

Marine Bill Team  
Department for Environment Food and Rural Affairs  
Area 2C  
Nobel House  
17 Smith Square  
London SW1P3JR

Our Reference: NWCF08 – UKM

26th June 2008

Dear Sir or Madam,

**Draft Marine Bill**

On behalf of the North West Coastal Forum I would like to thank you for the opportunity to comment on the draft Marine Bill.

The North West Coastal Forum is a not-for-profit multi-sector partnership which aims to promote and deliver integrated coastal zone management in North West England to secure the long-term sustainability of the region's coastal zone. As England's only truly regional Coastal Forum we have a strong interest in the development of marine and coastal policy at a national level and how that will be applied at both regional and local level within the North West and adjacent regions.

Please find below a detailed response to the consultation.

If you need further clarification regarding any of the matters raised please do not hesitate to contact me.

Yours faithfully,

A handwritten signature in black ink that reads "Caroline Salthouse".

Caroline Salthouse  
**North West Coastal Forum Secretariat**

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## **Draft Marine Bill, April 2008 – The North West Coastal Forum<sup>1</sup> response**

We welcome the draft Marine Bill and much of its content. We feel that the creation of a dedicated Marine Management Organisation and a system of Marine Policy Statements, Marine Plans and a network of Marine Conservation Zones are major steps towards enabling sustainable management of the marine environment. The proposals to reform and simplify licensing, create new Inshore Fisheries and Conservation Authorities and open up access on foot around the English coast are also extremely welcome. However we feel that an important aspect of marine and coastal management has been overlooked and this is the need for coastal integration, both in terms of planning policy and other management issues.

The coast and near-shore areas are zones of intensive use and conflicting need, both human and natural and present some of the biggest challenges to the UK in terms of managing our island boundaries in the light of climate change. We would welcome the introduction of integrated coastal management explicitly into the Bill, perhaps through inclusion in Marine Policy Statements, so that we may better comply at English national level with the Recommendation of the European Parliament and of the Council of 30 May 2002 concerning the implementation of Integrated Coastal Zone Management in Europe (2002/413/EC).

Here in North West England we are exploring ways in which we might develop the North West Coastal Forum remit as a delivery agent managing stakeholder relations in relation to various coastal initiatives, for example coastal defence. In many areas of the country there are already well established coastal partnerships – usually networks of coastal stakeholders – which bring coastal interests together and could usefully deliver a consultation role given sufficient resources. There are examples in other sectors from Regional Rural Forums to the Regional Aggregates Working Parties.

### **Part 1 – the Marine Management Organisation**

We welcome the creation of a new Marine Management Organisation (MMO) which has the objective of achieving sustainable development. We are currently working with local partners including The Mersey Partnership to present a case for Liverpool as a potential location for the MMO headquarters and this will be submitted to Defra in due course.

Our comments are as follows:

1. the aim indicated in the explanatory notes of achieving a strategic approach, i.e. across its functions, is not properly reflected in the draft Bill text.
2. the MMO takes powers relating to conservation designations in the marine environment and some other wildlife-related functions (e.g. those given under the Conservation of Seals Act 1970 and Regulation 44 of the Conservation (Natural Habitats, &c) Regulations 1994) away from Natural England, whilst at the same time the draft Bill, in Part 10, formally extends the area over which Natural England may exercise its functions to include English waters up to the 12 nautical mile limit from baseline. This seems contradictory. Other concerns relating to the roles of the MMO and Natural England regarding the marine environment are set out in Part 4 below.
3. There is no general duty placed upon the MMO to consult with or take advice from relevant statutory agencies in the execution of its duties. We would urge that such a duty be placed on the MMO.

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<sup>1</sup> *This response represents the consensus view of the North West Coastal Forum's Management Board but please note that the North West Regional Development Agency, who are represented on the Management Board, do not, as a matter of policy, sign up to consultation responses produced by other parties in order to protect their independence and neutrality in all planning-related matters.*

## Part 2 – Marine planning

We welcome the proposal to instigate a system of Marine Spatial Planning, led by Marine Policy Statements and firmly believe that this approach will facilitate sustainable and more equitable management of the marine environment.

Our comments are as follows:

1. Section 46 subsection 1 states that a marine plan authority for any marine planning region 'may' designate the whole or any part of that region as a marine plan area and 'may' prepare a marine plan for that area. This indicates the process is entirely discretionary and whilst a degree of flexibility for very detailed plans enabling reflection of local circumstances is to be welcomed it would better ensure sustainable development if there was a coherent and contiguous system of marine planning in UK waters, particularly given the mobile nature of some of the key resources, protected species and the need only to consult with adjacent and adjoining marine plan authorities which could leave some large areas of sea with no plan, making cumulative impacts, etc. harder to account for in the plans that are created.
2. Schedule 4, setting out the process for preparing Marine Policy Statements, does not mention the need for any conformity with terrestrial planning, policies or strategies (for example the new National Policy Statements proposed under the Planning Bill or integrated Regional Strategies). The marine environment, particularly in coastal and near shore areas, can be heavily affected by what happens on land and due consideration of this needs to be brought into any policy-making process. We would also urge the need to ensure that any changes to the terrestrial planning system and land-based policies and strategies reflect the need for consideration of adjacent marine plans and marine policy statements.
3. Whilst the draft Bill text in Part 2 does cover amendment and withdrawal of Marine Policy Statements if any of the policy authorities that prepared and adopted it concludes it necessary, Schedule 4, setting out the process for preparing Marine Policy Statements, does not go into any detail on the process of how objections to draft policy will be considered and whether there is any opportunity for interested persons other than the policy authorities to challenge policy once set. (NB see comment 10 below).
4. Whilst mention is made of arrangements concerning devolved administrations and their territorial sea areas there is no mention of maritime borders with other administrations, such as the Isle of Man and Ireland.
5. Schedule 5, setting out the process for preparation and adoption of Marine Plans, sets out in section 10 how an independent person may be appointed to investigate the proposals contained in the draft plan. However this is not an automatic requirement, and there is no mention of how, or whether, objections to the plan will be considered by this person, or of any process by which interested parties may challenge the decisions made to produce the final text. An example of a transparent process taken from the terrestrial planning system would be the preparation of regional spatial strategies where objections to the consultation draft are considered by an independent expert panel at an 'Examination in Public' which then makes formal recommendations to the Secretary of State. A further public consultation is then carried out on the proposed changes before formal adoption of the plan.
6. Whilst section 47 indicates that the marine plan authority for any marine planning region must keep matters under review there is no process laid out for how or when this should be done. Whilst the lack of any detail here gives the advantage of flexibility there is also a danger that plans may not be reviewed frequently enough, particularly given that there is no mention of how an existing plan can be challenged by interested parties other than the policy authorities (NB see comment 10 below).
7. Schedule 5 section 7 indicates that a Sustainability Appraisal must be carried out on the marine plan. We would urge that the fuller requirements of a Strategic Environmental

Assessment are implemented and that the Marine Policy Statement should also be subject to an SEA.

8. Chapter 4 section 53 subsection 2 refers to public authorities taking decisions which must be in accordance with the appropriate marine policy documents unless 'relevant considerations indicate otherwise'. There does not appear to be a definition of 'relevant considerations' so this is open to interpretation.
9. Whilst section 54 covers monitoring and reporting on implementation the matters to be considered are the policies in the marine plan and the MPS objectives. These, and the timeframe outlined, are to be welcomed; however a significant admission appears to be monitoring of adherence by all actors in the marine plan area to the plan itself.
10. Whilst Chapter 5 sets out a process where a person aggrieved by a relevant document (marine policy statement or plan) can place a legal challenge to the validity of that document the text would appear to exclude challenges based on technical content of the policy or plan. Challenges can be mounted on the basis of not being 'within the appropriate powers' or 'that a procedural requirement has not been complied with'. Unless the procedural requirements clearly state the need for, for example, a sound evidence base for decision-making, challenges mounted on such grounds would automatically fail. Sub-section 5 goes on to state that such applications must be made within 6 weeks of publication of the relevant document which precludes a challenge should evidence come to light at a later date which would justify a review.
11. There is no mention of statutory consultees other than adjacent planning authorities. All organisations retaining any legislative interest in the coastal and marine environment should be statutory consultees when drawing up Marine Policy Statements and Marine Plans. In English waters these would include both Natural England and English Heritage together with Harbour Authorities, Inshore Fisheries Committees, the Environment Agency, the Crown Estate, etc..
12. We understand that it is proposed that the new Infrastructure Planning Commission (IPC) will make decisions on major infrastructure in the marine environment, for example major port developments and offshore renewable energy schemes. In the interests of maintaining and delivering sustainable development in the marine environment it is critical that either these functions are transferred to the MMO or that a clear duty is placed on the IPC to have regard to the MPS and Marine Plan and to take into account issues such as cumulative impacts of not just development but also marine activities on the marine environment when determining applications. In such a case the MMO should be, at the very least, a statutory consultee.

### **Part 3 - Marine licensing**

We welcome the proposal to simplify the marine licensing and consents system.

Our comments are as follows:

1. Section 63 includes the need to prevent interference with 'legitimate uses' of the sea. 'Legitimate uses' does not appear to be defined anywhere within the legislative text, merely in the explanatory notes, and so may be open to interpretation.
2. When determining applications the text refers to the need to consult 'any person or body'. Whilst this flexibility is to be welcomed a number of statutory consultees could be named, for example those with a legislative interest in the marine and coastal environment (see also comment 11 under Part 2 above).
3. Chapter 2 section 68 sets out exemptions for certain local activities relating to harbour authorities, work carried out under the Harbours Act 1964 and where Admiralty consent is required. Whilst it is reasonable that activities such as routine maintenance dredging are exempted capital dredging, for example, should not be as apart from the potential physical effects on the local marine environment which may need careful consideration to avoid damage to sensitive species and habitats or other

economic activity – for example where pollutants buried in estuarine mud are re-released into the marine environment – such activity also indicates an alteration in the level or type of use of a harbour facility which may in itself have implications in terms of the marine policies or plan. There is also an issue relating to cumulative impact of various activities which would be harder to monitor and manage if no licence were required.

4. Sections 70, 72 and 73 set out how pipelines regulated by the Petroleum Act 1998 and certain harbour works and certain electricity works currently regulated under the Harbours Act and the Electricity Act respectively will still be regulated under those Acts. Rather than simplifying the consents process this seems to be needlessly perpetuating the situation where different bodies need to be applied to rather than having a single licensing body. This is in direct contrast to the situation outlined in Section 74, regarding structure in, over or under a main river which would formerly have required consent under the Water Resources Act but now will be covered by a Marine Act licence.
5. There is no reference to oil and gas licensing, which we understand will be retained by Department for Business, Enterprise and Regulatory Reform (BERR). Again this would seem to perpetuate the existing situation of many different bodies being responsible for licensing in the marine environment. In addition, when considering licensing applications, BERR should have a duty placed upon it to consult the MMO and to consider the Marine Policy Statement and the relevant Marine Plan.
6. Sections 80, 81 and 96 use the term ‘serious harm’ with regard to both the environment and human health and the term ‘legitimate uses of the sea’. Neither of these terms appears to be further defined within the legislative text which leaves them open to subjective interpretation.

#### **Part 4 – Marine Conservation Zones**

We welcome the proposals to establish Marine Conservation Zones (MCZ) to protect marine flora or fauna, marine habitats and features of geological or geomorphological interest. In particular we welcome the provisions to take immediate action to protect an area should an urgent need for protection be identified and the introduction of Conservation Orders for the purpose of furthering the conservation objectives of English MCZs.

Our comments are as follows:

1. Natural England is given new responsibilities out to the 12 nautical mile limit under Section 10, with JNCC having responsibility beyond. Natural England is the body tasked with identifying and designating nature conservation sites on land and it seems somewhat perverse to give them a new responsibility on one hand and remove it with another by giving responsibility for designating MCZs in English waters to the ‘appropriate authority’ rather than Natural England.
2. Section 106 indicates the grounds for designation of MCZs however no mention is made of the aim to create a coherent network of such protected areas. This is a key omission as being an important part in such a network might influence the placing of such an MCZ. It is also important in considering our international obligations as protected areas within the UK can form part of wider international networks of protected areas (for example Natura 2000 and Ramsar sites). There should be a duty placed on the appropriate body to designate the MCZ network and an identified timescale for this work.
3. Section 106 sub-section 5 indicates that the desirability of designating an area will be influenced by ‘any economic or social consequences of doing so’. However no further definition of the delimiting factors is given which leaves this wide open to subjective interpretation. If a limited economic or social impact were considered to outweigh a major conservation need the effectiveness of the purpose of this legislation, i.e. to

achieve sustainable development in the marine environment, could be called into question. The explanatory notes explain that this might be used as a deciding factor when choosing between two sites of a similar conservation value but this interpretation is not included in the legislative text. We would urge that identification, selection and designation of MCZs should take place, as with conservation areas on land, on a scientific basis alone.

4. Section 110 indicates that authorities must not authorise 'acts capable of affecting (other than insignificantly)' MCZs or associated processes, however there is no mention here of cumulative impacts of many acts which may in themselves have insignificant influences but when combined do have a significant effect.
5. Section 110 sub-section 4 indicates that where 'benefit to the public of proceeding with the act clearly outweighs the damage to the environment which the act is likely to cause' the act will be permitted with appropriate mitigation. 'Benefit' is not defined and is open to subjective interpretation. This could result in a poor level of protection for MCZs and result in fragmentation of the network, for example if half an MCZ was lost and the mitigating habitat recreated elsewhere.
6. There is no mention of monitoring the MCZs to ensure they are meeting their conservation objectives, or to take into account changes over time, for example as a result of climate change, that could justify the removal of MCZ status from a site or a realignment of the boundaries of that site. We suggest that Natural England be given the role of monitoring MCZs and condition reports be produced at regular intervals.

#### **Part 5 – Other conservation sites**

We are concerned that there are changes to designation of terrestrial SSSIs and National Nature Reserves below mean low water mark which may cause unnecessary confusion. Coastal habitats and species for which sites may be designated are often heavily influenced by or dependent on the immediately adjacent marine environment which may, in itself, not merit protection as an MCZ but forms a vital component of a mainly terrestrial SSSI or NNR.

#### **Part 6 – Inshore fisheries and conservation authorities**

We welcome the proposals for creation of Inshore Fisheries and Conservation Authorities and Districts in England and Wales with enhanced duties and powers in place of the existing Sea Fisheries Committees and the emphasis that is given to sustainable management of sea fisheries resources.

We also welcome that the IFCA must ensure furtherance of conservation objectives of MCZs in the execution of its duties relating to management of inshore fisheries.

#### **Part 7 – Fisheries**

No comments

#### **Part 8 – Enforcement**

We welcome the proposals to appoint Marine Enforcement Officers to ensure compliance with licensing, nature conservation and sea fisheries legislation.

#### **Part 9 – Coastal access**

We welcome the objective to create a route for on-foot access along the whole English coast and an associated 'margin' for public enjoyment in conjunction of that route. Perhaps this route could be designated a new National Trail?

The North West Coastal Forum is pursuing a project to create a regional coastal trail along the North West of England coast and, while we wish to create a trail which is also accessible on bicycle and horse, we consider that the proposals in the draft Marine Bill will go a long way towards helping us achieve our own regional goal. Our trail links coastal regional parks and is central to the regeneration ambitions of many coastal communities, particularly smaller, more isolated communities. As such it would bring many social and economic benefits but needs proper resourcing in terms of both initial delivery to a specified standard and ongoing maintenance and marketing. The North West Coastal Forum is working in partnership across the region to ensure the maximum benefit can be derived from development of the proposed route, socially, economically and environmentally.

Our comments are as follows:

1. Section 273 gives general provisions about the coastal access duty. There is no mention in this section of the need to consider, when exercising this duty, the needs of the natural environment, for example protected species or habitats or our international obligations with regard to the same.
2. Section 277 sub-section 4 sets out the action to be taken in cases of significant coastal erosion or encroachment by the sea. This is a significant improvement to the existing situation with coastal rights of way, once eroded into the sea, are lost and is therefore to be welcomed, however there is no equivalent set of measures with regard to an accreting coast and while in the short term this is unlikely to be an issue, over many years the main coastal route could end up some way inland with limited views of the sea in contradiction to section 273 sub-section 2b (General provision about the coastal access duty).
3. We welcome Section 277 sub-section 6b which enables closure of a route for specified periods, for example to protect nesting birds, danger to the public or land management purposes. We are concerned however that the inclusion of estuaries in coastal access legislation may mean that some areas are closed off and rerouted further inland for long periods, frustrating walkers who have arrived with an expectation of being able to walk along the estuarine coast. Although coastal access only extends as far as the first crossing point on some estuaries this may be a considerable distance up-river. Estuaries are particularly significant for birds, both in terms of providing autumn and spring migration route feeding grounds, over-wintering bird feeding grounds and spring/early summer ground nesting bird sites. Many have international protection as a result. This could result in some areas being closed off for most of the year. In addition estuarine salt marshes are also often grazed and cattle with calves can react aggressively to people, particularly if they are with dogs and this problem can occur from calving all the way through to when cattle are taken off in the late autumn.

## **Part 10 – Miscellaneous**

See comment 2 under Part 1 above.

## **Part 11 – Supplementary provisions**

No comments.

## **Other**

1. Schedule 4 – see comments under Part 2 above
2. Schedule 4 and Schedule 5 refer to 'statement of public participation (SPP)' and 'statement of public involvement (SPI)' respectively. Although they are slightly different the similarity in both name and acronym may cause confusion.

**END**