMB 102)
- 103 Supplementary memorandum Marine Conservation Society (DMB 103)
- 104 North Devon Fishermen's Association (DMB 104)
- 105 Supplementary memorandum Department for Business, Enterprise and Regulatory Reform (DMB 105)
- 106 Department for Environment, Food and Rural Affairs (DMB 106)
- 107 Department for Environment, Food and Rural Affairs (DMB 107)
- 108 Department for Environment, Food and Rural Affairs (DMB 108)
- 109 Department for Environment, Food and Rural Affairs (DMB 109)
- 110 Royal Society of Edinburgh (DMB 111)
- 111 Professor Lynda Warren (DMB 112)
- 112 Solway Firth Partnership (DMB 113)

List of unprinted written evidence

Environment Agency letter to Martin Salter MP (DMB 110)