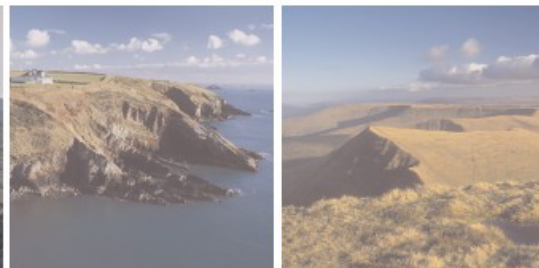


mae'n wlad i mi
breathe easier



NATIONAL PARKS WALES
Britain's breathing spaces

Marine Bill Team
Department for Environment Food and Rural Affairs
Area 2C
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By email 26th June, 2008

To: marinebillconsultation@defra.gsi.gov.uk

Dear Sir/Madam

COMMENTS ON THE DRAFT MARINE BILL

Pembrokeshire Coast National Park Authority and Snowdonia National Park Authority, working in partnership as the Welsh Association of National Park Authorities, thank you for the opportunity to comment on the draft Marine Bill. While Pembrokeshire Coast National Park extends only to the mean low water mark, and Snowdonia National Park to mean high water, the quality of the marine environment directly and indirectly affect the special qualities of what are nevertheless maritime Parks.

The UK is party to the UN Convention on Law of the Sea and to a host of conventions and directives with more specific implications for the marine environment, but despite these we feel that there has in effect been an institutional failure to protect 'the last great Commons'. Threats to the marine environment exist in many forms and can act alone or in combination; climate change will bring its own impacts and is likely to magnify the significance of others. Yet there is no strategic UK marine management framework, and allocation and delivery of enforcement powers has been patchy.

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We see the draft Marine Bill as a major opportunity to put a management framework in place, and this is warmly welcomed.

As a general comment on the draft Marine Bill, we see a potential gap between the aspirations set out in the policy paper at the front of the draft Bill (which we welcome) and the draft clauses (which we feel may not always be sufficient to achieve the aspirations).

A complicating factor is that much of the operational detail will only be filled in through secondary legislation or guidance. There is therefore no way of knowing at present the full expression of a Marine Act. We recognise, on the other hand, that this could be advantageous, in that the draft legislation is not overly prescriptive, and that as experience grows and as situations change it will be easier to amend the supplementary guidance which will support it.

Our more specific comments are as follows:

(i) Creation of an independent Marine Management Organisation

We support the draft Bill proposal for creation of a Marine Management Organisation (MMO) as an independent non-departmental public body.

The UK Government has committed through the current Planning Bill to creating National Policy Statements about future intentions regarding infrastructure in key sectors, including energy and transport. The Planning Bill proposes an Infrastructure Planning Commission to take decisions on nationally significant infrastructure projects. We understand that at sea the Infrastructure Planning Commission will be responsible for issuing development consents for large offshore renewable energy projects and the biggest harbours in the territorial waters around England and Wales and in the Renewable Energy Zone (except where Scottish ministers have responsibility).

We understand that both the MMO and the Infrastructure Planning Commission would operate in accordance with Government policy within this area, whether that policy was set out in the relevant National Policy Statement or in the Marine Policy Statement (see below). The Infrastructure Planning Commission will make decisions under the Planning Bill, and deem Marine Bill licences and conditions until the Marine Bill licensing provisions come into force, advised by the MMO as the specialist marine licensing authority.

Devolved matters would be the responsibility of the Welsh Assembly Government (WAG) in the Welsh inshore region. WAG is currently considering how best to interact with the MMO and how to administer devolved responsibilities. Wales' small area of territorial sea and other considerations mean that a 'Wales-only MMO' is not a likely outcome.

The foregoing indicates that the proposed regulatory arrangements could still result in a complex administrative framework, and possibly an uneven playing-field for developers.

The debate which has surrounded the MMO proposals throughout the development of the Marine Bill has underlined a need to avoid geographical/sectoral anomalies in planning and protection, and we are very keen to see management continuity across marine regions.

We believe that planning and regulation should work with ecosystem units rather than administrative boundaries. In particular, management must be coherently delivered across regional boundaries which divide important features like the Dee and Severn estuaries.

(ii) A new marine planning system

The draft Bill proposes a system of marine planning, by marine planning authorities, to operate within the context of an overarching Marine Policy Statement. We support these proposals.

The Marine Policy Statement would be underpinned by marine plans which would operate on a 6-year cycle. The draft Bill proposes that the area between mean high water springs and mean low water would be covered both by land based planning (by the relevant planning authority) and by marine planning.

WAG Ministers would constitute the marine planning authority for the Welsh inshore region, with five other marine planning authorities, and six marine planning regions. Marine planning authorities will be able to issue guidance on the plans to any public body with relevant functions in the region. Regional marine plans could in turn be supported by subregional plans, although we understand that WAG's preferred approach is for a single regional marine plan for Welsh waters. The level of detail within such a single plan could vary by area or topic as required.

Again, the proposed and likely arrangements underline the need for a joined up approach between marine planning authorities will be essential, with for example common guidance on shared issues like climate change and the visitor economy.

At a minimum, the proposed planning overlap will require planning to synchronise in the area between mean high water springs and mean low water (including estuaries and rivers). Developments close to shore nearly always have onshore implications and onshore developments may well have implications for the marine environment: the planning overlap should in principle 'force' marine/terrestrial planning harmonisation, at least within the area of overlap, and we broadly welcome this.

The potential benefit of the overlap will depend on how planning integrates across the foreshore and on whether and how different planning authorities and/or management considerations are assigned sovereignty. We understand that preparatory work on guidance for land/marine planning integration is underway by Defra, and that a good practice guide is expected later in 2008. We also note that advice is currently being prepared for the Countryside Council for Wales on how protected landscape managers can better take account of adjacent sea areas.

This issue illustrates a more general point, namely that the draft Bill proposals, as and when enacted, will have an extensive interface with other legislation and policy, and the nature of some key planning relationships remains to be seen (e.g. between Marine Spatial Planning and National Park management plans, local development plans or shoreline management plans). While this is likely to be an early topic for guidance, we feel that some legislative provision in the Bill, for example of a duty to deliver marine plans and to cooperate in planning (and to report on this), is also necessary, since there are no obvious existing mechanisms for integration beyond current sectoral responsibilities and partnerships. A requirement to set up an advisory or consultative group in the marine planning process would strengthen integration considerably. Integrated Coastal Zone Management is established as a set of principles and there is an ICZM Strategy for Wales. However ICZM has no statutory basis and it is not likely (nor, arguably, should it be necessary) that ICZM becomes a freestanding process in its own right.

(iii) Designation of Marine Conservation Zones

We welcome the draft Bill's provisions for Marine Conservation Zones, to protect individual habitats and species and features of geological or geomorphological interest and the aim is to have MCZs designated by the end of 2012.

We welcome the fact that scalable objectives relating to MCZ features will allow different degrees of protection and that there is scope therefore to create what are in effect Highly Protected Marine Reserves, and we strongly support this. We are pleased that recovery objectives will also therefore be possible, so MCZs need not only be designated in relatively 'healthy' areas.

The power to designate MCZs would rest with the relevant marine authority (WAG Ministers in the Welsh inshore region), although there would not, we understand, be an actual duty to do so, and we would urge that the draft Bill is revised to make the power a duty.

We welcome the proposals for the MMO to be able to make conservation orders to control activities, in order to further MCZ objectives.

All public bodies will have a duty to operate in ways which further, or at least do not hinder, the conservation objectives set for MCZs. We have some concerns about the extent to which short term socio-economic considerations might be able to dominate longer term considerations of public benefit (including conservation objectives). We understand that the rationale for taking socio-economic factors into consideration is to allow Ministers to decide between areas for designation, if alternative areas are available; our wariness stems from a comparable provision in the Marine Nature Reserve provisions in the 1981 Wildlife and Countryside Act which effectively morphed into a policy that MNRs would only be designated when all socio-economic objections were overcome.

We understand that statutory conservation agencies and marine authority-appointed enforcement officers would have access to a common set of enforcement and educational powers, and welcome this. We presume that conservation agencies would at a minimum maintain their current marine management commitments, and would in addition help determine conservation order requirements and MCZ management planning. We would however appreciate clarification on what additional agency involvement is envisaged in day-to-day MCZ management (even if it is not appropriate to legislate for that involvement) since achievement of MCZ goals will be contingent upon this involvement and the potential size of the role would have significant resourcing implications for relevant organisations.

The draft Bill proposes that Skomer Marine Nature Reserve is automatically converted into an MCZ, and that European Marine Sites (i.e. marine Special Areas for Conservation and Special Protected Areas) will be protected by conservation orders similar to those

proposed in the draft Bill for the MCZs. Collectively these will form a network of Marine Protected Areas, which we warmly welcome. Specifically we welcome the potential the draft Marine Bill affords for Skomer Marine Nature Reserve to become what would effectively be a Highly Protected Marine Reserve through the application of MCZ conservation orders.

Of key interest is how other MCZs and their component features will be designated and on how the target outcomes for the features will be defined, since these will govern the nature and degree of licensing and conservation orders operating within MCZs, and we note the draft guidance notes Defra and the WAG, with agency input, have prepared on this topic. We are concerned however that there is no immediately obvious mechanism in the draft Bill for resolving potential conflicts between the public right of fishery and MCZ objectives or objectives for features of designated sites, other than emergency order-making powers for Inshore Fisheries and Conservation Authorities.

We are also very concerned, and we make further comment on this below, that MCZ orders must be enforceable and enforced. The staffing and material dedicated to enforcement will need to be massively upscaled.

We would welcome some indications of the proposed relationship between MCZs and landward designations - including, but not limited to, protected landscapes - and clarification on the particular issues of conservation of seascape in general and seascape adjacent to existing protected areas. We appreciate that MCZs are not explicitly designed to accommodate seascape protection, but we would welcome clarification of more appropriate ways in which seascapes may be considered. The 2006 Marine Bill proposals included reference to protection of "*important seascapes and views from land*" but this does not appear to have been followed up in the current draft Bill.

The Europarc Atlantic Isles Coastal and Marine Working Group's submissions to the Joint Parliamentary Committee's examination of the draft Bill and to Defra. The Working Group's conclusions were that:

"(i) A mechanism needs to be created to enable the national recognition of the marine dimension our nationally important coastal landscapes and seascapes, and

(ii) in the absence of a means of formally recognising the national importance of these areas it is not clear how the marine planning system proposed in the Bill can take into account their national importance"

The Pembrokeshire Coast National Park Authority formally endorsed these conclusions at a meeting on 25th June 2008.

(iv) A unified system for licensing activities

We broadly welcome the licensing system proposed in the draft Bill which is intended to be more complete than the existing arrangements, better able to take account of in-combination effects, and easier to use.

Building on the Food and Environment Protection Act 1985, which we understand would be merged with the Coast Protection Act 1949, the draft Bill includes provisions for all dredging, including hydrodynamic and plough dredging, to be licensable. This is welcomed; dredging can be hugely damaging in terms of bycatch and physical seabed disturbance. Additionally, licensing conditions can also be applied to the period after the licensable activity has finished, which is also welcome.

We understand that the Marine Consents Unit established by WAG is acquiring roles from other WAG departments and has absorbed the Defra Marine and Fisheries Agency in Wales in order to streamline licensing in Wales, in particular where FEPA, marine aggregate dredging, and marine species protection legislation are concerned.

The draft Bill does not appear to deal with the issue of national system for registration of marine craft (or at least of craft with particular specifications of speed/draught etc), - a system which could be linked to a training and insurance requirement. Aside from the public safety and insurance considerations, there is a question about enforcement of conservation orders if vessels cannot easily be identified.

We strongly feel that this is a major missed opportunity and we urge Defra to include provision for craft registration in the Marine Bill.

(v) Measures to strengthen marine fisheries management

We welcome the draft Bill's intention that IFCAs will pay greater consideration to the wider environmental impacts of fishing. While the proposed IFCA membership seems rather broader than that of SFCs, it could still perhaps be rather polarised.

Coastal local authorities will contribute to IFCA funding, as they currently do to SFC funding, although Defra will offer support if resources are a problem. We wonder therefore why inshore fisheries

could not simply be brought under the direct control of the MMO, where they could be integrated with wider marine spatial planning.

We welcome the proposed introduction of a core set of enforcement powers for conservation and licensing for the purposes of inspection and investigation, and the provisions for reforms of migratory and freshwater fisheries and enhancement of the Environment Agency's powers in England.

We welcome the civil sanctions scheme for licensing and nature conservation offences and the administrative penalty scheme for domestic fisheries offences. In combination with enforcement tools ranging from advice to prosecution, we agree that these will give a greater ability to address offences in a proportionate, flexible and risk-based manner.

The situation in Wales is likely to look very different, and at this point we refer to two recent and current WAG consultations. At present WAG has competence for fisheries matters within the territorial sea adjacent to Wales (i.e. out to 12 nautical miles from baselines), but has recently consulted on proposals to create a Welsh Fisheries Zone which would extend WAG fisheries competence out to the median line with the Republic of Ireland to the west, to the Isle of Man in the north, and to a small area in the southwest.

The provisions in the draft Bill would allow WAG to bring fisheries management in-house if it wished to do so, and indeed WAG is currently consulting on a proposal that it assumes full responsibility for sea fisheries management and enforcement around Wales.

(vi) A new right of access to the coast of England

The draft Bill proposes a new right of access to the coast of England, via a managed route within a designated coastal margin. This would effectively create an Access Land corridor running along the coast of England with the corridor being defined from the Mean Low Water Mark.

We do not have any direct comments on this but observe that WAG has asked the Countryside Council for Wales to advise on how a statutory approach to coastal access could complement the existing Coastal Access Improvement Programme in Wales, a 6-year grant programme funded by WAG with the objective of creating a Wales Coastal Path. Once CCW have submitted their advice to WAG there is likely to be a consultation on the application of a statutory right of


access to the coast of Wales. This would allow an opportunity to incorporate provisions for coastal access in Wales when the Marine Bill eventually goes before Parliament. Any provision for a statutory right of coastal access in Wales will clearly have implications for the two coastal National Park Authorities in Wales.

Conclusion

The draft Bill affords a long overdue opportunity to help protect the marine environment. We broadly welcome its provisions, subject to the reservations expressed above, as the basis for a new era of marine stewardship.

Thank you again for this opportunity to comment. We look forward to continuing our involvement by contributing to proposals for secondary legislation and guidance in relation to the marine environment as appropriate.

Yours faithfully

A handwritten signature in black ink, appearing to be 'Greg Pycroft', with a long horizontal stroke extending to the right.

Greg Pycroft
Welsh Policy Officer