



WWF *for a living planet*

WWF-UK

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Friday 8th June 2007

Dear Sir/Madam,

Please find herewith WWF-UK's response to the Government's Consultation on a

Marine Bill White Paper, A Sea Change

WWF congratulates the UK Government on reaching this major milestone in its progress towards a UK Marine Bill.

WWF-UK and WWF's devolved offices in Wales, Scotland and Northern Ireland have been working on responding to this document. We have also been working closely with our Link colleagues in all the countries, and we have made a significant contribution to each of those responses.

Our response below contains our views on aspects of the Marine Bill that we have been working on to complement and add to the Link(s) responses, rather than duplicating them. We are very keen to continue efforts to support the progress towards a successful and worthwhile Marine Bill and the necessary legislation in devolved countries.

We are anxious that current progress does not stall or lose momentum. We understand the need for government to put effort into its energy policy and planning and all issues of Climate Change, including legislation. WWF works closely with climate change colleagues in WWF-UK and on a global level.

We hope this response will explain why we urgently need a Marine Bill alongside a Climate Change Bill, to ensure renewable energy needs are met, and to ensure we do not devalue the marine environment, which is our most important natural carbon sink.

WWF is strongly of the view that the Marine Bill White Paper is a key step towards achieving a robust Marine Act and legislation should be forthcoming in the next Queen's Speech.

We would be pleased to discuss any aspects of our response with you, and how WWF might help from now on to further the progress of the Marine Bill.

Yours faithfully,

Sally Bailey
North East Atlantic Marine Ecoregion Programme Manager
WWF-UK



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WWF-UK Response to

A Sea Change: A Marine Bill White Paper

Defra March 2007

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Acronyms

AGMACS	Advisory Group for the Marine & Coastal Strategy group in Scotland
ASFC	Association of Sea Fisheries Committees.
BAP	Biodiversity Action Plan
CBD	Convention on Biological Diversity
CCS	Carbon capture & storage
CEFAS	Centre for Environment Fisheries and Aquaculture Sciences
CFP	Common Fisheries Policy
CO ₂	Carbon Dioxide
COP 7	Seventh Meeting of the Conference of the Parties to the Convention on Biological Diversity
CROW Act	The Countryside & Rights of Way Act (2000)
Defra	Department for Environment, Food and Rural Affairs
DTI	Department of Trade & Industry
EIA	Environmental Impact Assessment
eNGOs	Environmental non-governmental organisation
EA	Environment Agency
EC	European Commission
EU	European Union
FRDC	Fisheries Research & Development Corporation
HPMR	Highly Protected Marine Reserve
GDP	Gross Domestic Product
GBRMNP	Great Barrier Reef Marine National park
ICZM	Integrated Coastal Zone Management
IPCC	Intergovernmental Panel on Climate Change
LINK	Wildlife and Countryside LINK
MEHRA	Marine Environmental High Risk Area
MCZ	Marine Conservation Zone
MEO	Marine Ecosystem Objective
MMO	Marine Management Organisation
MPA	Marine Protected Area
N2K	Natura 2000 protected areas; SAC & SPA (see below)

NE	Natural England
NI MTF	Northern Ireland Marine Task Force of NGOs
NIMF	Nationally Important Marine Features
NWNWSFC	North West and North Wales Sea Fisheries Committee
ORCA	WWF's Oceans Recovery Campaign
OSPAR	Oslo and Paris Convention on the protection of the North East Atlantic
RIA	Regulatory Impact Assessment
SAC	Special Area of Conservation
SEA	Strategic Environmental Assessment
SFC	Sea Fisheries Committee
SPA	Special Protection Area
SNCA	Statutory Nature Conservation Agency
SRO	Several & Regulating Orders
UKMPS	UK Marine Policy Statement
W&CA	Wildlife & Countryside Act
WAG	Welsh Assembly Government
WEL	Welsh Environment LINK
WFD	Water Framework Directive
WSSD	World Summit on Sustainable Development

Introduction

WWF congratulates the UK Government on reaching this major milestone in its progress towards a UK Marine Bill. We recognise that this is not easy task, given the current mish-mash of legislation stretching back over time that has resulted in the sectoral and unwieldy management sectors we are faced with today. Now we have this once-in-a-lifetime opportunity to provide 21st legislation for a huge asset: UK's vast area of sea, covering a marine area 867,000km² and 17 819.879 km of coastline¹.

WWF has been campaigning for Marine Act for UK seas since before 2000. Our thinking has moved forward since publication of our own 'Draft Marine Act' as part of WWF's ORCA and subsequent Marine Act Campaigns² in 2005. However, we found this was a very useful 'kick-start' in thinking that a Marine Act is the way forward for UK seas. We congratulate the UK Government for taking up the challenge.

This is a particularly crucial time to look to UK seas, as we are facing the global environmental challenge of climate change as well as the continuing complexity of human activities, both exerting pressures on UK seas. Our marine biodiversity faces threats such as acidification because of climate change, and the continuing threats from fisheries and many other human activities. In addition we now faced with carbon capture and sequestration as a mitigation measure for our current uses of CO₂ emitting energy. However, it is important to remember our oceans and seas and their marine life are a much needed natural 'carbon sink' and our coastal wetlands can provide natural, sustainable low-cost sea defences, while providing fish nursery areas and feeding grounds for bird species of international importance.

Our marine wildlife is not well-protected in the UK to date. In WWF's Marine Health Check 2005, 13 out of 16 key species and habitats were in decline or severe decline³. The mechanisms are not yet in place to provide protection for a representative network of Marine Protected Areas (MPAs) plus highly protected marine reserves to protect our most vulnerable species and habitats, both referred to as Marine Conservation Zones in the White Paper.

WWF understands that many activities still have to continue to take place in our seas: from aggregate extraction, oil and gas extraction, cable and pipelines, and tourism to activities of the fishing industry and port expansion. In addition, the UK has the best wind energy resource in Europe, and UK seas provide the best tidal and wave energy resource in Europe⁴. We urgently need a proper planning system to ensure we get the right renewable energy technology in the right place and protect biodiversity from the effects of climate change. Commercial stakeholders also welcome the prospect of a proper planning system for UK seas.

Finfish and shellfish have an out of date management regime in our coastal waters and are not given adequate protection to breed, feed or rebuild their numbers. The inshore sector faces real pressure from an increasing demand on its harvest as its value is recognised. To compound this we are faced with the very real threat of unfavourable environmental conditions brought about by anthropogenic climate change. Accordingly WWF welcomes the modernisation of SFCs and the newly named Marine and Fisheries Agency to establish and implement rigorous effective measures to sustainably manage this resource.

That is why WWF supports the progress of the UK Marine Bill and complimentary devolved legislation, including a Marine Act in Scotland to ensure all governments in the UK deliver on

¹ Marine Biodiversity, the rationale for intervention. A report to Defra. C Frid and O Paramor September 2006

² WWF-UK Marine Act Campaign website <http://www.wwf.org.uk/marineact/main.asp>

³ <http://www.wwf.org.uk/filelibrary/pdf/mhcr.pdf>

⁴ BWEA <http://www.bwea.com/about/what-we-do.html>

international commitments for sustainable development, the ecosystem approach, and marine protected areas.

The UK receives at least 5% of its GDP from its coastal and maritime activities⁵. It is time all sea users and our marine wildlife received recognition of this from the government through sufficient investment in proper legislation and management of our seas and maritime activities through the Marine Bill.

WWF wants the UK government to provide sufficient resources now to begin the process of moving towards implementation of the Marine Bill. For example, the resources to begin to identify a representative network of MCZs, including highly protected marine reserves, plus investment of resources in the MMO in order to fully engage with stakeholders from the beginning of the marine planning regime.

As we did in last year's consultation on 'A Marine Bill', WWF-UK has contributed much to the response you will receive from Wildlife and Countryside Link. Likewise, in the devolved countries the same approach has been taken. This has been the best way for NGOs to develop their thinking and combine resources and expertise for the 'greater good' and future success of the Marine Bill. We hope you appreciate this and give the Link responses the weight they deserve, in consideration of the Link coalition combined membership of over eight million people in the UK.

During the consultation period, WWF has met with other eNGOs and marine stakeholders, all of whom are trying to understand the government's intentions in the Marine Bill. We wish to comment here on some aspects of government's proposals, and where possible, we will make reference to sections of the White Paper. In addition, we will add some comments on each section.

We are grateful to Debbie Tripley, of Fenner's Chambers. Ms Tripley has contributed to this paper by providing advice and some of the text is taken from a report by Ms Tripley to WWF-UK⁶ while another is attached as an appendix⁷ Ms Tripley did much of the work on WWF-UK's 'Draft Marine Act'⁸. We would like it noted that the views offered in this response come from WWF-UK. They should not be taken as the views of Fenner's Chambers or Ms Tripley's.

Finally, WWF is strongly of the view that the Marine Bill White Paper is a key step towards achieving a robust Marine Act and legislation should be forthcoming in the next Queen's Speech.

General

Sustainable development and the ecosystem approach

In 'Safeguarding Our Seas' (Defra, May 2002) Government set out its 'vision and its delivery and it says "we are putting an ecosystem based approach at the heart of our strategy to reconcile conservation objectives and individual needs". The same section also states: "We will deliver our vision by pursuing policies that promote sustainable development, integrated management, stakeholder involvement, robust science and the precautionary principle."

⁵ Marine Biodiversity, the rationale for intervention. A report to Defra. C Frid and O Paramor. September 2006

⁶ Report on behalf of WWF concerning the contents of the government's White Paper for a Marine Act. A report to WWF. Deborah Tripley, Barrister. May 2006

⁷ Marine Conservation Zones – Enforcement of Management Systems. A report to WWF. Deborah Tripley, Barrister June 2006

⁸ A Draft Marine Bill prepared on behalf of WWF. D. Tripley, D Owens, K Marcus and G Linley-Adams January 2005

WWF applauds the above statements and welcomes this opportunity of the Marine Bill for UK government and devolved administrations to clearly set out their objectives for delivering sustainable development and the ecosystem approach in the marine environment, and for these commitments to be understood through the purposes clarified in the Marine Bill.

WWF wishes to see government's statutory commitment to sustainable development on the face of the Marine Bill. We feel it is relevant to have the concept of sustainable development in the Introduction to the Act as setting out the purpose of the legislation.

The legal tradition that the Court should not seek to determine the 'purposive' or 'teleological' approach to statutory interpretation was overturned in the House of Lords judgement of Pepper v Hart [1993] A.C 593. Consequently, any statute that includes wording that is ambiguous or obscure runs the risk of being interpreted by the Courts with reference to the parliamentary record in order to determine the legislative intention behind its drafting.

Establishing the statutory purpose of legislation may be important when determining whether the decision maker has acted within the powers conferred upon them by the statute.

WWF wishes to see an introduction in the Marine Bill that clearly sets out the aims and objectives of this legislation, in order to provide greater legislative certainty for all stakeholders and assist in the overall statutory interpretation of the document.

In the legal domain the term 'sustainable development' has failed to achieve anything beyond soft law status at international, regional and national levels.

In its most recent review of sustainable development policy, the European Union declares expansively that the term '*offers a vision of progress that integrates immediate and longer-term needs, local and global needs and regards social, economic and environmental needs as inseparable and interdependent components of human progress*'⁹.

The term has been defined as '*a journey we must undertake to arrive at sustainability itself*'. However as a term that is essentially driven by political and economic processes it is thought that it can also '*mean almost anything that anybody wants it to mean which sustainability cannot*'¹⁰.

WWF recognises that UK government has explained sustainable development in the government's 'Shared Framework for Sustainable Development: One Future-Different paths' (2005) the UK and devolved Administrations say they will pursue sustainable development in an integrated way. The document declares that this can be achieved by creating a sustainable, innovative and productive economy that delivers high levels of employment, and a just society that promotes social inclusion, sustainable communities and well-being. All of this will be achieved in ways that protect and enhance the physical and natural environment and use resources and energy as efficiently as possible.

The government has set out a number of 'framework indicators' to cover key impacts and outcomes that reflect the priority areas shared across the UK. These include the government's five shared principles for sustainable development:

- a strong, healthy and just society
- Achieving a sustainable economy
- Living within environmental limits
- Ensuring /Promoting good governance
- Using sound science responsibly.

UK commitment to an ecosystem approach was formerly endorsed at the 5th North Sea Conference on March 2002.

⁹ <http://ec.europa.eu/environment/eussd>

¹⁰ Porritt, 2000, pp103-104

Following the adoption of the 1992 Convention on Biological Diversity at the Rio Earth Summit, UK government became part of the global commitment to the Convention's Jakarta Mandate for action on marine and coastal biodiversity and the ecosystem approach (elaborated under the convention as the Malawi Principles).

WWF wishes to see the ecosystem approach adopted as part of an overall decision making process. This is reflected in the COP 7 Decision VII/11 guidelines.

This guidance states that the ecosystem approach provides an integrating framework for implementation of objectives including:

- (a) the management of living components alongside economic and social considerations at the ecosystem level of organisation, not simply a focus on managing species and habitats;
- (b) the management of land, water and living resources in equitable ways to be sustainable, and must be integrated and work within the natural limits and utilize the natural functioning of ecosystems;
- (c) approaching ecosystem management as a social process so that the many interested communities are involved in the decision-making and management

What is self-evident from the guidance contained in COP 7 is that wide engagement of stakeholders in making societal choices and in reaching decisions about management, use and the conservation of biological resources is absolutely essential to the ecosystem approach¹¹.

The English Nature Report entitled 'The Ecosystem Approach'¹² attempts to incorporate this guidance into a practical methodology for the application of the principle. The ecosystem approach is not a legal concept but a principle without any clear definition. The English Nature report considers that the principle is *key* the delivery of sustainable development, a term that in itself contains a number of competing policy approaches.

It is also apparent that the concept of sustainable development can include the requirement to take an ecosystem approach.¹³

Any statutory duty that gives expression to the term 'ecosystem approach' is likely to contain an implicit discretionary element in its actual application. Therefore it is important that the Marine Bill has objectives and measurable criteria setting out the scope of such discretion. Currently, the White Paper contains no statutory duties of this nature.

WWF wishes to see government incorporate the principles of the ecosystem approach into the Marine Bill, so that we can be assured it will be delivered in the marine environment, as an essential tool for sustainable development.

There is an expressed intention to impose a duty to deliver site objectives.

The White Paper states that it will impose a duty on (para 6.62)

'all ministers, Government departments or other public bodies (including SFCs, local authorities, statutory nature conservation agencies and the MMO) wherever they operate to undertake their functions in a way that will contribute to the delivery of site objectives. This will apply to all site-based conservation designations in the marine area, including SACs and SPAs. This will mean different things for different bodies but would include requirements to:

¹¹ See Guidance contained in COP 7 to Principles 1 and 2

¹² English Nature 'the Ecosystem Approach. Coherent actions for marine and coastal environments. A report to the UK Government.' Laffoley, Maltby, Vincent, Mee, Dunn, Gilliland, Hamer, Mortimer, Pound.

¹³ In the report on the Ecosystem Approach by English Nature it refers to sustainable development as meaning 'using of natural resources in a way that avoids irreversible damage to ecosystem structure and function, the loss of irreplaceable features or a reduction in ecosystem resilience. Environmental interests must be considered alongside social and economic interests, so as to prevent the irreplaceable loss of natural features, functions or processes, and to ensure a long-term and dependable flow of benefits from the exploitation of renewable natural resources. Delivering such sustainable development will involve significant measures to recover ecosystem structure and function where the flow of benefits is already reduced or impaired, or where ecosystem resilience is at risk.'

- Not permit activities, wherever they take place, that would result in the objectives of a site not being achieved or the integrity of the site to be compromised; and
- To take positive measures to control damaging activities, such as taking action to mitigate impacts, where they have powers to do so.’

The duty is narrowly focused on achieving the conservation objectives set for marine conservation zones. The achievement of sustainable development is not referred to in the White Paper as a statutory duty. WWF can see no good reason for this omission.

Firstly, this approach is contrary to the government policy as contained in ‘Securing the Future’- the UK Government Sustainable Development Strategy. Here the government refers to wanting the public sector to be a ‘*leading exponent of sustainable development.*’¹⁴

For this reason the government considers that a general statutory duty on all, or the most important public bodies to promote sustainable development can lead to clearer responsibilities and improved delivery of our sustainable development goals. The policy states:

‘We would like to continue to apply sustainable development duties on new bodies as they are created as appropriate to their role and remit, and to assess whether a specific sustainable development duty should be applied to existing key bodies in priority areas. The important issue is whether a new duty would promote better delivery of sustainable development.’

In view of the importance of marine spatial planning to the future sustainability of the UK’s oceans and the central role being created for the MMO it is not obvious why DEFRA should fail to provide for it in the White Paper.

In contrast to the UK approach Australian legislation provides a much clearer legislative framework. Under the terms of the Environment Protection and Biodiversity Conservation Act 1999 a set of Objects are provided making clear the intention of the legislature. From a set of Objects and ecologically sustainable principles the Act makes clear its concerns with the protection of the environment. (section 3 (a) (b))¹⁵.

WWF wishes to see UK government clearly set out its own well-rehearsed policy on sustainable development in the Marine Bill.

Government’s commitments and justification for the Marine Act

WWF expects the Government’s commitments to its responsibilities in the marine environment are well-known and have provided a justifiable route to the development of the Marine Bill.

First, there are a series of statements by the UK government concerned with providing strategies for the sustainable use of the marine environment. These include:

- May 2002 – ‘Safeguarding our Seas – A strategy for Conservation and Sustainable Development of our Marine Environment’ containing a reference to spatial planning and marine protected areas
- November 2002 – Seas of Change – The Government’s consultation paper to help deliver Our Vision for the Marine Environment. This includes reference to taking an ecosystem-based approach. In its response to the consultation the government concedes new legislation may be necessary.

¹⁴ Chapter 7, Ensuring it Happens.

¹⁵ The Act goes further and sets out the Principles of ecologically sustainable development which articulates sustainable development and the precautionary principles (section 3 A).

- July 2004 – Review of Marine Nature Conservation Working Group Report. Its recommendations included the recognition for conservation of a network of important sites.
- 2005 – ‘Charting Progress: An Integrated Assessment of the State of UK Seas’ – concluding that climate change poses a real threat to the balance and integrity of marine ecosystems.
- March 2006 – A Marine Bill – A Consultation Document. This refers to the Bill implementing a strategy for sustainable development.

Second, the government has made sustainable development commitments at various international and regional fora.

For instance, at the World Summit for Sustainable Development Member States set out aims to secure a significant reduction in the rate of biodiversity loss by 2010. The Johannesburg Plan of Implementation articulated commitments made by world states. In relation to the world’s oceans they agreed to:

Maintain or restore, where possible, depleted fish stocks to maximum sustainable yield levels not later than 2015, eliminate subsidies contributing to illegal fishing and over-capacity, implement the Ramsar Convention, implement the Global Programme of Action for Protection of the Marine Environment from Land-based Activities, establish a regular process under the UN for global reporting and assessment for the state of the marine environment by 2004.

In response to the WSSD process the UK government delivered its Oceans Delivery Plan which commits it to the:

- Conservation/sustainable management of marine and coastal biodiversity,
- Oceans governance and partnerships, and
- Sustainable fisheries.

The Oceans Delivery Plan Aims and Objectives specify the need to:

- Promote integrated, sustainable management of oceans at all levels (international, regional and national);
- Secure a significant reduction in the rate of biodiversity loss by 2010;
- Maintenance of biodiversity of important/vulnerable areas, including high seas;
- Development of programmes of action to halt the loss of marine biodiversity (wetlands, coral reefs);
- The identification of MEHRAs in UK waters (report Feb 2006);
- Offshore sites under the Habitats Directive completed by 2010;
- OSPAR designation of Marine Protected Areas (MPAs) by 2006 in North East Atlantic and;
- Secure by 2010 a network of representative, well managed MPAs in North Sea

For Integrated Coastal Zone Management (ICZM) the Plan commits to:

- Develop and adopt national strategies for coastal zone management by 2006
- Develop and adopt the EU marine thematic strategy to promote integrated marine management
- Develop and apply by 2010 an ecosystem approach to the management of human impacts on the marine environment

The Plan notes that in the UK context the ecosystem approach includes:

- The UK pilot project on Irish Sea;

- The introduction by 2008 of a legislative framework for the UK ecosystem objectives as proposed by a Marine Bill;
- By 2010 the development of ecosystem objectives for all UK waters consistent with the functioning and resilience of marine ecosystems and the delivery of biodiversity targets

Thus, at the international level the UK government has committed itself to include both ecosystem objectives and the delivery of biodiversity targets for all UK waters and to apply an ecosystem approach in order to secure a significant reduction in the rate of biodiversity loss by 2010.

Further, the UK Government has made commitments to the ecosystem approach during the OSPAR process.

The UK Government is committed to establishing a network of representative well managed MPAs in the North Sea by 2010 and to develop an ecosystem approach to the management of human impacts to the marine environment by 2010.

At the regional level the UK Government is expected to adopt legislation to implement the EU Directive Establishing a Framework for Community Action in the Field of Marine Environmental Policy (Marine Strategy Directive) (COM) 505.

The EU Marine Strategy Directive (MS Directive) is expected to establish a common framework in which it intends to establish common principles and approaches to the protection of the marine environment.

In the light of the above statements, principles and commitments it is justifiable to anticipate that a Marine Act would make reference to them as both justification for and the general purpose of the legislation.

For all the reasons stated above, WWF wishes to see an Introduction to the Marine Act that acknowledges the purposes of sustainable development with an interpretation of that phrase that includes taking an ecosystem approach for it delivery.

Marine Policy Statement and its objectives and targets

The EU Marine Strategy Directive (currently in draft) requires each Member State to achieve 'good environmental status of the marine environment by 2021'.

One of the purposes of the MS Directive is:

' In order to promote sustainable use of seas and to conserve marine ecosystems, priority should be given to achieving good environmental status in the Community's marine environment, to continue the protection and preservation of that environment and to ensuring that subsequent deterioration is prevented (para 3, Preamble).

The Preamble also notes that the Directive supports the 'strong position' taken by the community towards the aims of the Convention on Biological Diversity (CBD) and on halting biodiversity loss. There is particular reference to one of the purposes of the Directive as achieving the programme of work on marine and coastal biodiversity as set out at the Seventh Conference of the Parties to the CBD.

Under the terms of the Marine Strategy Directive each Member State is required to draw up a Marine strategy which will include an initial assessment of the current environmental status of its waters, a determination of good environmental status and the establishment of a series of environmental targets (Article 4).

Further elaboration of the content of the initial assessment is set out in Article 7.

Based upon that assessment the Member State is required to draw up a set of characteristics for good environmental status (article 8). Article 9 requires a comprehensive set of environmental targets and associated indicators to be provided taking into account the characteristics set out in Annex III and taking into account any target set at Community or international level.

Finally, the Member State must notify the Commission at every stage of the process.

Thus, there is a very clear framework for implementing sustainable development and the ecosystem approach established by the Directive. However, the *manner* in which each Member State chooses to achieve the contents of the Directive has been left to their discretion.

The White Paper acknowledges the need to meet the requirements of the EU Marine Strategy Directive (4.19). **However, the White Paper argues that there is little need for the objectives and targets to be written into legislation.** Instead they will be applied through the statutory planning system (4.23).

It is unclear whether objectives and targets will be set out in the Marine Policy Statement or to separate planning guidance.

The Marine Bill is said to 'help deliver economic, social and environmental objectives with a strategic, progressive and effective approach' (Executive Summary, page(2). WWF wishes to see the Marine Bill refer to these objectives and targets in the Marine Bill itself. In section 1.13, bullet point 3, of the White Paper government says the Marine Bill proposals will introduce "a flexible mechanism to protect natural resources, including marine protected zones with clear objectives."

WWF would prefer these key overarching objectives are referred to clearly in the Marine Bill.

In 1.32 Government states that "Policies plus sustainable development and environmental objectives will be clarified and applied through marine plans."

In 4.4 The White Paper states that government intends to adopt a two-stage approach to planning with:

- "the creation of a UK marine policy statement, agreed by all UK Government departments and the devolved administrations, which will articulate our joint vision and objectives for the marine environment and its uses; and
- the creation of a series of marine plans, which will implement the policy statement in specific areas, using information about spatial uses and needs in those areas.

The White Paper states that all decisions made that have implications for the marine area will have to be made in accordance with the UK Marine Policy Statement and any relevant marine plan.

In other words the Policy and plans will be material to the exercise of the decision maker's powers and duties.

WWF wishes to see legislation that will clearly state decision-makers duties to make planning decisions in accordance with the Marine Policy Statement.

We also wish to see all efforts to ensure stakeholder involvement in development of the Marine Policy Statement, and in the expansion of government vision for UK seas, if this is to be a separate process. We feel the best approach to ensure this happens is by conducting a Strategic Environmental Assessment on the Marine Policy Statement.

WWF wishes to see Strategic Environmental Assessment applied to the Marine Policy Statement, as this process will ensure stakeholder involvement.

Co-ordination with the Planning White Paper and the Independent Planning Commission

In government's White Paper: *Planning for a Sustainable Future* (May 2007) government proposes that decisions made on "major marine infrastructures will be made by the Independent Planning Commission. However it also states that those decisions in the marine environment will be made in accordance with the Marine Policy Statement" (that follows the Marine Bill). WWF welcome this proposal as the UK Marine Policy Statement will address all of the objectives to be achieved in the marine environment, rather than single sectors in isolation, and therefore must be the primary consideration in marine licensing decisions.

Integrating Issues of Climate Change

WWF-UK has recently proposed¹⁶ a range of measures to reduce greenhouse gas emissions to a keep the global average temperature rise to below 2°C threshold, and we also need to support and ensure ecosystems adapt to the impacts of human-induced climate change that are already happening and will continue to happen for some years, even if CO₂ emissions are reduced from now on. Hence, we need to build resilience in UK marine biodiversity and habitats to increase the resistance of natural systems so they can better cope¹⁷.

50% of our industrial CO₂ and 80% of the heat from climate change have already been absorbed into the oceans, thus buffering climate change to terrestrial environments. The costs of this to the seas are only just becoming understood. Absorbing CO₂ is leading to ocean acidification¹⁸ as CO₂ forms carbonic acid in seawater and absorbing heat is leading to unprecedented coral bleaching and regime shifts in plankton communities. These uses of the seas are implicit and not planned or regulated at present. Through ecosystem based management, such goods and services to society can be taken into account and valued. Most importantly, the capacity of the marine environment to buffer climate change must be protected. If the seas are pushed over certain thresholds, they will no longer absorb CO₂ and heat as they do currently, but will become net emitters of CO₂, and possibly of methane, which is a far more potent greenhouse gas than CO₂.

In its Marine Bill and its Climate Change and energy policies Government must recognise the implications for marine biodiversity as a result of climate change in its legislation and look forward in its planning with long time horizons in relation to climate change and global warming.

The adaptation and mitigation strategies for climate change in the marine environment must recognise the inherent links between both the adaptation of marine biodiversity to climate change and the mitigation measures, through not only provision of offshore renewables to the energy mix, but by ensuring the ecosystem continues to function as the largest sink for

¹⁶ Climate Solutions: The Vision for 2050. WWF International, 2007.

<http://assets.panda.org/downloads/climatesolutionweb.pdf>

¹⁷ Buying time; A User's Manual for Building Resistance and resilience to Climate Change in Natural Systems. L.J. Hansen, J.L. Biringer, J.R. Hoffmann. WWF September 2003

¹⁸ Assessing the impacts of climate change in the North East Atlantic. WWF Marine Update 57, January 2006, and full report:

Vulnerability Assessment of the North-East Atlantic Shelf Marine Ecoregion to Climate Change. WWF August 2005 <http://www.wwf.org.uk/researcher/issues/livingseas/000000021.asp>

carbon via marine primary production and as an essential element of climate regulation in the UK.

Ecosystems with high biodiversity and those that maintain structural components will have a better chance to survive or recover more easily from climatic disturbances. Marine and coastal waters are continuously being exposed to increasing human pressures through activities such as fisheries, oil and gas extraction, trade and pollution. The impacts of climate change are felt therefore in combination with direct human impacts. The latter reduces the resilience property of the marine and coastal systems which then become more vulnerable to stresses of climate change. The removal of all other stresses to eliminate habitat destruction pressures is a common theme in climate change adaptation strategy for biodiversity more widely, as ecosystems become more resilient to the impacts of climate change if we remove as many of the other external pressures they face as possible.

WWF has been looking at adaptation strategies for natural ecosystems and recommends three policies to Defra to incorporate in the Marine Bill and are necessary in order to tackle this urgent issue;

- **Protect adequate and appropriate space:**

It is important to take account of impacts of climate change in planning protected area networks of MCZs and to expand spatial scales through buffer zones and corridors to aid species migration. Marine Conservation Zones will contribute to the good health of the ecosystem which then could become relatively more resilient to environmental changes in comparison with those affected by additional anthropogenic pressure.

- **Limit all non-climate stresses:**

Government must be mindful of cumulative impacts on biodiversity in the context of marine planning, and plan to minimise those impacts outwith MCZs as well as planning well for a network of MCZs.

- **Use adaptive management and strategy testing**

By increasing the vulnerability of the marine ecosystems and lowering resilience we are losing a mitigation mechanism for climate change itself. The oceans provide the world with half of its oxygen, it has stored half of the world carbon dioxide emissions since the beginning of the industrial era, it is the world's largest carbon sink.

Therefore, WWF-UK believes it is imperative that both for the future viability of marine biodiversity in the UK and as an essential component in mitigating climate change it must be recognised within the UKMPS and marine objectives the importance of conserving and restoring biodiversity as a contribution to the mitigation of climate change alongside renewables.

We certainly need our wildlife to be able to adapt to climate change and this will only be possible if we provide them with the protection.

WWF supports an adaptive management approach in UK seas in response to climate change to ensure that marine wildlife has the best chance to survive.

WWF wants the Marine Bill and ensuing objectives and policies to recognise that our seas are the largest sink for carbon via marine primary production and an essential element of climate regulation in the UK. This must be factored in to management of UK seas alongside planning for renewable energy.

In addition, it is not clear yet how government is ensuring coordination between its energy and climate change policies and management of the marine environment as a natural carbon sink. We have the prospect of a Climate Change Bill, plus new plans for energy generation, including structures in UK seas planned by the Independent Planning Commission. Government must factor in the value of marine biodiversity as a carbon sink and not lose the most important natural and sustainable solution (in our seas) while implementing anthropogenic solutions.

WWF wants ALL government legislation and policies on energy and climate change to recognise the value of our seas and their biodiversity as a natural carbon sink, and ensure this is factored in to future plans so we do not lose this important part of the solution to climate change.

4. Planning in the Marine Area

Please see WWF comments on 'Coordination with Climate Change issues' above.

With reference to marine planning and licensing, the equivalent of 70% of UK's CO₂ emissions is originally sourced from UK seas¹⁹. A new marine planning regime provides the opportunity to switch from CO₂ emitting sources of energy to renewable sources of energy.

WWF wishes to see the new marine planning regime under the Marine Bill used as an opportunity to switch from CO₂ emitting energy sources to renewable energy technologies in UK seas.

WWF has contributed to and supports Wildlife and Countryside Link's (Link) detailed response on this section.

It is Link's and WWF's view that we urgently need Marine Planning as a tool to deliver an ecosystem based approach to the planning and management of activities in UK seas, and to ensure sustainable use and protection of our precious marine resources. **This is why WWF believes it is imperative that the government's commitments to deliver sustainable development and the ecosystem approach must be clearly set out in the Marine Bill.**

5. Licensing activities

Please see WWF comments on coordination with Climate Change issues, above, including our comments on CCS. **Please also note above the need for policies and regulations in the marine area, especially for energy and in consideration of climate change to recognise the value of marine biodiversity as a natural carbon sink, so we do not lose this part of the solution to climate change.**

WWF has contributed to and supports Wildlife and Countryside Link's response on this section. Where Link has submitted a detailed response.

Carbon Capture and Storage

The European Union's Maritime Green Paper²⁰ states that several research projects supported under the 4th, 5th and 6th Framework Programmes have addressed the practicality, environmental consequences and safety of carbon sequestration, and "It is estimated that by 2050 around 483 billion tonnes out of the projected 877 billion tonnes of total CO₂ emissions could be captured and stored". The Green Paper also states that "Carbon dioxide (CO₂)-induced ocean acidification is inevitable."

It is not yet entirely clear how CCS will be regulated in UK waters. This depends somewhat on international protocols. In November 2006 the contracting parties to the London Protocol voted to amend the protocol to allow the storage of CO₂ streams in sub-sea bed geological formations, and this came into force in February 2007. The OSPAR Convention still needs to be amended to remove uncertainties and UK Government is a co-sponsor of the amended proposals. The annual meeting of the OSPAR Commission in June 2007 will decide whether to accept the amendments and then they will need to be ratified by seven contracting parties.

¹⁹ Internal report to WWF. R Theirvel

²⁰ Green Paper: Towards a future Maritime Policy for the Union: A European vision for the oceans and seas Brussels, 7 June 2006 COM(2006) 275 final

In parallel with the above, a UK Government CCS Regulatory task force is looking at current legislation and possible options to provide a legal framework for CCS. In the Marine Bill White Paper, UK Government states that “In addition, because of its role in climate change mitigation, a domestic CCS licensing regime would also need to be compatible with the IPCC guidelines for national greenhouse gas inventories and the EU Emissions Trading Scheme”. The Marine Management Organisation is seen as a ‘centre for marine expertise’ and a regulator for other industries, and it is possible it can take over much of the regulation for CCS, although secondary legislation following the Marine Bill may be necessary. CCS might also be licensed by DTI along with oil and gas licensing. **WWF feels it is essential that CCS is classified as ‘waste’ and managed in line with dumping of other ‘spoils’ at sea, either by Defra or the MMO.**

CCS has the potential to help mitigate climate change. However, WWF is concerned that it also has the potential, if used heavily for Enhanced Oil and Gas Recovery to increase the exploitation of hydrocarbons from the seas and lead to a net increase in CO₂ emissions. To ensure that this technology delivers the benefits intended, it needs to have an element of international agreement in its implementation.

WWF wishes government to make it clear in its UK legislation and policies, that CCS can only be utilised for the purpose of maximising the *reduction* of CO₂ emissions. This must include very clear carbon accounting regulations, set by IPCC, which ensure that CO₂ emissions are reducing as a consequence of CCS.

Oil and Gas

Impacts on climate change and ocean acidification from our use of resources such as hydrocarbons, must be taken into account in UK energy and marine policies, planning and licensing structures and frameworks. The SEA and EIA Directives provide for consideration of such cumulative and indirect impacts, but these areas require more detailed attention in general EIA and SEA practice.

WWF wishes to see impacts on climate change and ocean acidification from our use of resources such as hydrocarbons, taken into account in ALL UK energy and marine policies and subsequent licensing procedures.

6. Marine Nature Conservation

Aim

WWF supports the majority of the Marine Nature Conservation proposals in the White Paper, and welcomes the overall aim of the marine nature conservation section. In particular new tools which ensure environmental considerations are at the heart of the decision making processes. This is essential to ensure true sustainable development and to implement an ecosystem approach when managing UK seas.

WWF hopes that to deliver this aim, Marine Nature Conservation will be recognised and given priority within the UKMPS, linked through the marine objectives and into the planning system as a valid and essential competing use for space and resources in the UK marine area, in parallel with the legitimate needs of other uses. However, the White Paper section detailing the licensing system at present does not appear to have the environment 'at the heart' of those proposals.

WWF also believes at present there is a lack of overall strategy for Marine Nature Conservation in the UK, tying in all of the commitments on marine biodiversity, this must be rectified in the UKMPS. It is important to identify the environmental outcomes being sought to help build the social, economic and environmental objectives for sustainable development²¹.

WWF believes the intent, objectives and purpose in the Marine Nature Conservation section must be translated into a statutory purpose. WWF feels this is necessary to ensure that a degree of *certainty* will be created for decision making and so that it will not largely rely on policy, which Defra has pointed out can frequently be changed – it could create further conflict unless there is a clear statutory duty to take reasonable steps to achieve the conservation purposes of the Bill.

WWF recommends a clear statutory duty, or a similar mechanism, to take reasonable steps to achieve the conservation purposes of the Bill.

Summary of proposals

WWF is particularly welcoming of the proposals for developing a national representative network of Marine Conservation Zones, which will include highly protected marine reserves (HPMRs). We also support the proposals to introduce new powers to regulate unlicensed activities, including bylaws and interim measures, and the stronger enforcement arrangements. WWF hopes that greater resources, training and expertise are provided to enable enforcement of the marine area.

Marine Ecosystem objectives

WWF fully supported the development of the marine ecosystem objectives rather than the more general proposed marine objectives. The ecosystem objectives should inform, and be central, to the UK MPS and therefore an integral statutory component of the marine plans, see comments regarding the ecosystem approach and putting the environment at the heart of the Bill.

Even with an effective network of marine conservation zones (MCZs), if the remainder of the marine area is fully exploited the network is unlikely to sustain the ecosystem functions, goods or services. Therefore there needs to be wider ecosystem objectives to ensure development is kept within sustainable limits. These must be developed in parallel with the other marine objectives, which can help articulate other sector and industry roles and

²¹ English Nature 'the Ecosystem Approach. Coherent actions for marine and coastal environments. A report to the UK Government.' Laffoley, Maltby, Vincent, Mee, Dunn, Gilliland, Hamer, Mortimer, Pound.

responsibilities to the marine environment, and what area or resource is needed within a spatial area to reach their objectives whilst integrating with the UK's nature conservation objectives.

Consideration is required for how the marine objectives for ecosystem health and biodiversity once developed at a UK scale in the UKMPS, are then translated or interpreted by the MMOs into certain geographical or regional sea areas, as the planning areas are to be on jurisdictional rather than biogeographical boundaries such as the regional seas in Charting Progress.

Objectives for marine biodiversity and ecosystems

WWF supports the full implementation of the European and international commitments mentioned in the White Paper, and would also mention the World Summit on Sustainable Development, 2002, commitment and the reaffirming of this commitment at the G8 summit in Evian in 2003.

WWF hopes that through the mechanisms and sufficient resources the UK Government can deliver these international commitments on time - we believe it is possible.

We agree with section 6.9 in the White Paper that marine biodiversity, and the ecosystem goods and services, are under threat from irreversible damage. There are increasing pressures from new technological developments and expansion of existing sectoral activity.

Although WWF agrees in section 6.10 that we should avoid damaging the ecosystem from a point it can no longer recover, as yet we do not know what that point is. It would be prudent for the UK Government to ensure that a precautionary level is built into the marine objectives and environmental limits for resource management to ensure we never get to this 'breaking' point, alternatively taking a precautionary approach to halt biodiversity loss.

Climate change and marine biodiversity

WWF-UK has recently proposed²² a range of measures to reduce greenhouse gas emissions to keep the global average temperature rise to below 2°C threshold, and we also need to ensure and help ecosystems to adapt to the impacts of human-induced climate change that are already happening as the CO₂ emissions are reduced. Hence, we need to build resilience in UK marine biodiversity and habitats to increase the resistance of natural systems so they can cope better²³.

The adaptation and mitigation strategies for climate change in the marine environment must recognise the inherent links between both the adaptation of marine biodiversity to climate change and the mitigation measures, through not only provision of offshore renewables to the energy mix, but by ensuring the ecosystem continues to function. By increasing the vulnerability of the marine ecosystems and lowering resilience we are losing a mitigation mechanism for climate change itself. The oceans provide the world with half of its oxygen, it has stored half of the world carbon dioxide emissions since the beginning of the industrial era, and it is the world's largest carbon sink due to biological processes.

Ecosystems with high biodiversity and those that maintain natural structural components are thought to recover more easily from climatic disturbances. The removal of all other stresses such as over fishing and habitat destruction pressures is a common theme in climate change adaptation strategy for biodiversity; ecosystems become more resilient to the impacts of climate change if we remove as many of the other external pressures they face.

²² Climate Solutions: The Vision for 2050. WWF International, 2007.
<http://assets.panda.org/downloads/climatesolutionweb.pdf>

²³ Buying time; A User's Manual for Building Resistance and resilience to Climate Change in Natural Systems. L.J. Hansen, J.L. Biringer, J.R. Hoffmann. WWF September 2003

WWF has researched adaptation strategies for natural ecosystems and recommends three policies to Defra to incorporate in the Marine Bill which is necessary in order to tackle this urgent issue:

- **Protect adequate and appropriate space:** Important to take account of impacts of climate change in planning protected area networks and to expand spatial scales through buffer zones and corridors to aid species migration.
- **Limit all non-climate stresses:** Important to have more than just one highly protected marine reserve (HPMR) for each habitat, there will need to be a substantial commitment from UK government to provide sufficient protection across UK seas to ensure adaptation and continued mitigation.
- **Use adaptive management and strategy testing:** Essential to ensure the UK marine monitoring strategy includes climate change impacts - monitoring between protected areas to provide a better strategy UK, and Europe wide.

WWF-UK believes the importance of conserving and restoring biodiversity must be built into UK's climate change mitigation strategy as an essential component.

Current conservation mechanisms

We agree with Defra that the current mechanisms are unable to deliver biodiversity commitments both for the two reasons outlined in Section 6.14, but also because the lack of strong legislative power, when considering the marine nature reserves legislation, which WWF hopes the Marine Bill will address.

In addition, the lack of ongoing management and administrative commitment once sites have been designated is also an inherent weakness of the current system of existing European sites. WWF would hope that sufficient resources are to be committed to ensure that the MCZs are 'well-managed' sites as OSPAR states.

Geographic Scope

WWF supports the geographic scope of the proposals in section 6.17, and to have MHWS as a landward boundary is welcome (section 6.19), as is the proposal that bylaws can be applied to activities taking place on land that impact marine biodiversity.

WWF believes that in the UKMPS a further commitment is required between the UK administrations to outline how an ecologically coherent network of Marine Conservation Zones (MCZs), or other marine protected areas (MPAs), will be developed across jurisdictional boundaries to make 'ecological' sense. This must acknowledge that planning for the network will be necessary across jurisdictional areas and there is a need for cooperation between the SNCAs, MMOs and other devolved delivery arrangements. The conservation of marine biodiversity will not be achieved without a network of well-planned and scientifically based MPAs, with strict and strong protection. It would be of great benefit if a similar framework to that of marine historic protection is developed for UK marine biodiversity protection.

WWF recommends there is a duty in the Marine Bill for the agencies to cooperate to develop the network of MPAs.

Regulating better

WWF welcomes the recognition in 6.22 that 'appropriate regulation' will require necessary commitment and resources we hope this will apply to the management of MCZs as these will require appropriate management if they are not going to be 'paper parks'.

WWF is concerned in section 6.32 that there will always be a need to show a demonstrable need for action and this could take time - we would query who will assess the key risks to marine wildlife. WWF would hope that this would be the Statutory Nature Conservation Agencies (SNCAs).

Recent and historical experience has shown even when evidence for damage to a site is demonstrated, or provided, action is limited and the damage continues to occur. An example is the case of Rathlin Island Special Area of Conservation (SAC) in Northern Ireland where there has been photographic evidence of sponge communities supported on reef and boulder communities having been damaged and largely extirpated from an area. It is known the cause is scallop dredging however since 2005 there has been no action to limit this activity to protect what is likely to be nationally important marine features.

Lessons must be learnt from such cases and the reversal of the burden of proof, in line with the polluter pays principle is essential to achieve our environmental objectives.

WWF welcomes consolidation of the Habitats and Birds Directive in section 6.25, and would ask for a published timetable for when the consolidation is to be complete.

Marine Conservation Zones Vision

WWF fully supports the UK Governments vision for a 'network of effectively managed sites comprising of European and MCZs, including highly protected sites.' WWF welcomes sections 6.26 to 6.30 rationale for the introduction of a new site mechanism.

WWF welcomes the mention of highly protected marine reserves (HPMRs) in the White Paper. WWF believes a significant area of the network will be required to be highly protected. This is essential to recover biodiversity, ecosystem functioning and to mitigate and adapt to climate change. This was recently backed up by a study that concluded by restoring marine biodiversity through a number of mechanisms including the creation of marine reserves, we can invest in the productivity and reliability of the goods and services that the oceans provide²⁴.

WWF recommends that **further commitment is required on HPMRs** in the UKMPS, in line with the recommendation in the English Nature report on The Ecosystem Approach²⁵ to introduce strict measures to protect biodiversity, as part of the wider sea management framework. This report also outlines the benefits to sustainable development of introducing strict levels of protection, one of which is to provide a long-term monitoring benchmark, control areas, and places for research in areas unaffected by human activities.

Whilst WWF agrees that rare, threatened and representative habitats and species should be within the network of MPAs, including both MCZs and N2K sites. We would query what 'enough' means for any habitat or species, and would obviously disagree with 'as small as necessary'. This shows a lack of ambition from Defra, both for the extent of the network and the timetable beneath this statement. These are amongst WWF greatest concerns with respect to the proposals within the White Paper, along with the degree of protection.

Therefore, **WWF recommends the Marine Bill includes a duty on the UK Government, in consultation with devolved administrations, to develop a network of MPAs.** Such a legislative mechanism has been included in other countries' marine legislation and WWF believes there is no legal reason for a duty not to be included in the Marine Bill. For example

²⁴ Worm *et al* 2006. Impacts of biodiversity loss on Ocean Ecosystem Services. Science, Vol. 314, no. 5800, pp. 787 – 790. DOI: 10.1126/science. 1132294.

²⁵ English Nature 'the Ecosystem Approach. Coherent actions for marine and coastal environments. A report to the UK Government.' Laffoley, Maltby, Vincent, Mee, Dunn, Gilliland, Hamer, Mortimer, Pound. 'Excluding all extractive pressures from well defined areas, as part of wider sea management process, appears to be the only way that such benefits can be delivered with any degree of certainty.'

in Canada's Oceans Act: 'For the purposes of integrated management plans ... the Minister (of Fisheries and Oceans) will lead and coordinate the development and implementation of a national system of marine protected areas on behalf of the Government of Canada'.

In addition the UKMPS must include the intention of the UK network of sites, including the spatial and regional element, expanding on the purposes and vision of the network. It should also address issues such as viability, or adequacy, and include the principles of replication, representativity, connecting sites and blue corridors and how to deliver the UK's conservation objectives and overall aim in the network. The USA is in the process of working on a framework for developing a national system of MPAs, and the process, engagement, collaborative planning, and principles would be of interest to UK Governments in developing the framework of MPAs in the UKMPS. This strong lead from Federal Government in the USA shows that a national framework for collaborative planning a representative system of MPAs can be achieved over jurisdictional boundaries.

WWF wants the Government to draw on its international commitments and best practice from across the world to develop the framework for the UK network of MPAs.

Timetable for implementation in Vision

The timetable for implementation of the network of MPAs will not meet current international targets and is very disappointing. Indeed Defra²⁶ recognises that the success of meeting international targets, 'the WSSD target from a UK perspective could, say 10 years after WSSD (in 2012), be characterised as: the delivery in conjunction with others of a network of MPAs in the North Sea / OSPAR region'. UK Government must be more ambitious with the implementation timetable. WWF believes the 2012 target for an initial network of marine N2K sites and MCZs could be developed if sufficient resources were provided as there is sufficient data to act. This would create greater certainty for nature conservation, but also for development.

WWF calls on government to invest proper resources to deliver N2K sites and MCZs to meet its international commitments for a network of MPAs by 2012 and publish an implementation timetable as soon as possible.

To ensure the progress of the network the Marine Bill must include a reporting system, required every 3 years to Parliament. This does not need to be onerous and could amalgamate the reports required under OSPAR and N2. This would join up the commitments under both instruments to ensure that a coherent network is being developed across the UK.

WWF wishes to see a reporting mechanism for progress in developing a network of MPAs in UK seas set out in the Marine Bill.

From previous experience with Marine Nature Reserves, and the implementation of the marine N2K sites, the UK Government has not shown itself willing to act to develop a network unless substantial external pressure has been brought to bear. For this reason, and the unambitious timetable in the White Paper, WWF wants the duty to develop a representative network and report on progress, as a minimum for the Marine Bill.

WWF wants a duty on UK Governments to develop a network of MPAs and report on progress every three years, as a minimum for the Bill.

²⁶ Beyond Johannesburg: Delivering our International Oceans Commitments.
<http://www.sustainable-development.gov.uk/international/wssd/documents/oceans-2006.pdf>

Purposes of MCZs

WWF fully supports the purposes outlined in the White Paper, in particular WWF is pleased with the mention of aggregations of important species, or marine biodiversity hotspots, and the recognition from Defra of the work and report undertaken by the Marine Biological Association on behalf of WWF.

WWF would also welcome the following inclusions as purposes for MCZs;

- **Physical marine features and ecological processes.** In recognition that these areas are essential to keep the ecosystem functioning and that wider protection measures have not been outlined in the Marine Planning section.
- **Areas important for marine education and research,** although agree that these may meet the other purposes of the MCZs it would recognise the great benefit and public acceptance of a network of MCZs

WWF fully supports the individual, or suite of sites, being designated together in section 6.32.

Conserving other important features

WWF wants the primary purpose and objectives for MCZs to be to conserve nature conservation, and agrees with the proposed mechanisms to consider the other options set out in section 6.35, with the exception of our comments above.

In addition for practical purposes if an MCZ were to be identified adjacent or close to a marine site of special archaeological interest, potentially a wider management plan could bring together the two sites in this area for ease of management, potential zoning and stakeholder engagement. However, the UK Government must not compromise on either nature conservation or marine heritage protection objectives by seeking combined MCZs for both heritage and nature.

Site Selection

WWF agrees with Defra proposals for flexible mechanism in section 6.36, and that a network can be developed over time, as further information becomes available. However WWF firmly believes there is sufficient information to develop an initial network by 2012. WWF's work to identify hotspots showed that there is sufficient data to start this process both in inshore sites (recognised as <three nm in the report) and offshore, taking deep sea experts advice on likely habitats and species and using the mapping of UK sea bed and water column features in UKSeaMap to develop a network of MPAs.

WWF fully supports the inclusion of replication, in section 6.37 as a principle in the network of sites although this must not be only one replication of each habitat, species or marine landscape throughout UK seas, or even regional MPA network planning regions. WWF would question what Defra means by a 'proportionate' network of sites.

Balancing, ecological, social and economic considerations

WWF fully supports LINK's concerns by Government's attempt to 'balance' social and economic considerations. At present this section and the whole of the White Paper appears to be skewed in the favour of avoiding impacts on social and economic interests. Whilst the White Paper states there needs to be a careful 'balance' it does not set out how this is to be achieved or what weight the various factors provided in section 6.43 will be given. **WWF wishes government to clarify if guidance on the priority or 'weight' or the factors will be reflected in the spatial element of the UKMPS and therefore marine plans? Please see WWF earlier comments on the UKMPS.**

WWF believes that the network of MCZs and N2K sites must be based on sound ecological science to ensure the coherence and connectivity between sites - see earlier comments on the need to clarify network principles across the UK and our request for a duty to develop a network of MPAs. This requires that the proposals for individual, or a combination, of sites are

proposed by the SNCA using ecological criteria, based on the MCZ purposes in the White Paper.

During the consultation process WWF recognises that it is important to gain community and stakeholder buy-in to individual or networks of MPAs²⁷, and to explain why MCZs are so important. There could be other factors relevant in selecting sites, in particular representative sites in the network, as recognised in section 6.52. However, WWF does not agree that this is the best list of factors in section 6.43. We strongly recommend the OSPAR criteria to Defra for this purpose and WWF queries why these were not used as the factors?

OSPAR practical criteria / considerations.

- Size (meaning extent of the feature being considered – usually the bigger the better)
- Potential for restoration
- Degree of acceptance
- Potential for success of management measures
- Potential damage to the area by human activities
- Scientific value

It is important to realise that additional criteria may also constrain development of an ecologically coherent network of MPAs (Day & Roff, 2000), therefore there must be a transparent iterative decision making process and a strong legislative and policy framework which recognises the coherence of the network and specifies the amount and degree of protection to be provided, see box 1.

If a site is not designated after a proposal by the SNCA the reasons must be clear, and an alternative site or measure to meet the objectives of the network of MPAs must be put forward. This must also be backed up by a legislative provision that the SNCAs have a duty to develop a network of MPAs, to allow the development of the network despite opposition from different sectors.

WWF recommends that the Marine Bill ensures a legislative obligation for the SNCA to effect the changes required for adequate ecosystem protection.

WWF does believe it is important to engage stakeholders at an early stage. WWF strongly recommends that the guidance follows a process similar to that used in developing networks of MPAs around the world for example in the USA, Canada and in the Great Barrier Reef representative areas programme. The GBRMNP had overarching biological principles and socio-economic principles for planners. In spite of its different location and size to MPAs in the UK, the methodology can be used as best practice for the success of implementing MCZs in the UK. However this would require commitment from Government to invest resources in the process from the beginning. This is a similar to the approach to be used in Finding Sanctuary, which WWF fully supports.

²⁷ Day & Rof, 2000. Planning for Representative Marine Protected Areas: A Framework for Canada's Oceans. Report prepared for WWF Canada, Toronto.

Box 1. Examples of the Great Barrier Reef biophysical principles to help achieve the ecological objectives of the Representative Areas Programme

Developed by the scientific steering committee

- Size, shape and definition of protection zones including the degree of protection; maximise larger MPAs (vs smaller),
- Replicate; have sufficient, amount and configuration of, strict protection areas to ensure against negative impacts on a bioregion
- Avoid fragmentation of habitats
- Set minimum amount of protection; represent a minimum amount of each habitat in each bioregion, including a minimum level of strict protection
- Represent all habitats; a minimum of each community type and physical environment type in the overall network
- Apply all available information to maximise configuration of network
- Protect uniqueness
- Maximize natural integrity; Consider effects of historic impacts on integrity of biological communities, existing strict protected areas

From Ferandes *et al.* 2005. Establishing representative no-take areas in the great barrier reef: Large scale implementation of theory on marine protected areas. *Conservation Biology* 1733 – 1744.

Financing MPAs in the UK

If costs and benefits are a factor to be taken into account there is also the application of the Regulatory Impact Assessment, therefore this could be seen as double counting of socio-economic factors and seems to be a cumbersome process to designate MCZs. WWF therefore recommends Defra ensure that this does not occur.

Although Defra has not discussed this in the White Paper, the Regulatory Impact Assessment does address the issue and states that economic benefits include the opportunity for increased leisure businesses involved in eco-tourism, for example wildlife watching, diving etc.

WWF has commissioned a report²⁸ into the economics benefits of MPAs, with an emphasis on the benefits to recreation and leisure (to be published by the end of July 2007) and WWF would welcome a discussion of its outcomes with Defra. The draft report concludes that the most valuable (and unquantifiable) benefits of marine protection will need to be protected by Government intervention. Due to their long term nature, the uncertainty surrounding the effects of degrading or destroying the source of these benefits, and the 'common resource' that they represent, the market does not adequately reflect their value and will not cover the costs needed to protect them (in spite of growing public awareness of the value of the natural environment). The report discussed cost recovery for financing MPAs, and a case study suggests that we first need to be able to measure what the current and proposed level of protection actually costs and relate this to the benefits obtained, which will guide investment in additional protection measures in future. However, there was limited data available to be able to assess the financial and economic costs and benefits of existing and future protection. Therefore, there is a need to ensure that both the MMOs and SNCAs establish data collection methods for this purpose which is highly relevant when considering a meaningful RIA for each of the MCZs.

WWF wants Government to establish useful data collection methods to enable meaningful RIA for each MCZ.

²⁸ Marine Protected Areas in the UK: An overview of their economic value with specific focus on leisure and recreation. Halcrow Group, Dr N Murray and Dr Sue Gubbay. Draft, 2007.

Site selection and marine planning

Whilst WWF recognises that marine plans will set a wider marine management framework in which to place both the MCZs and N2K sites in context, it appears from this that the guidance and plans could constrain the proposals brought forward by the SNCAs for any MCZ that may need to be designated in an area for a specific habitat, species, marine landscape. There must be guidance from the SNCA on the whole process to select MCZs. WWF supports that MCZs can be designated prior to a marine plan, but if a plan is being developed in a regional area it would make sense to develop the network of sites in the area based on the wider UK network objectives.

Site objectives

WWF fully supports the response from LINK on site objectives on section 6.45 – 6.51. The individual site objectives must be linked to wider network and conservation objectives, and these must be developed by the SNCAs.

As stated previously, WWF fully supports the mention of HPMRs in the White Paper, but believes the commitment is needed in the UKMPS.

Stakeholder engagement and site selection process

WWF recommends that the SNCAs must bring forward proposals for candidate site designations for individual or a combination of sites using ecological scientific criteria, that recognises representativeness, but also specifies if there are sensitive, rare or threatened species or habitats present, or meets the conservation purposes of the MCZs or the coherence of the wider network. These proposals should also set out the objectives for the site and potential proposed management, such as full recovery as a potential highly protected site, as set out in section 6.54.

However as Defra has acknowledged in section 6.56 this will require guidance of the site selection process which WWF recommends that the SNCA develop, as discussed previously.

Designation

WWF supports the LINK response on this section.

Management

WWF supports the LINK response on this section. Management schemes could be a way for a public body to demonstrate taking positive measures to control damaging activities. There is nothing in the White Paper that explains in any detail the management expectations for an MCZ, which is surprising given that the OSPAR commitment is for a network of 'well-managed' MPAs. Although reference is made to management measures but this could mean nothing more than the requirement for mitigation of a damaging activity to a selected site.

However, the intention appears to be that those authorities with competence over a particular geographic area will assume, as a result of their conservation duty towards the site, a management role towards the activities taking place at the site. Where such activities either individually or in combination are likely to damage a site the intention is to allow a management scheme to be established by relevant authorities section 6.89. This would apply to the management of overlapping sites, WWF supports this proposal.

It appears that the set of tools to manage the MCZs are largely reactive to threats and changes in use once they have been identified. It is best practice in many MPA regimes and in the legislative provisions, see box 2, for a more direct approach to managing sites which WWF would advocate for inclusion in the Marine Bill. The use of zoning for certain MPA objectives, action plans for each site and prohibited acts. Zones could include a highly protected zone, buffer zones around the MCZ which could assist in adapting to climate

change. WWF would ask why Defra has not looked into including zoning and the provision of such tools within the Marine Bill.

WWF recommends that the UK Government include a mechanism for zoning, plus a management or action plan for each the MCZ in the Marine Bill.

Box 2: Spain MPAs Zoning Tools (Stevens et al. 2006. *Methods for managing Marine Protected Areas: Options for establishing and managing a marine protected area system in the UK*. Report for Natural England).

The Spanish Zoning scheme is based on gradation of two or three levels;

- Central (core) zone; all uses and human activities are generally prohibited, except for the mandatory intervention of managers. The size of these zones of strict protection is always relatively small (65–100 ha, comprising around 7–10% of the total reserve area).
- Intermediate buffer zone – Bordering the central zone a (buffer) zone where certain uses are forbidden (generally spear-fishing, but sometimes also scuba diving and amateur line fishing) or are subject to other limitations or controls. Small-scale professional fishing is usually allowed in this latter zone, but this is generally controlled by limitations on the fishing gear used, and/or by a system of permit limitation which is equivalent to reserving this zone for local fishermen and thus to maintaining the status quo of resource use. Where a third peripheral (general use) zone exists the regulation of activities there is not very restrictive.

Duties to deliver site objectives

WWF supports these proposals in section 6.62 to 6.64.

In addition to the public duties imposed on public bodies the White Paper does not go as far as the Wildlife & Countryside Act 1981 (as amended) to incorporate a duty on any user of the MCZ, to notify the competent authority, or SNCA, of any activity (or operation) to take place in the site and to obtain a consent before they commence activities. WWF would ask why this has not been included for MCZs, unless it is intended to be included for the provisions of any license to be given. There are also provisions in the WCA that the competent authority has power to alter modify or refuse the consent, which WWF would like for the MMO with respect to any license.

The Government's proposed duty is expressed in both a negative and positive way. Firstly, activities should not be permitted 'where they would result in the objectives of a site not being achieved, or the integrity of the site to be compromised' which WWF supports. Secondly, relevant bodies must proactively carry out their functions and take 'positive measures to control damaging activities, such as taking action to mitigate impacts, where they have powers to do so'.

The UK Government could express the duty in even wider terms. For instance, the relevant bodies could be required to ensure the site is both kept free of damage or harm and that measures are taken to ensure its features are restored or enhanced by any activities.

The duty expressed under section 28G of the W&CA is worth consideration, to 'take reasonable steps, consistent with the proper exercise of the authority's functions, to further the conservation and enhancement of the flora, fauna or geological or physiographical features by reason of which the site is of special scientific interest'.

Moreover, without any duty imposed upon those carrying out permitted activities questions may be raised about the 'polluter pays' principle and who ultimately will bear any clean up costs.

Licensed activities

WWF fully concurs with the LINK response. WWF disagrees with the premise that most activities could be allowed to continue within an MCZ providing that they meet the criteria for public interest as specified in section 6.67, and if mitigation measures can be effective. The

section suggests that where an EIA identifies that an activity is likely to cause damage it could be allowed to continue in a HPMP subject to suitable mitigation measures, even where no mitigation will pass a 'public interest test'. The inclusion of wide economic interests in the test will mean that almost all non-mitigated damaging activity could be allowed in a HPMP, or MCZ.

This provides a stronger argument for further pro-active management tools for MCZs in the Marine Bill. We agree with LINK that there should be a presumption against development in an MCZ and there should be mention of the precautionary principle. This has been simply set out in the Canada Oceans Act at section 30 Part II the Principles of a National Strategy are:

- Sustainable development
- Integrated management of the marine environment
- Precautionary principle

This whole section will require further guidance from the SNCA on licensing within an MCZ. In section 6.68 WWF believes that compensation *must* be provided if there are adverse impacts on MCZs.

Review of licenses, fisheries, unregulated activities

WWF fully supports the LINK response.

With respect to any unlicensed recreational activities, WWF would advocate the use of the Sandford Principle in the Marine Bill for MCZs, as it is in the Environment Act, 1995. If access is in direct conflict with conservation, conservation must take precedence.

Adaptive management

WWF supports the W&C LINK response. In addition WWF agrees with the need to adapt to changing environment - please see adaptation strategy under climate change section. WWF advocates the use of buffer zones in MCZs to ensure adaptation can be assisted when boundaries need changing and therefore increase resilience in areas that species may migrate to. This is in response to on-going frequent monitoring, buffer zones and the need for climate refuge areas to be identified during the designation process of an MCZ.

Management schemes

WWF supports the LINK response, that management plans must be included within the Bill. The Irish Sea Pilot recognised this as a minimum for all MPAs but outlined that it need not be too onerous and several sites could be included together within a management plan.

Overlapping sites

WWF agree that sites should be able to overlap, and that objectives could too.

Appeal of MNRs, seaward limit of SSSI's.

WWF fully supports LINK response.

Offences

WWF fully supports the LINK response.

We hope that the recommendations from the Hampton Review are to be considered, that there were too many examples where penalties fell far short of the commercial value of the regulatory breach. It found that the average fine in magistrates' courts for environmental cases was too low.

The review stated that if penalties are inadequate to reflect the crime dishonest businesses will be given further incentive to breach regulations and undercut honest companies²⁹.

WWF would recommend a similar approach to sentencing for the MMO, as outlined in the Environment Agency's *Enforcement and Prosecution Policy* it states that in making a decision to prosecute it follows the *Code for Crown Prosecutors*. In particular, it considers (a) whether the enforcement action is proportionate to the risks posed to the environment and the seriousness of the breach of law; (b) the sufficiency of evidence (c) the public interest

In defining what the defence in Section 6.98 for 'demonstration they took all reasonable precaution and exercised all due diligence to avoid damaging or destroying the features in a site' WWF would expect the following factors³⁰ to be relevant to such a defence;

- Culpability
- Whether action could have been avoided in the location
- Where local conditions and circumstances played a relevant part
- Whether the business had maintained its business to a current state of technical and financial levels
- Costs of alternative actions
- Maintenance of good business practices
- Breach of any license condition
- Breach of any other legal duties

Species

WWF supports the vision for species protection, and would refer Defra to the LINK response regarding the species protection.

WWF, along with LINK, questions what Defra means by 'most important' or viable populations? WWF advises that the NIMF list is urgently completed in order to provide a basis to define these and would support statutory underpinning of the NIMF list and duties to ensure their protection.

WWF recommends that there is a duty on the SNCAs to identify a list of NIMF list.

WWF supports LINK's concerns that the measures outlined in the White Paper will suffice to conserve populations of nationally important mobile species. This is highlighted by the acknowledgement in the White Paper in section 6.103 that the majority of species can be addressed by the MCZ mechanism or sectoral controls apart from impacts in relation to collection or mobile species. However the next section goes on to contradict that measures are then needed for mobile species and to address the impacts of collection by stating if area protection tools and management tools are effectively applied, but states above that there are exceptions and these must be addressed by Defra in the White Paper or through other measures.

Therefore WWF recommends the following for inclusion in the Marine Bill to address this gap in the White Paper.

The Marine Bill to include;

- Management plans for NIMF, and/or priority Marine BAP, whilst WWF recognises a number of these will be considered under management schemes for MCZs
- establish targets for the protection, conservation and management and recovery of marine features

²⁹ Ibid, n.34,p.6

³⁰ Marine Conservation Zones – Enforcement of management systems, a report to WWF UK. Debbie Tripley, Fenner's Chambers, June 2007.

- periodic assessments of the quality of marine features
- monitoring of targets
- may make provision for further development of section 74 CROW Act lists
- Advisory Body to exercise functions for purposes of management plans

Establish a Code of Conduct for England, similar to that in the Scottish Marine Wildlife Watching Code, and a duty of the SNCA to develop and promote this to relevant stakeholders.

WWF would want Defra to consider the use of marine zones in the Marine Bill, see earlier discussion in respect to zoning in MCZs. These can be identified within the plan by the MMO, or SNCA and recommend zones to the MMO for the inclusion within a plan.

Purposes of marine zones could include; zones for other sectors, but also for biodiversity purposes.

Using sectoral controls

Whilst WWF recognises the reasons outlined in section 6.109 to not ‘criminalise’ the legitimate fishing activities. However WWF does not believe that the current sectoral measures expressed in 6.110 to minimise the impact of by-catch are working to ensure that there are ‘viable’ populations by 2020, nor to halt the decline of biodiversity by 2010.

WWF recommends that the Wildlife & Countryside Act is amended to establish a system of strict protection, as under the EU Habitats Directive; certain types of interference with the species are set out including deliberate capture or killing; deliberate forms of disturbances; deliberate destruction or taking of eggs from the wild and deterioration or destruction of breeding sites or resting places. For example this would include the requirement to monitor the incidental capture of small cetaceans, and once a problem identified mitigation measures implemented such as selective gear or real time closures. The derogation of this article is where there is no ‘satisfactory alternative’ and the derogation is not detrimental to the maintenance of the populations of the species concerned at a favourable conservation status.’

The exception in this circumstance is ‘in the interests of public health and public safety, or for other imperative reasons of overriding public interest, including those of a social or economic nature and beneficial consequences of primary importance for the environment.’

However, there is unlikely to be any change to existing measures of species protection. For instance, the government makes clear in the White Paper that it does not intend to make changes to the existing species protection legislation set out in the W&C, section 6.120. As a consequence, operators with permits will continue to have available to them under the W&CA the defence that acts resulting in the intentional or reckless killing, or injury of certain wild animals was the incidental result of a lawful operation and could not reasonably have been avoided³¹ even though this is no longer a possible defence under the EU Habitats Directive, and there are important mobile species which are not included on Annex II of the Habitats Directive, such as common skate, basking shark.

WWF would welcome an input into the review of the protective measures the Wildlife & Countryside Act as specified in 6.125, and that this include the recommendations from WWF.

Bylaw Making Powers and Interim Measures

WWF welcomes the proposals to introduce new bylaws to control unregulated activities, and agrees with the proposed activities to be controlled in section 6.134.

³¹ Section 10, W&CA

Bylaws are a useful way in which to maintain control over local activities. However, whilst there is the advantage that they can respond to local situations in a flexible way there is the disadvantage that they can take a considerably long time to put into place.

It would be useful here for the government to consider a fast track process for a standardised type of bylaw to be put in place, similar to those used for bylaws on land. WWF welcomes the use of interim measures to address this shortfall for urgent action. In addition we would also welcome a mechanism for speedy interim measures.

It is equally important for the government to set out clearly the purposes of the bylaw making powers concisely in the legislation bearing in mind that offenders may always raise the defence that the bylaw is ultra vires (or acting outside the legal authority) during criminal proceedings, where the bylaws may extend beyond the purposes set out in the enabling legislation.

Enforcement, Toolkit and Powers & Functions

WWF agrees with section 6.160 to ensure that provisions can be effectively enforced, and support that this would be the MMO, please see comments in offences section.

The level of protection likely to be achieved will depend strongly on the nature of permit conditions imposed by regulators. Weak conditions will allow for less enforcement of damage if it falls within the scope of permissible acts under the authorisation. This must be accounted for when introducing the new licensing regime for development activities and inshore fisheries.

WWF would welcome a provision within the Marine Bill that the Secretary of State must before the grant of any licence exempt from the general protection measures that the action authorised will not prejudice NIMF, or MCZ.

WWF welcomes section 6.175 premise that the enforcement officers of the MMO will be given a suitable suite of powers. WWF would query whether informed or effective stakeholders also provide evidence about damage, disturbance to prosecution officers? There is something in the Environmental liability Directive which allows individuals to provide evidence to a body, e.g. the MMO.

WWF would seek clarification of the term remediation in section 6.179. The Wildlife & Countryside Act states a restoration order may be ordered by a Court upon the conviction of any person of certain offences. A restoration order requires a person to carry out such operations as are specified in order to restore a site to its former condition.

WWF believes it prudent to use the Environmental Liability Directive definition of remedial measures as 'any action, or combination of actions, including mitigating or interim measures to restore, rehabilitate or replace damaged natural resources and/or impaired services, or to provide an equivalent alternative to those resources or services as foreseen in Annex II'. Three levels of remediation are set out in Annex II which are meant to combine and be complementary to one another. These are:

- primary remediation
- complementary remediation
- compensatory remediation

A short review³² of various management and enforcement measures proposed by the White Paper has found they may result in a patchwork of uneven and unequal sanctions and measures. The differing approaches may be dependent upon the level of legislative protection

³² Marine Conservation Zones – Enforcement of management systems, a report to WWF UK. Debbie Tripley, Fenner's Chambers, June 2007

certain sites and species will receive rather than driven by essentially ecological objectives. This is contrary to the welcoming aims of the Marine Bill for marine nature conservation.

The White Paper focuses on achieving regulation that is both certain and proportionate in its choice of measures and outcomes which is welcomed. However the government must also endeavour to take measures to halt the loss of biodiversity by 2010 in line with its commitments made at the Johannesburg Summit at the WSSD.

In the light of current scientific evidence and the time frame available WWF believes that the UK Government may find that the only one way of achieving this overall aim is to apply strict protection measures in a representative way in a wider sea management framework which ensures sustainable development and extraction within environmental limits.

7. Modernising Fisheries Management

WWF urges government to take every opportunity in the Marine Bill to improve management of inshore fisheries which will have wider positive impacts on many offshore fish populations, for the future of our fishing industry and the health of UK seas.

Sea Fisheries Committees in England

Summary of our proposals

7.15 The current UK fisheries legislation originates from the 1960s and reflects the first origins of the system of fisheries management in the late 19th Century. There is a widely held perception that legislation is neither relevant, enforceable nor appropriate for the effective management of today's UK fisheries, which are characterised by a highly dynamic and competitive industry, intensively exploited stocks, and stakeholder conflict.

WWF believes that it is only with the repeal of existing outdated and ineffective Acts and regulations and their replacement with new legislation that fisheries managers will be provided with the necessary powers, flexibility and adaptability to deliver true sustainable management of England's inshore fisheries. Above all, it is essential that the legislative 'toolkit' that inshore fisheries managers have at their disposal is (at the very least) sufficient for them to be able to deliver against management objectives. **We believe that the Government should introduce new legislation for inshore fisheries that:**

- Furnishes clear, logical and well-defined terms of reference for all authorities involved in the management framework of inshore waters.
- Must be applied appropriately and sensitively across all sectors, and introduces new ways of regulating the use, management, recovery, protection and monitoring of the marine environment, coupled with better enforcement.
- Requires a joined up approach, with SEA undertaken on a sea area basis, as applicable to the fisheries involved, to include all future planning strategies that are developed for inshore fisheries and aquaculture.
- Contains a requirement for all new inshore fishery projects to be the subject of an Environmental Impact Assessment (EIA), including developments in aquaculture, new fishery projects or practices, significant changes in gear design and new areas of exploitation.
- Establishes a duty of care on all fisheries managers.

- Develops, implements and resources an inshore fisheries strategy based on delivering economic, social, environmental and resource conservation objectives.
- Provides mechanisms to deliver environmentally friendly fisheries.

Purpose and duties

7.18 WWF supports this recommendation. The Government should define a clearly defined purpose for inshore fisheries management that ensures the integration of environmental considerations into fishery management. This function should be broadened to include a wider stewardship role for the marine environment. SFCs should be given a duty to ensure that the management of inshore fisheries is based on a number of key principles, including the need for ecologically sound management of the marine environment and adoption of the precautionary principle.

A duty of care is a legal obligation imposed on an individual requiring that they exercise a reasonable standard of care while performing their role. A duty of care may be considered a formalisation of the implicit responsibilities held by an individual towards another individual within society.

Defra has currently established one duty of care, for waste legislation and licensing. The duty of Care is set out in section 34 of the Environmental Protection Act 1990 and associated regulations. It applies to anyone who is the holder of controlled waste and ensures that the waste is managed properly, recovered or disposed of safely, does not cause harm to human health or pollution of the environment and is only transferred to someone who is authorised to receive it.

7.19 WWF supports this recommendation. WWF believes that inshore fisheries management should be incorporated into the framework of Marine Spatial Planning to allow the adoption of such an approach.

It is WWF's view that SFCs must be given the powers to manage inshore fisheries in an integrated way, and must attempt to balance the various objectives – ecological, biological, economic, social, cultural and administrative – which are implicit in the concept of sustainable development. There is a fundamental need to move away from species management towards ecosystem management. A fished species cannot be conserved without also conserving the ecosystem that supports it - noting, of course, that different life history stages of commercial species often live in very different places within different ecosystems.

7.20 WWF supports this recommendation and believes it is imperative that SFCs be given defined duties to enable them to achieve their purpose. However we would value the opportunity to be consulted on the exact nature of such a duty of care.

Constitution and governance

7.22 WWF supports this recommendation. SFCs should be provided with a secure funding framework that removes the uncertainty over their future support and enables them to perform their fisheries and environmental duties to the full.

The Sea Fisheries (Wildlife Conservation) Act 1992 requires fisheries managers to have regard for nature conservation in making decisions and to find a balance between this and other considerations. SFCs and other fisheries regulators have a duty to balance the conservation of marine flora and fauna with other factors that affect the exercise of their sea fisheries functions. The Environment Act 1995 placed wider marine conservation obligations on the SFCs. However, despite being authorised to enforce EC and national fisheries regulations, and required to work as "relevant authorities" and "competent authorities" to deliver national obligations arising from the European Habitats and Birds Directives, SFCs do not at present receive adequate funding. Any new framework must provide secure adequate

resources for SFCs along with a structure that reflects their enhanced marine conservation duties. An SFC should be appropriately and fully funded to carry out the tasks it is charged with to manage local, national or international (CFP, Birds Directive, Habitats Directive, Water Framework Directive, etc) obligations.

7.24 WWF supports this recommendation provided the method of such an appointment is carried out in a transparent and accountable manner.

7.25 WWF supports this recommendation. It is a strength of SFCs that they provide stakeholder input and while this needs to include local authority membership. It is also desirable, given the proposed purposes, to build on the present arrangements for representation from the fishing industry and environmental interests by strengthening the latter, together with recreational anglers. A reduction in local authority members would allow an increase for other interests and by allowing only local authority members to vote on the levy, it counters the arguments put forward in the Bradley Report.

- Natural England (NE) membership – SFCs are required to manage the impact of fishing activity on the wider marine environment. This requires specialist knowledge and skills, which NE can bring to each Committee. We intend that NE will have one seat on each SFC.

WWF supports this recommendation provided that the appointees from NE can demonstrate said specialist knowledge and skills.

- Marine Management Organisation (MMO) membership – SFCs work closely with the MFA to ensure a joined-up approach to monitoring and enforcement; to make best use of expensive capital assets (e.g. patrol vessels); and to share best practice and experience. We will strengthen this working relationship by allocating the MFA a seat on each Committee. Because the functions currently performed by the MFA will be transferred to the new MMO, the seat will be assigned to the MMO.

WWF supports this recommendation.

7.26 WWF supports this recommendation but would appreciate further clarification on the desired split within the 7 from the fishing industry, anglers, conservation bodies and other relevant interests.

7.27 WWF supports this recommendation and agree that the framework be made in line with the Commissioner for Public Appointments 'Code of Practice for Ministerial Appointments to Public Bodies'¹ to ensure transparent, consistent and fair appointments procedures (recommendation 7.28).

7.30 WWF supports this recommendation. In addition, as recommended in the Bradley Report, the ASFC could also be tasked with reviewing the effectiveness of SFCs. Furthermore it will assist in developing clear lines of communication between SFCs and Central Government departments.

Bylaws

Making bylaws

7.32 WWF supports this recommendation providing the need for consultation and an RIA does not inhibit the ability for SFCs to impose emergency bylaws.

7.33 WWF supports this recommendation. There is a need to ensure that SFCs not only have the powers to introduce interim measures but also the duty to positively do so.

7.34 WWF supports this recommendation to enable SFCs to adopt a precautionary response and react quickly to emergency situations.

7.35 WWF supports this recommendation provided a guiding framework is established to ensure the process of amendment and revocation is evidence-based.

Bylaw scope

7.37 WWF supports this recommendation.

7.38 WWF supports this recommendation. The ability to limit numbers is an essential tool for proper management of a fishery and forms a basis for an effective licensing system for inshore fisheries, facilitating the sustainable exploitation of all stocks, and providing a mechanism to adjust fishing effort rapidly in response to conditions e.g. stock levels. SFCs must be given the ability to restrict the number of licences issued more flexibly, and it should be possible to set conditions on licences issued. Licences should cost, with any money raised in this manner spent on the management of inshore fisheries.

7.39 WWF supports this recommendation. It is WWF's view that SFCs must be given the powers to manage inshore fisheries in an integrated way, and must attempt to balance the various objectives implicit in the concept of sustainable development. There is a fundamental need to move away from species management towards ecosystem management. A fished species cannot be conserved without also conserving the ecosystem that supports it.

7.40 WWF supports this recommendation and acknowledges that the wording of current legislation prevents effective management.

7.41 WWF supports this recommendation. In addition to fisheries management benefits, the introduction of mandatory catch recording schemes will allow better targeting of the enforcement task. It would be useful to know Defra's views on SFCs access to VMS data, both real-time and historic, to aid targeting of inspections/presence; as discussed in the Bradley Report.

7.42 WWF supports this recommendation. If the ecosystem approach is to be successfully adopted, resources will be required for monitoring and scientific research capabilities, to provide data and information for ecosystem based management. Research is needed to establish population status baselines and trends: the need for this information is far wider than just the fishing industry. A commitment to monitoring the environmental impacts of fisheries will allow the determination of appropriate mitigation targets and measures.

7.43 WWF supports this recommendation provided adequate coverage to meet SFCs purposes and duties is maintained in the marine jurisdictional area.

7.45 WWF supports this recommendation.

Enforcement

Penalties

7.49 WWF supports this recommendation. The penalties need to be proportionate to the offences.

7.50 WWF supports this recommendation.

7.51 WWF supports this recommendation.

7.52 WWF supports this recommendation.

Funding and administration

Funding

7.55 WWF supports this recommendation. The Sea Fisheries (Wildlife Conservation) Act 1992 requires fisheries managers to have regard for nature conservation in making decisions and to find a balance between this and other considerations. SFCs and other fisheries regulators have a duty to balance the conservation of marine flora and fauna with other factors that affect the exercise of their sea fisheries functions. The Environment Act 1995 placed wider marine conservation obligations on the SFCs. However, despite being authorised to enforce EC and national fisheries regulations, and required to work as “relevant authorities” and “competent authorities” to deliver national obligations arising from the European Habitats and Birds Directives, SFCs do not at present receive adequate funding. Any new framework must provide secure adequate resources for SFCs along with a structure that reflects their enhanced marine conservation duties. An SFC should be appropriately and fully funded to carry out the tasks it is charged with to manage local, national or international (CFP, Birds Directive, Habitats Directive, Water Framework Directive, etc) obligations.

WWF agrees that all local authorities with a sea or estuary coastline (tidal waters) contribute to relevant SFC levies. The example of the NWNWSFC illustrates the need for this; as a consequence of the abolition of metropolitan counties in the 1980s, the SFC lost about 25% of its income and then, when there was further reorganization later lost a further 25% as Cheshire's status was changed.

7.56 WWF supports this recommendation. As recommended in the Bradley Report, WWF supports the concept of charging the inshore industry to support the costs of inshore fisheries management (Recommendation 32 and para 10.11). At present SFCs do not charge the industry, except in some cases under regulating orders, from which they obtain a total income of around £170,000 (total funding of SFCs in 2003/04 was £5.5m). WWF suggests a portion of funds raised be used to increase resourcing of CEFAS to monitor the condition of inshore fisheries. A good model for funding some of the background research/monitoring required to improve inshore fisheries management could come from the Australian system. They have used licence fees and levies on landings to support the Fisheries Research and Development Corporation (FRDC) which provides funding (subject to competitive bidding) for research projects of specific relevance to the fishing industry.

7.57 WWF supports this recommendation providing such additional functions do not prevent the primary objectives being carried out adequately.

7.59 WWF supports this recommendation. Additional savings may be generated through 'economies of scale' by reducing the number of SFCs.

Working with others

7.64 WWF supports this recommendation. The SFCs should have a stewardship role for the marine environment, encompassing a duty to balance marine nature conservation with other factors that affect the exercise of their sea fisheries functions.

Number of SFCs

7.65 WWF supports the reduction of SFCs in England and Wales from 12 to 6 and recommends the Bradley Report “Preferred Option” scenario (Para A13.13) for the reasons described.

The Environment Agency

7.68 WWF supports this recommendation. The tasks in estuaries are not intrinsically different from those elsewhere for SFCs (except where salmonid issues are distinct). Therefore advantages of the SFC taking control include local stakeholder control, scope for integrated management and enforcement going beyond the current cross-warranting, and a focus on specifically inshore activities.

7.69 WWF supports retention of the EA's marine responsibilities for salmonids because of its close links with EA inland rivers work. As noted in the Bradley Report, the EA's work on

overall marine assessments is largely because of its role as competent authority for WFD, but it is not obligatory for the competent authority to carry out all tasks itself. Thus, there should be further examination of the SFC role in WFD tasks.

SFC Title

7.71 WWF supports the renaming (rebranding) of SFCs to mark their new functions.

Several and Regulating Orders for shellfish

Application process

7.83 WWF supports this recommendation. Several & Regulating Orders are a good mechanism for sustainable shellfisheries management but are underused - probably due to the perceived laboriousness of obtaining them. By reducing the likelihood of facing a public inquiry the number of SROs will likely increase – thus increasing sustainable shellfisheries in inshore waters. However, any simplification and acceleration of the currently lengthy application process, must not lose the emphasis on the development of a comprehensive management plan for the area proposed for an order.

Enforcement – Regulating Orders

7.85 WWF supports this recommendation but questions whether such enforcement will be chargeable.

7.86 WWF supports this recommendation. However, as such the SFCs must be given the ability to restrict the number of licences issued more flexibly, and it should be possible to set conditions on licences issued. Licences should cost, with any money raised in this manner spent on the management of inshore fisheries.

Enforcement – Several Orders

7.89 WWF supports this recommendation but questions whether such enforcement will be chargeable.

Enforcement – Private shellfisheries

7.90 WWF supports this recommendation but questions whether such enforcement will be chargeable.

7.91 WWF supports this recommendation.

Tolls and Royalties

7.92 WWF supports this recommendation.

7.93 WWF supports this recommendation.

7.94 WWF supports this recommendation.

Offences

7.96 & 7.99 WWF supports this recommendation. In addition, WWF recommends that a Ministerial power to withdraw a Regulating or Several Order where (significant) environmental damage is occurring, either directly within the Order areas, or where it is having impacts outside the boundary, or where stock sustainability is at risk (with a requirement for consultation before withdrawal) is established.

7.100 WWF supports this recommendation.

Activities within a Several Fishery

7.102 WWF supports this recommendation provided that an EIA should be applied to any new activities. SFCs should only consider a change in fishing practice or development of a new fishery after an EIA has been presented to the Committee. The conservation agencies and members of the committee should be fully consulted on any inshore fisheries EIA. Furthermore there needs to be clarification on what methods of harvesting are covered, with regulation of all vehicles (tractor dredgers as well as boats) and methods of fishing, as well as activities associated with fishing (for example the use of vehicles to collect catch from a beach, which can cause significant damage to an area's wildlife interest).

Other improvements

7.104 WWF supports this recommendation but would appreciate further information on whether EU quota shellfish (i.e. *Nephrops*) will be included. In addition, WWF wishes to see lifetimes of Orders reduced from a 60 year maximum to a lower limit (e.g. 20 years), after which the Order could be renewed on re-application, with environmental assessment. There also needs to be an imposition of some upper limit on the maximum size of an area to be covered by Several Orders, and a requirement for the applicant to justify the extent of the area that they are applying for. Finally there needs to be a requirement to manage Several Order areas in line with sustainable use of the resources and with regard to the environment (this would require greater clarification of the enforcement powers of the fishery order grantee over the leaseholder of the Several Order area);

An additional factor to consider is the continued requirement for Defra to administer applications. The transfer of the application process from central government to the Inshore Fisheries Management Body could act both to promote Fishery Orders through greater local-awareness and to accelerate the actual process by cutting out steps that are arguably unnecessary for primarily local measures.

Recreational sea angling and unregulated fishing

Chargeable licensing scheme

7.114 WWF supports this recommendation. WWF does not feel that it would be unreasonable to introduce charges on recreational anglers. In return anglers might expect to play an active role in resource management and decision-making and obtain equal (though not necessarily open), access to well-managed stocks.

7.117 In order to achieve compliance, the criteria used to determine which species and number of fish has to be clear and defensible, ideally based on sound ecological and or management objectives. The recreational sector are unlikely to accept bag limits based on reducing mortality in order to increase availability to the commercial sector or indeed to limit perceived impacts of angling on the availability to commercial fishermen.

7.118 WWF supports this recommendation.

Controls on sea angling and unregulated fishing

7.122 WWF supports this recommendation. While the concept of bag limits has been mooted previously (Review of Marine Fisheries and Environmental Enforcement), what has not been considered is which species to consider limits for. At the present moment bag limits are being associated with bass only, although in some areas it has been suggested that nearshore populations of cod may benefit from the implementation of bag limits.

Enforcement and control of commercial fishing

Control of UK nationals

7.134 WWF supports this recommendation.

Administrative Penalties

7.145 WWF supports this recommendation. Fishing gear tends to be constructed from modern synthetic fibres that are non-biodegradable. This means that snagged or lost gear and torn fragments of net may continue to catch fish indefinitely. This is termed ghost fishing. Any powers must be for ALL gear types, not just nets as of greater concern are pots, creels and traps which tend to be constructed with the more durable materials and have a rigid structure. As well as the impact on commercial species, ghost fishing can affect other marine species, notably birds and marine mammals.

7.146 Following Defra's decision of 20th June 2006 that modernised Sea Fisheries Committees (SFCs) will deliver improved management of fish stocks and the marine environment in England WWF believes that these modernised SFCs will require the following range of powers, functions and roles:

- A stewardship role for the marine environment, encompassing a duty to balance marine nature conservation with other factors that affect the exercise of their sea fisheries functions.
- Management of inshore fisheries based on a number of key principles:
 - Ecologically sustainable management in the context of the wider marine environment;
 - Setting of integrated environmental, social and economic objectives;
 - Adoption of the precautionary principle;
 - Introduction of the polluter and user pays principle; and
 - Adaptive management styles.
- Delivery of national obligations arising from the European Habitats and Birds Directives through work as "relevant authorities" and "competent authorities".
- License fishing
- Charge users
- Require reporting of effort, catches and landings
- Require marking of fishing equipment
- Use the following control measures:
 - Fishing effort (method restrictions, gear specifications and limitations etc)
 - Fishing areas/zones (including no- or low take zones)
 - Catch levels
 - Fishing seasons, periods and times
- Consult relevant bodies on appropriate issues
- Establish executive/consultative/advisory bodies as appropriate
- Establish emergency regulations

Officers should have powers (subject to the standard appropriate safeguards) to stop, inspect, search, seize and detain. These powers should match British Sea Fishery Officer (BSFO) powers.

Charging the fishing industry

7.153 WWF supports the principle that the fishing industry should be charged for their share of the cost of monitoring, regulatory and enforcement activities. It should be noted that public costs are also incurred for CEFAS scientific work and this should be recognised as a subsidy.

While it is noted that the undesirability of charging UK vessels alone and affordability in the light of cumulative burdens may preclude charging of the offshore industry at present, a charging regime should be established and initiated at a time when the offshore industry is viewed as "profitable".

As recommended in the Review of Marine Fisheries and Environmental Enforcement, WWF supports the concept of charging the in-shore industry to support the costs of inshore fisheries management (Recommendation 32 and para 10.11). The report estimates that a relatively

modest fee, averaging around £1000 per vessel (scaled according to vessel capacity/size), could raise around £2.5m after costs; this compares with the estimated value of in-shore landings of £40-50m. At present SFCs do not charge the industry, except in some cases under regulating orders, from which they obtain a total income of around £170,000 (total funding of SFCs in 2003/04 was £5.5m). We acknowledge that this concept raises major issues of acceptability if charging for offshore fishing were not introduced at the same time. One mitigation could be to use a portion of funds raised to increase resourcing of CEFAS to monitor the condition of inshore fisheries. A good model for funding some of the background research/monitoring required to improve inshore fisheries management could come from the Australian system. They have used licence fees and levies on landings to support the Fisheries Research and Development Corporation (FRDC) which provides funding (subject to competitive bidding) for research projects of specific relevance to the fishing industry.

8. A Marine Management Organisation

WWF has contributed to and supports Wildlife and Countryside Link's response on this section.

However, we reiterate here: WWF welcomes the prospect of an MMO that is 'a professional and proactive marine manager, trusted by all stakeholders to contribute to sustainable development of the marine area' (8.4). We have waited a long time for a central body that can facilitate joined-up government and facilitate marine planning and management in UK seas. We feel that the MMO should have a duty to further sustainable development in UK seas, not just *contribute* to it as government suggests. The Government will need to set out clearly and in some detail the objectives that the MMO will deliver in order to achieve Government commitments on sustainable development, the ecosystem approach, and the protection and recovery of biodiversity.

WWF wishes to see the Government set out clearly and in some detail the objectives that the MMO will deliver in order to achieve Government commitments on sustainable development, the ecosystem approach, and the protection and recovery of biodiversity. This will have to be set out in the Marine Bill as the MMO will be established ahead of development and agreement on the Marine Policy Statement

Devolved Administrations

WWF is concerned that there will be a delay between enactment of the UK Marine Bill and Marine Acts or complimentary legislation in the devolved countries.

WWF believes devolved administrations must devote time and resources now in order to be fully involved in progress of the UK Marine Bill and ensuing policy – including the UK Marine Policy Statement.

WWF urges the UK Government and all devolved administrations to work together to seek solutions on how to deliver consistency for marine legislation and policies.

WWF also urges devolved governments to invest in development of their own countries' marine legislation or Marine Acts to ensure we have true sustainable development and an ecosystem approach to management and biodiversity protection across all of UK seas.

Scotland

WWF fully supports Scottish Environment LINK and believes that comprehensive marine legislation requires a UK Marine Bill for reserved matters integrated with devolved marine legislation for matters controlled by the Scottish Executive, Welsh Assembly Government and Northern Ireland Administration.

In Scotland, such an approach urgently requires a Marine Act for Scotland.

Implementing AGMACS recommendations through a Marine Act for Scotland

Throughout the UK Marine Bill White Paper (e.g. Marine Planning 4.6, 4.109 and Marine Management Organisation 8.11) it is recognised that many decisions on how marine management proposals are to be taken forward in Scotland rest with the Scottish Executive, and in particular on the conclusions of the Advisory Group for the Marine and Coastal Strategy (AGMACS), a diverse group of specialists, from the fishing and oil industries to government scientists and environmental bodies. In March 2007, AGMACS³³ published their recommendations.

We would like to join Scottish Environment Link in drawing attention to our particular support for the following AGMACS points:

- There should be a Scottish Marine Management Organisation with a remit of national coordination of ICZM and Marine Spatial Planning delivery and a local dimension with powers that can be delegated as required
- There should be a statutory system of Marine Spatial Planning carried out by the Scottish MMO
- The Marine Spatial Planning system should be based on 3 tiers: the top level should be UK level, ensuring connection to regional seas; the middle level should be “Scotland” in some sense; and the bottom level should be local.
- Consideration should be given to the Scottish MMO having responsibility for Marine Nature Conservation and Fisheries to 200nm
- Scotland's system of marine nature conservation should follow a 3-pillar approach, based on objective scientific guidance, with specific measures for species conservation, policy, and site protection.
- A Scottish set of Marine Ecosystem Objectives (MEOs) should be drawn together, with full stakeholder engagement, during 2007.

Marine Licensing in Scotland

- We strongly support the statement that licensing regimes throughout UK waters will be identical wherever possible and, where not, at least similar (5.7). We urge the UK and Scottish governments to immediately begin discussions to ensure consistency for devolved licensing functions.
- We believe that all licensing decisions across the four UK administrations must be made within the context of UK-wide marine spatial plans.

WWF has been closely involved in the response to the Marine Bill White Paper from Scottish Environment Link. We support all recommendations in the detail of that response.

³³ See <http://www.scotland.gov.uk/Publications/2007/03/08103826/0> for full AGMACS transcript

Wales

Some points in the Marine White Paper which WWF (WWF-UK & WWF Cymru) feels are important to Wales are noted below. More detail is available in Wales Environment Link's response where WWF Cymru has made a major contribution and which we fully support.

4. Planning in the marine area

Reiteration of the UK Government and devolved administrations' commitment to "put an ecosystem based approach at the heart of our marine policy" (4.9) is undermined by the lack of any commitment to the regional seas approach in the White Paper.

WWF is encouraged to see that the UK Government and devolved administrations intend to jointly prepare and agree the policy statement, which will enable the policy statement to reflect some specific policies or objectives that apply in the marine area of a particular administration. However, we seek reassurance that this shared approach will ensure "the diversity of planning arrangements implemented throughout UK waters will be fully joined up" (4.16) does not imply that different administrations will adopt significantly different and non-compatible planning arrangements across the UK. An integrated approach to marine planning is essential if we are to implement an ecosystem approach.

As a result of proposals put forward in the White Paper, Welsh ministers would be responsible for planning in UK territorial waters within Wales, but the agreement of UK Government would be needed in relation to any matters that are outside the responsibility of the Welsh Assembly Government (WAG). Beyond 12nm the UK Government would be responsible for marine planning. However, it is noted that Welsh ministers are considering making a proposal for further devolution in relation to fisheries management and nature conservation (1.42). We would welcome further clarification on the extent of powers being requested and hope that this proposal does not result in any unnecessary delay to the progress of the Marine Bill.

The White Paper rightly identifies the Irish Sea as representing a particular challenge because of the complexities of jurisdiction. Whilst WWF are encouraged to learn that the UK Government and the devolved administrations are "committed to working together to create the most sensible approach" (4.42), we would welcome further details on how this will be achieved in practice. Interestingly, the White Paper notes that "planning jointly is not the only solution" (4.41), but fails to elaborate on what other processes or mechanisms would facilitate cross-border planning in estuaries such as the Severn and the Dee, or ecological units such as Liverpool Bay.

WWF wishes to see clear agreed guidance between UK government and devolved administrations including Wales on a collaborative approach across regional seas to ensure the ecosystem approach is implemented in UK seas.

7. Fisheries in Wales

The Marine Bill White Paper proposes some radical changes in the way in which inshore fisheries are managed in England. However, as regulation of fisheries is a function devolved to the Welsh Assembly Government, many of the proposals on managing marine fisheries outlined in the White Paper apply only to England. It is disappointing that much of the information on how inshore fisheries management will be delivered in Wales is not provided.

The proposals on the modernisation of Sea Fisheries Committees (SFCs) only relate to SFCs in England and do not relate to inshore fisheries management in Wales. In England SFCs are to be retained and modernised to deliver improved management of fish stocks and are to be given a marine stewardship role along with enhanced powers and a duty to conserve the marine environment from the impacts of fisheries activities. In Wales, the Welsh Assembly Government announced in September 2006 that it is to consult on proposals to 'absorb' SFCs and take full responsibility for fisheries management in Welsh waters.

The consultation paper proposing to take SFC responsibilities within the Assembly Government is still awaited. This causes uncertainty for the industry, the two SFCs in Wales and other interested parties. It also makes it difficult for Defra to build an effective inshore management system in England whilst the future of the cross-border North Western and North Wales SFC is unresolved. It would be beneficial for the Welsh Assembly Government to announce and consult upon its intentions for the management of inshore fisheries in Wales without further delay. Suggestions that the Assembly Government intends to make a proposal for further devolution in relation to fisheries management compounds current uncertainty.

Proposals for managing inshore marine fisheries in England cannot stand on their own and must mesh with arrangements in Wales if an ecosystem-based approach to fisheries management is to be achieved. We are encouraged that the White Paper states that Defra, the Welsh Assembly Government and other interested parties are working together closely to ensure that the new arrangements in relation to both England and Wales can work effectively alongside each other, but we would welcome further evidence of this. Careful consideration will need to be given to ensure the integrated management of fisheries in cross-border estuaries such as the Dee and the Severn or Liverpool Bay ecological unit, particularly if management responsibility for these areas is transferred from the Environment Agency and to the two North West and North Wales SFCs are split.

WWF wishes reviewed inshore fisheries management to be delivered in Wales without delay. We want to see effective arrangements put in place as soon as possible in order to reconcile inconsistencies between England and Wales for fisheries management, the Sea Fisheries Committees and bylaws. While this inconsistency continues, the fishing industry in Wales is in danger of operating at a commercial disadvantage. In addition, while it is still managed by an out of date management regime commercial fishing activities in Wales could be threatening the marine environment and its biodiversity.

8. A Marine Management Organisation and the Welsh perspective

The proposals set out in the Marine Bill White Paper in relation to the Marine Management Organisation (MMO) relate only to the delivery of non-devolved functions, functions in relation to England and Northern Ireland and, in each case, the adjacent territorial sea and the UK offshore area. The White Paper states that The Welsh Assembly Government and Scottish Executive are considering the arrangement for delivery of devolved marine functions that will work best for them. There are also suggestions that the Welsh Assembly Government might wish to consider using the MMO to deliver services on its behalf. It is clear from the White Paper that there is no intention for the UK Government, through the MMO, to take back functions that have been devolved to Wales. In fact, there are indications that there may be an extension of devolved functions in relation to fisheries and nature conservation.

It is not yet clear what delivery arrangements the Welsh Assembly Government will put in place for marine management in Wales. Nevertheless, the proposals set out in the White Paper for an MMO are of consequence to Wales because the proposed MMO will play a significant role in the delivery of an integrated licensing regime in Welsh territorial waters and will need to collaborate with the relevant Welsh marine management body to ensure integration across administrative and political boundaries. WEL therefore welcomes the commitment in the White Paper for the UK Government and devolved administrations to develop “a close working relationship between the MMO and other marine delivery organisations to maximise co-ordination and consistency throughout UK waters” (8.8) and a further commitment in paragraph 8.16 to ensure co-ordination and consistency across the England-Wales border. We would welcome further clarification of how this integration will be achieved in practice.

Management of Wales' territorial waters must be effectively integrated with that of the rest of the UK in a way that takes appropriate account of the ecosystem approach on a regional seas scale.

WWF wishes to see arrangements in devolved countries to allow close working with, or as part of the MMO to ensure joined-up management in UK seas.

5. Licensing activities in the marine area of Wales

The White Paper states the Government's commitment to ensuring, wherever possible, that the "essential provisions of the Marine Bill with respect to marine licensing, its principles and its processes, will be the same throughout the UK" (5.5). WWF strongly supports the Government's intention that the core of the licensing part of the Bill will be similar or, if possible, identical across the UK.

Whilst WWF recognises the need for licensing reform to respect devolution arrangements, this seems contradictory to the Government's vision for a licensing regime that is consistent throughout the UK.

There is even recognition in the White Paper that "some of the most important benefits could not be as effectively delivered by two or more organisations. If delivery was split between several bodies, on the one hand, it would probably cost more to ensure the same quality of service; and on the other, if the same total resource were put in, it would almost certainly provide a poorer service" (5.122). It is difficult to see how this situation could be resolved without further devolution of licensing. There is even recognition in the White Paper that "some of the most important benefits could not be as effectively delivered by two or more organisations. If delivery was split between several bodies, on the one hand, it would probably cost more to ensure the same quality of service; and on the other, if the same total resource were put in, it would almost certainly provide a poorer service" (5.122). It is difficult to see how this situation could be resolved without further devolution of licensing responsibilities to Wales to enable the Welsh Assembly Government (or the relevant marine management authority in Wales (S5.7) to deliver a fully integrated marine planning and licensing system in Welsh waters.

WWF urges the UK Government and Welsh Assembly Government to work together to seek solutions on how to deliver such consistency for devolved licensing functions.

WWF has been closely involved in the response to the Marine Bill White Paper from Wales Environment Link. We support the recommendations in the detail of that response.

Northern Ireland

WWF Northern Ireland has been actively campaigning for new, integrated and comprehensive marine legislation for Northern Ireland's seas (as part of a UK-wide Marine Act) for many years.

Over half of Northern Ireland's wildlife, over 4,000 species, lives in and around our seas, from giant basking sharks to tiny corals, yet only 4% of our seas is protected. Though the importance of areas like Strangford Lough is well known our knowledge of our marine environment is incomplete, as demonstrated the recent survey of the sponge diversity of Rathlin Island, which found 28 species of sponge new to science and identified Rathlin Island as one of the most important areas in the whole of Europe for sponges. Rathlin Island was also one of the hotspots of marine biodiversity highlighted in WWF's Marine Biodiversity Hotspot report in 2007³⁴. In WWF's Marine Health Check³⁵ 2005, the common skate is now classed as 'extinct' in the Irish Sea.

³⁴ Marine Biodiversity Hotspots in the UK: their identification and protection
WWF-UK, Keith Hiscock and Mark Breckels, The Marine Biological Association, January 2007

³⁵ Marine Health Check 2005 - A report to gauge the health of the UK's sea life.
K Hiscock, J Sewell and J Oakley, on behalf of WWF-UK, January 2005

WWF Northern Ireland fully supports the aims of the Marine Bill in the creation of a strategic marine planning system, more consistent licensing, the introduction of new tools for the conservation of marine wildlife which will also facilitate better fisheries and environmental management. In addition WWF Northern Ireland supports the creation of a Marine Management Organisation (MMO), specifically a Northern Ireland Marine Management Organisation (NIMMO) to deliver these essential objectives for the marine environment.

As regards the integration between land and sea and the need for environmental data in the Marine Bill, WWF Northern Ireland fully supports the Government's proposal to introduce systems for marine areas which "accommodate the complex interrelationships in coastal areas" (2.1). We hope there will be increased cooperation between all relevant parties with responsibility for the land and sea which takes account of both terrestrial and marine plans in the regional marine plan and ongoing cross border involvement with the Republic of Ireland in relation to marine management issues.

It is essential that Northern Ireland's Coastal Strategy and Integrated Coastal Zone Management (ICZM) strategy are effectively implemented. WWF Northern Ireland sees the Coastal and Marine Forum (CMF) as playing a crucial role in the implementation of these strategies and we wish to see full funding for the Coastal Strategy.

Marine Policy Statement in Northern Ireland

Within the statutory framework for Northern Ireland WWF Northern Ireland we would like to see the development of a clear, coherent and comprehensive Northern Ireland Marine Policy Statement from the UK Marine Policy Statement, to ensure a strategic approach to development, extraction and conservation, with wide stake holder engagement. This strategic approach must ensure that while the balance between environmental, economic and social objectives is maintained as far as possible, marine biodiversity does not suffer adversely, disproportionately or unnecessarily and the application of an integrated ecosystem based approach and the precautionary principle are essential to achieving this. Further detail is given in the NI MTF response.

6. Marine Nature Conservation opportunities for Northern Ireland

WWF Northern Ireland supports the majority of the Marine Nature Conservation proposals in the White Paper, including the overall aim of the marine nature conservation section, and in particular new tools which ensure environmental considerations are at the heart of the decision making processes. This is essential to ensure true sustainable development and to implement an ecosystem approach when managing UK seas.

WWF Northern Ireland welcomes the commitment to a network of effectively managed Marine Conservation Zones (MCZs), including highly protected sites. However the package of conservation measures, as currently described, is too weak to achieve the stated aim.

WWF Northern Ireland recognizes and welcomes the need for zoning of sea areas for different uses but believes that when dealing with highly ecologically sensitive areas, which should be designated as Highly Protected Marine Reserves (HPMRs), there should be a presumption against development. The designation of an 'ecologically coherent' network of HPMRs is an essential aspect of the marine bill, reflecting the Governments previously stated vision of 'clean, healthy, safe, productive and biologically diverse oceans and seas'.

The Marine Bill White Paper consultation provides a rare and very important opportunity for the UK to lead the way in Europe and develop a visionary, integrated, ecosystem based approach to the management of our seas for the benefit of all those who depend upon them. WWF urges the Northern Ireland Executive to make the most of this opportunity.

7. Modernising Marine Fisheries Management for Northern Ireland

The Irish Sea's cod stock is also outside safe biological limits and many of the fish in the ICES areas adjacent to our coasts are over fished for example sole. Two of our most spectacular marine protected sites, Strangford and Rathlin, have also been damaged by scallop dredging. For example, the damage caused to the horse mussel beds in Strangford Lough have had a knock on effect on the more than 100 other species, including scallops, that depend upon the horse mussel beds.

WWF wishes to see better management and enforcement of marine fisheries regulations in Northern Ireland. WWF supports the recommendations put forward in the Review of Inshore Fisheries Management in Northern Ireland. Further detail are given in the NIMTF response.

8. A Marine Management Organisation in Northern Ireland

Accountability is a key issue for any future Northern Ireland Marine Management Organisation (NIMMO) that will oversee the marine planning system, enforcement and streamlined marine licensing. We would like to see the MMO in Northern Ireland accountable to the Northern Ireland administration and we refer to the report prepared by Warren³⁶ (2007) for NI Marine Task Force and Wales Environment Link with a discussion of the options available to the NIMMO. WWF NI and WWF-UK are happy to discuss the options presented in this report with relevant government departments.

In the development of the NIMMO there should be a clarification of roles of the statutory agencies with respect to the marine environment. It is imperative that good communication is established throughout this process between all stakeholders and that the MMO fulfils its functions no matter what it's structure.

It is anticipated that any MMO will need to consult with, amongst others, the statutory nature conservation body, when developing marine plans. Therefore, any plans to establish an MMO in Northern Ireland must consider the findings of the Review of Environmental Governance, due to be published in June 2007, especially in the light of the possibility of the establishment of an independent Environmental Protection Agency.

Conclusions

The marine environment around Northern Ireland is extraordinarily rich in wildlife, with globally unique species and diverse marine ecosystems. Yet, it is poorly protected and is under increasing pressure from a range of anthropogenic influences, including the threats from climate change and the related acidification of our oceans. The introduction of robust, integrated marine legislation, which has the ecosystem based approach as a cornerstone, for Northern Ireland through the Marine Bill would provide a long overdue and badly needed opportunity. This would at least in part rectify our previous mismanagement of the marine environment, and hopefully help achieve a true 'Sea Change' which will enable the Government to turn their proposed vision of 'clean, healthy, safe, productive and biologically diverse oceans and seas' into a reality.

WWF Northern Ireland has worked closely with Ulster Wildlife Trust to invest in the response to the Marine Bill White Paper from Northern Ireland Marine Task Force. WWF supports the recommendations of that response.

³⁶ Marine management arrangements for Wales and Northern Ireland. (Draft) Report to Wales Environment Link and Northern Ireland Marine Task Force, May 2007. L.M. Warren

Appendix:

MARINE CONSERVATION ZONES – ENFORCEMENT OF MANAGEMENT SYSTEMS

DEBORAH TRIPLEY

Report to: WWF-UK

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1. Introduction

1.1 The Government White Paper 'A Sea Change' proposes the establishment of a new marine organisation – the Marine Management Organisation (MMO)³⁷.

1.2 It is intended to be established as an Executive Non-Departmental Public Body (NDPB) based on standard Cabinet Office guidelines³⁸.

1.3 In order to ensure that the MMO delivers a government-wide sustainable development agenda the organisation will recognise additionally the direct interests of a number of other government departments³⁹.

1.4 As an NDPB the MMO will retain independence from government but will have legal status with defined functions, powers, duties and responsibilities.

1.5 It will be run by a Board of Directors with corporate responsibility. The White Paper explains that the Board will have corporate responsibility to ensure that the MMO fulfils the aims and objectives set by Government and for promoting the efficient and effective use of staff and other resources⁴⁰.

1.6 Ultimate responsibility for the MMO will rest with the Secretary of State (SS) for DEFRA who will remain accountable to Parliament for the activities of the organisation.

1.7 However, it is intended that a cross-government MMO sponsorship group will be formed to enable the interests of all government departments, including Northern Ireland to be represented.

1.8 It is intended that the sponsorship group will have an advisory role on matters such as the objectives and targets to be set for the MMO, on the monitoring of its performance in terms of the achievement of strategic objectives and on whether the MMO is delivering value for money⁴¹.

1.9 Additionally, the MMO will be required to take into account guidance agreed across all relevant UK Government departments and Northern Ireland⁴².

2. Functions

2.1 A summary of the anticipated functions of the MMO are set out at Table 6⁴³ of the White Paper and include:

³⁷ White Paper, paragraph 8.1

³⁸ White Paper, paragraph 8.93

³⁹ White Paper, paragraph 8.98. The departments referred to are: Department of Trade and Industry; Department for Transport; Communities and Local Government; Department for Culture, Media & Sport; Ministry of Defence.

⁴⁰ White Paper, paragraph 8.103

⁴¹ White Paper, paragraph 8.100

⁴² White Paper, paragraph 8.101

⁴³ White Paper, page 128

- **Marine Planning** (the delivery of a series of marine plans);
- **Marine Licensing** (regulating environmental, navigational and other impacts of construction, deposits/removals, dredging, licensing of oil dispersants and carbon dioxide storage);
- **Fisheries Management** (by delivering the functions of the Marine Fisheries Agency (MFA) and Sea Fisheries Inspectorate (SFI));
- **Marine Nature Conservation** (Restricted to providing advice and information to Natural England, JNCC and DOE Northern Ireland on socio-economic issues relevant to site selection of Marine Conservation Zones);
- **Monitoring and enforcement** (including functions of the MFA transferred from DEFRA in April 2007 and those functions carried out by the SFI in relation to Northern Ireland. Also to include the monitoring and enforcement of marine nature conservation legislation in UK offshore waters and in the territorial sea and internal waters around England and Northern Ireland. Monitoring and enforcement to include gathering information and data collection, monitoring in a proportionate and cost-effective manner and providing enforcement officers);
- **Data** (by implementing a system for managing data, information and knowledge and to collecting data by third parties and providing data and information to the public where appropriate).

2.2 The MMO functions will include therefore all the existing enforcement powers of the Marine and Fisheries Agency and Sea Fisheries Inspectorate.

2.3 In addition, the MMO will be empowered to develop and implement bylaws and other interim measures for any *unregulated* activity where no other suitable controls exist, both offshore and in the territorial sea and internal waters around England and in relation to UK territorial waters in Northern Ireland.

3. The enforcement functions of the Marine and Fisheries Agency

3.1 The MFA is responsible for the enforcing and promoting compliance with fisheries regulations. Inspectors have powers of inspection and prosecution of offences. The following areas are subject to MFA enforcement⁴⁴:

- Access rules for foreign fishing vessels in British Fishery Limits;
- Total Allowable Catches and national quotas for fish stocks;
- Technical conservation measures for juvenile and spawning fish, such as minimum fish sizes, mesh sizes for nets and closed areas;
- Special stock recovery measures for 'at risk' fish stocks;
- Control measures for monitoring and inspecting fishing vessels and their catches, such as fishing logbooks and landing declarations;
- Effort limitation measures for limiting the days vessels may fish.

4. Marine Conservation Zones – selection, protection and management.

(a) Selection of MCZs – role of MMO

4.1 The government's vision for marine conservation is to establish by 2020 a network of effectively managed sites. The network will include European

⁴⁴ www.mfa.gov.uk/enforcement

marine sites designated either as Special Areas of Conservation (SACs) or Special Protected Areas (SPAs) for birds under the EU Habitat's and Birds Directives.⁴⁵

4.2 The aim seems to be not to establish a representative network of marine protected areas but instead 'to conserve enough rare, threatened and representative species and habitats to maintain and improve biodiversity and ecosystems whilst covering as small an area as necessary'⁴⁶.

4.3 A new mechanism for the protection of marine biodiversity is proposed called a marine conservation zone (MCZ)⁴⁷. The zones will be based on site based protection of important species and habitats.

4.4 Other important marine features may be protected under a variety of different mechanisms including their incorporation into a marine plan either by the MMO or as part of the UK marine policy statement or simply as part of the marine planning process, a specific heritage mechanism (currently being considered by the Department for culture, Media and Sport (DCMS), under fisheries legislation or for research and education purposes.

4.5 Site selection will commence with their identification in a marine plan. According to the White Paper it is the marine plan that will set out the relative importance of different issues affecting potential site selection. This will not prevent the selection of sites in the absence of marine plans but simply ensures a presumption in favour of a network of sites that are plan led⁴⁸.

4.6 There appears to be an inherent contradiction in the text when it comes to the approach to be adopted to site selection.

4.7 On the one hand the White Paper refers to the need to designate sites without giving consideration to the socio-economic implications of designation⁴⁹. This is the approach adopted under the EU Habitat's Directive and endorsed by the European Court of Justice (ECJ)⁵⁰.

4.8 In the same breath the White Paper refers to a flexible approach not causing *inappropriate* economic or social impacts – this would seem to turn the objective of achieving protection for marine biodiversity back to front with the main objective reflected as economic and social rather than environmental.

4.9 Additionally, the White Paper refers to site selection establishing a *careful balance*⁵¹ between socio-economic factors and the ecological importance of a site. However it does not set out how the balance is to be achieved or what factors will be weighted in the balancing exercise.

⁴⁵ White Paper, page 70

⁴⁶ Supra, n8.

⁴⁷ White Paper, paragraph 6.31

⁴⁸ White Paper, paragraph 6.44

⁴⁹ White Paper, paragraph 6.40

⁵⁰ Case C-371/98 First Corporate Shipping [2000] ECR I-9235

⁵¹ White Paper, paragraph 6.41

4.10 It must be presumed therefore that guidance as to the appropriate 'balance' will be reflected in the *spatial* element of both the UK Marine Policy statement and marine plans.

4.11 The role of the MMO is restricted to an advisory one in relation to site selection. It will be responsible for advising on the socio-economic factors and the implementation of licensing controls⁵².

4.12 Instead, the role of site selection falls to the statutory nature conservation agencies who will be asked to prepare a list of potential sites for designation.

4.13 The aim is that the initial list of potential MCZ sites will be selected without recourse to any socio-economic factors. However in reality the statutory nature conservation agencies may find their discretion to do is narrowly constrained by guidance and criteria already established in the UK Marine Policy and marine plans.

(b) Protection and management of sites

4.14 The statutory nature conservation agencies will also be tasked with drafting a list of marine objectives for each MCZ⁵³.

4.15 These may include objectives that exclude all damaging or potentially damaging activities from the site and thereby create what the government terms highly protected marine reserves.

4.16 It appears that the government is concerned to include at least some such sites as part of its marine protected area network⁵⁴.

4.17 The White Paper sets out a number of ways in which enforcement of restrictions may be delivered⁵⁵.

(i) Statutory Duties

4.18 The White Paper proposes to impose duties upon all ministers, Government departments or other public bodies, statutory nature conservation agencies and the MMO to undertake their functions in a way that will contribute to the delivery of the site objectives⁵⁶.

4.19 Interestingly, the White Paper does not go so far as the Wildlife and Countryside Act 1981(as amended) (W&CA) which incorporates a duty upon owners and occupiers of any land of special scientific interest to notify the competent authority of certain operations and to obtain consent before its commencement⁵⁷.

⁵² White Paper, paragraph 6.53

⁵³ Supra, paragraph 6.48

⁵⁴ Supra, paragraph 6.50

⁵⁵ White Paper, page 78.

⁵⁶ White Paper, paragraph 6.62

⁵⁷ Wildlife and Countryside Act 1981(as amended) section 28 E (1) and (3).

4.20 Moreover, under section 28 E (5) W & CA the competent authority has power to refuse consent or later modify it.

4.21 The government's proposed duty is expressed in both a negative and positive way. First, activities should not be permitted 'where they would result in the objectives of a site not being achieved, or the integrity of the site to be compromised'.

4.22 Secondly, relevant bodies must proactively carry out their functions and take 'positive measures to control damaging activities, such as taking action to mitigate impacts, where they have powers to do so'.

4.23 One proposition is that the government could express the duty in even wider terms. For instance, the relevant bodies could be required to ensure the site is both kept free of damage or harm and that measures are taken to ensure its features are restored or enhanced by any activities.

4.24 Thus a duty not dissimilar to the one expressed under section 28G of the W&CA is worth consideration. The duty is to 'take reasonable steps, consistent with the proper exercise of the authority's functions, to further the conservation and enhancement of the flora, fauna or geological or physiographical features by reason of which the site is of special scientific interest'.

4.30 Moreover, without any duty imposed upon those carrying out permitted activities questions may be raised about the 'polluter pays' principle and who ultimately will bear any clean up costs.

4.31 Further discussion of this issue is given below at- EU Environmental Liability Directive.

(ii) Management schemes

4.32 The government's proposals for management schemes are one way in which a public body could demonstrate taking positive measures to control damaging activities.

4.33 There is nothing in the White Paper that explains in any detail the management expectations for a MCZ. Reference is made to 'management measures' but this could mean nothing more than the requirement for mitigation of a damaging activity to a selected site.

4.34 However, the intention appears to be that those authorities with competence over a particular geographic area will assume, as a result of their conservation duty towards the site, a management role towards the activities taking place at the site.

4.35 Where such activities either individually or in combination are likely to damage a site the intention is to allow a management scheme to be established by relevant authorities⁵⁸. This would apply also to the management of overlapping sites.

4.36 It is worth comparing the type of protection already in existence for marine nature reserves (MNRs), not least because the White Paper proposes to repeal them in order to avoid duplication⁵⁹.

4.37 Under the Wildlife and Countryside Act 1981 (as amended) (W&CA) section 36, MNRs may be created upon the application of the appropriate conservation body out to the limits of the territorial sea.

4.38 An application may be made where the appropriate conservation body considers the area should be managed for the purpose of-

- (a) conserving marine flora or fauna or geological or physiographical features of special interest;
- (b) providing, under suitable conditions and control, special opportunities for the study of, and research into, matters relating to marine flora and fauna and the physical conditions in which they live, or for the study of geological and physiographical features of special interest in the area.

4.39 A duty to manage MNRs falls to the appropriate conservation body immediately upon designation.

4.40 Whilst it is apparent that the purposes for site selection as proposed in the White Paper are wider than under the W&CA, and therefore have the *potential* to provide greater protection to biodiversity, the arrangements for management of those sites differs in several distinct ways.

4.41 First, in the White Paper all bodies with relevant marine functions are made responsible for the management of sites whereas the W&CA refers to a single conservation body.

4.42 Secondly, under the W&CA the conservation body is directed to manage the marine nature reserve⁶⁰ whereas the White Paper wants greater flexibility.

4.43 Thirdly, the W&CA provides the conservation body with specific powers for the purpose of managing a marine nature reserve, including the power to install markers indicating the existence and extent of the reserve and bylaw making powers⁶¹. There is no indication in the White Paper that relevant public bodies will have their powers extended accordingly (although see below the proposed bylaw making powers for the MMO).

⁵⁸ White Paper, paragraph 6.89

⁵⁹ White Paper, paragraph 6.91

⁶⁰ Section 36 W&CA states that the Secretary of State may by order designate the area comprising the land and those waters as a marine nature reserve and 'the appropriate conservation body *shall* manage any area so designated for either or both of those purposes'.

⁶¹ Section 36 (5) W&CA 1981

4.44 Additionally, under section 37 W&CA the conservation body may exercise its bylaw making powers with the specific purpose of *protecting* the area designated.

4.45 Thus it may be argued that the powers to carry out enforcement under the W&CA are wider because they allow for the purpose of protection and not only the purposes of mitigating against harm or damage as suggested in the White Paper.

4.46 Under the W&CA bylaws can be wide in scope and can allow for the prohibition or restriction 'either absolutely or subject to exceptions' of the following activities⁶²:

- the entry into, or movement within, the reserve of persons or vessels
- the killing, taking, destruction, molestation or disturbance of animals or plants of any description in the reserve, or doing of anything therein which will interfere with the sea bed or damage or disturb any object in the reserve (underline added);
- the depositing of rubbish in the reserve.

4.47 Bylaws may also provide for terms and conditions to be specified in permits authorising entry into the reserve or the doing of anything unlawful under the terms of the bylaws (section 37(2) (b)).

4.48 Additionally, they may provide for an element of zoning within the marine nature reserve by applying either 'generally or with respect to particular parts of the reserve or particular times of the year' (section 37(2)(c)).

4.49 Of equal interest are the provisions in the W&CA providing management functions over land based sites of special scientific interest (SSSIs).

4.50 For instance, the relevant competent authority (Natural England) is entitled to serve a management notice on any owner or occupier of land that is not giving effect to any management scheme and where 'as a result any flora, fauna or geological or physiographical features by reason of which the land is of special interest are being inadequately conserved or restored' (section 28K W&CA).

4.51 It is clear that the focus of the legislative provisions under the W&CA is on the conservation and restoration of the site features and not on proof of damage or harm.

4.52 As a consequence, the result of the management notice may provide for works to be carried out on the land by the owner/occupier (which may go beyond mitigation measures so long as they are reasonable and in accordance with the management scheme) (section 37(3)(a)).

⁶² Section 37 (2)(a)(i-iii) W&CA 1981

4.53 From the above it is possible to conclude that if the government wants to achieve similar environmental objectives for MCZs it could consider attaching duties to the licensing of activities and amending the bylaw making powers of a wider group of competent authorities who already have functions over the marine environment.

(iii) Licensing

4.54 The White Paper also considers the licensing of activities and environmental impact assessments (EIA) as another way of ensuring protection and management of MCZs.

4.55 Therefore, it suggests that where the EIA identifies that an activity is likely to cause damage it could be allowed to continue in the highly protected marine area subject to suitable mitigation measures.

4.56 However, even where no suitable mitigation is proposed the activity will be allowed if it passes a so-called 'public interest test'.

4.57 It may be argued that the inclusion of very wide economic interests in the test will mean that almost all non-mitigated damaging activity could be allowed in a highly protected marine area⁶³.

4.58 This approach to protective measures is unlikely to be satisfactory for EU protected sites under the Habitat's Directive. The European Court of Justice has ruled that when carrying out impact assessments upon protected sites under article 6 (2), (3) and (4) it is necessary for member states to ensure that protective measures are appropriate in the sense that they meet the conservation objectives of the Directive and act to safeguard the site's favourable conservation status (Dragaggi – C-117/03, 13 January 2005).

4.59 The government also says it will use sectoral tools to ensure that biodiversity objectives as set out in the Marine Policy are taken into account under the licensing regimes⁶⁴.

4.60 It refers to sectoral tools such as restricting the extent of activities using licensing or fisheries controls⁶⁵. It proposes the improvement of these controls, particularly to improve the sustainability of fishing activities.

4.61 According to the White Paper these tools are likely to assist the government in reducing and minimising the 'significant undesirable conservation impacts' of bycatch on non-target species.

4.62 Interestingly, the government does not consider that this is best achieved through the use of criminal sanctions. It argues that this is because 'the comprehensive application of such measures across the

⁶³ White Paper, paragraph 6.67

⁶⁴ White Paper, paragraph 6.113

⁶⁵ White Paper, paragraph 6.108

marine area could criminalise legitimate fishing activity. This does not reflect the sustainable development approach, which lies at the heart of all our policies.’

4.63 This begs the question whether the government’s view of ‘viable’ populations of the most important marine species and plants differs from that put forward by the EU Habitat’s Directive with which it is compelled to comply.

4.64 Under Article 12 (1) of the EU Habitat’s Directive Member States are required to establish a system of strict protection for all animal species listed in Annex IV(a) in their natural range (generally includes the type of species subject to by-catch such as dolphins and porpoises). Certain types of interference with the species are set out including deliberate capture or killing; deliberate forms of disturbances; deliberate destruction or taking of eggs from the wild and deterioration or destruction of breeding sites or resting places.

4.65 Article 16 of the EU Directive allows for derogation from Article 12 but only where there is no ‘satisfactory alternative’ and the derogation is not ‘detrimental to the maintenance of the populations of the species concerned at a favourable conservation status.’

4.66 Only in these circumstances may the exception apply which includes the exception that it is ‘in the interests of public health and public safety, or for other imperative reasons of overriding public interest, including those of a social or economic nature and beneficial consequences of primary importance for the environment.’

4.67 The UK Government transposed these provisions into the Conservation (Natural Habitats, &c.) Regulations 1994. Regulation 39 (1) sets out various offences reflecting the prohibitions set out in Article 12 of the Directive whilst regulation 44 allows the appropriate authority to licence certain derogations for specific purposes.

4.68 However, the government has been forced to amend these provisions as a result of two rulings by the European Court of Justice (ECJ). In particular, in the case of Commission v UK (C-6/04, 20 October 2005) [2005] ECR I-9017 where the Court ruled, inter alia, that the government had wrongly transposed into domestic legislation articles 12,13 and 16 of the Directive.

4.69 The ECJ held that the Habitat’s Directive sets out the precise manner and circumstances in which Member States may derogate and that Article 16 must be interpreted restrictively (para 111).

4.70 Furthermore, the ECJ confirmed that articles 12,13 and 16 were to be looked upon as forming a coherent framework for the protection of the relevant species. An act in breach of these provisions but nevertheless

allowed on grounds of the lawfulness of the act was contrary to both the spirit and purpose of the Directive (para 113).

4.71 The government has since consulted upon new regulations to comply with the ruling⁶⁶.

4.72 However, there is unlikely to be any change to existing measures of protection. For instance, the government makes clear in the White Paper that it does not intend to make changes to the existing species protection legislation set out in the W&CA⁶⁷.

4.73 As a consequence, operators with permits will continue to have available to them under the W&CA the defence that acts resulting in the intentional or reckless killing, or injury of certain wild animals was the incidental result of a lawful operation and could not reasonably have been avoided⁶⁸ even though this is no longer a possible defence under the EU Habitats Directive.

(iv) Fishery measures

4.74 A discussion of these measures is beyond the scope of this report. However, it is important to be aware in the light of the above discussion that there is a potential disjuncture between the requirements of the EU Habitat's Directive in relation to species protection and the legality of any restrictive measures taken against EU fisheries outside of the legal framework of the Common Fisheries Policy.

(v) Bylaws and interim measures.

4.75 Based on research conducted by Hull University the government has decided to introduce new bylaw making powers to control unregulated activities likely to have an impact on the conservation status of mobile species⁶⁹.

4.76 The government's view is that bylaws are an effective tool for providing targeted and proportionate measures to address impacts on biodiversity.

4.77 Although the government does not define what is meant by the term 'proportionate' in this context it is likely that it has in mind the recommendations of the Hampton Review. This Review looked at the need to provide overall a much more proportionate regulatory system within the UK.

⁶⁶ Draft Conservation (Natural Habitats, &c) (Amendment)(England and Wales) Regulations 2006

⁶⁷ White Paper, paragraph 6.120

⁶⁸ Section 10, W&CA

⁶⁹ White Paper, paragraph 6.127

4.78 It found, for instance, that the failure by regulators to use risk assessment comprehensively and consistently meant that resources were either not targeted at the riskiest areas or that there was over-inspection at a local level⁷⁰.

4.79 Bylaws are often considered to work best at a very local level. Indeed they are best described as powers made under certain Acts of Parliament which are local laws that create criminal offences. Before they come into force they must be confirmed by a Secretary of State.

4.80 They are also considered more flexible in dealing with individual circumstances and surroundings. Thus, the government has in mind providing bylaw making powers to deal with activities such as bait-digging, tourism and unlicensed dredging and fishing

4.81 Specifically, it is proposed to give powers to the MMO to make bylaws to control these types of unregulated activities within MCZs and for important marine species⁷¹.

4.82 Case law concerning the validity of bylaws has ruled certain bylaws ultra vires where they extend beyond the purposes set out in the enabling legislation.

4.83 The courts have tended to take a 'benevolent' approach to bylaws made by public representative bodies, such as railway or dock companies, and only hold them unreasonable if they are found to be manifestly unjust, partial, made in bad faith, or so gratuitous and oppressive that no reasonable man could hold that they were justified⁷².

4.84 The MMO will need to carry out consultation with relevant stakeholders before proposing any bylaws, probably consulting at the same time as proposed designations for MCZs⁷³

4.85 They will apply to unregulated activities where it can be demonstrated that they have a significant impact on the achievement of a MCZ's objectives or on the conservation status of an important marine species. It is intended that they will be used to control specified activities in a specified manner⁷⁴.

4.86 Before making any bylaws the MMO will be required to consider the need for action in the context of the UK Marine Policy and marine plans and determine the most appropriate measures to control activities. Once bylaws are in place the MMO will be expected to enforce them⁷⁵.

⁷⁰ Hampton, P (2005) Reducing Administrative Burdens: effective inspection and enforcement, p.4. HMSO. London <http://www.hm-treasury.gov.uk>

⁷¹ White Paper, paragraph 6.134

⁷² Kruse v Johnson (1898) 2 QB 91

⁷³ White Paper, paragraphs 6.144/6.146

⁷⁴ White Paper, paragraph 6.137

⁷⁵ White Paper, paragraph 6.140

4.87 Where there are existing and continuing impacts on sites and prior to the making of bylaws the MMO will be given further powers to introduce interim measures. These will aim to control unregulated activities at short notice⁷⁶.

4.88 Interim measures will last a minimum of six months and will contain a right of appeal.

4.89 Bylaws are a useful way in which to maintain control over local activities. However, whilst there is the advantage that they can respond to local situations in a flexible way there is the disadvantage that they can take a considerably long time to put into place.

4.90 It would be useful here for the government to consider a fast track process for a standardised type of bylaw to be put in place, similar to those used for bylaws on land.

4.91 Equally, it is important for the government to set out the purposes of the bylaw making powers concisely in the legislation bearing in mind that offenders may always raise the defence that the bylaw is ultra vires during criminal proceedings.

(vi) Criminal sanctions.

4.92 As part of its commitment to ensuring that all current and new conservation management arrangements are effectively enforced the government intends to give the new MMO responsibility for the enforcement of nature conservation legislation⁷⁷.

4.93 Where an area is covered by a Sea Fisheries Committee (SFC) the MMO and SFC will be expected to work together to deliver both fisheries and marine nature conservation enforcement.

4.94 This will involve amending legislation to allow SFCs to undertake functions in the marine environment on behalf of the MMO. The Secretary of State will transfer responsibility for the appointment of SFC members to the MMO to help with this arrangement⁷⁸.

4.95 The MMO will not take over all enforcement activities. Other bodies with similar powers will continue to carry out these functions.

4.96 For instance, the Environment Agency is the competent authority regarding integrated river basin management for inland, estuarine and coastal waters out to 1nm in relation to England and Wales for the purposes of the Water Framework Directive. It will be expected to continue to carry out those functions and to work in close relationship with the MMO⁷⁹.

⁷⁶ White Paper, paragraphs 6.151-153

⁷⁷ White Paper, paragraph 6.162

⁷⁸ White Paper, paragraph 8.122

⁷⁹ Supra, paragraph 8.135

4.97 The MMO's powers of enforcement will extend to all UK offshore waters, territorial waters adjacent to England and internal waters in England. Part of the government's aim is to provide a regulatory body that is fit for the purpose and complies with the reforms considered necessary by the Hampton review.

4.98 Thus, the White Paper seeks a risk-based approach to enforcement and one that will bring 'consistency, clarity, predictability and proportionality' to the carrying out of its functions.⁸⁰

4.99 This seems in keeping with the thrust of the Hampton Review's findings that risk assessments should be used to enable the targeting of more riskier areas so that less inspections and resources are spent on those operators/areas that are deemed to be of low risk⁸¹.

4.100 However, the White Paper goes further and suggests that penalties and sanctions need be approached too in a proportionate manner⁸². It considers it necessary for the MMO (or the Court)to ensure that a balance is struck between the capacity of an offender to pay, the damage they have caused, and the benefit they may have accrued from the illegal activity.

4.101 Severity of sentences is to be compared to similar offences, for example, under the W&CA.

4.102 It is unclear whether the intention here is to incorporate key recommendations from the Hampton Review.

4.103 The Hampton Review considered that there were too many examples where penalties fell far short of the commercial value of the regulatory breach. It found that the average fine in magistrates' courts for environmental cases was too low. A similar picture emerged for health and safety offences.

4.104 Several of the Reviews recommendations deal with this aspect as follows:

- Recommendation 6 – maxima fines in magistrates courts to be increased with more powers to set fines that are an effective deterrent. This power to extend to all regulators
- Recommendation 7 - sentencing Guidance Council to consider new guidance on fine levels and setting fines taking full account of economic benefit gained
- Recommendation 8 - the Better Regulation Executive to undertake a comprehensive review of regulators' penalty regimes with the aim of making them more consistent – administrative penalty regimes should be introduced and penalty powers should include powers to deprive offenders of economic benefit of any long term illegal activity.

⁸⁰ Supra, para 8.68

⁸¹ Ibid, n34

⁸² White Paper, paragraph 6.180

4.105 The Hampton Review spells out what perhaps should be obvious. That if penalties are inadequate to reflect the crime dishonest businesses will be given further incentive to breach regulations and undercut honest companies⁸³.

5. Enforcement

5.1 Offences

5.2 The White Paper states the government intends to create criminal offences for damage caused to any species or habitat or other feature for which an MCZ has been designated⁸⁴.

5.3 There will not be a requirement to demonstrate intention to cause damage but the offences will provide for the defence of acting in accordance with the terms of a permit or in relation to an emergency.

5.4 One further exemption will allow operators to argue that they took all reasonable precautions and exercised all due diligence to avoid damaging or destroying the features in a site⁸⁵.

5.5 As stated above the level of protection afforded to EU protected sites must be strict in the sense laid down in the case of Commission v UK.

5.6 The proposed Offshore Marine Conservation (Natural Habitats,&c.) Regulations 2007 (2007 Regulations) attempt to comply with this ruling. They create offences specific to European offshore marine sites. Section 29, subsection (4) states:

- A person is guilty of an offence if-
 - (a) without reasonable excuse, he intentionally or recklessly damages or destroys the natural habitat type in Annex I to the Habitats Directive hosted by a European offshore marine site;
 - (b) without reasonable excuse, he intentionally disturbs the native species in Annex II to the Habitats Directive hosted by such a site;
 - (c) without reasonable excuse, he intentionally disturbs the bird species for which such a site is classified pursuant to Article 4(1) or (2) of the Wild Birds Directive; and
 - (d) he knew or ought reasonably to have known that what he damaged or disturbed was within a European marine site.

5.7 Under section 29,ss(5) the following amounts to a reasonable excuse:

- (a) if it is an emergency;
- (b) if the action is in accordance with the terms or a consent, permission or other authorisation granted by a competent authority;

5.8 The penalty for breach is a fine. However under section 29, ss (7) the Court is instructed to take into account any financial benefit which has

⁸³ Ibid, n.34,p.6

⁸⁴ White Paper, paragraph 6.97.

⁸⁵ Supra, n.42

accrued or appears likely to accrue to the offender as a consequence of the offence.

5.9 From the terms of the offence and defences set out under the Offshore Marine Conservation Regulations it seems likely that the Marine Act will contain a degree of disparity between sanctions for causing damage to an MCZ and a European special area of conservation (SAC).

5.10 First, the requirement of remediation is absent from the Offshore Marine Conservation Regulations whereas it is intended as a sanction in the White Paper. It may be that the White Paper intends to address this (see below).

5.11 Secondly, unless there is equivalence between the enforcement scheme set out in the 2007 Regulations and the Marine Bill there will be an obvious disparity between the protection provided to MCZs and protection granted to EU marine sites. Whether this is the government's intention or is even justifiable given commitments made to the World Summit for Sustainable Development is questionable.

5.12 Thirdly, it is important to recognise that both protection regimes provide for a permit defence.

5.13 Therefore the level of protection likely to be achieved will depend strongly on the nature of permit conditions imposed by regulators. Weak conditions will allow for less enforcement of damage if it falls within the scope of permissible acts under the authorisation.

5.14 In addition, the 2007 regulations provide for licences to be granted only where they meet the tests set out at section 41. These are activities that are allowed by article 16 of the EU Habitat's Directive in derogation to the strict protection measures required by article 12.

5.15 However the Secretary of State must themselves before the grant of any licence exempt from the general protection measures that the action authorised will not prejudice natural habitats within their natural range or the wild native fauna and flora.

5.16 Within the 2007 Regulations it is evident therefore that conditions, including mitigation measures, will be critical for satisfying the relevant legislative criteria.

6. Enforcement powers

6.1 Enforcement officers will be given a full range of enforcement powers including the prosecution of offences.

6.2 Officers' powers will include stop and search of individuals and vessels; seizure and the detention of vessels for evidence; boarding, entering and inspection of vessels.

6.3 Further powers will allow them to make enquiries and carry out examinations of persons and things and to collect evidence in the form of specimens, samples, documentation and photographs ⁸⁶.

6.4 Sanctions available will range from fixed penalties to custodial sentences for the more persistent offender.

6.5 Additionally, where there is damage within an MCZ the MMO will be able to demand that the offender undertake remedial action. ⁸⁷

6.6 The White Paper claims that if the offender fails to undertake remedial operations the MMO will be given powers to do so in their place and to reclaim their expenses for doing so from the person who carried out the unlawful activity in question.

Remediation measures

6.7 In the W&CA a restoration order ⁸⁸ may be ordered by a Court upon the conviction of any person of certain offences.

6.8 A restoration order requires a person to carry out such operations as are specified in order to restore the site to its former condition.

6.9 However the White Paper uses the term 'remediation' without further definition.

6.10 In speaking of remediation the government may have in mind its obligations under the EU Environmental Liability Directive [Directive 2004/35 EC] (ELD) which came into force in April 2007. The Directive has not yet been implemented into domestic legislation.

6.11 Under the ELD where liability is established different remedial measures are required depending on the type of damage.

6.12 The Directive defines remedial measures as 'any action, or combination of actions, including mitigating or interim measures to restore, rehabilitate or replace damaged natural resources and/or impaired services, or to provide an equivalent alternative to those resources or services as foreseen in Annex II'.

6.13 Annex II sets out a range of possible remedial measures for damage to water or protected species or natural habitats, but it is for the competent authority to decide which remedial measures are taken. Costs for remediation as well as associated administrative and legal costs can be recovered.

⁸⁶ Supra, paragraph 6.176

⁸⁷ White Paper, paragraph 6.179

⁸⁸ Section 31, W&CA

6.14 Three levels of remediation are set out in Annex II which are meant to combine and be complementary to one another. The are:

- primary remediation
- complementary remediation
- compensatory remediation

6.15 First, primary remediation is any remedial measure which results in restoration of the protected species, natural habitats and water to their baseline condition.

6.16 Secondly, complementary remediation is the provision of a compensatory or alternative site that provides a similar level of natural resources and/or services where primary remediation does not or cannot result in fully restoring the damaged natural resources and/or services.

6.17 Finally, compensatory remediation is to be undertaken to compensate for any interim losses pending the recovery of a damaged site. The aim is for compensation to include additional improvements to protect natural habitats and species or water at either the damaged site or at an alternative site.

6.18 When determining which option to choose the competent authority must consider such factors as public health and safety, benefits for the overall environment, costs and implementation time, the likelihood of success and social economic and cultural concerns.

6.19 Those held responsible for environmental damage under the ELD fall into two distinct camps.

6.20 Firstly, there are those operators who carry out the type of risky activities listed in Annex III to the Directive will be held liable even in the absence of fault.

6.21 Secondly, there are other types of operators who may also have a liability for environmental damage to protected species and habitats but only if they are found to have been at fault or negligent.

6.22 The ELD provides for certain exemptions from its provisions.

6.23 It allows member states to introduce a permit defence for those causing damage that is incidental to lawful operations and it allows for the exemption of any operator carrying out unforeseen damaging activities due to the state of scientific and technical knowledge.

6.24 When consulting on possible approaches to the implementation of the ELD into UK law the government's preference was to limit the scope of the Directive to EU-protected biodiversity and adopt the exemptions allowed for in the Directive.

6.25 On this basis all SSSI sites and potential marine nature reserves under the W&CA would be excluded from the liability regime. The White Paper appears to take a similar approach albeit that it is suggesting remediation as a sanction.

6.26 Again it is arguable that the government should seek equivalence of protection and strive to achieve a higher level of protection than is provided for under the ELD.

Conclusion

6.27 This review of the measures proposed by the White Paper has found that the proposals may result in a patchwork of uneven and unequal sanctions and measures taken by the MMO. The differing approaches may be dependent upon the level of legislative protection certain sites and species will receive rather than driven by essentially ecocentric criteria.

6.28 Such a result would appear contrary to the aims of the Marine Act.

6.29 The White Paper focuses on achieving regulation that is both certain and proportionate in its choice of measures and outcomes. This is to be applauded. However the government must also endeavour to take measures to halt the loss of biodiversity by 2010 in line with its commitments made at the Johannesburg Summit at the WSSD.

6.30 In the light of current scientific evidence and the time frame available the government may find that in the end there is only one way of achieving this aim which is to apply very strict protection measures in a representative way throughout the whole of the marine environment.

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