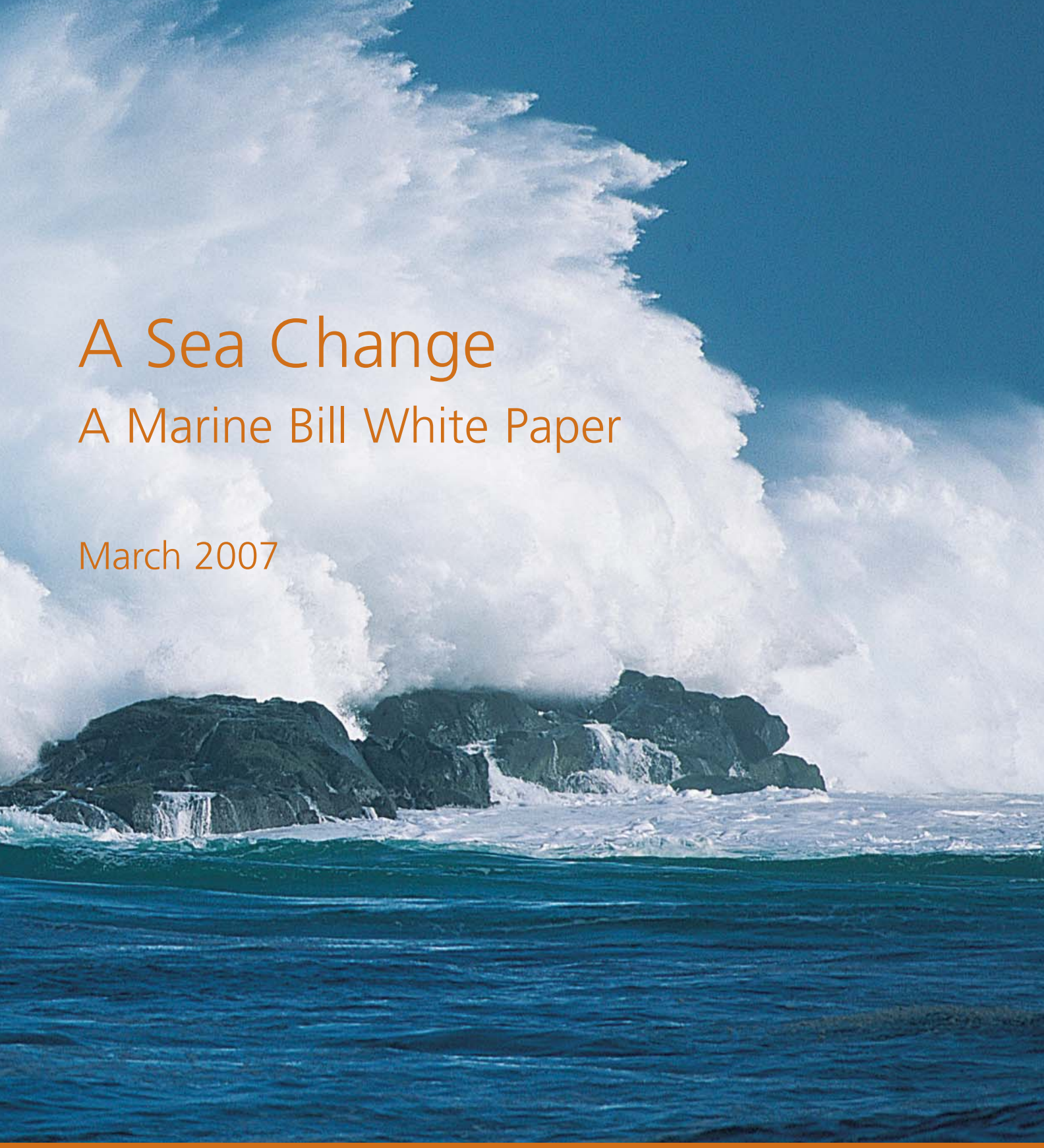
A Sea Change

A Marine Bill White Paper

March 2007



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Presented to Parliament by the Secretary of State for
Environment Food and Rural Affairs
By Command of Her Majesty

March 2007

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Contents

Foreword **1**

Executive Summary **2**

1. Introduction **4**

Why does this matter? 4

What do we need to change? 4

What have we done so far? 5

What do we want to do? 5

What are we going to do? 7

When are we going to do it? 8

How does this fit with wider European, international and other obligations and initiatives? 9

Regulating better 10

Geographic scope 12

Regulatory Impact Assessment 13

2. Integration between land and sea **14**

3. Environmental data and information **16**

4. Planning in the marine area **18**

Summary of our proposals 18

Geographic scope 18

Rationale for planning ahead 19

Regulating better 20

Setting a clear direction: a shared UK marine policy statement 20

Translating policy into plans 24

Integration with other plans 34

Influencing decisions 35

Delivering plans 37

5. Licensing activities in the marine area **41**

Summary of our proposals 41

Introduction 41

Creating a modern, streamlined and simplified marine licensing regime 46

Carbon capture and storage 54

Oil and gas 56

	Constructing renewable energy installations in the sea	57
	Harbours legislation	59
	Transport and Works Act 1992	60
	Small scale telecommunications development in the sea	60
	Delivering the new licensing regime	61
6.	**Marine nature conservation**	**65**
	Summary of our proposals	65
	Introduction	66
	Marine Conservation Zones	70
	Species protection	84
	Control of unregulated activities	89
	Enforcement	93
7.	**Modernising marine fisheries management**	**98**
	Summary of our proposals	98
	Sea Fisheries Committees in England	99
	Several and Regulating Orders for shellfish	110
	Recreational sea angling and unregulated fishing	115
	Enforcement and control of commercial fishing	118
	Charging the fishing industry	122
	Out-of-date and redundant fisheries legislation	123
8.	**A Marine Management Organisation**	**125**
	Summary of our proposals	125
	Introduction	125
	Integrated management within a single organisation	127
	Regulating better	129
	Functions of the new Marine Management Organisation	130
	Relationships with other bodies	142
	Implications of previous reviews for the Marine Management Organisation	149
	References	**152**
	Glossary	**157**
	Acronyms	**166**

Foreword

Much of what goes on in our seas is not easily observed. Perhaps for this reason, the marine environment has not traditionally enjoyed as much attention as what happens on land. But the sustainable management of our seas is one of the biggest environmental challenges we face.

A healthy and productive marine environment is obviously vital for those who make a living from its resources but because of the seas' crucial role in absorbing greenhouse gases, it is critical to the balance of the earth's ecosystems and the fight against climate change.

Marine legislation has built up piecemeal over centuries. It is confusing, overlapping and broken into sectors. However, countries all over the world are reviewing the way they manage their marine environment.

The UK Government recognised the need for fundamental change when we promised in our last general election manifesto to introduce a new framework for the sea, based on marine planning, that balances conservation, energy and resource needs.

Our proposals for a Marine Bill, which we consulted on last year, enjoyed widespread support.

Since then, the European Commission has come forward with proposals for a more strategic and holistic approach to the marine environment that mirror our own.

We are delighted now to be publishing this detailed White Paper with policy proposals that will help us meet our commitment to legislation in the current Parliament.

We are extremely grateful to officials in Defra, other Government departments and the devolved administrations for the commitment and hard work that has been needed to publish this document. I would also like to thank all those organisations and individuals who took part in our consultation and have contributed to our work before and since.

We are confident this White Paper will help us achieve a legal and management framework for our seas fit for the 21st Century, so that future generations will continue to benefit from a clean, healthy and productive marine environment.

David Miliband **Ben Bradshaw**

Executive Summary

The UK Government is committed to introducing a new framework for the seas through a Marine Bill. It will establish a strategic system of marine planning, and will balance conservation, energy and resource needs.

This White Paper explains why new legislation is required. It sets out the UK Government's intention for the scope and content of the Marine Bill. The views of anyone with an interest will be welcomed – the consultation period will end on 8 June 2007. The responses will help to refine these proposals and ensure that the Marine Bill will be fit for purpose.

Why do we need a Marine Bill?

There are many existing systems for managing marine activities and protecting marine wildlife and the marine environment. These can be complex, confusing and costly. They are generally discrete and do not provide a strategic approach. Pressures on our seas are increasing and there is growing demand for marine space from the expansion of traditional activities and emergence of new technologies. Our approach will be flexible, so that we can adapt to the impact of climate change on our seas and recognise the contribution that the marine area can make to meet this challenge. We want to ensure that we have the tools that we need to balance conservation needs with the demands that we place on the marine area to meet social and economic requirements.

Purpose

The principle of sustainable development runs through the Marine Bill proposals. The Bill will be based on the principles of good regulation and modern government. It will improve the delivery of marine policies, by providing an integrated approach to sustainable management and the enhancement and use of the marine natural environment for the benefit of current and future generations. It will help deliver economic, social and environmental objectives with a strategic, progressive and effective approach.

Working together

The UK Government and devolved administrations are working together to manage the marine area around the UK in a coherent way. Within this overall approach, each administration will decide on the most appropriate way to implement change within their respective areas and competence. The changes we make must also be consistent with international and European law.

The main themes

There are five key areas that will be covered in the Marine Bill, but there are significant links and interdependencies between them.

A new Marine Management Organisation

The UK Government and Northern Ireland administration have decided that a new Marine Management Organisation (MMO) is needed to help effectively deliver many marine policies. The MMO will be guided by a UK marine policy statement. It will deal with a range of functions (including marine planning, licensing and enforcement) that together provide a holistic approach to marine management.

Marine planning

The Marine Bill will introduce a new system of marine planning. This will provide a strategic approach to the use of marine space and the interactions between its uses. It will encompass all activities and deliver sustainable development by facilitating forward looking decision-making. Marine plans will guide decisions on licence applications and other issues, and provide users of the sea with more certainty.

Licensing marine activities

The proposals will deliver a marine licensing system that is more efficient and transparent, leading to less risk, delay and cost to business. We will replace some existing legislation with a modern streamlined system. The changes will simplify marine licensing processes and provide for a rationalised and more integrated approach.

Marine nature conservation

The proposals will provide for new mechanisms that will supplement existing tools for the conservation of marine ecosystems and biodiversity. This will include a new approach to protected areas for important species and habitats.

Managing marine fisheries

The Marine Bill will modernise inshore fisheries management arrangements and enable a more active approach to managing recreational sea angling. It will strengthen fisheries enforcement powers and provide for recovery of the costs of fishing vessel licence administration.

1. Introduction

Why does this matter?

1.1 Our oceans, seas and coasts have a huge impact on our lives, much of which goes unnoticed or is taken for granted, even though for most of us the sea is never very far away. The UK marine area is a vast and important resource that is of vital importance to our well-being. Not only does it provide us with valuable economic, environmental and cultural benefits, it plays a major role in shaping our climate and in sustaining life. Without our oceans and seas there would be no life on this planet.

1.2 Shallow seas such as those that surround much of the UK constitute less than ten percent of the world's total marine area yet contain the vast majority of its marine life. Our seas are no exception, containing up to half of the UK's biodiversity. As part of the North-East Atlantic, they are one of the most biologically productive marine areas in the world. As well as its own innate importance, it is that diversity which contributes to the range of resources that we can utilise, the ability of marine ecosystems to adapt to changing conditions, and the influence these systems have in controlling our global climate.

1.3 Activities in the marine area contribute substantially to the UK economy and quality of life. It is estimated that the economic contribution of these activities is in the order of 67 billion pounds Sterling annually in the UK.[52] Important contributors are oil and gas (22.3 billion), tourism and recreation (16 billion), naval defence (6.5 billion), and ship and boat building and repairs (3 billion), with significant contributions being made by ports (1.6 billion), fisheries (0.5 billion) and a range of other activities.

What do we need to change?

1.4 In many places the marine area is becoming increasingly crowded with demands on space for development, to exploit resources, for recreation and nature conservation. Space is particularly in demand near to the coast, in shallow waters and in our estuaries. Technological developments and the demand for resources for an increasing variety of activities have led to further exploitation of the marine area, which has moved into deeper waters and more remote areas.

1.5 We are facing significant environmental modification brought about by climate change with rising sea levels and a changing coastline, increasing sea temperatures and changes in seawater chemistry. Biodiversity will respond to these changes and human activities will need to adapt to them too.

1.6 A number of recent reviews and reports have considered the challenges and the way that we manage and protect our marine resources. These have shown that we do not have all the necessary tools we need. The complex system of legislation and regulation that helps us manage marine activities and protect marine nature and the marine environment has developed to address sectoral issues over many years and has a number of gaps and limitations.

1.7 Currently there is no strategic framework for policy in the marine area. Management of our seas can be ad hoc and reactive. We do not plan in a strategic, coordinated way and this makes it difficult to assess the cumulative impacts of activities. We do not have a focal

point for effective, integrated management of activities in the marine area. Nor is there sufficient focus on the task of collecting the information needed to take strategic decisions. In the busy parts of our seas, it is difficult to balance shipping, fishing, industrial, leisure and environmental objectives. We need substantial reform to make our systems fit for the future and the expected future increases in the intensity of marine activities.

What have we done so far?

1.8 In 2001, the Prime Minister committed the UK Government to new measures to improve marine conservation, including a series of Marine Stewardship reports. The first of these reports, 'Safeguarding Our Seas', jointly published a year later by the UK Government and devolved administrations, set out the shared vision of 'clean, healthy, safe, productive and biologically diverse oceans and seas'.[7] The UK Government and devolved administrations jointly published this to address the strategic issues faced across all UK waters. It also set out a strategy for the conservation and sustainable development of the marine environment. The UK Government and devolved administrations committed to implement an ecosystem approach to reconcile and integrate conservation goals with the full range of demands that we place on the marine environment to help meet our economic and social needs.

1.9 In 2005, we completed an integrated assessment of the 'State of Our Seas – Charting Progress'.[11] The overall picture that emerged was that UK seas are productive and support a wide range of fish, mammals, seabirds and other marine life. The levels of monitored contaminants and pollution have decreased significantly. However, human activities have resulted in adverse changes to the marine ecosystem and continue to do so. These direct human activities, along with climate change, pose a real threat to the balance and integrity of the marine ecosystem.

1.10 Since 'Charting Progress', we have implemented the new UK Marine Monitoring and Assessment Strategy (UKMMAS), formed the Marine Climate Change Impact Partnership and the Marine Data and Information Partnership (MDIP). We have also made real progress in protecting our marine area and have played a key role in European and international efforts to protect the oceans both regionally and globally.

What do we want to do?

1.11 The UK Government and the devolved administrations are committed to working together to manage marine activities and protect UK seas effectively. Together, we have adopted a number of strategic goals for the marine environment, and made a commitment to ensure that our policies and marine management contribute to meeting these goals.[10] We are working together to achieve the best and most appropriate means for managing activities in the marine area around the UK.

The UK Government's and devolved administrations' shared vision and strategic goals for the marine environment.

The vision:

Clean, healthy, safe, productive and biologically diverse oceans and seas.

The strategic goals:

- to conserve and enhance the overall quality of our seas, their natural processes and their biodiversity;
- to use marine resources in a sustainable and environmentally sensitive manner in order to conserve ecosystems and achieve optimum environmental, social and economic benefit from the marine environment;
- to promote and encourage economically and environmentally sustainable use of natural resources to ensure long term economic benefits and sustainable employment;
- to increase our understanding of the marine environment, its natural processes and our cultural marine heritage and the impact that human activities have on them; and
- to promote public awareness, understanding and appreciation of the value of the marine environment and seek active public participation in the development of new policies.

1.12 To achieve these goals we must ensure that we have all the tools that we need. That is why the UK Government is committed to a Marine Bill, to provide the necessary legal tools to effectively deliver our policies.

1.13 The Marine Bill proposals will provide a strategic approach to the protection and use of the marine area – now and for future generations. They will introduce:

- a new UK-wide system of marine planning, with devolved matters delivered by each devolved administration;
- a streamlined, transparent and consistent system for licensing marine developments;
- a flexible mechanism to protect natural resources, including marine protected zones with clear objectives; and
- improvements to the management of marine fisheries in relation to England, Wales and Northern Ireland and the ability to share the costs of management with commercial and recreational sectors.

1.14 For England and Northern Ireland and for matters that are not devolved this will primarily be delivered by a new body – a Marine Management Organisation (MMO) – which will work for all relevant UK Government departments, acting as an expert, efficient and impartial delivery agent. Scotland and Wales will implement their own delivery arrangements for devolved matters.

Aims for the Marine Bill

To create a strategic marine planning system that will clarify our marine objectives and priorities for the future, and direct decision-makers and users towards more efficient, sustainable use and protection of our marine resources.

To change marine licensing regimes to give better, more consistent licensing decisions, delivered more quickly and at less cost by a system that is easier to understand and to use. We want to integrate delivery across a range of sectors and provide an effective link through planning to enforcement.

To introduce new tools for conservation of marine wildlife to help halt the deterioration of biodiversity and promote recovery where practicable, to support healthy, functioning and resilient ecosystems, and provide mechanisms that can deliver current and future European and international conservation obligations.

To strengthen fisheries and environmental management arrangements so that more effective action can be taken to conserve marine ecosystems and help achieve a sustainable and profitable fisheries sector.

To set up a new UK Government MMO to deliver many objectives for the marine area. A new organisation would be a centre of marine expertise, provide a consistent and unified approach, deliver improved coordination of information and data and reduce administrative burdens. The integration proposed would provide benefits from joined up delivery and economies of scale that could not be realised by placing those functions in separate organisations.

What are we going to do?

1.15 Activities in the marine area must be managed effectively, to deliver the right balance between protection of the environment and social and economic needs. Sustainable development is at the heart of our proposals in this White Paper.

1.16 The guiding principle of sustainable development is to enable us to satisfy our basic needs and enjoy a better quality of life without compromising the quality of life for future generations. The UK Government and the devolved administrations have a shared framework for sustainable development, which sets out how they intend to pursue that goal in an integrated way through a sustainable, innovative, and productive economy that delivers high levels of employment, and a just society that promotes social inclusion, sustainable communities and personal well being.[12] This will be done in ways that protect and enhance the physical and natural environment, and use resources and energy as efficiently as possible.

Shared UK principles of sustainable development

A shared set of principles sets out the overarching approach to achieving the UK's sustainable development goal:

- living within environmental limits;
- ensuring a strong, healthy and just society;
- achieving a sustainable economy;
- promoting good governance; and
- using sound science responsibly.

1.17 Through the Marine Bill, our objective is to establish modern and flexible new arrangements and structures that will stand the test of time. We want to improve the delivery of policies relating to marine activities operating in coastal and offshore waters and to marine natural resource protection. We need a strategic and long-term decision-making framework that can anticipate the way we will use marine and coastal areas in future, and the effects that those uses will have. We want to facilitate sustainable economic growth whilst protecting the environment, providing us with a marine and coastal environment that can be enjoyed by all. We want coherent management within and between sectors so that we can deliver sustainable development.

1.18 We set out the proposed scope and content of a Marine Bill in our public consultation[14] in March 2006. The responses to the consultation were overwhelmingly in favour of the scope and purpose of our proposals and the principles that we set out that underpinned those proposals.[15] The majority of responses were also strongly in favour of integration and harmonisation of structures and policies across UK waters and wider international boundaries.

1.19 This White Paper sets out an integrated suite of proposals for a new approach to the management of activities in our marine area. They will allow the UK Government and the devolved administrations to take proactive policy decisions and implement them. We will provide the tools to maximise benefits from the seas and coasts whilst preserving their integrity for the future – achieving a holistic approach that has never been achievable before, and which was supported in responses to the 2006 Marine Bill consultation by stakeholders from all sectors.

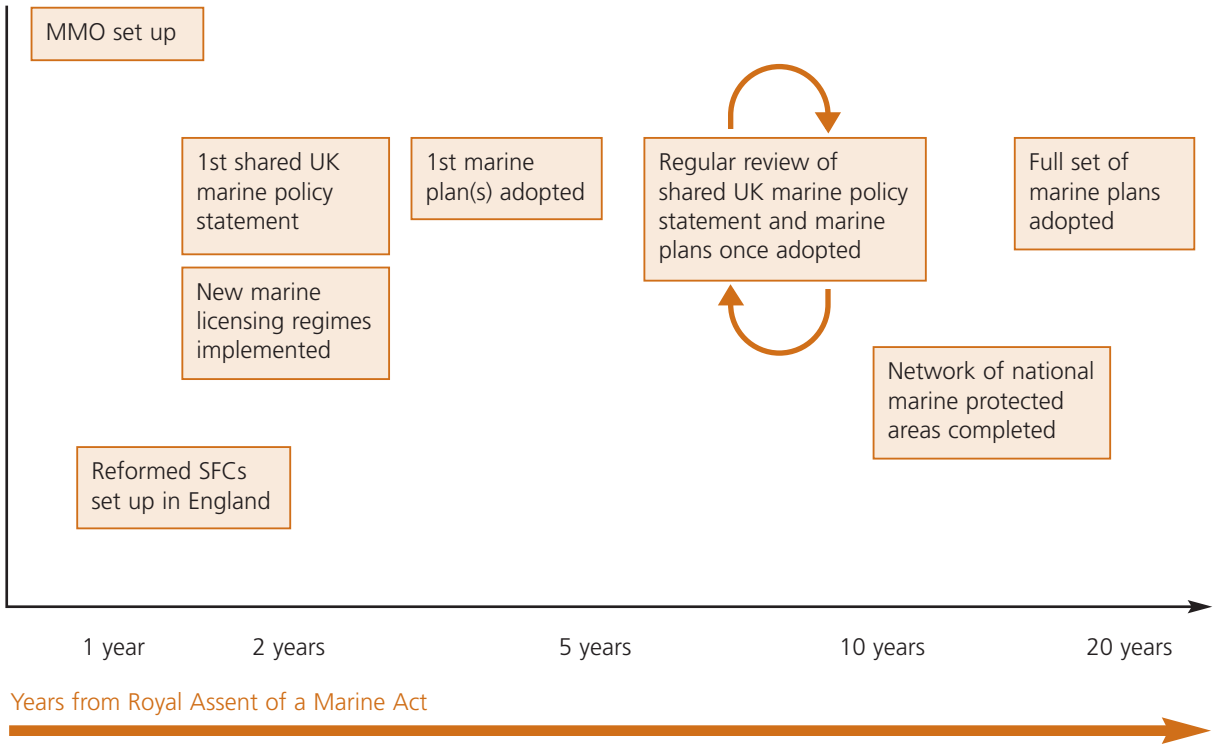
When are we going to do it?

1.20 We want to implement each of our proposals swiftly but some will take longer than others. Figure 1 shows approximately when we expect some of the key proposals will be implemented.

1.21 Although it will be some time before the combined benefits of all the proposals are realised, each proposal will be implemented as soon as is practicable. For example, whilst the full benefits of the reformed licensing regimes will be achieved when we have a full suite of marine plans to guide licensing decisions, this does not mean that we should wait until we have implemented marine plans before we introduce improvements to licensing systems that will bring benefits in their own right.

1.22 An important principle throughout the implementation of our proposals is that no one should be retrospectively disadvantaged through the imposition of new rules. Only activities undertaken or applications for new licences made after specifically advertised dates will be subject to new rules. Any applications already accepted prior to these dates will be processed in accordance with existing rules and guidance.

Figure 1: Illustrative timeline for implementation of Marine Bill proposals



How does this fit with wider European, international and other obligations and initiatives?

1.23 Our proposals are compatible with, and will enable us to meet, our obligations under European and international law. The UK's commitments, as a result of relevant European and international obligations, will continue to apply whatever the scope and nature of the legislation brought forward because of our proposals. One of our purposes is to make the net effect of all relevant requirements clearer and more effective and to provide a firm and certain foundation upon which integrated management in the marine area can be built.

1.24 We also want our proposals to contribute to wider initiatives and obligations where possible. For example, the Government is committed to taking the lead on international action to address climate change. Our proposals will provide greater certainty and streamlined, more transparent licensing arrangements for marine industries, including those developing offshore renewable projects. This will help us to meet our targets for increasing the amount of energy generated by renewable technologies.

1.25 We will ensure that the arrangements that we put in place are flexible. We need to be capable of responding to the changes that we know will happen in the future and, as far as possible, to changes that we have yet to foresee.

1.26 There are a range of developments that will have an impact in the marine area, including:

- The European Commission are developing a European Marine Thematic Strategy, there is currently a draft Marine Strategy Directive under discussion and a Maritime Green Paper is being consulted upon.
- The UK Government has developed a number of proposals that have been published recently, or are due to be published soon: a Planning Reform White Paper, an Energy White Paper, a Heritage Protection White Paper and a draft Climate Change Bill. There are consultations on carbon capture and storage and natural gas storage, and in due course there will be consultations on improving recreational access to the English coast and on the secondary legislation that will follow the passage of a Marine Bill.

1.27 The Energy Review Report (July 2006) committed the UK Government to introducing fundamental change to the planning system for major energy projects once the findings of the Eddington Study on transport and the Barker Review on land use planning were clear. Both were published in December 2006 and the UK Government gave an initial positive response, in its Pre-Budget Report, to the proposals on infrastructure and planning in both reports. It also gave a commitment to publishing a Planning Reform White Paper in Spring 2007. The planning areas covered include energy, transport, water and waste projects that are of national economic importance.

1.28 We have developed the Marine Bill proposals to complement these other developments. The draft Marine Strategy Directive and Maritime Green Paper are developing in a way that strongly supports our proposed direction. We have the opportunity to lead the way in Europe, particularly on marine planning. Introduction of a successful, effective and proportionate planning system in the UK is likely to strongly influence the European proposals. It is also a reason for developing a flexible framework that will be able to accommodate European developments.

Regulating better

1.29 The UK Government is committed to pursuing the Regulating Better agenda by implementing in relation to the marine area recommendations from the Hampton Review[34] and the Better Regulation Task Force report 'Less is more'.[3] These include:

- regulating only when necessary – supported by a robust evidence base and in a way that is proportionate to the risks;
- setting demanding targets for reducing the cost of administering regulations and
- targeting inspection and enforcement.

1.30 Better regulation promotes efficiency, productivity and value for money. Proportionate regulation and inspection arrangements can help drive up standards and deliver better outcomes – whether in the form of improving public services, a better environment for business, or driving forward economic reform in Europe.

1.31 The proposals in this White Paper seek to maximise benefits whilst minimising burdens. We will establish a modern, transparent, efficient and effective legislative framework that enables improved decision-making and minimises bureaucracy by consolidating the complex, disparate and diverse body of marine regulation into a clearer regulatory framework that will resolve overlaps and inconsistencies, aid clarity and improve compliance. We will also repeal out of date and redundant legislation where appropriate and simplify the legislative landscape where possible.

1.32 Policies plus sustainable development and environmental objectives will be clarified and applied through marine plans. This will help businesses to assess the potential impact of their developments on marine ecosystems and will inform subsequent decisions on licensing. We will introduce efficient, flexible planning arrangements that minimise bureaucracy. Marine plans will provide targeted and relevant information to business to help reduce business costs and regulatory risks of exploiting marine resources, and will provide efficient decision-making through the licensing process. Marine planning will be an inclusive process for all interested stakeholders.

1.33 In particular, industry will welcome our proposals to:

- reduce the need to apply for multiple licences for single developments;
- limit the number of separate regimes that a business working in the marine area must deal with;
- reduce costs, expedite and modernise the licensing process;
- rationalise the number of regulatory bodies that business interfaces with; and
- increase regulatory certainty.

1.34 We will introduce a suite of modern compliance mechanisms, including preventive measures, appropriate remediation or compensation obligations and in some cases administrative penalties or civil penalties. These are precisely the sorts of proposals now also advocated by the final report of the Macrory Review[47]. There will be coordinated compliance activity through existing agencies and inspectorates and by bringing some related activities together into a MMO. This will build upon the regulatory regimes currently in place for fisheries and for development and licensing controls, and will be consistent with the new requirements of the Legislative and Regulatory Reform Act 2006. Administrative and operational efficiencies and economies of scale will also come from bringing Government functions together within a new MMO. In Wales the approach to achieving similar operational efficiencies and economies of scale is to bring together policy development and policy delivery within the Welsh Assembly Government.[60]

1.35 Our proposals will provide transparent and equitable arrangements for managing marine activities and protecting marine resources that reduce risks for business, contribute to conservation efforts and reflect public interests. We have only made proposals to regulate where it is needed and will not introduce measures where there is no evidence that they are necessary. When we do regulate we will do so in a way that is proportionate to the risks.

Geographic scope

1.36 To ensure that activities are managed at the appropriate level by electorally-accountable bodies, the UK Parliament has devolved many functions to Scotland, Wales and Northern Ireland. In this White Paper, we collectively refer to the Scottish Parliament and Welsh and Northern Ireland Assemblies, and the ministers and administrations working alongside them as the devolved administrations.

1.37 Each devolved administration develops its own solutions to best suit its own needs. The ability to set priorities and take action based on local needs is an important part of achieving sustainable development and protection of the marine area. We are committed to working together to meet our shared goals without compromising the strengths that our diversity of approach offers.

1.38 The Marine Bill proposals are structured to link coherently with devolved administration responsibilities. Where proposals relate to issues where responsibility has been devolved, then whether and how they will apply will be determined by the devolved administrations. The sections of this White Paper provide more detail on how each of the proposals will work in each part of the UK.

1.39 Northern Ireland's ministers support the introduction of a Marine Bill, extending fully to Northern Ireland, whilst respecting the devolution settlement and a streamlined and modernised framework for managing the marine environment based on the principles of sustainable development. This commitment is reflected by the inclusion of the development, by 2008, of a policy and legislative framework for protecting the marine environment as one of the key targets in Northern Ireland's Sustainable Development Strategy, published in May 2006. Final decisions on the nature of marine management structures in Northern Ireland will be a matter for the Northern Ireland Assembly on restoration of devolution.

1.40 The commitment to Northern Ireland's involvement in the Marine Bill takes account of the ongoing Review of Environmental Governance in Northern Ireland, which commenced in February 2006. The recommendations from the Review, expected later this year, will shape environmental governance in Northern Ireland and support sustainable development. Northern Ireland has a unique position in the UK, sharing a land border with another Member State. Mechanisms must facilitate consultation and build on existing cooperation with the Republic of Ireland on marine matters, which will become increasingly important in a European context. The proposed MMO will have responsibilities in relation to England and Northern Ireland and, in each case, the adjacent UK territorial sea and the UK offshore area.

1.41 The Government of Wales Act 2006 changes the devolution settlement for Wales. It:

- creates a formal legal separation between the National Assembly for Wales (the legislature) and the Welsh Assembly Government (the executive);
- transfers most of the current functions of the National Assembly for Wales to Welsh ministers, including the ability to make secondary legislation; and
- enables the National Assembly for Wales to seek legislative competence from the UK Parliament to make a new category of legislation – Assembly Measures.

1.42 The Marine Bill may include provisions specifically relating to Welsh ministers or the National Assembly for Wales. Welsh ministers and the National Assembly for Wales will have the tools to deliver our shared strategic goals for the marine environment in the areas for which they have responsibility. Welsh ministers are considering making a proposal for further devolution in relation to fisheries management and nature conservation.

1.43 The Government is committed to working with the Scottish Executive and the other devolved administrations to ensure that marine activities are managed coherently and effectively. Since devolution, much policy and legislative responsibility in relation to the marine area out to 12 nautical miles in Scotland has been devolved. Policy and legislative responsibility beyond 12 nautical miles, in the offshore area adjacent to Scotland, is also devolved in important respects, particularly in relation to marine fisheries and marine aggregates. Scottish ministers also have other executive powers in the offshore area, including in relation to marine licensing. Where proposals relate to issues where responsibility has been devolved, then whether and how they will apply will be determined by the Scottish Executive. The UK Government would work closely with Scottish ministers on any legislative proposals that would impact on their devolved competence or the legislative competence of the Scottish Parliament to ensure the benefits of devolution are fully taken into account. In addition, the UK Government in partnership with the Scottish Executive is actively reviewing the appropriate balance of responsibilities in relation to the new powers proposed through this legislation.

1.44 The Channel Islands and the Isle of Man are Crown Dependencies that are not part of the United Kingdom. They legislate for their own territorial waters. Our proposals take account of arrangements with Crown Dependencies. We will work with them to consider any impacts that new arrangements might have and seek joined up approaches across administrative boundaries.

Regulatory Impact Assessment

1.45 An accompanying Regulatory Impact Assessment (RIA) supports the proposals in this White Paper. We are developing this partial RIA alongside the development of the proposals for the Marine Bill. It represents a significant step forward from the RIA that supported the 2006 Marine Bill consultation as it focuses on the costs and benefits of the specific proposals that we have chosen to pursue. It will be developed into a full RIA as we move towards introduction of a Marine Bill into the UK Parliament. We are gathering further information on costs and benefits and we will take into account any further evidence submitted during consultation on this White Paper.

1.46 The changing nature of the marine environment and the pressures faced mean that Government policy and legislation must be responsive and adaptable. The detail of some proposals will therefore be implemented through secondary legislation. Where this is the case, any such future regulation will be subject to further detailed RIAs and public consultation.

2. Integration between land and sea

2.1 Some activities that take place on land can have a significant impact on the marine environment and vice versa. This makes considered management of coastal areas particularly important. Some sectors are also active both on land and at sea, and developments can have both marine and land based elements. The systems that we introduce for the marine area must therefore accommodate the complex interrelationships in coastal areas.

2.2 The UK has a long coastline relative to its total area (see Table 1). The length and diverse nature of this coastline means that there will be different activities taking place in different areas and the interplay between activities on land and at sea will have varying effects on one another depending on their location.

Table 1: Total length in km of the coastline of United Kingdom (adapted from the Joint Nature Conservation Committee's resource survey of Great Britain, with addition of Northern Ireland information)

Geographic area	Length km	% of UK coast
United Kingdom total	19488	
England	5496	28.2%
Scotland (mainland)	6482	33.3%
Scotland (islands)	5295	27.2%
Wales	1562	8.0%
Northern Ireland	650	3.3%

2.3 Currently there are well-developed land planning systems managed largely by local authorities whilst in the marine area there are sectoral management arrangements that fall principally to central Government departments. However, there is a vast array of other organisations that have a role in planning and management of activities both on land and at sea which, allied to the diversity of economic and social interests, come together within a complex set of arrangements for managing activities and assets in our coastal areas.

2.4 This has been recognised both nationally and internationally. The UK Government has recognised the need to improve coastal management arrangements and communication between those with an interest. The need for improved coastal management grows as pressures on land and sea increase whether through demands on space or as a result of changing environmental conditions such as those brought about by climate change.

2.5 In 2002 the European Community recognised the need for an improved approach to enable integrated management in coastal areas and adopted a Recommendation concerning the implementation of Integrated Coastal Zone Management (ICZM).[27] In the same year the UK Government and devolved administrations outlined their intention to develop a new, shared vision for the future of our coastal areas which would be underpinned by ICZM.[7]

2.6 ICZM means the adoption of an integrated or joined up approach towards the many different interests in both the land and marine components of the coast. It is the process of harmonising the different policies and decision-making structures, and bringing together coastal stakeholders, to encourage concerted action towards achieving common goals. It means that we consider the coast and activities on land and at sea in a holistic way, looking at issues in the widest context.

2.7 UK Government and the devolved administrations are already seeking to promote an integrated approach to management across our coasts. Each administration has been preparing separate draft national strategies on ICZM, or more generally on marine and coastal management, reflecting the particular circumstances and needs of their own coastline.[20, 54, 62] The UK Government and devolved administrations work closely together to achieve a strategic coastal management approach for the UK as a whole, and to ensure harmonisation between processes around the coastline.

2.8 UK Government already encourages cooperative working in the preparation of development plans, between the local authorities around estuaries and on stretches of the open coast, and emphasises the need to involve fully other relevant bodies with an interest.

2.9 The Marine Bill will help deliver further integration and the principles of integrated management are embedded throughout our proposals. A marine planning system will provide the strategic focus and will take account of, and be considered by land planning arrangements. That includes plans, guidance and policies for shoreline management, river basin management and the land planning system. This will also help us to deliver our obligations under the Water Framework Directive (WFD)[26] and a future Marine Strategy Directive.

2.10 The Government is committed to improving recreational access to the English coast. Its aim is to provide a right to walk along the English coast, promoting understanding of the natural environment and an enjoyable recreational experience. We want to focus initially on areas of greatest benefit as part of a longer-term programme and deliver wildlife and landscape improvements as well as improved access. Defra will be consulting shortly on the basis of advice from Natural England (NE). 'Wales: a Better Country', the strategic agenda for the Welsh Assembly Government made a commitment to improve public access to the coast.[59] Options are being developed and the aim is to link up existing paths to form a single all-Wales Coastal Path.

2.11 We are also giving careful consideration to other proposals, such as the Local Government White Paper: Strong and Prosperous Communities[6] and those that may result from any recommendations of the House of Commons Select Committee Coastal Towns inquiry.[49] We will ensure that we take all developments into account.

3. Environmental data and information

3.1 Our proposals highlight the importance of high quality marine data. In particular, the creation of a MMO will provide a renewed focus and centre of expertise for the collection, storage and accessibility of data.

3.2 A sound evidence base is essential for making informed policy and management decisions. It is generally the case that we know less about the marine environment than we do about the environment on land, although the waters around the UK are relatively well studied compared to most countries and a significant amount of data already exists. A key factor for any existing or new marine management arrangements is the collection, availability and use of suitable up-to-date data and information relating to the marine area.

3.3 Many respondents to the 2006 Marine Bill consultation commented on data issues. The most common comment was the need for appropriate scientific data and information to provide an evidence based approach to policy-making both at a strategic level (planning) and local marine management decisions (licensing, enforcement and nature conservation). The Bill was seen by many to provide an opportunity to develop a comprehensive marine database with 'fit for purpose' marine data and information. This was seen to be particularly important for marine planning, which needs a range of information types (environmental and social) on regional and local scales, which look at present conditions and predict the future. There were concerns that in some cases information on the marine environment may currently be insufficient to support decisions, but there were also opinions that limited information should not preclude planning and adoption of an adaptive approach to management as data availability improves.

3.4 It was recognised in 'Safeguarding Our Seas' that the best available scientific evidence must inform the stewardship of the marine environment. The report went on to outline the need for greater integration of government marine monitoring programmes, particularly in the light of the desire to move towards an ecosystem-based approach to marine management. Subsequent work on the production of the state of the seas report – Charting Progress – has reinforced the need for greater integration and led to the conclusion that significant re-structuring was required of the arrangements for collecting, collating, storing and interpreting marine data. These actions are being taken forward as part of the UKMMAS and the MDIP.

3.5 The new UKMMAS will enhance the UK's capability to collect and respond to the evidence required to assess if the desired state of our marine area is being achieved. It will ensure that the various marine monitoring activities undertaken in the UK are coordinated and fit for purpose. The planning process proposed draws heavily on the UKMMAS.

3.6 The data collected under the UKMMAS accounts for only part of the marine data collected for many reasons including site surveys and research. Although some data gaps exist, some of the data needed to make marine assessments and management decisions has been collected but is inaccessible for one reason or another. Significant resources can be spent attempting to access data already collected or in repeating data collection already undertaken.

3.7 In 2005, MDIP was established between UK Government, the devolved administrations and a number of agencies and industry to work towards our vision of data stewardship (collect once – use many times). MDIP is working to improve the accessibility and storage of marine data across the UK, identifying best practice and recognised standards and making it easier to locate and access UK marine data. We want to maintain a network of UK Marine Data Archive Centres (DACs) to ensure secure long-term archiving of key marine data sets.

3.8 Working closely with MDIP, the Marine Environmental Data Action Group (MEDAG) is developing the guidelines for data management and exchange. MEDAG also actively collate the information in databases and catalogues. Both MDIP and MEDAG are ensuring that the UK is fully compliant with current national and international data management agreements. It is the responsibility of member organisations to implement MDIP and MEDAG guidance. We want the data stewardship initiatives to ensure that as much data as possible is made available to agreed standards at proportionate cost. We are also working to achieve greater harmonisation and coordination of marine data collection and storage, and improved access to historic data and data collected in future. We intend that the MMO will work closely with MDIP and MEDAG to contribute to a culture of sharing, improved access and reuse of data.

3.9 Our proposals, coupled with existing initiatives, will shape the way that marine data and information are collected, handled and used in future. Subsequent sections of this White Paper set out the expected data management needs for each of our proposals. The new marine planning system and body to operate it will provide a focus for related marine data acquisition and storage. It will need to secure access to a broad range of data types collected by industry, regulators and other organisations and present it in a user friendly way. The outputs of the planning process must also be able to be shared. This new focus for collating data should lead to national standards and protocols for marine data and will improve data consistency and availability. This more strategic and efficient approach will provide benefits beyond the planning system to other aspects of marine stewardship.

4. Planning in the marine area

Our Aim

To create a strategic marine planning system that will clarify our marine objectives and priorities for the future, and direct decision-makers and users towards more efficient, sustainable use and protection of our marine resources.

Summary of our proposals

4.1 The United Kingdom is surrounded by seas of vital environmental, cultural and economic importance, which face ever-increasing pressures, such as from the impacts of climate change and competing marine industries. We do not plan ahead to cope with these pressures in the way that we do on land.

4.2 It is now essential that we look more strategically at the whole of the marine environment, the way that we use and protect our resources and the interactions between different activities that affect them. This will require a shift in practice to a much more integrated approach to managing ecosystems, but the case for doing so is now compelling.

4.3 A new system of marine planning[a] must be a key element of our new approach to marine management. We intend to adopt a strategic, plan-led approach to marine activities that will offer benefits to marine regulators and users. It will help us secure the maximum sustainable benefits from our marine resources, whilst ensuring appropriate environmental protection.

4.4 Effective marine planning will require a clear statement of our policies for UK waters as a whole, before consideration of the demands on specific sea areas. For that reason we intend to adopt a straightforward two-stage approach to planning:

- 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.

Geographic scope

4.5 We are keen to ensure the best approach to marine management that is possible throughout UK waters. Within those waters, since 1999 the responsibility for a number of marine issues has been devolved to the administrations in Scotland, Wales and Northern Ireland, so we want to make sure that any proposals we take forward reflect that devolution framework.

a Marine planning as proposed in this White Paper means undertaking forward-looking activities to create policy statements or plans. It does not refer to what, in the context of land use planning, is generally referred to as 'development control', i.e. the need for permission for particular acts of development. This aspect of management is addressed within our proposals for the licensing system in section 5.

4.6 Our proposals for marine planning will apply differently throughout UK waters. UK Government and the devolved administrations intend to come together to jointly agree a UK marine policy statement. The responsibility for developing plans to implement that policy statement will fall to different administrations depending on where they have competence to act. Any future planning in the UK territorial waters within Scotland will be taken forward through separate legislation, and Scottish ministers in consultation with their Advisory Group on Marine and Coastal Strategy (AGMACS) are currently considering the most appropriate approach to this.

Rationale for planning ahead

4.7 It has become clear that, to varying degrees in the different parts of UK waters, the current complex framework of domestic and international legislation used to manage the UK's seas can make effective decision-making difficult. There is increasing demand on marine space and resources, partly because of both the expansion of some industries, such as the transportation of goods by ship, and also newer developments such as offshore wind farms. These changes in marine use have meant that conflicts can arise between different activities. We want to plan ahead to try to address these conflicts, and also to think about potential future marine uses, such as tidal and wave energy generation, at the same time.

4.8 We are gaining an increasing awareness of our impact on the marine environment, and the importance of a healthy marine environment to our wellbeing. Protection of marine resources now and for the future is a key element of our marine policy. Whilst at present there are effective rules in place to enable us to consider the impacts of individual activities on marine resources and the environment as a whole, it can be difficult to judge the combined effects of lots of activities over time. We want to be proactive towards achieving nature conservation objectives, rather than relying only upon the current reactive approach of Environmental Impact Assessments (EIAs) and sectoral Strategic Environmental Assessments (SEAs).

4.9 To manage the marine environment effectively, we must consider the whole marine ecosystem, interactions within it, and how it might change into the future. This is why the UK Government and devolved administrations' 2002 Marine Stewardship Report 'Safeguarding our Seas' stated our intention to put an ecosystem based approach at the heart of our marine policy.[7] This report was also our first commitment to exploring a marine planning system in the UK.

4.10 The consultation on proposals for a Marine Bill in March 2006 confirmed clear support for a robust but flexible planning mechanism. With this in mind, we want to create a system that will:

- coordinate and set clear policies and objectives in one place, which will help to bring together consideration of economic, social, cultural and environmental needs in the marine area;
- ensure that policy is being implemented through specific decisions that are made in the marine area;
- ensure that UK Government and devolved administration policy provides better guidance and clarity to decision-makers, and greater certainty to users;

- consider how the marine environment is currently being used, what spatial needs different activities have, how new technologies are emerging and the nature of activities is changing;
- consider the need to protect ecosystems and valuable natural resources, and better understand and manage the cumulative effects of different marine activities, both on the ecosystem and each other;
- make more efficient use of available marine space, striking a considered balance between competing pressures, and consider how activities can in some instances be located in the same area for mutual benefit;
- look ahead at the predicted impacts of climate change on the marine environment, how marine activities contribute towards it, and also how they are affected by it; and
- provide a point of focus for bringing together and considering the views of all those with an interest in the marine environment, and allow them to have a strong influence over what happens there.

Regulating better

4.11 One of the most important elements of this plan-led approach is the way in which it can create improvements in decision-making in the marine area. The planning system will inform and guide marine regulators and users, and make the national and local context in which decisions are being made clearer. The planning system will develop with the involvement of a range of interests across government and with the participation of a range of stakeholders from an early stage. This will promote more confidence in decisions that are later made in the context of the plan, and create greater certainty for marine users.

Setting a clear direction: a shared UK marine policy statement

The need for clear policy

4.12 We want to articulate a clear policy for the marine environment that will provide a sound basis on which to make marine plans and decisions. This will help to ensure that activities that use the marine environment, and the management approaches addressing them, are all operating in a way that will implement our marine policy.

4.13 Our domestic policy about the way that marine resources should be used and protected has developed over a number of years. Our international obligations that apply to the marine area have also increased. Since devolution in 1999, the administrations in Scotland, Wales and Northern Ireland have developed their own policies for the marine areas and issues within their respective jurisdiction.

4.14 Wherever possible, the different UK Government departments and devolved administrations work together to agree policies and implement obligations. Inevitably, sometimes policies for different issues, such as energy, transport and biodiversity, are developed at different times and communicated separately. This can lead to a lack of clarity about what our priorities are, and this can make decision-making and resolution of conflicts more difficult.

4.15 We now want to move towards a more integrated approach to marine management. For that reason, we intend that the first stage of the marine planning system should be the creation of a UK marine policy statement. The statement would set out both our short and longer-term objectives for the marine environment and would be created with the clear purpose of contributing towards the sustainable use of the marine environment. It would provide general guidance to marine regulators and users, but would also be specifically implemented through marine plans and decisions, and would therefore help steer us towards our vision for the marine environment.

Working together

4.16 The UK Government and devolved administrations intend to jointly prepare and agree the statement so that it applies to the whole of the UK's waters, but may also reflect some specific policies or objectives that apply in the area of a particular administration. This shared approach will ensure that the diversity of planning arrangements implemented throughout UK waters will be fully joined up, but flexible enough to meet the needs of different stakeholders and decision-makers in different parts of the UK.

Our marine vision and goals

4.17 We have already begun the process of coordinating marine policy. In response to the 'Safeguarding Our Seas' strategy in 2002, UK Government and the devolved administrations for the first time jointly stated an overall vision for the marine environment as 'clean, healthy, safe, productive and biologically diverse oceans and seas'. We followed this with the creation of several strategic goals that would help us to move towards that vision. Placing the ecosystem approach at the heart of our strategy meant that we were recognising the essential processes, functions and interactions among organisms and their environment, and recognising that humans, with their cultural diversity, are an integral component of and therefore reliant upon healthy ecosystems. This is important for sustainable development.

Marine objectives

4.18 We now want to elaborate on our vision, and build on our strategic goals, and look at how they relate to the key issues and policies of today. To take forward effective marine management and monitoring we need to articulate more detailed policies and objectives.

4.19 We already have a number of objectives, for example as a result of European legislation. Of particular significance, the European Commission published a proposal for a Marine Strategy Directive in October 2005, which is currently being considered by Member States and the European Parliament. The current draft Directive agreed at the Environment Council in December 2006 requires us to aim to achieve good environmental status in the marine area by 2021 at the latest and contains provisions for how the definition of this status will be determined. We need to ensure that our marine objectives enable us to meet this requirement and that the programme of work to implement this Directive is as integrated as possible with our marine planning system. The Water Framework Directive (WFD), which requires us to aim to achieve good ecological and chemical status by 2015 in coastal and transitional waters out to one nautical mile, is also of key relevance to our marine policy.[26]

4.20 We want the shared UK marine policy statement to help us deliver our European and international commitments, alongside domestic priorities, such as the target we have to achieve 10% of energy needs from renewable sources by 2010. However, the marine objectives we currently have vary in levels of aspiration, robustness and measurability, so we want to ensure we can clarify how they relate to each other.

4.21 As we develop the shared UK marine policy statement, we want to be able to look across our set of objectives, reconcile them as far as possible, and decide on priorities between them, based on current UK Government thinking.

4.22 We want marine objectives that will allow us to clarify the limits within which sustainable development needs to operate, and create measurable targets for ecosystem health and biodiversity. They should help marine users and decision-makers to assess the impacts of proposed activities on the marine ecosystems and on each other. More specific objectives will also enable us to monitor the condition of the marine environment.

4.23 We intend to consider where there are gaps in our marine objectives, and where we are not taking action to achieve elements of our overall vision. There will be a limit to how quickly we can develop new objectives. Initially they will reflect areas where we have comparatively greater knowledge about marine ecosystems and activities. They will need to be adaptable, so we can change them as scientific knowledge increases. To ensure this adaptability they will not be written into legislation, but by incorporating them into the statutory planning system we can ensure they apply throughout decision-making.

Further considerations

4.24 The precise content and objectives within the shared UK marine policy statement will reflect the priorities of the UK Government and devolved administrations at the time of its development. However to ensure the statement can best provide a context for making plans and decisions, there are certain considerations which will undoubtedly need to be addressed.

4.25 Current trends and anticipated future changes within the marine environment, such as the growth of marine industries and the impacts of climate change would need to be identified to ensure our policies are as relevant as possible. Areas of uncertainty and how we should deal with these would also need to be taken into account.

4.26 We will need to describe a range of marine issues, such as energy, protection of biodiversity or heritage, transport, mineral extraction, major infrastructure and defence, and explain what our policies and priorities are for each. This will include identifying what the future spatial requirements of certain activities are likely to be, where this is known. Current and emerging strategies and reviews would need to be considered, and where policies apply more widely than the marine environment the marine elements would need to be considered in the context of the policy as a whole.

4.27 The balance and relative priority of different policies and activities would need to be evaluated, making difficult choices where necessary, using a sound evidence base and where practicable, an assessment of the costs and benefits. We would consider the compatibility and conflicts between different priorities. We would integrate policies as far as possible, resolving conflicts and creating common objectives wherever possible.

4.28 Integration between marine and land issues is important. Consideration would be given to terrestrial planning developments and key issues in coastal areas, such as tourism, ports, economic development and coastal erosion and flooding. We are committed to an integrated approach to management of coastal areas and this would need to be applied throughout the development of the policy statement. Objectives from our strategies on Integrated Coastal Zone Management (ICZM) would need to be incorporated into the policy statement, which would mean that organisations making decisions in marine and coastal waters would be implementing this approach through their activities.

Preparation and review

4.29 We want the first shared UK marine policy statement to be prepared, adopted by ministers, and published widely within a period of two years after a Marine Act received Royal Assent. Throughout the preparation process, the Secretary of State and devolved administrations would need to:

- seek advice from organisations with relevant marine experience and expertise, to enhance the robustness of proposed objectives;
- make use of up to date marine science and data where it is available, to ensure an evidence based approach to policy;
- ensure wide public participation and awareness of progress; and
- consider the economic, social and environmental impacts and feasibility of the content of the statement, and be clear about how it would create an improved approach to marine management. We will also consider whether a formal SEA of the policy statement would be needed.

Monitoring progress

4.30 Although we envisage the statement would address longer-term objectives, particularly on issues like climate change, in the shorter term, our marine policies will adapt to address the changing degree or nature of human activities or environmental pressures. We need to ensure therefore that it is reviewed and updated regularly.

4.31 We will aim to monitor whether decisions are being made in accordance with the statement, and therefore whether they are supporting the achievement of our vision and goals. We will adopt a proportionate and risk based approach to this, as it would be impractical to review every decision taken in the marine environment.

4.32 More widely, we already have in place, jointly led by joint UK Government and the devolved administrations, a UK Marine Monitoring and Assessment Strategy (UKMMAS), which gives us the power to answer questions about the state of our marine ecosystem and to document ecosystem trends. We want to feed back this information into our marine management systems so that we can adjust our objectives and decisions we make to allow us to address areas of concern. Alongside any specific objectives in the statement, we will wish to use indicators to help us identify how well they are being achieved. This review process will help us ensure that our statement remains relevant and useful.

Translating policy into plans

The nature of marine plans

4.33 The shared UK marine policy statement would apply throughout UK seas. However, use of marine space and resources varies widely in different areas. We therefore intend that the second stage of the marine planning process should be the creation of a series of marine plans, applying to specific geographic areas and providing a spatial context.

4.34 Because marine planning is a new concept in the UK, we will need to ensure the system is evolutionary, and adapts as we learn lessons and obtain increasing amounts of information about the marine environment and the impact planning is having on it. This White Paper explains the outline process for developing plans that we want to embed in legislation. In addition, there is a need for further exploration and evaluation of the range of tools and techniques that might be used within the plans, so that they can guide activities effectively. This work will be ongoing in coming months.

Case study: Marine Spatial Planning in Belgium

Marine Spatial Planning (MSP), covering Belgium's territorial sea and Exclusive Economic Zone (EEZ), developed on an ad hoc basis, mainly driven by international and European environmental protection commitments and increasing opportunities for the exploitation of the marine environment. The need for a more comprehensive approach toward spatial planning for Belgian waters became particularly urgent in light of new objectives and associated targets such as the need for offshore energy production and the development of the European network of protected areas (Natura 2000).

Central to the Belgian legislative framework for MSP is a system of permits linked with environmental impact assessments.

At the policy level, a 'Master Plan' for the entire Belgian territorial sea and EEZ was developed. The 'Master Plan' provided a translation of current and future objectives of various sectors into a spatial vision. The first two phases of the 'Master Plan' focus on spatial delimitations for sand and gravel extraction and a zone for future offshore wind energy projects (Phase 1), followed by the delimitation of marine protected areas as part of the EU Natura 2000 Network (Phase 2).

At the scientific level, the discussions regarding new uses and requirements of the sea and seabed at both the national and international scene led to the GAUFRE study that made it possible to anticipate new developments in a balanced and sustainable way. Rather than mapping the uses of the Belgian part of the North Sea, the aim of the study was to produce maps and plans that would enable policy-makers and end users to envisage different ways in which Belgian waters might be spatially managed in the future.

Sources:

'GAUFRE': *Towards a Spatial Structure Plan For Sustainable Management of the Sea*, Maes et al, *SPSD-II/Mixed Research Actions* (Belgian Science Policy, 2005) pp. 39-298.

The International Perspective: Lessons from recent European experience with Marine Spatial Planning. Douvere, F and Ehler, C. N. UNESCO, Man and the Biosphere Programme (MAB) and the International Oceanographic Commission (IOC), June 2006.

UK administrations working together

4.35 Marine planning must reflect the framework of devolution in place within the UK. For this reason, the marine planning activity taken forward will be the responsibility of different administrations, either solely or jointly, in the different parts of UK waters. These responsibilities are described in the following paragraphs and in the map, see figure 2.

UK territorial waters within Scotland

4.36 Subject to new legislation in the Scottish Parliament, Scottish ministers would take any plans prepared in the UK territorial waters within Scotland forward, but giving appropriate consideration to matters outside of Scottish ministers' responsibilities. Scottish ministers, assisted by AGMACS are currently considering whether and how new legislation is required and how it might be implemented.

All other areas

4.37 In the offshore area adjacent to Scotland, we intend that UK Government and Scottish ministers would be jointly responsible for planning. We would build in flexibility to address particular areas such as Rockall, which form part of Scotland but are further offshore.

4.38 The 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 of the Welsh Assembly Government's responsibility.

4.39 The Department of the Environment in Northern Ireland (DOE) would be responsible for plans for UK territorial waters within Northern Ireland, but the agreement of UK Government would be needed in relation to any matters outside of the responsibility of Northern Ireland departments. Northern Ireland also has some responsibilities offshore within its fisheries zone, and in this area the UK Government and the DOE would be jointly responsible for planning.

4.40 In all other areas, the UK Government would be responsible for marine planning.

4.41 There would need to be flexibility built into this framework, should we wish to change our approach in future. Our proposals would enable the different administrations to prepare plans jointly across administrative boundaries, or across the division between territorial and offshore waters. This could be important in cross-border estuaries, given our commitment to integrated coastal management and our WFD obligations to consider river basins holistically. We need to ensure joined up thinking at all plan boundaries – planning jointly is not the only solution.

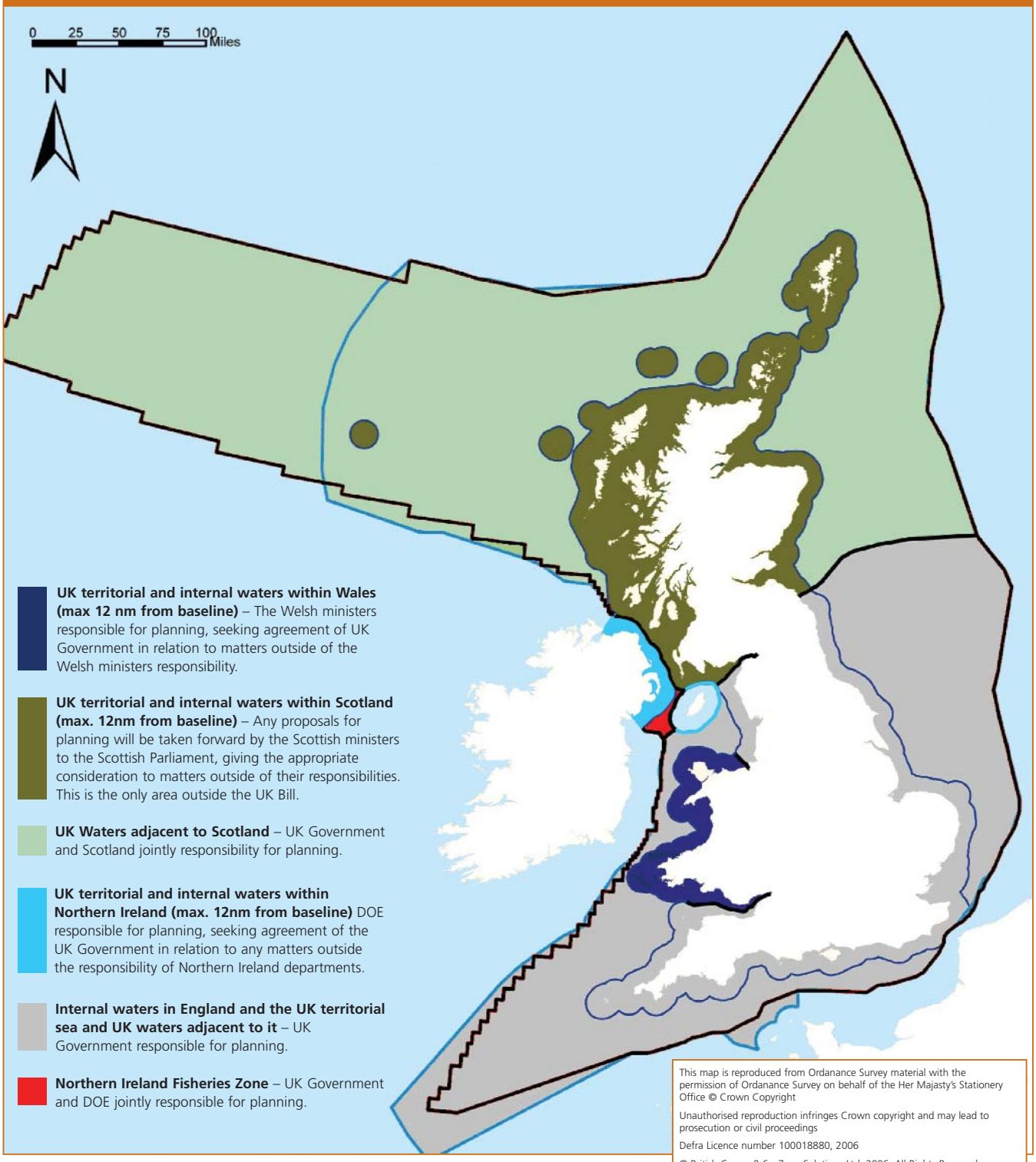
4.42 The Irish Sea represents a particular challenge because of the complexities of jurisdiction, but UK Government and the devolved administrations are committed to working together to create the most sensible approach. We are also building a sound working relationship with the Isle of Man.

Planning Body

4.43 We intend that ministers and departments within UK Government and the devolved administrations should either carry out aspects of the preparation of marine plans

themselves, or delegate responsibility for this activity to another body. In describing the broad planning process in the following section, we refer to a generic 'planning body', for ease of reference in relation to whichever organisation, or organisations jointly are taking forward the process. Our current thinking on how this will work in practice is explained in 4.98 – 4.110.

Figure 2: Responsibility for Marine Planning in UK waters



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Scope of plans

Coverage

4.44 It is our intention along with the devolved administrations to create marine plans to cover the whole of UK waters. Plans would need to represent the three dimensional nature of the marine environment by addressing the seabed and area below it, the whole of the water column and area above it.

4.45 Plans would exist from Mean High Water Springs (MHWS) to the fullest extent of the UK's marine jurisdiction (the UK continental shelf and fisheries limits). This coverage means that marine planning will overlap with the terrestrial planning system between MHWS and the Mean Low Water Mark (MLWM). However, this is inevitable if marine and land planning are to be able to address the whole of the marine and terrestrial environments respectively, and not be restricted by an artificial boundary at the coast. Indeed the geographic overlap between marine and existing plans should compel different organisations to work effectively together and strive to ensure that sensible harmonisation of plans is achieved. National and local objectives in coastal areas could be reinforced in each of the different plans.

4.46 The planning body would determine the geographic area to be covered by each plan. Where planning is the joint responsibility of more than one administration, boundaries would have to be agreed jointly. It is envisaged that the extent of each region will take into account the amount, nature and complexity of marine activity in the region, as well as ecological considerations and physical features. The administrative boundaries between the different administrations would be a strong factor in determining plan boundaries. In identifying the planning areas, the planning body would be expected to consult interested parties, as well as to examine the available science and data. It will be important that adjacent plans complement each other, so that they can as far as possible provide consistent guidance to marine users that operate across planning boundaries.

4.47 The differing nature of activity in different areas of UK waters means that some areas may need far more detailed plans than others. Where use of a marine area is particularly heavy or complex (e.g. estuaries or near busy ports), or local issues or conflicts have already arisen, plans may need to be developed on a smaller scale or in more detail.

Timing

4.48 It is likely that marine plans will be created gradually in a phased approach, in line with the available resource of the planning body, and where it is felt plans are needed most, or earliest.

4.49 Plans would be reviewed on a regular basis. The more up to date plans are, the more useful they will be, but this must be set against the formalities and effort that accompany their preparation and revision. The duration of plans must therefore be kept within manageable limits, and be determined by the degree to which the science, policy or data on which existing plans are based have changed.

4.50 Based on the outcome of the MSP pilot that was operated in the Irish Sea, and responses to the 2006 Marine Bill consultation which discussed other marine management processes, we anticipate that the first plans will cover a period of 20 to 25 years from the date of adoption, and will be subject to review and revision at least every 6 years. It is unlikely that plans would need complete revision at each of these reviews.

Subject matter

4.51 We want to create plans that consider, as far as possible, all of the relevant activities in an area and the impact they may have on each other. We intend that they will address both the current situation, and also emerging and future marine uses and technologies, such as for example carbon capture and storage in the sub-seabed, tidal and wave energy initiatives and new Marine Conservation Zones (MCZs). They will seek to anticipate changing economic, commercial and social trends and the impacts of climate change. Plans would also consider both the natural and cultural resources within an area, and the changing ecosystems and seasonal patterns and migration routes by adopting a temporal approach in some areas.

4.52 The scale and nature of the location of the plan being prepared would also have some bearing on the level of detailed information it includes. It is likely that not all issues will be applicable in any given area, however we anticipate that broadly the sorts of issues that might feature in plans are:

Human activities and associated infrastructure

Aquaculture

Artificial reefs

Bio-prospecting

Carbon capture and storage

Coastal land use

Desalination

Diffuse and point source contamination and discharges from marine, land and riverine inputs

Diving – recreational and otherwise

Dredging – different techniques, and for different purposes

Drilling

Dumping (e.g. disposal of dredged materials), sewerage and waste disposal (and associated infrastructure)

Excavation and recovery of wrecks

Fisheries

Flood and coastal erosion risk management

Marine historic assets, such as wrecks

Military and defence activities, including aviation[b]

Mineral extraction

Offshore housing, factories, airports and hubs for trans-shipping

Oil and gas exploration, storage and production, including associated pipelines and cables

Ports and navigation

Recreational activities – including fisheries, boating, bathing, watersports and swimming

Renewable energy (and associated interconnectors)

Salvage operations, e.g. following an emergency, or for dismantling structures (Sailing and use of hovercraft)

Shipping activity including shipping channels

Submarine cables

Tidal barrages

Tourism

Undersea mining

Natural resources, features and processes

Biodiversity – including genetic, species, community and habitat diversity

Climate change – adapting to and mitigating impact

'Circulation systems' and food chains

Geological / geomorphological features

Ecological and physico-chemical processes

Designated sites for ecological or heritage purposes

Habitats, breeding grounds, nurseries and migration routes

Marine Conservation Zones

Meteorological changes – wind, wave and tide

Nationally important and/or protected species

Sea surface, water column sea bed and beneath the sea bed

Seascapes

Sites of archaeological importance

b Unclassified activities only

Proportionality

4.53 Although it is important that plans adopt a comprehensive view of the areas they are addressing, we must adopt a proportionate and flexible approach to the level of detail they can contain. They will not be unduly prescriptive on matters about which there is a great deal of certainty, or which are of little relevance to the area in question. We intend to examine methods, and the extent to which plans can address mobile activities, and how they can incorporate a temporal element in relation to non-continuous or seasonal uses of marine areas.

Preparing plans

Wider public engagement in the planning process

4.54 We want the marine planning system to be as open and transparent as possible. Early engagement of the public, industry, local government, regulators and stakeholder groups in the planning process is fundamental to achieving its objectives. We want to give those with an interest the chance to get involved in deciding on the broad scope of the plan as well as in the later preparation stages. This would lead to better planning, and give those who might be affected by a plan a role in shaping it, enabling them to share ownership of the final product.

4.55 Early and broad consultation, at a stage when any concerns and issues raised can be addressed and reflected in the plans, would also lead to greater certainty for developers submitting licence applications. At present, developers have often made significant financial commitment to a project before such concerns are raised. The new system will help to avoid this, by giving people the opportunity to raise issues before applications are submitted, and for developers to begin a project with better information. There would be greater certainty to developers in knowing that decisions about projects are less at risk from challenge, if they are based on a plan that has wide support.

4.56 Involvement in consultation on the plan would not prevent issues and objections being raised at a later stage in response to specific licence applications.

4.57 We intend the planning body to publish a statement at the start of the planning process of whom they propose to consult during the preparation and drafting of the plan, and how they intend to carry out that consultation. The planning body would then be expected to proceed in accordance with that statement and seek input and approval from relevant ministers and Government departments at all appropriate stages. This would ensure transparent consultation and that all with an interest were aware of the opportunities that they and others were being given to contribute.

4.58 In particular, we want the planning body to seek the views of stakeholders on the matters that should be included in the plan before the detailed work of producing a plan begins. Involvement at this stage from stakeholders with knowledge of the specific factors affecting an industry, or a particular marine region, will be crucial to the success of the plan. The Crown Estate, as owner of 55% of the foreshore and virtually the entire seabed out to 12 nautical miles will have a key role to play in this process.

Appraisal of the impacts of the plan

4.59 The SEA Directive[27] requires us to consider the possible impact any new plans and programmes would have on the environment.

4.60 We also want to ensure that the wider effects on communities and economic activity are considered at an early stage and throughout the planning process. The planning body would therefore carry out an economic, environmental and social appraisal and an assessment of sustainability during the preparation of the draft plan. This process would incorporate the requirements of the SEA and Public Participation[29] Directives, Appropriate Assessment under the Habitats Directive[25], and other requirements of European legislation, and would consider the practical feasibility and cost-effectiveness of the plan.

4.61 Information gathered during this process could also inform future EIAs[24] associated with new licence applications, thereby helping to reduce the burden on applicants and minimising duplication of effort.

4.62 Assessment of sustainability would be integral to the process of preparing the plan, and would help to shape the eventual proposals. The earliest stage would be to agree sustainability objectives for the planning area, which would themselves flow from the shared UK marine policy statement. These would then be used to assess the draft plan and provide a framework against which progress towards implementation could be measured and monitored.

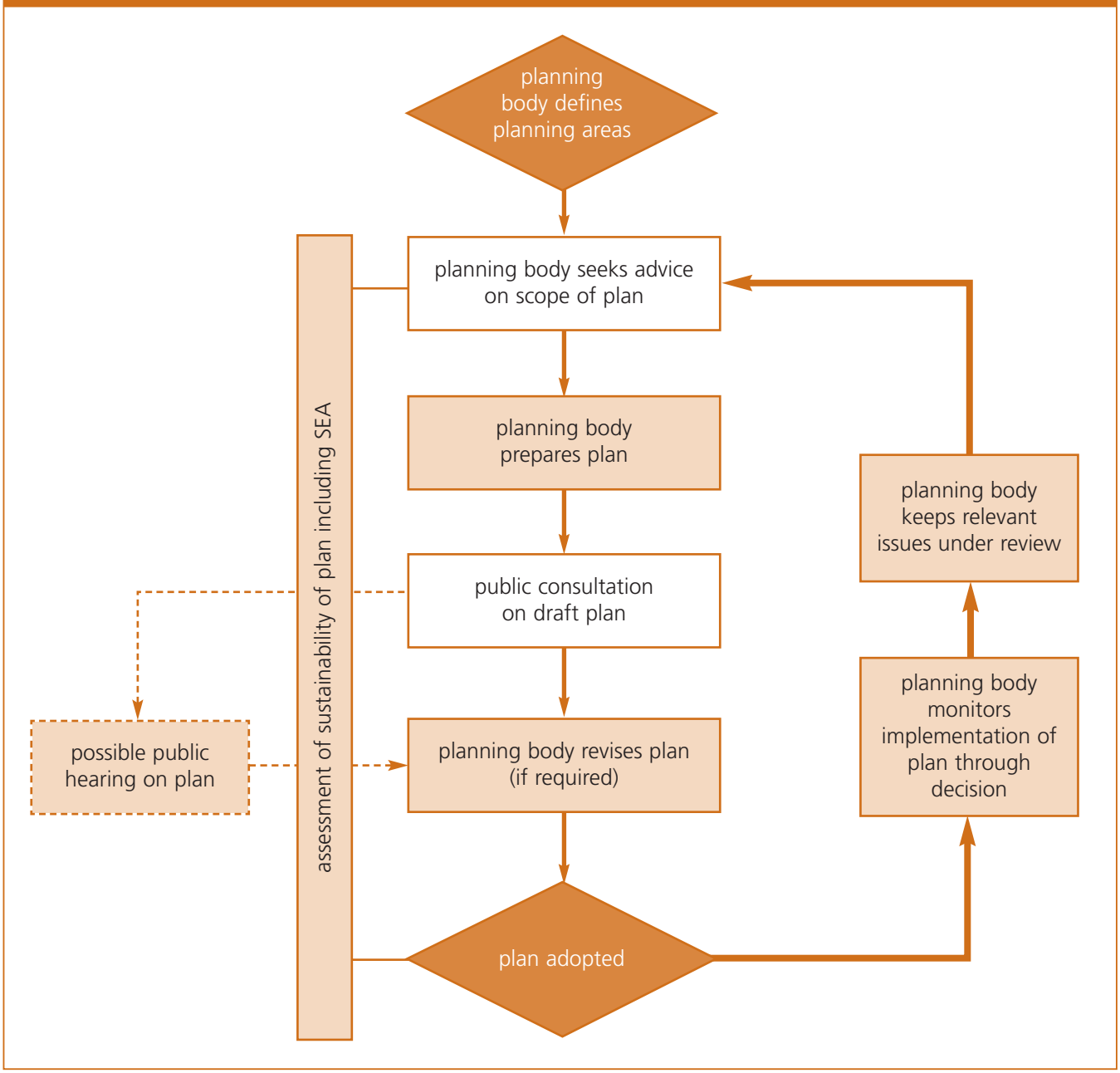
Drawing up draft plans

4.63 The planning body would be required to produce a draft plan giving effect to the shared UK marine policy statement and having regard to relevant factors affecting the region to which the plan applies.

4.64 During the drawing up of draft plans the planning body will liaise with relevant government departments e.g. Department for Culture, Media and Sport (DCMS), Department for Trade and Industry (DTI), Ministry of Defence (MoD), Communities and Local Government (CLG), Department for Transport (DfT), and where necessary the other UK administrations, to ensure that the developing plans accurately reflect their policies, priorities and objectives, as set out in the shared UK marine policy statement. Furthermore, to ensure that plans are made based on the best information available, and so make the most positive contribution to good and certain decision-making, the planning body would also seek advice during the planning process from bodies and organisations with specific expertise or marine related responsibilities. These could include:

- stakeholders who have detailed local knowledge of an area;
- scientific or industry advisors, e.g. CEFAS;
- the Crown Estate, as owner of most of the foreshore and the seabed out to 12 nautical miles;
- environmental, cultural and heritage bodies, e.g. Natural England (NE) or English Heritage (EH);
- the relevant devolved administration where there are likely to be cross border implications; and
- bodies with responsibilities that overlap with marine plans, e.g. Environment Agency (EA), local authorities, regional assemblies etc.

Figure 3: Outline planning process



Consideration of the draft plan

4.65 The plan would be published in draft, after which we intend that there would be a period of time before the plan was finalised, during which the public could consider the proposals and raise any issues or concerns they may have with the planning body.

4.66 The planning body, or relevant ministers or departments would consider whether there was a need for a formal public examination or hearing on the plan, or parts of it. In making their decision, they would be required to have regard to the public response to the plan, the level of stakeholder involvement that there had already been in the preparation

and drafting of the plan, and any other matters they consider relevant. It may be that some elements of this process could be similar to the Examination in Public that takes place within planning on land.

4.67 An independent expert or inspector could chair any public hearing. They would report on their findings to the relevant planning body, ministers or departments, who would then consider whether to amend the draft plan as a result of the report, or other representations received during the consultation process, on doing so publishing their decision on the rationale behind any changes.

Adoption and publication

4.68 Once the relevant ministers or departments were satisfied that the plan implemented the policy statement and that the planning process had adequately addressed other relevant concerns, it is intended that they would adopt the plan as a final version. In this case the relevant ministers or departments would be:

- the sponsoring Secretary of State, and other UK Government departments;
- Welsh ministers;
- Scottish ministers; and
- the Department of the Environment in Northern Ireland.

4.69 An adopted plan would then be published. We intend that plans should be published in an easy-to-use format, where appropriate presenting information graphically using maps and charts. In particular, the plan should be accessible to anyone who may be affected by decisions influenced by it. To ensure comparability between plans, we anticipate some standardisation in how marine plans are presented.

Monitoring progress

4.70 During the lifetime of a plan, the planning body would keep under review matters that may affect the plan's content or effectiveness, such environmental trends, changes to biodiversity, effects of climate change etc., as well as to monitor how well the content of the plan has been taken forward through decision-making.

4.71 UKMMAS already brings together a substantial amount of data about our seas. The planning system would play a key role in the way in which UKMMAS is taken forward. UKMMAS would also feed information back to the UK Government and devolved administrations to enable management activities or objectives to be adapted in the light of improved information.

Review

4.72 The planning body would fully review the plan at least once in every 6-year period, to ensure that it accurately reflects both the current situation and also the most accurate predictions and objectives for the next 20 to 25 years. In particular, we anticipate that the quantity and quality of data available for planning would improve over each 6-year planning cycle and that the planning body would be able to improve the predictions and

assumptions on which the longer-term aspects of the plan are based. Plans may therefore need updating to take account of this additional information.

4.73 New developments or changes may mean that plans need to be revised before the formal 6-year review period has elapsed, so we intend that plans should be reviewed at an earlier stage, if it appeared to be necessary or sensible.

4.74 Formal 6-yearly reviews would follow the same broad process, outlined above, of consultation, preparation, appraisal and adoption, as for the initial preparation of the plan.

Integration with other plans

4.75 It is essential that our proposals integrate well with other plans and planning processes, both statutory and non-statutory, and particularly in coastal areas where management arrangements can be complex. There are a number of ways we will seek to achieve this integration.

4.76 The shared UK marine policy statement would bring together and reconcile different policies, objectives and targets that currently exist, and could therefore incorporate obligations we currently have under, for example, the WFD. This would therefore promote the achievement of those objectives alongside other marine policies.

4.77 We intend that, throughout the preparation of marine plans to implement the policy statement, careful consideration should be given to:

- any adjacent plans;
- any plans covering the whole or part of the same geographic area and
- any other plans with relevant content and subject matter.

4.78 The marine planning process would adopt an approach that would facilitate integration across planning boundaries, and harmonisation between plans with the same or overlapping geographic coverage. This will be particularly crucial for activities and organisations that operate across more than one planning area: we do not want plans to impose new burdens on these. Working to ensure how plans can be integrated may reveal areas of duplication between plans and, where that happens, we would explore ways this duplication could be removed or addressed.

4.79 It should be noted that integration of, and harmonisation between, plans would not be achieved immediately. Different plans in coastal areas are reviewed in different time cycles independently of each other, but this staged approach will enable planners progressively to consider the content of other plans, enabling gradual, more considered integration.

4.80 Where the content of a marine plan is relevant to land use planning, then it should be considered in development control decisions in the usual way. In such cases, it may also be helpful to consider the need for any consequent modification of statements of land use planning policy.

4.81 Where plans in any part of UK waters adjoin the geographic area of one or more other administrations, or affect in any way the functions for which another administration is responsible, the administrations will notify each other so that any possible implications can be considered at an early stage, although this would not affect the competence of any administration to adopt their respective plans. Plans developed throughout UK waters would be intended to link effectively with any plans developed in the UK territorial waters within Scotland, through separate legislation.

4.82 The SEA Directive requires us to consider whether our plans may have a 'significant effect' on the environment of other EU Member States, and if so, requires us to consult them. In any case we are keen to work cooperatively with other Member States, and in particular Northern Ireland will consult the Republic of Ireland where a plan may have any implications for them. We are also keen to work closely with the Isle of Man on anything that might be of interest to them.

4.83 Integration between marine and land planning is extremely important and will require careful thought. We intend that the marine planning process should give careful consideration to the impacts of marine activities on the coast (e.g. pollution, seascape and visual amenity, noise, extra marine or land traffic into ports, cables running into connecting stations on land) and also to terrestrial impacts on the marine environment. The science and data we use for planning could help us to establish these impacts. We must also consider the socio-economic links between what happens at sea and the communities that will be affected by changes to those activities.

Influencing decisions

4.84 We want the shared UK marine policy statement and marine plans in specific areas to have sufficient influence over decisions that are made in relation to the marine environment. This would ensure that the planning system can achieve significant benefits. Marine planning can only provide an effective framework for decision-making if it has a strong and direct link to decisions.

Our intention

4.85 We want all decisions made in the marine area, or that could have implications for the marine area, to be made in accordance with the shared UK marine policy statement and any relevant marine plan. When taking decisions, public bodies would have to review the content of the policy statement, in addition to the content of any relevant marine plan, to ensure that their proposed course of action is in accordance with both.

4.86 Although we intend that bodies should act in accordance with the plan, a marine plan would not always be the only consideration, and at the time of taking a decision there would be a number of other relevant considerations the decision-maker would need to bear in mind. For the planning system to be effective, we must ensure that the decision-maker can act in a flexible way and depart from the plan if relevant considerations indicate that another course of action is most appropriate. In that event, the decision-maker would have to have clear and convincing reasons for taking this course of action.

4.87 Relevant considerations could be:

- the results of any Appropriate Assessment or EIA undertaken as part of the decision-making process, which may reveal information that was not contained in plans;
- the marine environment is dynamic and changes, or new discoveries (e.g. oil & gas), may have taken place or have been made since plans were adopted;
- new, or changed statutory obligations;
- new government policies; or
- appropriate and effective ways to respond to emergency situations.

4.88 This is an approach that is already very familiar on land: the Town and Country Planning Act 1990[41], as amended by the Planning and Compulsory Purchase Act 2004[38], is an example of this approach working in practice.

Decisions and bodies to which this would apply

4.89 The approach described above (4.85 – 4.88) would apply to all public bodies making decisions in the area covered by marine plans, because if some bodies were making decisions that significantly conflict with the plan, then this could adversely affect or undermine the activities of others. It would apply to all decisions that are made either in the marine area, or that may have implications for the marine area. We will need to ensure that this does not conflict with the detailed statutory functions of such public bodies, but there is no reason in principle why it should.

4.90 The types of decisions that would be affected by the approach laid out above would be:

- licensing decisions about projects, developments and activities, for example those decisions currently made in accordance with the Food and Environment Protection Act 1985 (FEPA);
- enforcement decisions;
- decisions taken about the protection of resources, for example about whether to designate an MCZ;
- by-law making; and
- creation or amendment of other plans (Shoreline Management Plans, Land Use Plans etc).

4.91 Decisions that would not be affected by this would include policy formulation and development by government departments. We would expect departments and the devolved administrations to consider the content of the shared UK marine policy statement and any relevant plans carefully when making new policy decisions, or when entering into international negotiations, however policy should be guiding the marine planning process, rather than being restricted by it. We intend that the evidence gathering and consideration involved in the marine planning process would inform good policy-making in the future.

Considering marine plans together with other obligations

4.92 In some parts of the marine area, and in particular in coastal waters, there will be other plans. We want the marine planning system to work so that, wherever possible, the content of these plans is harmonised.

4.93 Having ensured as much harmonisation between plans as possible, decision-makers may still be faced with one or more plans they must consider in addition to marine plans. In general, statutory plans would have greater influence than non-statutory plans, but the relevance of the scope and content of the plans is also a significant factor. We must also ensure that we continue to comply with relevant European and international obligations.

Ensure compliance with this approach

4.94 We intend to monitor and review whether decisions are being made in accordance with the policy statement and marine plans. This would ensure that the planning system was consistent and predictable. This would be part of the mechanism of monitoring and reviewing plans – to ensure that plans could be amended to take account of problems that may have arisen, or to prompt the early review of a plan.

Activities that are not regulated by public bodies

4.95 There are some marine activities that are not regulated by public bodies, and would therefore not be affected by the process described above (for example, some small scale recreational boating). Voluntary initiatives and management schemes are often used to manage such activities, and marine planning would take note of these, and any local plans.

4.96 These activities tend to be unregulated because they cause negligible or no significant damage to the wider marine environment, are well established, or give rise to limited and manageable interference to other sea users. However, these activities may have an impact on local areas that are particularly sensitive from a biodiversity or heritage point of view. By-law making powers proposed for MCZs would help regulators to protect those sites. Where areas are designated for heritage purposes, under the Protection of Wrecks Act 1973 for example, there is a requirement for sea users, such as divers, to obtain a consent to enter the area

4.97 If marine plans are likely to contain anything that might affect smaller scale, unregulated activities, then this would be discussed during the preparation of the plan and consultation process. The plan itself would serve as notice that if some areas were particularly suitable for certain types of activities, then those areas could potentially become unavailable for some other uses at some future date.

Delivering plans

4.98 UK Government and the devolved administrations will either carry out aspects of the marine planning process themselves or delegate responsibility for this activity to another body: it is for each administration to decide what arrangements are most suitable for their own circumstances. Our current thinking on how this will work in practice is explained below.

Marine Management Organisation

4.99 Although ministers in UK Government and the devolved administrations would have ultimate responsibility for marine planning, in some areas we believe the practical activity involved in the planning process is something that may be best delivered outside of central Government. In waters for which the UK Government or Northern Ireland are the responsible administrations, we intend that the planning function would be delegated to a Marine Management Organisation (MMO). This would not apply in areas where UK Government would be jointly planning with other administrations.

Preparing guidance to the MMO

4.100 Whilst legislation would enable a framework planning process, we want to create a flexible, evolutionary system, the detail of which will change and develop over time. We therefore intend to provide the MMO with a set of guidance, agreed by all relevant Government departments, that it should use to develop marine plans.

4.101 The detailed scope and content of supporting practice guidance would be a matter for continual development, but it could guide the MMO on:

- the content of the shared UK marine policy statement and how the objectives within it should be implemented through marine plans;
- how to undertake a spatial assessment of an area, using appropriate evidence;
- identifying subject matter to be included in plans;
- known or generic conflicts between activities, and how they might be addressed;
- improving integration of priorities or sectoral interests;
- potential synergies that could be exploited when considering the location of activities;
- potential opportunities for regeneration of coastal communities that could be enhanced by the content of marine plans;
- different types of tools and techniques, such as zoning, sensitivity mapping, allocation of 'preferred areas';
- effective public participation processes; and
- standardising the presentation of information between plans for different areas.

Coastal areas of England: Steering Groups

4.102 In the coastal areas of England, UK Government is giving particular consideration to how the MMO will take forward marine planning. It is in coastal areas or estuaries, that planning might be taken forward at a smaller scale, or in more detail. To ensure that the MMO is best placed to take forward planning effectively in coastal areas, we intend that it would set up a small number of 'marine planning steering groups' – the precise number, location and nature of which requires further consideration.

4.103 Steering groups consisting of individuals or organisations with relevant responsibilities and interests will be important in helping the MMO in coastal areas in particular because:

- marine plans would apply landward to MHWS and would overlap with the area covered by land planning and local authority jurisdiction;
- there are a number of different plans in place in coastal areas e.g. River Basin Management Plans (RBMP), Coastal Habitat Management Plans, Shoreline Management Plans, and a number of other organisations therefore have planning responsibilities in these areas;
- ensuring that marine planning is open and transparent, with an element of democratic accountability, will be particularly important in coastal areas where marine activities and developments have a greater impact on local communities;
- it is sensible to ensure that marine planning makes the best use of local knowledge and expertise;
- key projects and developments in coastal areas, such as ports and related infrastructure and shipping traffic, will be an important consideration in both land and marine plans, and will require joined up thinking between the two processes; and
- UK Government has committed to ICZM and is seeking ways to help coastal management operate more effectively.

4.104 The most appropriate size and structure for the groups would need further consideration. There are a number of organisations and individuals who could be considered as possible members of these steering groups, such as:

- local authorities and harbour or port authorities;
- The Crown Estate;
- Environment Agency;
- advisory bodies such as English Heritage (EH), Natural England (NE), Natural Trust, local tourist boards;
- industries;
- Non-Government Organisations (NGOs);
- local coastal groups, partnerships;
- UK Hydrographic Office (UKHO);
- Sea Fisheries Committees (SFC); and
- general or local lighthouse authorities.

4.105 The main role of the steering groups would be to advise the MMO and contribute towards the preparation of marine plans. The steering group members would apply their knowledge and expertise of local issues, other planning systems or the way in which they affect local communities. The groups would contribute a balanced viewpoint and consider evidence, and help the MMO to resolve conflicts and obstacles identified in the planning process.

4.106 The steering groups would play a valuable role in facilitating public participation in the marine planning process, by utilising their experience of stakeholder engagement and contacts within different communities and sectors. We intend that the MMO, together with the steering groups advising it, would make use of existing stakeholder networks and sources of expertise as far as possible.

Northern Ireland

4.107 The Northern Ireland administration is considering the implementation of an approach similar to that proposed for England, at a scale appropriate to requirements in Northern Ireland.

Wales

4.108 Wales is currently considering how these functions may best be delivered, and the Welsh Assembly Government has asked the Wales Coastal and Maritime Partnership (WCMP) for advice on the practical aspects of marine planning. The Welsh Assembly Government will use this advice to guide its decision-making in relation to the marine planning process in Wales. 'People, places, futures – The Wales Spatial Plan' forms an integrated, 20 year plan for the land area of Wales that aims to ensure that all Welsh Assembly Government policies and programmes come together in a way that recognises local differences, while working to achieve the objectives for Wales as a whole.[61] It is important that any system of marine planning in Wales can integrate with the Wales Spatial Plan. In providing advice to the Welsh Assembly Government, WCMP will be looking at the process that was used to develop the Wales Spatial Plan and the lessons that can be learned from it. It would be possible for Welsh ministers to ask the MMO to be involved in marine planning in Wales, should they decide this is appropriate.

Scotland

4.109 In Scotland, where any marine plans would be taken forward through separate legislation, Scottish ministers are considering with AGMACS what the potential delivery options might be for any future marine planning.

Offshore area adjacent to Scotland

4.110 Further consideration is being given to how best to implement the joint planning arrangements in the offshore area adjacent to Scotland.

Our Aim

The changes that we propose to make to the marine licensing system are intended to result in better, more consistent licensing decisions delivered more quickly and at less cost to all by a system that is proportionate and easier to understand and to use. They will integrate delivery across a range of sectors and, through the creation of a marine management organisation and the functions it will perform, be a vital link in the chain from planning to enforcement.

Summary of our proposals

5.1 This section sets out how we will:

- create a reformed marine licensing regime based on the consolidation of Part 2 of the Food and Environment Protection Act 1985 (FEPA) and Part 2 of the Coast Protection Act 1949 (CPA);
- include all forms of dredging, including marine minerals dredging and currently unregulated forms of dredging, within the reformed regime;
- enable ministers to introduce new rules to regulate Carbon Capture and Storage (CCS), if appropriate;
- streamline licensing of offshore renewable energy installations;
- reduce overlaps in legislation applying to harbours and ports;
- repeal some redundant provisions relating to laying cables;
- give powers to the new Marine Management Organisation (MMO) to deliver the reformed licensing regime, regulation of harbour developments, offshore renewables up to a certain size and aspects of the regulation of CCS in England and Northern Ireland;
- enable ministers to establish timescales for processes set up by the reformed licensing regime;
- enable ministers to exempt activities from the need for licensing, either fully or partially, where they pose no significant risk to the marine environment, heritage or other legitimate users of the seas, to ensure proportionate regulation; and
- enable ministers to issue licences for extended programmes of linked activities, to save developers having to make multiple applications.

Introduction

5.2 Our marine licensing[c] system is the mechanism which translates the objectives of marine plans into decisions to allow individual activities (subject to specific conditions) or bar them. Licensing therefore articulates how in practice the Government's policies are delivered. It also provides a vital hook on which to hang monitoring and enforcement.

c In this section, "licensing" is used to mean permission being given by Government or another authority. Its sense includes "consenting", "formally allowing", "permitting" etc.

5.3 The current systems have built up over many years. The increasing variety and volume of activities that take place at sea mean that modernisation of the licensing framework is now needed. Our stakeholders throughout the UK share this view.

5.4 We intend to deliver a modernised system that is streamlined, flexible, consistent and promotes integrated decision-making. It will be delivered in part through a combination of changes to the law to embed the principles of better regulation: accountability, consistency, targeting, proportionality and transparency. This means matching the costs of licensing, monitoring and enforcement to the risk that an activity poses to the environment or other legitimate uses of the sea. These changes will be complemented by the creation of a new organisation – an MMO – that will be charged with supporting and implementing the new licensing provisions for many projects. Together they will help the Government to fulfil its ambition to implement sustainable development in the UK's seas.

Geographic scope

5.5 We are committed 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. Ministers in devolved administrations are considering how to implement and deliver such consistency for devolved licensing functions.

5.6 It is important to recognise, of course, that policy and legal responsibilities for environmental protection in relation to the sea have been devolved since 1999. Particularly in the case of marine licensing, the scope of those responsibilities and the ways in which they have been devolved are different for each devolved administration. Where matters have been devolved, responsibility for deciding on the scope and nature of reform has also been devolved.

5.7 Our guiding principle is that proposals for licensing reform will respect devolution arrangements. The core of the licensing part of the Bill will be similar or, if possible, identical across the UK. However, proposals relating to some matters, in particular to how licensing is delivered, will necessarily continue to vary to some extent between England, Scotland, Northern Ireland and Wales.

The need to reform marine licensing

5.8 Many improvements to existing regimes have been made despite the limitations of the current law. For example, applications made for licences under FEPA are advertised and interested parties are consulted despite the lack of any domestic legal requirement to do so. The forthcoming formal implementation of some European environmental rules[d] will also update existing law. However, current systems have now been stretched to their limit – they are outdated and in need of revision. They no longer provide regulators with the tools to manage activities effectively, and they fail to provide transparency, efficiency of decision-making, and clarity of requirements.

d The Environmental Impact Assessment Directive, as amended by the Public Participation Directive, is being transposed to apply to FEPA and the CPA. These changes are expected to come into force in summer 2007.

5.9 From the feedback from the 2006 consultation, we received strong messages from respondents across the UK about better regulation, integration, and increased customer focus. We believe this supports the inclusion of marine licensing as part of a holistic marine management system that starts with marine planning and ends with consistent enforcement. This system will also deliver our objectives for protecting vital natural habitats and modernising our inshore fisheries, as described in sections 6 and 7, respectively.

A holistic approach

5.10 Delivering sustainable development is of paramount importance in the approach we are taking to reforming the licensing system. We want to enable regulators to consider the wider benefits of a development alongside its potential impacts. Doing so would be a major enhancement of our ability to deliver the holistic management of the seas that is our ultimate objective and the philosophy underlying marine planning.

Regulating better

5.11 We want to obtain benefits by making the licensing system effective, efficient, and as simple and clear to use as possible, while keeping the burdens imposed to the minimum necessary. We want to regulate only where necessary.

5.12 We intend to introduce legislation that is:

- effective – targeted on things that need to be controlled: for environmental reasons, to ensure that a proper balance is struck between competing uses, and to use finite marine resources sustainably;
- efficient – in both the speed of its processes and use of resources;
- consistent – between regimes, over time and across the UK;
- simple, clear and transparent – so that stakeholders know what is required, what to expect of the process, and are able to understand how and why decisions are made; and
- flexible, targeted, proportionate and risk-based – enabling regulators to deal with all situations appropriately, striking the right balance between the need to regulate and our desire to promote entrepreneurship.

Customer focus

5.13 We regulate activities to protect the environment and the interests of other users of the sea. Licensing allows safeguards to be required before activities can take place. We recognise that the current regulations are complex, overlap and are difficult to understand. On occasions they take longer to administer than they should. This is a hindrance to both regulators and licence applicants, particularly where activities span the land-sea boundary. It limits the UK's ability to generate the social, economic and environmental benefits of sustainable development. We want to ensure that our reforms offer improved customer service and a user-friendly process.

Integration at the coast

5.14 Integration of the various terrestrial and marine licensing regimes at the coast is an area where improvements could have a significant impact. The higher density of activities in these

areas leads to more tension between sectors and more difficulty in achieving sustainable development. Integrated Coastal Zone Management (ICZM) has been highlighted in recent years as a solution to such problems. Marine planning will address many of these issues, but successful coastal management also depends upon effective communication between licensing authorities on land and at sea. Where activities cross the land-sea interface, we will provide greater clarity on the relative responsibilities of the MMO and other regulatory bodies. We shall also identify and promote current best practice in the licensing system and encourage dialogue between developers and stakeholders through local advice groups. By doing so, we expect to further advance integrated management of our coastal zones.

5.15 The Environmental Permitting Programme (EPP), a joint initiative of Defra, the Environment Agency (EA) and the Welsh Assembly Government, will streamline terrestrial waste and pollution controls. The principle guiding us is that there should be no duplication between EPP and marine licensing controls.

Case Study: the River Hamble Streamlined Consents Group

An example of best practice in the licensing process at a local level is an informal Streamlined Consents Group (SCG) in the area of the River Hamble Harbour Authority. The aim of the SCG is to help guide people through the current marine licensing process and provide the opportunity for developers with proposals for development on the River Hamble to discuss them with regulatory and advisory bodies before they make an application (ongoing applications cannot be discussed). This has been very well received and successful in putting into practice the principles of both local engagement and integrated coastal zone and estuarine management.

The Streamlined Consents panel includes representatives from all the relevant licensing authorities – both local and from central government – and some of the advisory bodies consulted during the decision-making processes.

Benefits of the SCG include:

- improved communication between regulators and increased awareness of the forthcoming applications in the River Hamble;
- the opportunity for regulators to openly discuss issues relating to different consents;
- a clearer idea for applicants of which consents will be needed, and potential problems in the application process;
- advice on Appropriate Assessments and Environmental Impact Assessments (EIAs); and
- helping avoid time delays and cost increases.

Enforcement

5.16 For our proposals to have the maximum effect, we need to provide regulators with tools to monitor and ensure compliance. These should enable the authorities to carry out their duties in a targeted, proportionate and risk-based way. These tools are described in 5.62 – 5.72.

One project:one licence

5.17 For as many sectors as possible, we would like there to be one application per project, submitted to one authority, which will deliver one decision and issue one licence: in short, *one project:one licence*. As an indication of the effect of our proposals on the number of licences required for certain projects, see Table 2.

5.18 As well as providing simplicity of concept and process, this approach will facilitate the achievement of sustainable development. Where two or more licences are needed for a project and issued under different legislation, there is a tension that can obstruct progress towards sustainable development objectives.

5.19 An example is that both a FEPA licence and consent under Section 36 of the Electricity Act 1989 are needed before a marine wind farm can be built. Each system has a different purpose and the factors that can be taken into account are limited by those purposes. For FEPA, the factors considered are broadly those relating to the protection of the marine environment, whilst the wider benefits that generating renewable energy bring are not generally relevant. Decisions under the Electricity Act 1989 are confined to matters relating to electricity infrastructure and supply, except where European rules now say otherwise. Decisions do not balance the benefits of a project with its drawbacks.

5.20 Unifying these two licences would not only simplify the application system for the developer, it would also enable the licensing authority to consider all the relevant factors concurrently and arrive at a balanced decision. We want to ask, "On balance, do the benefits (social, environmental and economic) of this project outweigh the costs?" That would be a powerful tool in our ambition to introduce a holistic management system that delivers sustainable development to our seas.

Delivering our vision

5.21 We intend to deliver our vision through a three-pronged approach:

- we will make legislative changes to streamline and simplify the marine licensing process (see 5.23 – 5.27 and 5.45 – 5.61);
- in England and Northern Ireland, we will complement that by setting up an MMO, which will administer licensing and provide integration and consistency between licensing regimes (see 5.118 – 5.131). Scottish and Welsh ministers are considering options for administering those functions that are devolved to them. In Scotland, there is already a single portal for licence applications.
- we will increase the use of guidance and other non-legislative advice, and extend the range of powers available to enforcement authorities to ensure compliance with the legislation without having to resort to prosecution.

5.22 We will retain elements of the current regimes where they do not need to change, but we will make some significant changes to the way that licensing regimes work.

Creating a modern, streamlined and simplified marine licensing regime

5.23 The heart of the licensing system controlling activities in tidal waters and in ports and harbours will be a reformed regime based on a consolidation of Part 2 of FEPA and Part 2 of the CPA, which will also cover all dredging. This reformed regime will be flexible, targeted and proportionate so that only those activities that pose a significant risk to the environment, marine heritage or other legitimate uses of the sea are subject to regulation. The decision-making process will be made fairer and more efficient. This regime will sit alongside others for offshore renewable energy installations, harbours legislation and oil and gas, as outlined in later sub-sections. Many of these licensing functions will be delivered in an integrated manner by the new MMO.

Consolidating general marine licensing controls

5.24 When they were enacted, Part 2 of FEPA and Part 2 of the CPA[e] had very different purposes. FEPA was intended to control dumping and incineration at sea, and construction on the seabed, to protect the marine environment, human health and other legitimate uses of the sea. The CPA was designed to ensure a safe environment for navigation following similar activities.

5.25 Successive changes, particularly those derived from European environmental law, have since blurred the distinction. For example, EU law now requires EIAs and imposes conservation requirements under both Acts and there is now a significant overlap between the two regimes. Where an activity falls in the area of overlap, in effect two permissions are needed for the same purpose. This overlap leads to costly complexity and lack of clarity. Reducing the regulatory burden by consolidation of legislation is in line with the recommendations of the Davidson Review.[4]

5.26 We intend to merge the relevant parts of FEPA and the CPA into one modernised system. Only one licence will be needed where currently there is often a need for two, so there will be no doubt about which licence to apply for nor about the relative scope of different permissions. For example, in 2005, there were 156 applications for CPA consent in conjunction with a FEPA licence. For projects only subject to the FEPA and CPA regimes, this will deliver our one project:one licence objective.

5.27 The reformed marine licensing regime will regulate broadly the same activities in much the same way as FEPA and the CPA do now. Activities currently licensable will generally remain so. Developers will be required to apply for a licence to carry out activities involving construction, alteration or improvement of works, the deposit or disposal of substances on or under the seabed, or removal of objects and material from the seabed. This licensing regime will also incorporate all forms of dredging, including those licensed by Defra and Communities and Local Government (CLG), and those currently unregulated.

e The CPA applies only in relation to the marine area in or adjacent to England, Scotland and Wales.

Incorporation of dredging

5.28 Dredging is carried out in many locations and at vastly differing scales. Each year the aggregate dredging industry extracts millions of tonnes of sand and gravel, from the seabed around the UK, for use in construction and beach replenishment. The building of new ports, or the upgrading of existing ones, often requires considerable deepening of shipping channels to allow large cargo vessels to use new facilities. There are also many small ports and marinas around the coast where regular, small-scale dredging is needed to remove silt deposited by rivers and the sea. This may be carried out by traditional methods such as cutter suction dredging, but may also involve currently non-licensable forms. These include hydrodynamic dredging, such as water injection and agitation dredging,[f] and plough dredging.[g] The impact of these operations on the environment, navigation and other uses of the seas varies considerably. But clearly all aspects of dredging, both excavation and disturbance of the seabed and the deposit of dredged material can have an impact on the environment. Major projects can destroy plants and animals and make major changes to the character of the seabed, and even minor works are not without an impact.

5.29 The effect of licensable forms of dredging as part of a large project is always carefully assessed alongside the other parts of the project licensing process. Environmental impacts are taken into account (including, where appropriate, in fulfilment of European obligations), as are the impacts on, for example, shellfisheries, other fisheries and recreational uses. The effects of developments can also be considered in the context of other works in the same area, to ensure that the combined impact of projects is kept within acceptable limits.

5.30 Ongoing, small scale dredging often has a marginal or negligible impact on the environment. Nevertheless, even small scale dredging can have a significant adverse impact where, for example, it disturbs sediments contaminated with tributyl tin (TBT) antifouling or historic industrial or other pollution that may drift onto shellfish beds or particularly sensitive ecosystems.

5.31 Whilst large construction projects are currently regulated under FEPA and the CPA, and aggregate dredging under the Government View procedure (GV)[h] and the CPA, various dredging techniques, such as hydrodynamic and plough dredging, fall outside of the scope of current rules.

5.32 We intend to establish a comprehensive system to regulate all forms of dredging. We will regulate the excavation of material from the seabed or its disturbance or movement across the seabed. The new system will be flexible and will not apply controls where there is no good reason for doing so. Our proposals for proportionate, modernised regulation are set out in 5.45 – 5.61 below, and will apply to dredging as elsewhere.

f Hydrodynamic dredging involves relocation of sediment as a result of ambient water movements and/or gravity. The sediment is not physically removed and deposited elsewhere. Although often small in scale, this is not always the case. Such techniques include water injection and agitation dredging Water injection dredging involves injection of water into the seabed to suspend the sediment in the water column; agitation dredging uses physical contact to disturb the sediment.

g In plough dredging, a plough is dragged through the sediment on the seabed, which is therefore pushed out of a shipping channel, in much the same way a snowplough clears a road.

h Shortly to be replaced by Regulations – The Environmental Impact Assessment and Natural Habitats (Extraction of Minerals by Marine Dredging) (England and Northern Ireland) Regulations 2007 – being prepared by the CLG, and equivalent Welsh and Scottish provisions.

5.33 The flexibility in the licensing system will have to take into account the significant differences in the physical, geochemical, ecological and anthropogenic influences on the seas around the UK. For example, the waters around the South-East coast of England are generally shallow and rich in sediment, while in the South-West the coast is exposed and rocky. As a result, they support different ecosystems, and a given activity may have widely differing impacts. We believe our proposals will allow for such differences to be properly reflected in licensing decisions.

Making fair and well-informed decisions

5.34 It is in the decision-making process that we think the most important improvements will be made.

5.35 Licensing decisions will have to be made in the context of marine plans. Plans will be prepared through a public, participative process and address matters that inform marine licensing policy. They will also set out publicly the main considerations against which licence applications will be measured. This transparency will provide a more certain basis for commercial decision-making.

5.36 Establishing the MMO will improve consistency through bringing together in one body functions which are currently spread between different organisations. See 5.118 – 5.123 for further information on the benefits we expect to achieve through the MMO.

5.37 Our proposals on the MMO and on marine planning therefore make an important contribution to improving licensing decision-making generally.

5.38 Beyond these important general developments, we think two more specific changes would also help improve marine licensing. We expect that some decisions will attract a high level of interest. There may be cases where it would be appropriate for the consideration of the application, and the ensuing decision, to be made in public, and ministers may wish to ensure that happens. In such cases, ministers should be able to require a public hearing to be held before a final decision is made. This is not generally the approach taken now – FEPA does not provide for holding public hearings before licensing decisions are made. We propose to make it clear in advance when these sorts of powers might be exercised, i.e. what constitutes appropriate circumstances.

5.39 Many of the issues that cause concern for stakeholders occur where a project crosses the land-sea boundary. The current systems do not readily promote integrated consideration of the separate elements of project proposals and this tends to impose extra burdens on developers. One of the heaviest burdens, for all concerned, is the conduct of a public hearing or inquiry. Some developments are subject to more than one public inquiry because they are licensed under different pieces of legislation. We believe that a single public inquiry should be able to consider all matters relevant to a project and intend to enable that to happen.

5.40 We are also committed to open, transparent and consistent decision-making. If people understand what a system is trying to achieve, how it works, and how and why decisions are made, we believe that their confidence in it will be high. Consistency, in particular, helps developers to predict likely outcomes and constraints in marine development projects, and thereby aids business planning and reduces risks.

5.41 To further our objectives on transparency, we intend to require licensing bodies to publicise applications, and make details available to anyone who wishes to see them. These data should be accessible electronically, though that is probably not sufficient on its own. There may have to be some exceptions, but only for good reason (e.g. where there are national security interests).

5.42 We also think that the licensing authorities should be required to consult bodies with a particular interest in an application. These might include conservation agencies, harbour or navigation authorities, the Ministry of Defence (MoD), or the Environment or Food Standards Agencies. Where licensing functions are not held by ministers, the appropriate ministers will be able to intervene in the process to safeguard interests of national importance.

5.43 In addition to simplifying and clarifying the law itself, we will enable the relevant authority to regulate more clearly the procedure for obtaining a licence. This could include setting out detailed rules in secondary legislation and related guidance. As now, such rules could include provisions on what an applicant would be expected to have done before making an application, what additional information was required in support of an application (including an environmental statement when appropriate), allow for recovering the costs of administration, monitoring and enforcement, and require information in electronic format and to a prescribed standard.

5.44 There will of course be flexibility to allow for unpredictable events and discussion between the applicant and the authorities. We would certainly expect the system to be operated in a sensitive and proportionate way. As a result, we expect the introduction of a defined process to provide a greater degree of certainty for applicants for licences, and greater transparency for all stakeholders.

Making timely decisions

5.45 The time it takes to obtain a FEPA or CPA licence has often been criticised. We understand that delays in the decision-making process can cause commercial or environmental time windows to be missed, potentially resulting in financial losses to a developer. Lengthy applications can increase the burden on consultees and advisors. Uncertainty about the time it takes to obtain a licence hampers effective planning and has a negative impact on businesses. It is important that our reforms foster a positive business environment, as well as protecting environmental and other interests in relation to the sea.

5.46 We therefore intend the rules relating to the application and decision-making process to establish timescales for various stages of the process (with some flexibility where circumstances merit it).

5.47 Establishing the MMO (see 5.118 – 5.131, and section 8), with its customer service objectives and associated service standards, and the gathering within it of Government's relevant expertise, will drive the authorities to work within the new timescales. For the applicant's part, there is usually a commercial incentive to keep to the timetable. We are, in addition, looking at how to address the practice among some developers of submitting speculative applications, with little or none of the required evidence, either to use the authorities in a free consultancy capacity or to lay claim to the rights to carry out development in an area and so block competitors. Setting binding timetables might provide one way to do this.

Proportionate and targeted regulation

5.48 We intend to regulate only where there is a justifiable need to do so, and then to ensure that requirements of the law are the minimum to do the job effectively. Ensuring that the burdens that we impose are proportionate to the risk associated with activities is fundamental to the health of our economy and our democratic processes.

Provisions to lighten or remove the regulatory burden

5.49 Many activities in the marine area do not need a licence now: some because they have never been licensable (e.g. deposits made other than from vehicles); others because they have been expressly exempted (e.g. deposits in the course of fishing). We do not generally want to change this but we want to allow further exemptions and reduce the regulatory burden in other ways where appropriate.

5.50 We plan to achieve this through use of more flexible powers to exempt activities from licensing, power to grant general permissions (for specific classes of activity), phased or programmed licensing of complex or long term projects, and power to draw more local regulators into decision-making.

Exemptions

5.51 We think that some activities in certain areas are so insignificant that they should not be regulated at all. These might include minor construction projects by private individuals or harbour authorities, for example repair or maintenance of private moorings or some harbour facilities, or the regular redistribution of sand on beaches. We intend to be able to disapply the new system altogether where it is not needed by exempting activities. While a similar power already exists in FEPA, for consistency we intend to extend it to activities that currently fall under CPA provisions and to allow it to cater for a wider range of situations than is possible now.

5.52 To ensure that exemptions are targeted, risk-based and proportionate, we need to describe accurately what is exempted, and when. Some exemptions might need to be conditional (e.g. restricted to certain times of the year or areas of the sea) or include a registration or notification obligation so that regulators can maintain a complete picture of activities. In some cases, we may need to revoke an exemption.

5.53 Consistency with other systems and familiarity for stakeholders are important factors here. In bringing in reformed exemption powers, we will be looking at what we can learn from existing legislation, for example on water[40] and the land planning system[39].

5.54 Other activities, such as tourism and recreation, will not generally be licensed at all under the new regime. However, there is the potential for them to cause damage. Therefore we intend to give the MMO the power to make local by-laws to regulate these activities if there is shown to be a need (see 6.132 – 6.140 for further detail).

Lighter touch licensing

5.55 We will ensure the new system is flexible enough to allow us to apply a light touch where that is proportionate to the risks an activity presents. Small scale and low impact activity, and managed activity under the control of responsible operators could fall into this category.

5.56 We propose to make provision for the licensing authority to grant a general permission or provide for general rules for specific types or classes of activity. A developer would not need a licence under the reformed marine licensing regime to be able to undertake activities provided they were carried out within the terms of the general permission. Other legislation, however, would continue to apply where appropriate, for example the Habitats Regulations.

5.57 A key feature of this is that by requiring the developer to make a judgement about whether an activity came within the scope of the general permission, it would transfer more responsibility to the developer than an exemption. A general permission might also impose other conditions, thresholds or reporting requirements. It might also entitle (but not require) regulators to inspect such projects to maintain the possibility of active scrutiny and enforcement. If an inspection revealed significant concerns, the authority could then be empowered to require a specific licence for the project or take other enforcement action.

5.58 We expect this proposal to have the greatest beneficial effect for small businesses, where the costs and delays associated with preparing and considering an application can be prohibitive. We also intend it to enable regulators to take local conditions, including local environmental impacts, into account in deciding the scope of a general permission. It would enable lighter regulation to be applied in some cases, but ensure that unforeseen impacts, new information, or more than merely local effects could prompt licensing in the usual way.

Phased activities

5.59 Some marine activities (e.g. navigational dredging) are carried out periodically in the same place or by certain statutory authorities (e.g. harbour authorities) in their own area. Others may take place regularly over an extended period, perhaps also within a defined area (e.g. mineral extraction or depositing at sea). These examples relate to a series of activities in an identifiable area, at specified times, and often in phases.

5.60 We propose that where a single applicant wants to carry out a series of related activities in a defined area then, subject to appropriate safeguards, it should be possible for a single licence to permit this. This will provide greater commercial certainty, reduce the burden of licensing and still deliver appropriate environmental protection.

5.61 Developers would need to make an initial assessment of the expected environmental conditions and impacts over the course of the project and in some cases, it could be necessary to revisit that assessment during the works. We also need to ensure that regulators could intervene during the course of long-term permissions if circumstances changed and remove such licences if they were not used or if evidence of adverse effects emerged.

Enforcing licensing

5.62 To be fully effective, a licensing system must be backed up by an enforcement regime. The same principles of proportionality, targeting and flexibility that apply to licensing should also be guiding principles here. Current controls have some flexibility built in, but do not properly fulfil these objectives. For example, there are powers for a licensing authority to vary or modify licences to suit evolving circumstances, but it is not clear that licence holders themselves can seek variations. Nor is it clear when a licensing authority can exercise these powers.

5.63 The sanctions available to enforcement authorities are similarly inflexible. While a licence can be revoked under the current regime, we do not have the scope to suspend it, or provision to set out what a licence holder must do to fix a problem. The powers we have in FEPA and the CPA to require remediation are also limited, because they cannot anticipate future damage or be used in cases of real urgency.

5.64 We will remedy these defects. We intend to broaden the range and flexibility of enforcement tools to enable regulators to intervene in the most appropriate way and ultimately to ensure we deliver our sustainable development objectives.

Administrative sanctions

5.65 The purpose of enforcement is to ensure compliance with regulatory requirements. However, revoking a person's licence (and therefore perhaps removing their livelihood), or prosecuting somebody, are onerous enforcement actions. In many cases, they would be too heavy-handed. We therefore want to make greater use of a wider range of administrative sanctions so that we can ensure compliance in most cases without having to resort to the courts.

5.66 Formal and informal advice and guidance, while normally part of ongoing discussions between regulators and developers, are the first enforcement mechanism. Where, for example, licence conditions are breached through carelessness or ignorance, advice may be all that is required to ensure compliance in the future.

5.67 Issuing a formal notice enables a regulator to give a clear, specific set of requirements or actions to address areas of failure and so ensure compliance with licence conditions. A notice could also specify a deadline for compliance, or otherwise manage the process more closely than envisaged in the original licence. Failure to comply with the terms of a notice should normally lead to escalation of enforcement action.

5.68 In some cases, an improvement notice might be appropriate as an alternative to other criminal or civil penalties. For example, where a licence condition is precautionary or technical and breach does not, or would not, cause unacceptable environmental or other harm, this route may be preferable to prosecution.

5.69 Where serious environmental or other relevant harm has or could arise from marine activities, then we propose that regulators should be able to serve a stop or prevention notice. Such a notice would require immediate action, and could also require steps to be taken to avert an identified threat. These notices could apply to all categories of activities, including unlicensed (or exempted) activities, projects operating under a general licence,

and projects operating under a specific licence, whether in accordance with its conditions or not. This sort of action would be an emergency measure only. It would need to be exercised in combination with appropriate arrangements for dealing with the immediate and any longer term consequences of its use.

5.70 The tools that we have proposed so far are intended to ensure compliance with regulations and licence conditions. In addition, the CPA and FEPA have some powers to require remedial action to repair damage done. We will retain these powers, but modernise them. We think that, where unacceptable environmental harm has arisen from breach of regulatory requirements, regulators should issue a notice to require remedial action to be taken, or to take it themselves. As now, this should not be dependent first on a criminal conviction. We think that in many cases such notices promise to be a more effective means of protecting the environment and other users' interests, and of securing regulatory compliance, than criminal prosecution. They might include liability for initial clean-up costs, monitoring and formal restoration of the environment to its pre-damaged condition, or creation of replacement habitat if the original has been damaged beyond repair. In accordance with the polluter pays principle, if the licensing authority deems it necessary to undertake remedial work itself, it should be able to recover its full costs from those who caused the damage.

Amending or revoking a licence

5.71 The highly dynamic nature of the marine environment and the activities that take place in it, and our ever-increasing understanding of the marine ecosystem and human impacts on it, mean that a licence is trying to hit a moving target. There may therefore be cases when the original terms of a licence become insufficient for it to manage adequately the risks associated with an activity. For example, new scientific information might be published that requires the reassessment of the risks of an activity. There may also be a need to tighten the regulatory effect of a licence (for example by requiring additional reporting) following breach of its conditions. Exceptionally, we may also need to revoke a licence altogether.

5.72 We therefore propose to continue the approach of FEPA and the CPA and provide for the tightening or relaxing of licence conditions, or in exceptional circumstances, revocation.

Changing the scope of marine licensing

5.73 We want to change the scope of what is licensed, or which legislation an activity is regulated by. In addition to the reformed regime covering activities currently licensed by Part 2 of FEPA and Part 2 of the CPA and marine dredging, our proposals cover:

- CCS;
- offshore renewable projects;
- harbours legislation;
- activities carried out under the Transport and Works Act 1992; and
- minor change for some cable-laying operations.

We now set out our proposals for these activities, starting with CCS.

Carbon Capture and Storage

5.74 Emissions of carbon dioxide (CO_2) from human activities are the major contributor to climate change and ocean acidification, the greatest long term environmental challenges facing the world today. The UK Government is committed to reducing UK CO_2 emissions by 20% by 2010 and by 60% by 2050, compared with 1990 levels. These are challenging goals, and CCS is an important component in a portfolio of mitigation measures to help achieve them.

5.75 CCS comprises the capture of CO_2 generated on land by industrial processes, its transport and injection into geological formations. In the UK, most storage sites will be offshore, in formations typically 1000m below the seabed. These include saline aquifers and depleted oil and gas fields. After injection, stored CO_2 is prevented from escaping into the marine environment by sealing the injection sites, and by the overlying cap rock and pore trapping. Over time the CO_2 will also dissolve into water trapped within the formation and may later solidify through mineralisation as secondary and tertiary trapping mechanisms.

5.76 The Intergovernmental Panel on Climate Change (IPCC) suggests that globally CCS could provide 15 to 55% of the emissions reductions needed to stabilise CO_2 in the atmosphere. Others have estimated that potential storage sites in the UK sector of the North Sea are large, about 20,000 million to 260,000 million tonnes of CO_2. This would represent approximately 40 to 500 times the total UK emissions in 2005.

5.77 Recently, the Stern review reported that extensive use of CCS worldwide would allow continued use of fossil fuels without damage to the atmosphere.[55] It could also help guard against the danger of strong climate change policies being undermined by any falls in fossil fuel prices. By enabling and investing in CCS now, the UK can also show leadership to rapidly growing economies, such as China and India: CCS offers the only realistic prospect of mitigating the effect of CO_2 emissions from the increasing use of fossil fuels that supports the economic growth of these countries.

5.78 A number of CCS projects in the North Sea are now being developed by industry. These projects require both national and international regulatory certainty to go forward. The UK Government therefore supports measures to create an appropriate international regime and will ensure that a domestic regulatory framework is put in place to enable such projects to take place.

International context

5.79 There has been uncertainty about whether two major international regimes permit sub-seabed CO_2 storage. These are the 1996 Protocol to the 1972 London Convention and the 1992 OSPAR Convention.[45,50] Certain activities resulting in sub-seabed storage of CO_2 are currently allowed under these agreements (e.g. the use of CO_2 in enhanced oil recovery), and recent developments have now done much to clarify issues.

5.80 On 2 November 2006, the contracting parties to the London Convention and its Protocol voted to amend the Protocol to clearly allow the storage of CO_2 streams in sub-seabed geological formations. This amendment came into force on 10 February 2007.

5.81 The applicability of the OSPAR Convention's provisions are more complex. They depend primarily on the route taken to the storage formation by the CO_2 stream. Some routes are already permissible, though subject to strict controls; others may not be. However, there is a broad consensus amongst contracting parties that the OSPAR Convention needs to be amended to remove the uncertainties, and the UK Government is a co-sponsor of the amendment proposals to achieve this. The annual meeting of the OSPAR Commission in June 2007 will decide whether to accept the proposed amendments. Any amendment will then need to be ratified by seven contracting parties.

5.82 We anticipate, therefore, that by the middle of 2007 significant moves to address international legal barriers to using CCS will have been made. The UK should then be able to develop and implement a national regulatory infrastructure to encourage and regulate CCS.

UK developments

5.83 In parallel, a UK Government CCS Regulatory Task Force has been working to identify the processes involved in carrying out CCS, how the complex existing laws apply, and to develop options to complete the regulatory picture. Appropriate regulation would at least need to provide the legal framework for:

- capture of substantial quantities of CO_2 derived from anthropogenic activities;
- exploration;
- site development and operation;
- permanent storage of CO_2 injected into the seabed;
- full assessment, based on risk, of the potential impacts on the marine environment;
- establishment of appropriate measures to monitor and control deposits during and after injection, and after site closure;
- site closure and decommissioning; and
- liability.

5.84 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.

5.85 We want to ensure that once the UK Government CCS Regulatory Task Force's work is complete, any new regulation that is needed can be put in place. We are exploring options for doing that.

5.86 One option is to modify or add to existing or proposed future legislation to make it better suited to CCS. For offshore storage of CO_2, this could be achieved by amending FEPA or the Pollution Prevention and Control Act 1999 and/or the Petroleum Act 1998 (which we expect would already regulate enhanced oil and gas recovery using CO_2 and which may be used to regulate decommissioning of oil and gas installations that have been used for CCS). A few further amendments (or additions to the provisions of the reformed marine licensing regime) might be all that is needed. This might therefore represent a straightforward way of achieving our goals, in line with the principle of only regulating if necessary.

5.87 Another option is to provide in the Marine Bill for secondary legislation to regulate CCS in the marine environment. This would enable us to modify the way the reformed marine licensing regime will apply to CCS, or disapply it altogether and replace it with a bespoke regime, providing targeted and proportionate regulation.

5.88 The approach we eventually follow will depend on the emerging knowledge of the distinctive features of CCS, any European proposals to regulate CCS, and the continuing work of the UK Government CCS Regulatory Task Force. That in turn will affect who delivers the new regime. For example, if treated as a waste disposal process, CCS would be regulated in Scotland by the Scottish Executive.

5.89 Regulation of offshore CO_2 injection and storage, apart from activities covered by existing provisions applicable to oil and gas installations, could also be delivered in England and Northern Ireland by the new MMO. As the Government's coordinator of marine expertise, the MMO could be the most appropriate home for this aspect of CCS regulation. The decision on the MMO's role will depend on the final choice and scope of the regulatory framework for CCS. If chosen, we will ensure that the MMO can draw on the necessary technical expertise to fulfil this role.

Oil and gas

5.90 Many stakeholders thought that the oil and gas regime ought to be included in the scope of the Marine Bill and its provisions on licensing. They argued that including this sector was necessary for Government to be able to deliver a holistic marine management regime. We have carefully considered the arguments put forward and the pros and cons of bringing the oil and gas sector within the current reforms.

5.91 The exploration for and exploitation of oil and gas is closely regulated under the Petroleum Act 1998. It is a system, operated by the Department for Trade and Industry (DTI), which provides the kind of tailored, targeted and proportionate control of the industry that both regulators and the industry require and that we intend through the Marine Bill to introduce for other sectors. The oil and gas sector will of course feature in and take account of marine plans (as described in 4.85 – 4.88) when making licensing and consenting decisions. But in the absence of any compelling evidence that the current system is failing, on balance we believe that the resources we have available are best directed at introducing other reforms that will bring greater benefits.

5.92 Because of the urgent need to increase the UK's reserves of gas, the DTI is developing proposals for legislation on the sub-seabed storage of natural gas. Defra and the DTI are working closely together on this project to ensure that any legislation that is needed is introduced as soon as possible. Such legislation will of course incorporate provisions to ensure that the impact of natural gas storage is closely controlled, and that the environment, marine heritage and other sea users are properly protected.

5.93 The DTI launched its public consultation on 24 November 2006,[21] and the findings will be published shortly in the Energy White Paper. The path for introducing an enabling regime is not yet certain, but the Marine Bill is available as an option, should the timing be right.

Constructing renewable energy installations in the sea

5.94 The Government's programme of action to tackle climate change is wide-ranging. An essential element of finding the right energy mix for the UK's future energy needs is renewable energy, and our aim is that 10% of our electricity is generated by renewable sources by 2010 and 20% by 2020. Through the Marine Bill, we will facilitate achievement of this target by simplifying the licensing process for marine renewable energy installations.

5.95 The construction of most[i] offshore renewable electricity generating stations in Great Britain is subject to consent under Section 36 of the Electricity Act 1989 and licensing under FEPA.[j] There is significant overlap of these provisions, since the Electricity Act 1989 contains environmental provisions, albeit not as extensive as those of FEPA. We think that dual licensing of this sort, when both parts actually fall to the same territorial administration, is wasteful and unnecessary. It can cause practical confusion and delay, and can get in the way of considering applications in a joined-up way. Particular confusion can arise if different decisions are unnecessarily taken at different times, not least in deciding whether some factors are relevant to just one of the decisions or to both of them. In addition, laying the cables to take the electricity generated by the wind farm, or wave or tidal installation, to the shore is subject to consent under the CPA.

5.96 We believe that since building an offshore renewable energy installation and connecting it to the grid is a discrete project, developers ought to be able to apply to do that through a single process, consistent with our *one project:one licence* principle.

5.97 Reforms made in Great Britain in 2004 removed the need for CPA consent for the construction (but not the laying of all the associated cables) of offshore renewable energy installations but there is room for further improvement. In particular, we propose removing, where possible, the current dual licensing that applies to the construction of offshore generating stations larger than the thresholds set out at footnote (i) below, and the need for a separate CPA consent for laying cables, whilst maintaining the same level of environmental controls. Where planning permission and a FEPA licence are currently required for developments below these thresholds the system will remain as it is now, though the reformed licensing regime will replace FEPA in its current form.

5.98 We therefore intend to create a single licensing system for the construction of offshore renewable energy installations, where responsibility for both existing licences currently lies within the same administration. When the licensing authority issues consent for a project under Section 36, it will also be able to grant concurrently the appropriate environmental permission. One way to do this would be by empowering the Section 36 consenting authority to direct that a licence has been given under the reformed marine licensing regime as well.

i Consent is needed for stations in the territorial sea with a capacity of over 1MW and for those in the offshore area with a capacity of over 50MW.

j The equivalent provision in Northern Ireland is Article 39 of the Electricity (Northern Ireland) Order 1992.

5.99 This will in no way sidestep the safeguards that the Marine Bill will put in place. The Section 36 consenting authority will only be able to direct that consent has been given by ensuring that all of the requirements established by the new licensing regime are met. That will include ensuring that the duty to take the environmental impacts of a proposed development into account includes assessment of its marine impacts. (This duty is set out in Schedule 9 to the Electricity Act 1989.[36]) Marine renewable energy projects will be subject to the same reformed environmental, navigational and other safeguards as any other project.

5.100 The marine environmental controls that currently apply to the construction of offshore renewable energy installations under FEPA fall short of modern better regulation requirements. Compared with the Electricity Act 1989, they lack procedural transparency: there are no advertising and publicity provisions, and there are no satisfactory arrangements for holding public inquiries. These are defects that stakeholders asked us to put right. Our proposals for reformed rules will address them, as they will for all activities subject to the reformed licensing regime.

5.101 Consent under Section 36 can already be accompanied by a direction that any necessary planning permission for the proposed development is deemed to have been granted. This power enables the Section 36 consenting authority to address issues associated with connecting an offshore generating station to the grid on land. As with our proposals for the reformed licensing regime, all the relevant planning rules apply to planning permission granted in this way. In particular, the land planning and Section 36 processes differ significantly and can result in separate public inquiries on a single project. We are examining how we might go about simplifying this aspect of the process and so reinforce our ability to deliver a simple one stop shop route for the offshore renewable energy developments to which Section 36 applies.

5.102 As stated above, this single licensing solution will apply where responsibility for both the Electricity Act 1989 and FEPA licences lies within the same territorial administration. At present this means in England and Scotland. Applicants with proposals in marine waters in Wales will benefit from the same streamlining of the marine licensing process. However, in order to preserve the balance of devolved powers, responsibility for the environmental conditions of the licence will remain with Welsh ministers. Responsibility for energy consents and FEPA licensing is devolved to Northern Ireland and Northern Ireland ministers have confirmed that they wish equivalent reforms to be made in their area.

5.103 We propose that the MMO should generally be the consenting authority for offshore renewable energy installations up to a certain size. We will ensure that the MMO, when granting consent under Section 36, will be able to direct that planning permission for associated development is also deemed to be granted, as happens under the current system. In so doing, it will be able to provide a one stop shop, *one project:one licence* service covering both land and sea aspects of these projects. However, the Government has announced that it will take forward recommendations by Eddington and Barker on the planning system for major infrastructure projects. The Government will set out its proposals in a Planning Reform White Paper, in the near future, including the determination of major offshore renewable energy installations.

5.104 Our proposal will make the process of considering the desirability of such development more user-friendly and offer a better customer service. It will facilitate development in appropriate places and on appropriate terms through a more proportionate and targeted regulatory system. A single application process will reduce the administrative burden on applicants, regulators and consultees. It will benefit all stakeholders who wish to engage in the decision-making process, and indeed the quality of this process, since all factors will be considered together. We think this is a more transparent procedure for enabling sustainable development than the current dual process, and one that responds directly to the concerns that many stakeholders have expressed.

Harbours Legislation

5.105 The current approach to authorising marine works in or near port or harbour areas is complicated and often archaic – some of the legislation dates back two centuries or more. We want to ensure wherever possible that a straightforward and consistent system of regulation applies in future. We also want to reduce unnecessary bureaucracy, and provide a clear basis for the implementation of European environmental rules.

5.106 The reforms of the CPA that we are making mean that we can make the rules relating to harbours clearer, and focus them in a proportionate way on real world problems. We expect to make use of the ability under the new provisions of the reformed licensing regime to exempt some activities from control and we may modernise others by disapplying local statutory provisions. This does not mean sweeping away local rules that work well. Where local powers to control the environmental or navigational impacts of works in a port or harbour are in place and effective, we will not change them. Indeed, we want to make it clear that our reformed licensing regime will not then apply separately. We will also address problems through guidance and improved practice relating to how different rules fit together.

Specific proposals

5.107 We consider that a local harbour authority with its own local powers is generally best placed to regulate works in a harbour area to ensure safe navigation. At present, CPA consent is not needed for dredging authorised directly by a local Act, but is generally required for dredging authorised under it, i.e. when done with permission of a harbour authority. This means that harbour authorities can carry out such works but others, even those seeking permission of the harbour authority, need the permission of central government in addition. We will remove this bureaucratic requirement. The reformed marine licensing regime will control the environmental impact of these activities (depending on their scale), but navigational safety will not be an issue.

5.108 Under the current Harbours regime, a FEPA licence is often issued in addition to an order under the Harbours Act 1964. In many cases, this is an unnecessary burden. We therefore also want to ensure that when such an order authorises and specifies work in sufficient detail to carry out any environmental assessments required, the work should normally be exempt from the reformed marine licensing system. We will ensure that these orders can also include operations outside harbour areas as well as works within them where they are

all part of the port infrastructure or operations. This will reduce the overlap of harbours and environmental legislation and the duplication of licensing. Harbour authorities will liaise with developers to clarify the level of detail required so their plan can be entirely authorised by an order under the Harbours Act 1964 and does not require a licence under the reformed marine licensing regime. Where sufficient detail cannot be provided, it will still be appropriate and proportionate to require a separate marine licence application later.

5.109 Likewise, where operations are authorised under either the reformed marine licensing system or local navigational controls, we also propose that they should not also need consent under the Land Drainage Act 1991, nor be subject to the EPP.

5.110 Antiquated rules and complicated provisions are particularly prevalent in local harbour acts. We believe it is important that local navigational provisions, which remain after our reforms have been introduced, should meet modern regulatory standards. But the variety of these rules is such that the task would have to be done by secondary legislation after the Bill itself. We therefore intend to ensure that the Secretary of State, or appropriate devolved administration, can modernise out of date local rules.

5.111 Neither the Harbours Act 1964 nor the CPA apply in Northern Ireland. Northern Ireland will consider whether to implement harbour reforms equivalent to those proposed for England and Wales.

Transport and Works Act 1992

5.112 The Transport and Works Act 1992 (TWA) enables certain major infrastructure projects, such as bridges, barrages and tunnels, to be permitted without requiring primary legislation. Its comprehensive procedure can substitute for most other licensing. It does so in the case of CPA, though FEPA is usually applied in the normal way.

5.113 Since other licensing regimes can be disapplied under the TWA, the problem of legislative overlap does not exist. We propose to maintain the ability for an order under the TWA to exclude the effect of reformed marine licensing, as long as equivalent consideration of environmental and navigational issues is made. This may be the subject of guidance.[k]

Small scale telecommunications development in the sea

5.114 CPA consent is normally needed before a cable can be laid on or under the seabed, and for its subsequent maintenance and removal, if those operations could have navigational impacts. However, certain operators of electronic communications networks[l] can carry out a limited range of works in the waters of the UK territorial sea without such consent. These works still need the Secretary of State's permission under communications rules. They may also need a FEPA licence, and in addition are subject to the rights of landowners including the Crown.

k The Transport and Works Act 1992 does not apply in Northern Ireland.

l Code operators" under the Electronic Communications Code, as certified by Ofcom (the independent regulator and competition authority for the UK communications industries).

5.115 We think these tidal works powers are confusing, over-complicated and unnecessary. They provide a duplicative consenting process with no material benefit for either operators or regulators. Respondents to the Marine Bill consultation supported introduction of a more user-friendly, transparent and consistent approach. So, we propose to repeal the provisions of the Telecommunications Act 1984 that allow for consent under that Act instead of licensing under general marine rules.

5.116 The environment, marine heritage, or other legitimate uses of the sea will remain fully protected. Where an assessment of the environmental and navigational impacts of such works is needed, it will be carried out under the reformed licensing regime. If such an assessment is not required, however, we will be able to use the power to exempt activities with little or no adverse impact from the need for a licence.

5.117 We do not propose to take away the protection that landowners enjoy under the 1984 Act when an operator is then permitted to carry out works on land that the operator does not own.

Delivering the new licensing regime

5.118 As we have said, consistency of decision-making was extremely important to stakeholders in the consultation. The integration of marine licensing was also very important to many, especially stakeholders with an environmental interest or a desire to benefit from a reduced regulatory burden.

5.119 The legislative reforms that we have described will provide many of the benefits that we are seeking to bring to the marine area through the Marine Bill. By moving towards a *one project:one licence* solution to marine regulation, we are overcoming some of the tensions that our present fragmented law and delivery mechanisms create. In England and Wales, we have already obtained some administrative streamlining benefits through the establishment in 2001 of Defra's Marine Consents and Environment Unit (MCEU). The MCEU will join the Marine Fisheries Agency (MFA) forming the Marine and Fisheries Agency on 1 April 2007.

5.120 However, to realise fully our vision for the marine area, we believe the time has come to complement those legislative changes with the establishment of a dedicated new delivery body. At present at least four different Whitehall departments, each with its own set of priorities, performance targets and cultures, carry out the licensing of marine activities for England alone. While departments make every effort to work together on marine licensing, this inevitably exacerbates the tensions set up by the legislative structures and tends to hinder efficient service delivery.

5.121 Moreover, the service we want to deliver through the Marine Bill is not simply the licensing of marine activities. The Bill provides a set of tools for holistic management of the seas, from the concept of marine planning, drawing in measures for environmental protection and coastal fisheries management, through licensing to monitoring and enforcement. We believe it is important for the effective and consistent delivery of the whole chain that one body should be responsible for as much of it as possible. We will therefore set up a new MMO to provide that function in relation to England and Northern Ireland and elsewhere for functions that are not devolved. Scottish and Welsh ministers are considering delivery options for their devolved licensing functions (see 8.10 – 8.15).

5.122 The MMO, with a broad range of functions, will deliver the integration that was much sought after by many stakeholders. Some of the most important benefits simply 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. Housing a large number of functions in a single unit would create an MMO that could:

- develop a single corporate body of expertise and organisational philosophy, focused on providing an excellent service for all stakeholders;
- apply a single interpretation of marine planning to licensing, including ensuring consistency between different sectors; and
- because it was involved in the earlier stages, continue that through to a consistent approach to monitoring and enforcement.

5.123 With these characteristics, it will have the capability to deliver the holistic management of the seas that we are committed to. The MMO will be the Government's coordinator of marine expertise. It will combine the collected in-house marine knowledge and experience of much of central Government with the competence to draw on the Government's other advisors and the wider expert community to give authoritative advice and make well-informed decisions.

MMO Licensing Functions

5.124 The MMO's ability to make this ambition reality will depend on the breadth of its responsibilities. The greater its influence over the marine environment, the greater will be the benefits it will be able to deliver.

5.125 We propose that the MMO will carry out all of the functions currently undertaken by Defra's MCEU and the MFA, plus regulation of aggregate dredging (currently carried out by CLG, but transferring to the MFA on 1 April 2007) and currently non-licensable dredging (see 8.18 for a fuller list of activities). To take a credible step towards holistic marine management, we believe it is vital that the MMO should have a role expanded significantly beyond these functions.

5.126 We describe in 5.94 – 5.104 above our proposal to amend the Electricity Act 1989 and Energy Act 2004 to create a single licensing regime, where possible, for offshore renewable energy installations. The licensing functions are currently shared between DTI and Defra.

5.127 We also envisage the MMO having a role in the regulation of offshore CCS activities. The scope of this role will depend upon whether an integrated regime for both onshore and offshore CCS is developed.

5.128 In addition, the MMO will also assume responsibility for administering the regulation of harbour developments that is carried out at present by the Department for Transport (DfT). This includes administering orders under the Harbours Act 1964, and local and private harbour Acts in England and, for non-fisheries harbours, Wales. In doing so, the MMO will consult with central Government policy leads when appropriate. Development consent for major port projects will be considered in the Planning Reform White Paper.

5.129 This is a very important element of our restructuring of the marine licensing system. The greatest challenges we face, both for marine planning and marine licensing, are generally at the coast, where the density of activities competing for space is highest. Many of these activities occur in and around harbours. Including consideration of harbours applications in the MMO's duties will therefore significantly enhance its ability to deliver an integrated approach to management in the coastal zone.

The MMO in Northern Ireland

5.130 In Northern Ireland, ministerial preference is currently for a regional office of the MMO, resourced to deliver a holistic approach to marine management on a non-sectoral basis. In terms of licensing, the regional office would assume responsibility for the reformed licensing regime and tidal works both within fisheries and non-fisheries harbours. It would also carry out relevant functions undertaken by the SFI for which the Department of Agriculture and Rural Development is currently responsible. Northern Ireland will consider further the extent of the role of the MMO in renewable energy licensing in Northern Ireland in light of the Planning Reform White Paper. It will also consider further whether regulation of harbour developments by the MMO is appropriate in its jurisdiction.

Whose MMO?

5.131 The Marine Bill will implement UK Government policy. The MMO will therefore be delivering a service on behalf of several different departments and as such, although it will be set up under legislation introduced to Parliament by Defra it will be a Government body. The details of how we will respect the different departmental priorities are addressed in 8.97 – 8.105, which set out the governance arrangements.

Table 2: The effect of our proposals on the number of licences required for certain projects[m]		
Project	**Licences required**	**Licences required under proposed regime**
Poole Harbour Major channel deepening (dredging)	FEPA and CPA **Total: 2**	Reformed marine licence **Total: 1**
River Hamble Replacement & reconfiguration of Harbour Master's jetty	Harbour Authority Works Consent, FEPA disposal licence, FEPA construction licence, Land Drainage Act 1991 consent, landowner's consent and planning permission. **Total: 6**	Reformed marine licence and landowner's consent and planning permission (Local controls may be deemed more appropriate, but no duplication should occur.) **Total: 3**
The Solent (Lepe & Gunnard) Installation of portable water supply pipe	FEPA and CPA **Total: 2**	Reformed marine licence **Total: 1**
Kentish Flats wind farm Application for offshore wind farm	FEPA, CPA, Electricity Act 1989 **Total: 3**	(amended) Electricity Act 1989 **Total: 1**
Princes Channel Capital dredging & sand material re-use	FEPA and Local Act Consent **Total: 2**	Reformed marine licence (or local consent if sufficiently modernised) **Total: 1**
Columbine Building at Venture Quays, Isle of Wight Development & reclamation	Planning permission, Land Drainage Act 1991 consent, CPA and FEPA **Total: 4**	Reformed marine licence and planning permission **Total: 2**
Coast Protection Scheme at Newbiggin Bay, Northumberland Construction of breakwater & beach re-nourishment	FEPA and CPA **Total: 2**	Reformed marine licence **Total: 1**

m Using information provided by KPMG in "Marine Licensing Case Studies, Handover Document", prepared for Defra, 29 March 2006 (updated by Defra, June 2006).

Our Aim

To introduce new tools for conservation of marine wildlife that together with existing ones can: halt the deterioration in the state of the UK's marine biodiversity and promote recovery where practicable, support healthy functioning and resilient marine ecosystems, ensure environmental considerations are at the heart of decision-making processes, and provide mechanisms that can deliver current and future European and international conservation obligations.

Summary of our proposals

6.1 Marine biodiversity is subject to a variety of impacts, both natural and man made. In many cases these impacts are damaging marine species and habitats and having a negative influence on the capacity of marine ecosystems to support the goods and services they currently provide for us. This has some serious implications for the benefits we derive from the sea, from tourism and recreation to climate regulation and waste assimilation.

6.2 We must ensure that we manage the marine environment to ensure we protect important biodiversity and secure maximum benefits from it. This necessarily means minimising the impact of damaging activities and enabling biodiversity improvements. To do this we want to introduce new tools to address issues of particular concern.

6.3 We currently have the duty under European law to designate areas in our seas to protect a small number of species and habitats considered of European importance. We propose to introduce a parallel mechanism to designate and manage Marine Conservation Zones (MCZs). These are intended to provide protection for species and habitats considered of national value that cannot be protected under European law.

6.4 This will give us the ability to manage, where appropriate, the majority of activities that can have an adverse impact on biodiversity. The main exceptions are those currently unregulated activities such as recreational and tourist activities that have the potential to impact on marine biodiversity. To address this we intend to introduce by-law making powers to manage unregulated activities where these might have an impact on a MCZ or on important marine wildlife outside protected sites.

6.5 By-law making powers can take time to introduce so we also propose to introduce interim measures to enable us to prevent activities from damaging important sites or species whilst by-laws are being developed and consulted upon.

6.6 We plan to complement these new mechanisms with improved and modernised enforcement arrangements by giving enforcers new, updated powers and a comprehensive set of tools to ensure compliance with conservation legislation.

6.7 We will continue to develop a suite of Marine Objectives[n] that will clarify what we want to achieve for marine ecosystems, including the biodiversity and human activities within them. We do not propose giving these objectives a statutory basis due to their developing

n Referred to as Marine Ecosystem Objectives in the 2006 Marine Bill consultation document

nature and the need for a flexible approach to the dynamic marine environment – although many of the objectives will draw on existing international statutory obligations, including any developed to implement the proposed Marine Strategy Directive. We propose that they will form an integral component of marine plans and will therefore influence decision-making processes.

Introduction

Objectives for marine biodiversity and ecosystems

6.8 Our policies for marine nature conservation aim to deliver the vision and strategic goals outlined in 1.11, as well as delivering a number of international commitments that we have entered into to confirm the importance that we place on the marine biodiversity conservation. The most relevant international commitments and European obligations are:

- halt the decline of biodiversity across the European Union by 2010[30];
- establish and maintain a network of 'Natura 2000' protected areas and conserve species and habitats of European importance[25];
- establish an ecologically coherent network of well managed Marine Protected Areas (MPA) by 2010;[51] and
- implement an ecosystem approach to management[31].

6.9 Marine biodiversity in UK waters is under increasing pressure from human activities. A wide body of research has identified that significant and important processes of the marine environment are under threat of irreversible damage, including those that assimilate waste, regulate the climate and recycle nutrients. These processes are linked to the biodiversity found in the marine environment.[57]

6.10 We wish to ensure that we can continue to make full use of the marine environment and its resources, whilst ensuring that it is resilient to human impacts. We want to avoid damaging it to the point that it can no longer provide these essential services and to allow damaged ecosystems to recover.

Climate change

6.11 Climate change has been recognised as the greatest environmental challenge facing the world today. Rising global temperatures will bring changes in weather patterns, rising sea levels and increased frequency and intensity of extreme weather events. The impacts climate change will have on biodiversity will be significant but are difficult to predict. Already the variety and distribution of marine species are being altered by climate change. Cold-water species of plankton, fish and intertidal invertebrates are retreating northwards around the UK and the ranges of southern species are expanding.[48] We can expect to see a geographic shift in the distribution of species in UK waters and an overall change in the species living here. We must be able to respond to a changing environment.

Current conservation mechanisms

6.12 A range of biodiversity measures, legislative and non-legislative, already exist to deliver nature conservation benefits in the marine area and have proven valuable in delivering conservation gains. Table 3 outlines some of the key conservation specific legislation for the UK that is currently relevant to the marine environment.[o]

6.13 Conservation benefits are also delivered in other ways. For example, through the application of:

- the Environmental Impact Assessment (EIA) Directive to licensing regimes ensuring proper consideration of environmental impacts in decision-making;
- the Water Framework Directive (WFD)[26] and the subsequent improvements to habitats, morphology and water quality; and
- fisheries management controls helping to reduce the adverse impacts of fishing activity.

6.14 However, current measures are unable to fully deliver our biodiversity objectives because:

- they do not provide the means to protect the full range of important biodiversity in UK waters; and
- most conservation tools were designed primarily to address terrestrial needs.

Geographic scope

6.15 The proposals in this section are those of the UK Government and relate to the UK offshore area and to England and the adjacent UK territorial sea. Similar issues exist in the devolved administrations and it will be for each of them to decide how to apply these mechanisms in waters for which it is responsible.

6.16 We are considering with Wales and Northern Ireland the arrangements for delivering these proposals in UK territorial waters adjacent to those countries. The Scottish Executive is considering the benefits of taking on additional responsibilities for nature conservation in the Scottish Fishing Zone and what new arrangements would be necessary in doing so.

6.17 The new measures we are proposing will apply to:

- marine waters out to the seaward limit of the UK Territorial Sea adjacent to England, Wales and Northern Ireland[p];
- UK offshore waters from 12 to 200 nautical miles or the median line between countries; and
- the UK Continental Shelf, including areas beyond 200 nautical miles.

6.18 UK rights in relation to the continental shelf and offshore waters are different. Where the continental shelf extends beyond offshore waters the rights of the UK relate only to the seabed and subsoil and therefore site and species protection would only be possible for seabed species and habitats in this area.

o This document refers only to UK and GB legislation. Similar legislation exists in the devolved administrations but is not referred to here.

p The delivery arrangements in each administration will be different and are under discussion.

6.19 The landward boundary of these provisions will generally be Mean High Water Springs (MHWS). However, the new measures will also be applicable to activities taking place on land where they may have an adverse impact on marine biodiversity. For example, new by-law powers may be used to restrict activities taking place near the foreshore where they are having a negative effect on the achievement of a MCZ's objectives. Some of the responsibilities proposed in this section will therefore be relevant to bodies or geographic locations further inland.

6.20 References to the proposed nature conservation functions of the Marine Management Organisation (MMO) relate only to the delivery of those functions in relation to the UK offshore area, territorial waters adjacent to England, and internal waters in England. It is likely that the MMO will have functions in territorial waters adjacent to Northern Ireland but the detailed arrangements for this are still under discussion. The Welsh Assembly Government does not intend the MMO to have functions in relation to Wales that have been devolved. This does not preclude the MMO delivering services on behalf of the Welsh Assembly Government by agreement. For Wales, the references to the MMO should be taken to mean the relevant body in Wales. Scottish ministers are currently considering possible mechanisms to deliver marine environmental objectives in the UK territorial sea within Scotland.

6.21 Where the Secretary of State exercises nature conservation functions in the Scottish and Northern Irish Fisheries Zones, he will consult the relevant devolved administration in relation to how this may affect the exercise of any devolved functions.

Regulating Better

6.22 Regulating better is about ensuring that the Government regulates only where necessary, it does so at the least cost and it delivers the intended outcomes. We cannot protect the environment, or promote a competitive, efficient economy without an appropriate framework of regulation and the necessary commitment and resources to enforce it. So better regulation is about finding more effective ways of delivering protection without placing unnecessary burdens on those who are regulated.[35]

6.23 Our proposals for improving the protection of marine wildlife are based on introducing measures that are targeted at addressing key risks and are proportionate to the threat posed by those risks. We do not propose to introduce new measures where there is not a demonstrable need.

The Marine Bill and European legislation

6.24 The measures we are proposing would complement existing nature conservation legislation transposing the European Wild Birds[23] and Habitats[25] Directives. This would give us a two-tiered approach to nature conservation in the marine area:

- species and habitats important at the European level protected through conservation legislation transposing the strict requirements of the Wild Birds and Habitat Directives; and
- species, habitats and ecosystems that are important domestically protected through new provisions allowing greater flexibility to take account of other factors, including social and economic considerations.

Table 3: Nature Conservation Legislation Applying in the Marine Area[q]

	Legislation		
Feature	**WCA 81 (as amended)**	**Habitat Regulations 1994**	**Offshore Marine Regulations**
Protected Areas	Ability to notify Sites of Special Scientific Interest (SSSIs) generally extending to local authority jurisdiction and Marine Nature Reserves (MNRs) up to 3nm. Ability to control operations likely to damage special interest features of a SSSI and to establish Management Schemes and Notices with offences for failure to comply	Duty to designate a UK suite of Special Areas of Conservation (SAC) for species and habitats listed in the Habitats Directive up to 12nm Ability to establish Management Agreements, restrictions on certain activities and control of potentially damaging operations up to 12nm.	Duty to designate a suite of Special Areas of Conservation (SAC) and Special Protection Areas (SPA) for species listed in the Birds and Habitats Directive and habitats listed in the Habitats Directive beyond territorial waters. Ability to establish Management Agreements, restrictions on certain activities and control of potentially damaging operations beyond territorial waters.
Habitats Protected (examples)	Estuaries, chalk reefs, seal haul out sites.	Sandbanks, Estuaries, Reefs, Submarine structure made by leaking gases up to 12nm	Sandbanks, Estuaries, Reefs, Submarine structure made by leaking gases beyond territorial waters
Species Protection Measures (examples)	A range of species protection is provided. For example the following is prohibited up to 12nm: The intentional or reckless killing, injuring or taking of wild birds and / or the destruction of their nests. In relation to wild animals listed in Schedule 5 of the Act it is an offence to intentionally or recklessly kill, injure or take such animals or to possess or control any live or dead specimens of such animals or to intentionally or recklessly damage or destroy any structure or place used by such animals for shelter or protection. The disturbance of dolphins, whales and basking sharks is also prohibited up to 12nm.	A limited number of listed marine species are protected through a prohibition on killing, capturing or disturbing European Protected Species (EPS) and damaging or destroying the breeding sites or resting places of such species up to 12nm. The majority of species are land based or inshore species.	A limited number of listed marine species are protected through a prohibition on killing, capturing or disturbing and damaging or destroying the breeding sites or resting places of such species beyond UK territorial waters. The majority of species are land based or inshore species. A prohibition on killing, capturing or injuring wild birds and / or damaging or destroying their nests is provided.
	Trade in the protected species is restricted, and certain methods of killing or taking certain species are prohibited, under all three regimes.		
Protected Species (examples)	Porpoises, Pink Sea Fan, Basking Shark, Whales	Dolphins, Porpoises, Whales, Marine Turtles and Sturgeon (EPS) up to 12nm	Dolphins, Porpoises, Whales, Marine Turtles and Sturgeon (EPS) and Birds listed in Annex I of the Birds Directive and regularly occurring Migratory Species beyond territorial waters
NERC	General duty on Public Authorities to conserve biodiversity. Ability to establish management agreements associated with NE's general purpose.		
CROW	General duty on Public Bodies to have regard to the purpose of conserving biological diversity in accordance with the Convention on Biodiversity		

q Similar legislative provisions exist in Northern Ireland

6.25 To simplify the legislative framework for marine nature conservation we will consolidate the regulations that transpose the Wild Birds and Habitats Directives. This will be separate from the Marine Bill and will give us an integrated set of regulations applying to all of the marine and terrestrial areas for which we have competence.

Marine Conservation Zones

Our vision for Marine Conservation Zones

By 2020, we want a network of effectively managed sites comprising European marine sites[r] and MCZs, including highly protected sites.

We want this network 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.

We want to:

- by 2008, complete our initial contribution to the network of European Natura 2000 sites, building on the 65 Special Areas of Conservation (SACs) and 78 Special Protection Areas (SPAs) in the UK that already have a marine element;
- by 2012, have made substantial progress to completing our network by designating additional European sites, bringing the total number of fully marine sites in the territorial sea adjacent to England and the UK offshore area to around 30; and
- by 2020, complete a UK site network that effectively conserves marine biodiversity.[s]

6.26 Protected sites play an important role in conserving sedentary and sessile species and habitats. They can also protect certain life cycle stages of some mobile species.

6.27 We currently have the power to establish and manage sites for some marine species and habitats which are considered important at the European level:

- SACs can protect only a small number of marine features, i.e. reefs, sandbanks, sea caves, submarine structures made by leaking gases, and areas that are important in the life cycle of European protected species such as the bottlenose dolphin (*Tursiops truncatus*).
- SPAs can protect habitats that are important for the conservation of migratory bird species such as Common Scoter and those such as Avocet (*Recurvirostra avosetta*) or Little Egret (*Egretta garzetta*) which are specified under the EC Wild Birds and Habitat Directives.

r European Marine Sites means sites designated in the marine area as SACs or SPAs under the Habitats and Birds Directives.

s A study for Defra suggests that this may require a in the region of a further 100 fully marine sites in addition to European marine sites.[58]

6.28 These powers are limited in their scope to a small range of marine habitats and species that are important on a European scale. As a result, they do not provide the means to protect the range of habitats and species that are important in UK waters. To conserve healthy marine ecosystems and a full range of biodiversity, and to provide opportunities for recovery, we need a site protection mechanism that can protect a wide range of species and habitats.

Case study: Protecting important biodiversity

The fan shell (*Atrina fragilis*) is a rare bivalve mollusc. It is found only in a few locations around the southern and western shores of the UK in predominantly muddy habitats to a depth of around 400m.

The fan shell is threatened because of its small population size, slow growth rates, and because they live with their pointed end embedded in sediment with the posterior (broad) end protruding from the surface. This makes them extremely susceptible to damage caused by, for example, the dropping of anchors from boats and from dredging or certain types of fishing practices.

A site protection mechanism could control the most severe impacts on the fan shell, but we cannot currently do this.

Similarly, Ocean quahog (*Arctica Icelandica*), Sea Grass (*Zostera*), and maerl beds are all in decline in UK waters and would benefit from this type of protection.

6.29 English Nature's research report 'Marine Protected Areas: a review of their use for delivering marine biodiversity benefits' concluded that there is very good evidence of the benefits of marine protected areas[t] for marine biodiversity.[33]

6.30 Responses to the 2006 Marine Bill consultation document indicated overwhelming support for the introduction of a new mechanism for designating marine protected areas, focussed on the conservation of biodiversity.

Purposes of Marine Conservation Zones

6.31 We intend to introduce a new type of marine protected area called a MCZ. We want MCZs to conserve or aid the recovery of:

- rare or threatened habitats such as seagrass beds and deep soft sediment habitats;
- rare or threatened species such as the sunset cup coral (*Leptopsammia pruvoti*), the long-snouted seahorse (*Hippocampus ramulosus*) and the native oyster (*Ostrea edulis*);
- globally or regionally significant areas for geographically restricted habitats or species such as estuary habitats and species such as the spiny lobster (*Panulirus argus*);
- important aggregations or communities of marine species, particularly hotspots, where a large number of species gather in one area;

t In this document the term 'marine protected area' refers to any site established under UK law to protect marine features. Where we are referring to the new mechanism that we are proposing to establish we use the specific term 'Marine Conservation Zone'

- areas representing the full range of biodiversity in UK waters, including important habitats such as areas of muddy seabed which contain Norway lobster (Nephrops norvegicus), Northern sea fan (*Swiftia pallida*) and Angular crab (*Goneplax rhomboides*);
- areas important for key life cycle stages of mobile species, including habitats known to be important for reproduction and nursery stages;
- areas contributing to the maintenance of marine biodiversity and ecosystem functioning in UK waters; and
- features of particular geological interest.

6.32 We want to be able to designate sites for any of these purposes either individually or in combination.

6.33 By delivering these purposes, MCZ will make an important contribution to the functioning and quality of the wider marine environment, and thus an important role in the sustainable use of our seas. They will do this by providing a refuge within which marine species can flourish and help repopulate the wider environment, and by protecting important species and habitats from destruction.

6.34 Table 4 shows how MCZs will fit into the wider range of protected area mechanisms that would be available for use in the marine area and highlights the main differences between them.

Conserving other important marine features

6.35 Other important features and characteristics of the marine environment will be protected through a range of means:

- physical marine features and ecological processes that play an important role in supporting marine ecosystems and biodiversity can be protected by a range of means, including considering their relative importance through the marine planning process;
- sites of special archaeological or historic interest within 12 nautical miles will be protected through specific heritage mechanisms currently being considered by the Department for Culture, Media and Sport (DCMS);[u]
- important seascapes and views from land would be considered within the marine planning process (which will be more appropriate to their large scale). The UK marine policy statement could include objectives describing the importance of seascapes, and views and how we wish to treat them. More detailed plans would allow us to consider seascapes and views in the context of the priorities for specific areas;
- spawning and nursery areas and other areas important for commercial fish stocks can currently be protected under fisheries legislation. They could also be protected by MCZs under the criteria set out above; and
- areas that are important for marine ecosystem research or education purposes will vary, but in many cases will be provided as a consequence of establishing MCZs for the purposes set out in 6.31 above.

u See http://www.culture.gov.uk/what_we_do/Historic_environment/heritage/heritage_protection_review.htm

Table 4: Marine Protected Area Mechanisms

	MPA Type					
Feature	**SSSI**[v]	**SACs (0-12nm)**	**SACs (Offshore)**	**SPAs (0-12nm)**	**SPAs (12nm+)**	**MCZs**
Geographic scope	Land based sites generally extending to local authority jurisdiction.	Land based & 0-12nm	>12nm	Land based & 0-12nm	>12nm	Inshore and out to 200nm
Selection Rationale	Sites selected at a national level where the nature conservation agency considers the land to be of special interest.	SACs are selected to create a network of protected areas for a limited number of threatened marine habitats and species important at a European level.		SPAs are selected to create network of protected areas for birds important at a European level.		A flexible selection mechanism to support a wide range of biodiversity and geological features that are important in UK Waters
Level of Site Protection	Sites are managed to achieve favourable condition.	Sites are protected in order to prevent deterioration and maintain or restore where possible their conservation value				Sites managed to ensure site objectives are met.
Management Tools	Management Agreements, Schemes and Notices that range from voluntary to compulsory arrangements. Creation of by-laws.	Sites are protected from damaging development and activities through control of plans or projects likely to have a significant effect, for example mitigation measures may be attached to a licence/consent to ensure damage is not caused.				Adaptation of existing controls with the creation of new by-laws where necessary to achieve conservation aims
		Management Schemes and Notices ranging from voluntary to compulsory arrangements. MNR by-laws where necessary for sites which are not SSSIs	Management Schemes and other measures where necessary such as seeking fisheries closures through the Common Fisheries Policy	Management Schemes and Notices ranging from voluntary to compulsory arrangements. MNR by-laws where necessary for sites which are not SSSIs	Management schemes and other measures where necessary such as seeking fisheries closures through the Common Fisheries Policy	
Offences	Various relating to requirements on owners and occupiers and public bodies. It is an offence for anyone to intentionally or recklessly destroy or damage the special features of a SSSI.	Limited site/habitat based offences but SSSI offences will apply up to SSSI boundary	Offences proposed in OMRs for damage to offshore habitats and disturbance to species for which a site is designated	Limited site/habitat based offences but SSSI offences will apply up to SSSI boundary	Offences proposed in OMRs for damage to offshore habitats and disturbance of birds for which a site is classified	General offence of damage or destruction of a protected habitat.

Key

EPS – European Protected Species
OMRs – Offshore Marine Regulations
MNR – Marine Nature Reserve
SAC – Special Area of Conservation
NE – Natural England
SSSI – Site of Special Scientific Interest
NM – Nautical Mile
CFP – Common Fisheries Policy

v Similar provisions for Areas of Special Scientific Interest exist in Northern Ireland

Site Selection

6.36 We are proposing a flexible mechanism that could be used to designate individual sites or groups of sites on their own merits. This would give us the ability to establish sites as information becomes available, or as the need is identified, without having to know in advance where all sites will be located.

6.37 Over time, we want to develop a proportionate network of sites for the conservation of marine ecosystems and biodiversity. In developing the network, we would often seek to include several areas containing a particular species or habitat (a principle known as replication) so that if one site were seriously damaged, the network as a whole would continue to meet its objectives.

6.38 There may be cases where it would be beneficial to extend the boundary of a MCZ inland to capture the full extent of a habitat or ecological feature. We want the mechanism to be flexible enough to do this.

6.39 We expect that sites would be selected for consideration in accordance with:

- the purposes set out above;
- any relevant plan (where available); and
- any relevant guidance.

Balancing, ecological, social and economic considerations

6.40 When sites are designated using existing mechanisms, consideration is not given to the socio-economic implications of designation. We wish to take a more flexible approach with MCZs, one that protects ecosystems and biodiversity without causing inappropriate economic or social impacts wherever possible. Responses to the 2006 consultation exercise revealed overwhelming support for this approach where options existed.

6.41 We propose to take account of both the current situation in the area and the future situation anticipated as the result of factors such as planned economic development or climate change. A careful balance will need to be drawn in considering any relevant socio-economic factors against the ecological importance of a site but the existence of socio-economic interests would not necessarily preclude the designation of a MCZ. Guidance on site selection will include consideration of the scope of, and manner in which, socio-economic issues will be reflected. This will ensure that such considerations are sufficiently taken into account while also ensuring delivery of our biodiversity objectives.

6.42 The relative importance of different factors will vary for each site. There may be areas that we want to protect because they are particularly sensitive, they are unique areas of rare or threatened species or habitats, or are essential for ecosystem structure and functioning. In such circumstances, ecological considerations are likely to have greater weight and impacts on human activities may be unavoidable.

6.43 It is likely that in many cases there will be a choice between a number of areas identified as potential sites, particularly for the protection of representative species and habitats.

In these cases a number of factors may be relevant in selecting the most appropriate sites, including:

- how well an area meets the conservation purposes set out above;
- how far an area contributes to wider ecological coherence or the coherence of any network of marine protected areas;
- whether an area is also important for other reasons, including special archaeological or historic interest, education or research;
- the level of use of an area, including the existence of development or extraction licenses which might hinder its effective conservation;
- the costs and benefits of introducing site-based controls;
- how far the site contributes to access and recreational opportunities where this is compatible with its conservation; and
- the relevance of the proposed site in meeting international obligations (including their contribution to the MPA networks required by the OSPAR Convention, the World Summit on Sustainable Development and the Convention on Biological Diversity).

Site selection and marine planning

6.44 It is intended that marine plans will set out the relative importance of different issues and therefore the context within which sites are selected. It will be possible to designate MCZs in the absence of any marine plans but, where they exist, sites will be selected in accordance with them unless new evidence or considerations come to light that suggest a need to depart from plans. In selecting sites in coastal areas, other relevant plans will be taken into account.

Site objectives

6.45 There is a wide variety of species and habitats that require protection and for which designation of a MCZ may be appropriate. The type of protection these species and habitats will require will vary.

6.46 We propose that objectives will be set for each site. These will establish the nature conservation outcomes to be delivered by the site and will help to clarify the level of constraints on marine activities that are required to deliver them.

6.47 Objectives will describe the aims of a MCZ. For instance, whether they include:

- avoiding deterioration of a habitat from its current conservation condition;
- maintaining or enhancing current population levels of a particular species; or
- restoring or enabling the recovery of a habitat to a good condition.

6.48 We propose that the statutory nature conservation agencies[w] would draft objectives for each site. The restrictions on activities needed to achieve a site's objectives will vary considerably, depending on:

- the ambitiousness of the objective;
- current levels of activity in the area; and
- the sensitivity of the protected species or habitat.

6.49 In some cases, objectives might be deliverable with very little change to current activities. In others, delivery of objectives may require higher levels of protection, including, for example, prohibition of any activity within a site.

6.50 Where it is appropriate to allow sites to fully recover and develop, objectives may be set for MCZs that exclude all damaging or potentially damaging activities. This would create highly protected marine reserves. Such sites can play an important role in marine protected area networks by enabling the recovery of ecosystem structure and function and providing a benchmark for the effectiveness of wider measures such as marine planning. Where suitable locations can be identified, we would aim to include a number of such sites in any MPA network

6.51 We want a flexible system that can deliver the objectives we have set out and through which we can ensure that regulation is tailored to the needs of particular sites and proportionate to specific objectives. This proposal received broad support from respondents to the 2006 consultation exercise.

Stakeholder engagement and the site selection process

6.52 We intend to consult on all relevant aspects of sites under consideration as potential MCZs, including their proposed boundaries and objectives. Relevant stakeholders would be consulted at key stages of the site identification process, including seeking their views in considering the selection of representative sites where there are a number of options.

6.53 The key stakeholders to be consulted would include:

- affected businesses, sectors and those with an interest in an area (in as far as these can be identified);
- the MMO which will have a key role to play in advising the relevant conservation agencies on the context for site selection, the consideration of socio-economic factors, and in the implementation of licensing controls;
- any bodies or organisations involved in managing activities potentially affected by a MCZ; and
- other relevant statutory advisors such as English Heritage.

w The relevant statutory nature conservation agency in relation to England is Natural England, in relation to Wales is the Countryside Council for Wales and in relation to Northern Ireland is the Environment and Heritage Service (Northern Ireland).

6.54 Consultations on proposals for MCZs would generally include:

- evidence of how the proposed site(s) meets the criteria for which sites can be designated;
- the feature(s) that require protection. This could include representative habitats or species or the marine ecosystem within the site;
- a description of the contribution of a site to achievement of the objectives of any protected area network and wider environmental goals;
- the proposed objectives for the site;
- details of likely adverse impacts on the features for which the site is designated;
- details of proposed measures to manage activities to mitigate impacts, including any draft by-laws, and an explanation of their need;
- a map of the site showing the proposed boundaries;
- the site's name, location and the area it covers;
- details of any other designated areas that the site overlaps and how their objectives interrelate; and
- a Regulatory Impact Assessment identifying the likely costs and benefits of site designation.

6.55 The selection and designation of MCZs has the potential to create uncertainty for those undertaking activities in the marine area. It is vital therefore, that information on proposed sites, impacts likely to affect them, and the likely effects of designation on business interests is shared at the earliest possible opportunity.

6.56 We will prepare guidance explaining what information needs to be shared with relevant interests, when and how. This will include guidance to developers and other business interests on the information they will be required to provide in preparing applications.

Designation

6.57 Before decisions on designation are made ministers will need to satisfy themselves that appropriate consideration has been given to socio-economic considerations and may take the advice of a range of bodies in doing so, including the statutory nature conservation agencies, the MMO and other appropriate bodies.

6.58 Once a decision has been made on whether a site should be designated as a MCZ, this will be published and affected interests informed. This would include information about the site and its proposed management. A register of sites will be held and made publicly available.

6.59 Where a site is likely to be damaged whilst under consideration for designation, voluntary measures will be encouraged to limit impacts. Where there is reason to believe that a site will be particularly susceptible to damage, we will use available controls to prevent adverse impacts, including through the licensing regimes and using interim measures to control fisheries and certain other unregulated activities.

Management

6.60 We propose to prevent damage to sites through:

- the planning and licensing regimes operated by the MMO and other licensing authorities to control the impacts of development and other industrial activities;
- any other licensing regime that may impact upon the site;
- fisheries controls introduced by fisheries authorities;
- nature conservation by-laws and interim measures introducing specific controls on unregulated damaging activities (see 6.129 – 6.159); and
- the creation of an offence of damage or destruction of any species, habitat or other feature for which a site has been designated (see 6.95 – 6.98).

6.61 Our proposed changes to the marine licensing and fisheries management regimes will help to ensure that they are effective in providing protection for MCZs and other marine protected areas. For example:

- the coverage of all forms of marine dredging by a rationalised licensing regime will ensure that these activities can be controlled where they are having impacts on important marine sites; and
- a stronger ecological focus for Sea Fisheries Committees (SFCs) in England, including the extension of their by-law making powers to cover fisheries related activities such as bait digging, will enable protection from a wider range of impacting activities[x].

Duties to deliver site objectives

6.62 We propose a duty on 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:

- 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
- take positive measures to control damaging activities, such as taking action to mitigate impacts, where they have the powers to do so.

6.63 Assessing the impact of activities on the conservation interests of a site can be difficult. We will prepare guidance for regulators and developers on how impacts could be assessed and what impacts would be considered acceptable in certain circumstances.

6.64 The competence for managing certain activities, such as fishing and shipping, in UK waters lies primarily with international or European bodies. In conducting discussions with the relevant competent authorities for such activities we would, as a matter of good environmental policy, take account of site designations. Where appropriate we will seek action from international authorities to protect sites that are being damaged by activities over which they have competence.

x The restructuring of inshore fisheries management in Wales aims to achieve similar improvements.

Licensed Activities

6.65 Licences or other formal permissions or consents are issued to authorise specified activities, such as aggregates dredging or construction operations. In considering whether to grant a licence, and the terms of any such licence, we propose that a full assessment of the possible impacts on MCZs of proposed activities is carried out. The licensing authority would require the licence applicant to undertake the assessment and provide it to them. An EIA will already be required for most licence applications and should be sufficient in most cases. The statutory nature conservation agencies and the MMO will be proactively collecting and collating data and information on the marine area and will provide it to developers wherever possible to minimise the costs of undertaking such assessments. This will include guidance and advice to businesses on where activities would be likely to be of concern and on what the acceptable levels of impact arising from their activities might be.

6.66 Where an impact assessment identifies that an activity could damage a MCZ and prevent its objectives from being achieved, the licensing authority would require applicants to take mitigation measures. These could be in relation to the site itself, but off-site mitigation could be appropriate. Mitigation measures could include adjustments to the design, location or timing of works to avoid impacts on important features. The statutory nature conservation agencies will advise developers and regulators on appropriate mitigation measures.

6.67 If the impacts of an activity could not be mitigated it would not be permitted to proceed unless it was in the public interest and it could be demonstrated that there are no suitable alternatives. We propose that activities could be considered to be in the public interest if it can be demonstrated that:

- there is a need to address a risk to human health or public safety;
- it is in the interests of national security and defence;
- there is a clear and demonstrable direct environmental benefit on a national or international scale;
- there is a substantial contribution to regional economic development or regeneration; or
- failure to proceed would have substantial undesirable environmental, social or economic consequences.

6.68 We intend that where a licensing authority decides to grant a licence for an activity to proceed on public interest grounds despite adverse impacts on a MCZ, it will be able to require applicants to put compensatory measures in place. Compensatory action could take several forms including funding:

- an extension of the site to counter the development impact;
- the selection or creation of an alternative site which could deliver similar conservation objectives; or
- marine conservation work of equivalent value to the damage caused.

6.69 Decisions to proceed on public interest grounds should first be discussed with the relevant minister.

6.70 We propose that in taking decisions on mitigation and compensatory measures licensing authorities would be required to take the advice of the statutory nature conservation agencies and the MMO (where the MMO is not also the licensing authority).

Case Study: Mitigation and compensatory measures – Bathside Bay Container Terminal

Bathside Bay Container Terminal is one of several recent port developments that have secured consent after detailed examination of environmental impacts.

The proposal was to develop a 69 hectare site within the Stour and Orwell Estuary SPA, as a new container terminal with four ultra-large container ship berths. EIA identified impacts on inter-tidal habitats and upon the movement of sediment that would be detrimental to mudflats and saltmarsh evolution throughout the Stour Estuary. These issues were addressed by the development of a mitigation and compensation package agreed between the developer and English Nature.

To mitigate the impacts of disruption to sediment transport, a programme of sediment feeding was developed. This involved re-deposition of maintenance dredged fine sediments upstream of the port to feed mudflats and saltmarshes. The works took place within the designated site and effectively maintained the status-quo.

To compensate for the direct loss of habitat, the flood defences at Little Oakley in nearby Hamford Water will be realigned to create 138 hectares of new inter-tidal habitat.

Review of licences

6.71 We wish to ensure that our approach to site selection delivers our biodiversity objectives whilst avoiding unnecessary conflicts with our social and economic goals. Wherever possible, we will aim to minimise the number of sites that are established in areas where there are high levels of potentially damaging industrial activity or existing licenses for potentially damaging activities

6.72 Nevertheless, sites could be designated in areas where there are existing licenses for ongoing or future activities that are incompatible with the site objectives. For example, where a site hosts rare or sensitive species, such as the sunset cup coral and there are no clear options available for alternative sites with the same level of conservation value. There may even be circumstances where there might be shared benefits in co-locating MCZs with sites of industrial activity, such as wind farm sites.

6.73 The modernised licensing regimes discussed in section 5 will give relevant authorities the ability to review, vary and revoke licences. This could be used to review existing licences within new sites or in cases where new information has become known about damage caused to sites by licensed activities.

6.74 We want to ensure that the ability to revisit licences does not undermine the ability of industries to effectively plan and undertake their activities in the marine area.

6.75 We propose to set out the circumstances in which it would be appropriate to review licences to protect MCZs. These are likely to exclude situations where:

- varying an existing licence will not provide significant benefits for nature conservation;
- the social, economic or administrative costs of varying a licence are disproportionately high in comparison to the conservation benefits; and
- the licence is for an activity that is in the public interest.

6.76 Licence amendments or revocations would only cover ongoing activities or those yet to be implemented. They could not be used to require reversal of previously licensed activities (e.g. by removing infrastructure already in place).

Fisheries

6.77 The proposed duty on public bodies to take measures to protect sites and deliver their conservation objectives will place a positive obligation on fisheries authorities to regulate fishing activities so they do not cause significant damage to sites. We do not have the competence to take action relating to matters covered by the Common Fisheries Policy (CFP). This means that:

- within 6 nautical miles from the coast, SFCs will need to put by-laws in place to prohibit or constrain fisheries activities in inshore waters, which would otherwise conflict with the conservation objectives of a designated or proposed MCZ; and
- beyond 6 nautical miles, Defra could seek the agreement of the EU Fisheries Council to the introduction of measures through the CFP to protect areas of national importance that are fished by fishermen from other European states.[y] This could involve closure of areas, or gear restrictions to prevent impacts that would prevent the achievement of site objectives.

Unregulated activities

6.78 We propose giving the MMO by-law making powers for the regulation of currently unregulated activities that could otherwise cause damage to sites (see 6.129 – 6.159 and section 8 on the MMO).

Adaptive management

6.79 MCZs would be likely to be designated with a view to achieving nature conservation benefits over long timescales. Sites, once established, would usually remain in place for the long term. In addition to the nature conservation benefits, this is important in providing stable conditions for marine businesses to plan their activities. Occasionally, there may be a need to designate sites for a shorter period.

6.80 A balance will need to be struck between the benefits of stability and the need for flexibility to respond to changing circumstances. It is essential that MCZs can, individually or as part of a network, respond to changing environmental conditions and to the affects that climate change will have on our biodiversity.

6.81 To respond to such changes there is likely to be a need to redesign individual sites, reconsider the structure of any wider network of sites and to revisit conservation objectives. The need for change may arise because:

- the feature for which the site is designated is no longer present or has moved;
- a site is no longer able to meet its objectives, for example as a result of changed environmental conditions;

y Where this relates to matters within Welsh and Northern Irish waters this would be done in conjunction with the relevant devolved administration.

- new evidence or information shows that the site is no longer appropriate to achieve the role for which it was selected;
- our understanding of marine biodiversity and ecosystems has improved and objectives need to be updated to reflect this; or
- changes in a site as it recovers or in response to external factors such as climate change mean new objectives are required.

6.82 We want to be able to de-designate sites, amend boundaries or alter objectives where this is necessary due to environmental changes, new scientific information or other significant factors. The majority of respondents to the 2006 consultation exercise agreed that this approach was appropriate.

6.83 Where site objectives are changed, it may be necessary to change the management measures required to deliver them. The measures required to deliver objectives may also change over time as a result of other factors such as:

- pressures such as climate change making a site more vulnerable to the impacts of human activities;
- a site improving its resilience to impacts as a result of successful recovery, which could allow additional activities to take place without compromising the delivery of site objectives; and
- failure of initial measures to deliver the site objectives.

6.84 Full consultation would be needed on any changes to sites in the same way as for new sites.

6.85 We expect that proposals for changes to sites would usually come from the statutory nature conservation agencies who would also undertake consultations.

Overlapping sites

6.86 A number of sites have already been designated in the area that we propose MCZ powers to apply, for example Sites of Special Scientific Interest (SSSIs) in the inter-tidal area and marine SACs in coastal waters.

6.87 We want to make sure that relevant bodies can work together to ensure that areas where overlap exists are managed in an integrated manner to deliver the maximum conservation benefits. It may be useful in such cases for relevant bodies to work together to specify in a management scheme how different objectives relate.

6.88 Where a MCZ overlaps with a site designated under European law we would expect that the objectives of the European site take precedence.

Management schemes

6.89 Some MCZs may be located in areas where a lot of activity takes place, managed by a number of bodies. The decisions of the different bodies might impact on the sites objectives individually or in combination. In such circumstances, there may be benefits in establishing a management scheme for a site or a combination of sites.

6.90 The ability to establish management schemes might also be useful where sites overlap and have different, potentially conflicting objectives. If any of the bodies involved in the management of a site consider it appropriate or helpful to establish a management plan they may. Where a plan is established, it should take account of any national marine plan or sub-regional marine plans.

Repeal of MNRs

6.91 MCZs will provide a flexible mechanism to conserve nationally important species and habitats. To avoid duplication, we propose to repeal the existing Marine Nature Reserve provisions under the Wildlife and Countryside Act 1981[z]. This proposal received significant support in response to the 2006 consultation exercise.

6.92 Where by-laws have been made under the Wildlife and Countryside Act 1981 to protect these sites or European marine sites they may be revoked and replaced by new by-laws we intend to introduce (see 6.129 – 6.159).

Seaward limit of Sites of Special Scientific Interest and Areas of Special Scientific Interest

6.93 There is currently some uncertainty about the geographic scope of the terrestrial SSSI regime. We propose to set a standard limit to the scope of these at the lower edge of the intertidal area. This has yet to be determined but is likely to be either at Mean Low Water Springs (MLWS) or at the limit of lowest astronomical tides.

6.94 There may be circumstances where it would be appropriate to extend the boundaries of a SSSI beyond this seaward limit (see case study below) and these will be set out in guidance.

Case study: Extending SSSIs below mean low water mark

Robin Hood Bay – Maw Wyke SSSI is currently notified to Mean Low Water Mark (MLWM). The interest of this site is geological, geomorphological and marine biological. The scientific interest is the eroding cliffs, the rocky intertidal – and shallow sub-tidal zones.

The richest bits are on the lower shore and do not stop just inside the *Laminaria digitata* (kelp) zone – roughly where MLWM lies in this part of the country and the current seaward boundary of the SSSI. The scientific interest extends below this probably as far as, or just into the *L. hyperborean* (kelp) zone.

The most appropriate seaward boundary of the SSSI would be the lower limit of the interest at the bottom of the *L. digitata* kelp zone. This has scientific justification, but it is also easily recognisable. Furthermore, any activities that require management are likely to come from the land (e.g. collecting at low water) and can be adequately managed using the SSSI-based regulatory apparatus.

z Sections 36 and 37.

Offences

6.95 Where a site is damaged by activities that are in breach of a condition of a licence, a fisheries rule or by-law, offenders could be prosecuted according to the offences and penalties relevant to those regimes.

6.96 There may be cases where an activity has the potential to impact on a site but has not been foreseen and it is not possible to control its short-term impact using licensing, fisheries or by-law controls (see 6.132 below).

6.97 We therefore propose that a person should be guilty of an offence if they damage or destroy any species or habitat or other feature, for which a site has been designated. The nature conservation agencies would provide guidance on activities likely to cause damage to the features within individual sites (see 6.54).

6.98 It will not be necessary for the damage to be shown to be intentional. However defences will apply where the person causing the damage can show:

- they were acting in accordance with the terms of a licence or other authorisation granted by a public body;
- they were taking action in relation to an emergency; or
- they could demonstrate they took all reasonable precautions and exercised all due diligence to avoid damaging or destroying the features in a site.

Species Protection

Our vision for marine species

By 2020, we want viable populations in all UK regional seas of the most important marine species and plants.

We want to ensure sufficient populations of the most important marine species so that they are resilient to human impacts and make a positive contribution to essential ecosystem goods and services.

We want to:

- By 2010, introduce appropriate and proportionate measures to halt the rate of decline in nationally important marine species and plants.
- By 2020, ensure sufficient measures are in place to conserve effectively marine species and plants.

6.99 UK waters contain up to half of the UK's biodiversity, estimated at around 44,000 species. Our objective is to maintain viable populations of the most important marine species and plants in UK waters. We will do this by using proportionate and targeted measures that are capable of addressing identified threats to the conservation status of important species (see 6.128).

6.100 Over 90% of respondents to the 2006 consultation exercise believed existing species protection measures did not adequately address threats to the conservation of marine species and that this could be addressed by extending their geographic scope.

6.101 A report for Defra by the Institute of Estuarine and Coastal Studies at Hull University examined the protection requirements of a representative range of species considered vulnerable to human activities.[56]

6.102 It found that species are at risk from only two main pressures: either a loss of, or modification to, habitat; or the removal of the species or its prey. The report concluded that there are two fundamental approaches to the protection of species in the marine environment:

- control of certain damaging activities within the marine environment to protect the functioning of a habitat, physical attributes and food supply;
- restrictions on species being overexploited through direct target catch or continuous bycatch.

6.103 The report found that in the majority of cases these species could be adequately protected through protected area measures or sectoral controls such as fisheries measures. The exceptions were where the main impact on the species was collection (for example for the curio trade) and in relation to mobile species.

6.104 The work from Hull University did not demonstrate a good case for extending the geographic scope of existing species protection measures, if area protection tools and existing management tools were effectively applied.

Site based protection

6.105 Habitats provide the fundamental building blocks for marine wildlife. Damage or destruction of the habitats on which species rely can have a significant impact on the capacity of species to maintain viable populations. Maintaining good habitats will help to ensure the long-term survival of marine species.

6.106 Our proposals in relation to MCZs will provide a powerful tool for improving the protection available to marine species. We propose to use MCZs as our primary tool for protecting:

- habitats which are important for maintaining viable populations of rare and threatened marine species;
- important aggregations of sedentary and sessile species (e.g. pink sea fans or erect sponges); and
- mobile species, where areas can be identified which are important for key life cycle stages, such as for rearing or breeding.

6.107 This will provide substantially more protection for more species than is currently available but it cannot provide protection in all areas at all times. Additional tools are needed, particularly to provide protection for highly mobile species.

Using sectoral tools

6.108 Sectoral tools can play a key role in protecting marine species (for example, by restricting the extent of activities using licensing or fisheries controls.

6.109 Bycatch of non-target species can have significant undesirable conservation impacts and we wish to take steps to reduce and minimise it. However, conventional conservation offences, such as in relation to killing or taking, do not provide effective tools to reduce or eliminate bycatch. This is because the comprehensive application of such measures across the marine area could criminalise legitimate fishing activity. This does not reflect the sustainable development approach, which lies at the heart of all our policies. For such offences to be utilised and to avoid inappropriate side effects it is therefore necessary to apply defences for legitimate activities such as fishing. This is why the species offences in Sections 9 and 10 of the Wildlife and Countryside Act 1981 are constructed as they are and consequently inappropriate to control bycatch.

6.110 Nonetheless, we already have a wide range of tools that enable us to manage fishing activities that impact on marine wildlife, including using closed areas and gear restrictions. Such measures are suited to reducing undesirable bycatch as they can be used on a flexible and localised basis. They have been used to good effect already as demonstrated by changes to net types over the years and the development of new equipment such as escape hatches in nets and pingers.

6.111 We propose improving sectoral controls to improve the sustainability of fishing activities (see section 7 on modernising marine fisheries management). We will identify how we can make better use of gear restrictions and fisheries no take zones where fishing is having an adverse conservation impact. Beyond this, measures to control bycatch would have to be sought through the Common Fisheries Policy (CFP) by agreement of the EU Fisheries Council.

6.112 Where fisheries are managed under the CFP the UK cannot unilaterally use fisheries measures to protect species. We will work within Europe to ensure that fisheries management provides these species with appropriate protection.

Case study: Using fisheries tools – sharks, skates and rays

Sharks, skates and rays are particularly vulnerable to over-exploitation due to a combination of large size, associated large offspring size, slow growth and late maturation.

There is evidence from a number of sources (including ICES and IUCN) that many shark species are declining and under threat. Currently, the IUCN red list contains 44 shark species for the North-East Atlantic of which nearly a quarter are considered Vulnerable or Endangered. Trends on all species were either uncertain or downward.

Angel shark is now locally extinct in the Irish Sea and English Channel, the common skate was made locally extinct in the Irish Sea and North Sea in the 1980's, whilst four other skate species have suffered severe declines. Anecdotally, catches of the Shark Angling Club of Great Britain have dropped from 3000 to 86 sharks a season.

Current threats to sharks arise almost exclusively from targeted fisheries and bycatch. Spain alone is responsible for nearly half the EU catch total of 115,000 metric tons.

We cannot unilaterally enforce national conservation measures against foreign fisheries, so we must work through the CFP to address the threats to species such as sharks, skates and rays.

6.113 Impacts arising from development and extractive activities other than fishing can also have conservation impacts on marine species. The UK marine policy statement will set the context for decisions in the marine environment (see section 4). Licensing decisions will be made in the context of the UK marine policy statement and any marine plans which will include explanation of our marine biodiversity objectives.

6.114 We propose that decisions taken under the licensing regimes take account of our biodiversity objectives to minimise impacts arising from development activity. This could be through, for example, licence conditions relating to development noise, or timing of development in relation to sensitive species or particular construction methods.

Case study: Using licensing tools – seismic testing

To assess the likelihood of oil or gas reserves underneath the seabed the oil and gas industry use seismic survey techniques.

The noise generated by this technique can cause disturbance to cetaceans and other marine mammals. To address this, the JNCC produced guidelines to help minimise the impacts from seismic survey.

When licences are issued by DTI for oil and gas survey the use of JNCC guidelines is a standard condition of licence.

Using existing conservation tools

6.115 Marine species of conservation importance are provided protection from a range of impacts under current legislation. The most important currently available measures are outlined in Table 4.

6.116 For nationally important species, this protection extends to the seaward limit of territorial waters. For species of European importance (i.e. dolphins, porpoises and whales, common sturgeon and marine turtles) it extends throughout the waters over which the UK exercises jurisdiction.

6.117 Threats from fisheries and development activities can be adequately controlled through the proposed revisions to existing regimes. In combination, these measures alongside the traditional and new conservation measures introduced through the Bill will provide a strong set of tools to protect our important marine species.

6.118 We will consider where better use can be made of existing conservation offences. For example, offences relating to possession or sale of protected species, such as provided by Section 9 of the Wildlife and Countryside Act 1981, have the potential to prevent targeted exploitation of vulnerable species. They can usefully support measures aimed at returning incidentally caught species to the sea where there is a reasonable chance of more robust species surviving.

6.119 Responses to the 2006 consultation document did not identify any threats to marine species that could be addressed by extending the Wildlife and Countryside Act 1981 beyond territorial waters or that could not be more effectively addressed through sectoral or other controls.

6.120 In view of these factors, we do not propose to introduce changes to the existing species protection legislation for territorial waters provided by the Wildlife and Countryside Act 1981.

Case study: Using existing conservation tools – seahorses

Seahorses are found in seagrass beds and kelp forests around the UK coast. Their numbers are in decline, and they are widely dispersed. The main threat faced by the species is from habitat destruction and collection and sale for the curio and aquarium trade.

The Wildlife and Countryside Act 1981 is capable of providing very effective protection for species such as the seahorse making it an offence to possess or sell listed species. This approach, alongside protection of appropriate areas of habitat in MCZs, will provide an appropriate level of species protection.

Two species of seahorse (short-snouted and spiny) have been proposed for listing for protection by the Wildlife and Countryside Act 1981.

6.121 Outside territorial waters, the only significant conservation threats are those that would be better dealt with using sectoral controls, e.g. bycatch. The one identified exception to this is the impact of disturbance on the basking shark (which is provided protection from disturbance within territorial waters by the Wildlife and Countryside Act 1981).

6.122 To address cases such as this we will explore the possibility of adding nationally important marine species, such as the basking shark, to the list of European protected species under the Offshore Marine Conservation (Natural Habitats, &c) Regulations 2007, which were designed specifically to work in the offshore environment.

Reviewing current protection

6.123 Schedules 5 and 8 of the Wildlife and Countryside Act 1981 list the animals and plants that are protected by specific provisions of the Act. These schedules include a number of marine species and the protection provided relates in general terms to the killing, injuring, taking and selling of the plants and animals listed.

6.124 There are 29 individual marine Species Action Plans and six grouped marine species plans (covering another 51 species) that identify the actions required to conserve important marine species. The existing plans are currently under review in order to reflect updated information on the current status of marine species.

6.125 We will undertake an assessment of whether the protective measures provided by the Wildlife and Countryside Act 1981 and identified by marine Species Action Plans are the most appropriate and effective conservation tools for these species based on the threats they face. This will include a review of the marine species and plants on the schedules to this legislation. This will take into account the work already undertaken by JNCC on identifying nationally important marine species and habitats.

Using by-laws

6.126 Work by Hull University identified that in coastal areas unregulated activities (such as recreation and tourism) have the potential to impact on rare and threatened species through, for example, ad hoc or commercial wildlife watching, and disturbance to breeding or resting sites from water-based recreational activities.[19]

6.127 To minimise those impacts we propose to introduce new by-law making powers to control unregulated activities having an impact on the conservation status of mobile species (see 6.129 – 6.159).

6.128 By-laws are an effective tool for providing targeted and proportionate measures to address impacts on biodiversity. Seasonal by-laws are likely to be particularly effective providing seasonal protection for important breeding and spawning areas for wide ranging species such as basking shark.

Control of unregulated activities

6.129 We wish to ensure that we can control activities that have a significant impact on the achievement of MCZ objectives or on the conservation status of important marine species. Licensing and fisheries controls already address the most significant impacts but there are a number of unregulated activities that have the potential to cause damage.

6.130 Studies for Defra by the Institute of Estuarine and Coastal Studies of Hull University[19] assessed activities considered to have adverse conservation impacts in terms of the risk they present:

- high – bait digging / collection, water-based recreation and unlicensed commercial fishing activities;
- medium – unlicensed dredging, wildlife watching / ecotourism, recreational fishing, land-based recreation; and
- low – diving, military activities,[aa] hovercraft, education and research, low flying aircraft.

6.131 These activities are usually very localised and vary significantly in their potential impacts. Impacts arising from such activities are therefore most appropriately dealt with at the local level where the most relevant knowledge and expertise can be brought to bear.

By-law making powers[bb]

6.132 Of the activities identified above, amendments to existing fisheries and licensing controls will address impacts arising from bait digging / collection, unregulated fisheries, recreational fishing, and unlicensed dredging.

6.133 The work by Hull University demonstrated that the other impacts that we need to address are those arising from recreational and tourism-related activities.

aa Although military activities were included in the consultants report, we do not consider them to be unregulated. They are not therefore included within this analysis and would not be covered by the proposed mechanisms.

bb Consideration will be given to whether a by-law making power is the most appropriate mechanism for use in Welsh and Northern Irish waters.

6.134 We therefore propose to introduce a power for the MMO to make by-laws to control the impact of such unregulated activities on MCZs and important marine species. We propose that they will be used to control activities:

- that are having, or are likely to have, a damaging impact on designated and potential MPAs, including MCZs or marine SACs and SPAs;
- that are having or are likely to have damaging effects on the features for which marine protected areas are designated;
- that are preventing, or are likely to prevent a marine protected area from meeting its objectives; and
- that are having, or have the potential to have, a negative impact on the effective conservation of important marine species.

6.135 The proposal to use by-laws to control unregulated activities received broad support from respondents to the 2006 consultation exercise. Respondents thought that by-laws should be capable of wider application than just to marine protected areas.

6.136 By-laws are a very effective regulatory control providing clarity and certainty to individuals. They make clear what is, or is not, permitted in specified areas and / or at specified times, for example by excluding specified activities or introducing restrictions such as speed limits. They can:

- apply for a specific season or period of time;
- apply over a specific area; and
- enable control of an activity/impact to a level that is not damaging.

6.137 We propose that by-laws may be applied to control unregulated activities, wherever they occur, when it can be demonstrated that they have a significant impact on achievement of a MCZ's objectives or on the conservation status of an important marine species. They should be used to control specified activities in a specified manner. For example, by excluding activities such as anchoring from specified areas to minimise damage to benthic habitats and by applying speed limits to reduce noise impacts.

6.138 These controls would be introduced in cases where voluntary measures were insufficient to prevent unregulated activities from causing significant damage to protected areas, areas under consideration for designation as protected areas, or mobile marine species at key life stages.

6.139 However, by-laws for unregulated activities should not be used where other controls, such as those to manage fisheries, exist and can be used to control damaging impacts. In effect this means that by-laws are only likely to be appropriate to control recreational and tourism-related activities, and possibly educational and research activities.

6.140 It is likely that the need for action will be identified by the statutory nature conservation agencies. The MMO would then use its regulatory expertise to:

- consider the need for action in the context of the UK marine policy statement and the marine plans that implement it;
- determine the most appropriate measures to control activities;

- develop appropriate by-laws or interim measures; and
- enforce the resulting measures.

Role of voluntary measures

6.141 Many recreational activities are overseen by clubs that have introduced voluntary mechanisms such as codes of conduct to manage impacts. These have often proved successful and in view of this, efforts should always be made to make the best use of voluntary measures before introducing by-laws. Where it can be demonstrated that there are still significant impacts or risks of impacts despite the presence of voluntary measures, or those voluntary measures are unlikely to be effective, by-laws should be considered.

6.142 Voluntary mechanisms often fail as a result of the actions of just a few individuals within a community. We do not expect the introduction of by-laws to affect those already acting in accordance with voluntary agreements.

Case study: The role of voluntary measures – anchoring in the Helford Estuary

In the Helford Estuary in Cornwall, areas of seagrass habitat were being damaged by the anchors of visiting yachts – the bay was a popular lunch stop for day sailing.

Since the area is marked on Admiralty charts as an anchorage, and there is no statutory harbour authority for the area, a voluntary approach to control anchoring was developed. Warning buoys with signs have been placed at the seaward limit of the seagrass, requesting yachts to anchor outside the buoyed area. Postcards with the area marked on an aerial photograph and an explanation of the impacts have also been widely circulated in local yacht clubs.

The voluntary approach has been extremely successful, with self-policing and generally high compliance.

Consultation

6.143 Where the need for a by-law is identified for an established MCZ or for the purposes of species conservation, the consultation process outlined for MCZs would be followed (see 6.52 – 6.56).

6.144 Stakeholders the MMO will be expected to consult in preparing by-laws include:

- affected businesses, sectors and those with an interest in an area proposed for a by-law (in as far as these can be identified);
- the statutory conservation agencies; and
- any bodies or organisations involved in managing activities within an area proposed for a by-law.

6.145 As with MCZs, we would expect that a Regulatory Impact Assessment (RIA) identifying the likely costs and benefits accompany proposals for the introduction of new by-laws.

6.146 When a site is under consideration for designation as a MCZ we propose that any proposed management measures, including by-laws, should wherever possible form part of the consultation exercise.

Licensing mechanism

6.147 In the marine environment, it is often the case that it is only above a certain level that an activity will have a damaging effect on a site or feature of conservation interest. It may not, therefore, be necessary in all cases to exclude the full extent of recreational, tourist or other activity from an area to ensure that a significant impact on a site or feature is removed. It is important, therefore, that the by-law provision enables the control of the level of an activity rather than simply banning it outright, allowing a limited amount of activity to continue to take place.

6.148 For example, where whale watching tours operate in large numbers they may impact on local biodiversity. Rather than exclude all tour operators from an area it may be more appropriate to limit the number of operators, and hence their impact, in an area at any one time.

6.149 To ensure we can take a proportionate approach to managing activities in areas covered by by-laws, we propose that licences should permit activities to continue to the extent that they do not cause inappropriate impacts. We will consider opportunities for cost recovery in any licensing scheme that is set up.

Confirmation of by-laws

6.150 The power to confirm by-laws will rest with the Secretary of State (or where appropriate the devolved administration). This will provide the opportunity to consider any outstanding unresolved issues and to verify that alternative management approaches have been properly considered.

Interim measures

6.151 Although we plan to speed up the by-law making process it can currently take 12 months or more to go through the full procedure for adopting new by-laws. This could result in unacceptable conservation impacts occurring before suitable by-law or site-based controls can be put in place.

6.152 To address the potential risk caused by the length of time it takes to make and introduce a by-law we propose that the MMO will be able to introduce interim measures to control unregulated activities at short notice.

6.153 Interim measures will be used to manage the same activities as by-laws (see 6.134). The circumstances under which it would be appropriate to do so would include cases where new information demonstrates that significant damage is occurring or imminent as the

result of an unregulated activity or where a new site is identified which is at particular risk. These measures would only be applied to:

- a designated MCZ or European marine site;
- a proposed MCZ or European marine site; and
- a nationally important marine species.

6.154 We propose that this could be used immediately a threat is recognised but would be limited to a maximum of six months duration. This could be extended a further six months but would only generally be done where it can be demonstrated that action is being taken to introduce more appropriate by-law or site-based controls.

6.155 Interim measures should only be used where voluntary measures are inappropriate or ineffective and where no other controls exist that can control the impact. Some essential procedural safeguards would be built into the system to ensure that interim measures introduced are necessary, proportionate and well formulated.

6.156 Where the rights of an individual are affected by the introduction of interim measures we propose that they be entitled to appeal. Restrictions could be revoked or amended should the appeal be successful.

6.157 The MMO would keep the need for interim protection under review and would have the ability to amend or revoke measures where circumstances required it.

Duty to make by-laws and use interim measures

6.158 We propose that all public bodies will be required to ensure that appropriate management measures are put in place on MCZs to deliver site objectives. They will need to ensure that activities requiring their permission are only permitted where they do not have a significant negative impact on the achievement of a site's objectives.

6.159 The MMO will need to ensure by-laws are in place to control recreational, tourist and other unregulated activities where they are having, or are likely to have, a significant impact on the achievement of MCZ objectives. This duty will also apply to the making of by-laws for the purposes of species protection and in relation to interim measures.

Enforcement

6.160 We want to ensure that all current and new conservation management arrangements, including those introduced by the Marine Bill, can be effectively enforced.

6.161 A range of bodies have enforcement responsibilities in UK waters but none have the full range of powers, responsibilities and capabilities to effectively enforce new and existing nature conservation legislation. Research has indicated that the current arrangements can often result in complexity and confusion.[53]

6.162 To rationalise, simplify and strengthen enforcement arrangements in the marine area we propose to give the new MMO responsibility for the enforcement of nature conservation

legislation in UK offshore waters, territorial waters adjacent to England, and internal waters in England (see section 8). This section relates to nature conservation functions in those areas only.

6.163 We propose to develop an integrated, modernised and effective suite of enforcement powers that can be used for nature conservation offences.

6.164 Other legislative regimes such as marine licensing and fisheries powers contribute to the conservation of marine species and habitats. These would complement the marine nature conservation functions discussed here.

6.165 Enforcement officers would have powers to carry out all stages of enforcement of marine nature conservation legislation including:

- crime prevention, education and awareness raising;
- compliance monitoring;
- enforcement action;
- evidence gathering; and
- prosecution of offences.

6.166 In addition, we propose to establish new powers for the Secretary of State to change the organisational arrangements for marine nature conservation enforcement and to appoint and empower additional enforcement officers. This would provide the flexibility to respond to future changes in enforcement needs.

Police liaison

6.167 The MMO would develop a clear working relationship with the Police, who would also retain their ability to enforce wildlife crime in the marine area.

6.168 Although the MMO would generally seek to handle enforcement cases on their own to minimise pressures on Police resources, the Police will have powers and expertise that are not available to the MMO. In a limited number of cases, it is likely that it would be necessary to seek to refer cases to them, for instance where it is necessary to arrest an offender, or where detention of an offender is required following refusal to provide proof of identify.

6.169 There may be circumstances where wildlife offences in the marine area fall outside of the expertise of the MMO, for instance the illegal trade by ship of protected species. Enforcement of these offences generally requires a high level of knowledge and expertise, perhaps with the attendance of a veterinary surgeon. In these instances, they would escort the vessel to a convenient port and refer the case to the most appropriate enforcing body (e.g. Police or other specialist enforcement agents such as Customs or Wildlife Inspectors).

cc We are working with the devolved administrations to assess the most appropriate way of ensuring effective enforcement in waters over which they exercise responsibility.

6.170 Defra, the devolved administrations and the countryside agencies already work closely with the Police to combat wildlife crime (for example the Partnership for Action Against Wildlife Crime). These arrangements would continue and develop in light of changes to legislative powers.

Co-operative working

6.171 There would be some circumstances where other enforcement bodies are better placed to enforce nature conservation legislation in particular sea areas, because they have greater local presence, capability or expertise.

6.172 This is likely to be the case in the inshore area where controls on unregulated activities would be most likely to be introduced, but the MMO would lack the capacity to provide an effective enforcement presence.

6.173 Bodies such as the SFCs, Maritime and Coastguard Agency (MCA), the Environment Agency, and Port and Harbour Authorities may have capacity to take on an enforcement role in inshore waters.

6.174 We propose to enable the MMO to enter into agreements with other enforcement bodies to undertake enforcement in specified locations and for specified purposes. The MMO would be able to provide officers within the relevant organisation with the necessary powers to undertake these functions.

Powers and functions

6.175 We propose to equip enforcement officers within the MMO with a suitable suite of powers for the enforcement of marine nature conservation legislation.

6.176 The basic powers would be similar to those used by British Sea Fisheries Officers (BSFO), which are being modernised as set out in section 7 and which will also be used for nature conservation enforcement under the Offshore Marine Conservation Regulations 2007:

- *Stop and search individuals and vessels*. Enforcement officers would have the ability to require a vessel to stop and do anything that will facilitate the boarding of the vessel by the officer in order to ascertain whether an offence is being or has been committed.
- *Seize and detain vessels and or items for evidence.* If they believe there are reasonable grounds for believing that an offence has been committed, an enforcement officer could require the master or person in charge to take it and its crew to the nearest most convenient port or landing area and detain, or require the master or other person in charge to detain (for the purpose of evidence gathering) the vessel in port or at such landing area. Once detained, enforcement officers would have the power to seize and detain items that might be evidence of the commission of the offence or may be liable to forfeiture by a court.
- *Board, enter and inspect vessels.* Enforcement officers would be able, at all reasonable hours, to stop, board, search and inspect any vessel within British fishery limits or any offshore marine installation or person, or any British vessel within the UK Continental Shelf in order to ascertain whether an offence is being or has been committed on or from the vessel or offshore marine installation.

- *Make enquiries and examine things.* In order to find out whether an offence has been or is being committed, enforcement officers would have the power to make any inquiry of any person or examine anything there.
- *Take specimens or samples.* Enforcement officers would have the ability to require any person on the vessel, offshore marine installation or at the premises, who has a specimen in his possession or control to make it available for inspection by him.
- *Require documentation and take photographs.* To ascertain whether an offence has been or is being committed, enforcement officers would be able to require any person on the vessel, offshore marine installation or at any premises or vehicle, to produce any document which is in his possession or control and may take copies of any such document, and take photographs of anything he believes is evidence of an offence.

6.177 New powers would be required to enable enforcement officers to carry out some of the roles set out above. These include:

- *Issue and recover penalties.* Enforcement officers would have the power to issue fixed penalty notices to persons committing a conservation offence.
- *Delegation of functions/Cross warranting.* The MMO would have the power to delegate specific enforcement powers and functions to other bodies and to warrant individual officers within those bodies with the powers necessary to enforce conservation provisions within their area.

Enforcement toolkit

6.178 We propose that the following sanctions will be made available when a conservation offence has been committed:

- *Fixed penalties.* Where an offence has been committed under the proposed nature conservation by-laws the MMO will able to issue a fixed penalty notice. A fixed penalty system would avoid disproportionately criminalising activities and the need for lengthy and costly court intervention. Fixed penalties will apply where minimal evidence is required. They would only apply to offences where evidence of commission of the offence is available at the point of detection. The level of penalty will reflect the seriousness of the offence but offer sufficient incentive for the offender to pay rather than go to court.
- *Fines.* Where a case is taken to court we propose that in the first instance it is dealt with by the Magistrates' court which will have the power to issue fines on conviction. We would expect those undertaking commercial operations and making profit from breaching by-laws to be subject to more substantial fines.
- *Confiscation of assets.* The MMO will be given the power to confiscate assets used in the commission of an offence. The court will be able to order forfeiture of any assets, including profits gained during the commission of an offence.
- *Custodial sentences.* Where other enforcement measures have been tried and in the case of the most serious persistent offenders, we propose that the court is able to impose custodial sentences of up to two years on offenders.

6.179 In addition, where an activity results in damage to a MCZ, the MMO would be able to demand that the offender undertake remedial action. Where someone fails to remediate damage, the MMO may take steps to undertake remedial operations and recover its expenses of doing so from the person who carried out the unlawful activity in question.

6.180 In determining which sanctions should apply to an offender it is important 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. This determination will rest with the MMO as enforcing body, or the courts if a case progresses to that stage. We would expect the MMO and/or the courts to consider the severity of the sentence in comparison with similar offences under, for example, the Wildlife and Countryside Act 1981.

6.181 None of the offences outlined in this section will apply to:

- a public body acting in the exercise of its functions;
- any activities contributing to national security and defence;
- the Secretary of State or relevant devolved administration or anyone acting on their behalf and in accordance with their functions; and
- any activities governed by European or international law where the UK does not exercise competence, such as fishing activities governed by the CFP.

6.182 Penalties relating to other offences are outlined in the relevant sections of the White Paper.

7. Modernising marine fisheries management

Our Aim

To strengthen fisheries and environmental management arrangements so that more effective action can be taken to conserve marine ecosystems and help achieve a sustainable and profitable fisheries sector.

Summary of our proposals

7.1 In this section of the White Paper we set out proposals that will:

- modernise inshore fisheries and environmental management arrangements by establishing a clear purpose and duties for Sea Fisheries Committees (SFCs) in England. We will also improve their evidence-based decision-making; update their by-law making and enforcement powers and enhance their funding arrangements;
- strengthen the operation of Several and Regulating Orders used to establish and maintain local shellfisheries by removing some of the disincentives to applying for Orders and by making practical improvements to the way they operate;
- enable a more active approach to managing recreational and unregulated fishing activities through new powers to introduce a chargeable rod licence as well as measures to set catch limits and to regulate fishing undertaken from the shore; and
- update and strengthen enforcement powers including improved powers to tackle Illegal, Unreported and Unregulated (IUU) fishing, implement a system of administrative penalties for minor offending in the commercial sector; and ensure that we can use our existing vessel licence charging powers to recover the costs of licence administration more flexibly than is currently possible.

7.2 Regulation of fisheries is a function devolved to each of the four fisheries administrations in the UK. Our proposals on managing marine fisheries apply in relation to England and, where indicated in each of the sections below, in relation to Wales and Northern Ireland.

The Issues

7.3 Fishing is one of the many activities that take place in the marine environment. It provides important socio-economic benefits, especially to coastal communities, as well as a valuable and nutritious food source. However, there is an environmental impact and some fishing activities threaten the integrity of the marine environment, including the long-term sustainability of fish stocks. Delivering environmentally and economically sustainable fisheries is an integral component of achieving the Government's overarching marine vision of "clean, healthy, safe, productive and biologically diverse oceans and seas" and achieving the right balance between socio-economic benefits and environmental costs is essential.

7.4 The fisheries sector in the UK is extremely diverse and for the most part is subject to extensive regulation. Through our proposals we are seeking to strengthen, and simplify where possible, existing regulation to improve the environmental and economic sustainability of fishing activities. We believe that there is a positive future for the fisheries sector and whilst there is still much to do to realise the aim that was set out in 'Securing the Benefits'[13] the Marine Bill will play an important part in progressing this agenda.

7.5 Our proposals for managing marine fisheries cannot stand on their own and must mesh with our intentions for managing other human activities in the marine environment through a system of marine planning, modernised marine licensing and strengthened marine nature conservation. Taken together our proposals will provide the tools to influence human activities in the marine environment in a more holistic and strategic way.

Regulating Better

7.6 As part of the Government's wider agenda for regulating better we are committed to the simplification of fisheries legislation and the reduction of the administrative burdens that this places upon the fishing industry. There are a number of ways that we propose to deliver this. We intend to:

- streamline a range of legislation covering fisheries and bring wider benefits including making fisheries legislation more transparent, comprehensible and accessible to fishermen, regulators and others operating in the marine environment. It will help to ensure provisions are up-to-date and compensate for the quantity of new fisheries legislation;
- introduce a number of new requirements that will help our delivery bodies regulate better;
- overhaul, modernise and simplify the Victorian legislation on which SFCs operate. This will include new requirements to undertake full consultation and carry out cost benefit analysis of proposed by-laws through the use of Regulatory Impact Assessments (RIAs);
- pursue improvements to legislation underpinning Several and Regulating Orders for shellfisheries including clarifying the powers of grantees and making enforcement more effective;
- modernise, rationalise and streamline fishery officers' enforcement powers; and
- offer financial administrative penalties for minor fisheries offending, as an alternative to taking such matters to criminal courts.

Consultation

7.7 We signalled our intention in the last consultation on a Marine Bill to pursue the above measures. Respondents were supportive of our ideas and we have listened to their views and those of other stakeholders in shaping this package of measures. We have also undertaken a number of targeted consultations and held meetings with the fishing industry, angling sector and others as we developed our policy proposals.

Sea Fisheries Committees in England

Introduction

7.8 Our coastal waters support varied and productive ecosystems that sustain extensive fishing industries as well as tourism, angling, diving, boating and other activities. We want to conserve these ecosystems to provide rich resources today and for future generations.

Human activities pose the biggest threat to them, most acutely in our inshore waters (generally within six nautical miles of the coastline) where there is greatest interaction between man and the marine environment.

7.9 There is a wide range of inshore fishing activities taking place around our coasts. These are often characterised by fishing vessels of less than 10 metres in length making day trips from local fishing ports. These vessels often leave harbour early in the morning and engage in trawling, netting and lining for a variety of fish species including cod, plaice, sole, bass, sprat, herring and mackerel. There are also extensive shellfisheries such as those for crabs, lobsters and scallops using pots, creels and dredges. Fisheries exploited by hand gatherers operating in the inter-tidal zone for species such as mussels and cockles are common in some coastal areas.

7.10 Inshore fisheries management in England is the responsibility of SFCs. They were originally established in the 19th century through the Sea Fisheries (Regulation) Act 1888, since consolidated in the Sea Fisheries (Regulation) Act 1966. The Committees can make by-laws for the management and conservation of their districts' fisheries and enforce some national and EC fisheries legislation. Their original purpose has been extended to enable them to regulate fishing activity on wider environmental grounds, such as for the protection of sensitive reefs from fishing activity, as well as for stock conservation. In certain coastal waters and estuaries, the Environment Agency (EA) has the powers of an SFC. Local control and stakeholder involvement in SFCs is a critical factor. This is achieved by appointing to SFCs people knowledgeable about the fishing industry and other relevant interests (e.g. recreational sea angling) as well as through local input to proposed by-laws.

7.11 Defra Minister, Ben Bradshaw announced on 20 June 2006 the reform of SFCs in England through the Marine Bill. This was in response to a number of reviews of inshore fisheries and environmental management.[2, 9, dd] Those reviews considered options for strengthening management arrangements, including abolition of SFCs, and suggested that any new delivery structure should have a strong regional/local base with the full involvement of stakeholders. An enhanced role in the protection of the wider marine environment was also suggested, as well as greater involvement of recreational sea anglers in management decisions.

7.12 The challenges of inshore fisheries and environmental management often relate to conditions in very local areas such as an individual bay or estuary and require local solutions. Local input to decision-making and local accountability that flows from their status is a key strength of SFCs and means they are able to get to the root of these challenges and to negotiate practical solutions. These factors weighed heavily in the decision to retain and reform SFCs, which is consistent with the broader thrust of Government policy to devolve more responsibility to local people. The SFC model was the option preferred by respondents from across the spectrum of stakeholders who commented on the 2006 Marine Bill consultation.

7.13 Retaining a strong regional focus supports the increased emphasis of the reformed common fisheries policy on local management responsibility through Regional Advisory Councils or regional fisheries managers.

dd The Inshore Fisheries Working Group Report presented to Defra ministers in March 2005.

7.14 We have developed a package of reform measures to ensure that SFCs can deliver their responsibilities effectively and in line with good regulatory practice. We are also making proposals in response to arguments for consolidation of the number of organisations delivering fisheries management.

Summary of our proposals

7.15 Under our proposals, we will equip SFCs to deliver a fully effective management service fit for the 21st Century. In particular we plan to:

- provide SFCs with a clearly defined purpose and duties;
- modernise their outdated by-law making and enforcement powers;
- further delegate local management matters currently delivered by Defra to SFCs;
- put SFCs on a firm legal footing and address problems with their funding;
- increase their accountability;
- improve their evidence-based decision-making and introduce requirements for RIA; and
- streamline management responsibilities currently performed by SFCs, the Marine Fisheries Agency (MFA) and the EA in the inshore zone, and provide for closer working between these and other organisations.

7.16 Taken together this will ensure SFCs play an effective role in delivering conservation and sustainable management of the marine environment.

Geographic scope

7.17 These proposals apply in relation to SFCs in England. SFCs in Wales are the responsibility of the Welsh Assembly Government, which announced in September 2006 that it is to consult on proposals to take full responsibility for fisheries management in relation to Wales. Defra, 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.

Detailed proposals

Purpose and duties

7.18 Legislation underpinning SFCs does not establish a clearly defined purpose. This means that SFCs are not clear about the precise scope of their responsibilities and in some instances have not taken action in situations where they are empowered but arguably have not been required to do so. In these cases, Defra has needed to act on matters that we believe would be better resolved at a local level by SFCs. The absence of a clearly defined purpose also creates difficulties for SFCs when negotiating the levy with their constituent local authorities because the scope of activities needing funding is not clear.

7.19 We intend the core purpose of SFCs to be the sustainable management of fish stocks in the marine environment through an ecosystem-based approach. Their focus will remain

firmly on fisheries activities and their impact on the marine ecosystem. In particular, SFCs should:

- sustainably manage fisheries impacts on marine ecosystems, having due regard to a precautionary approach;
- maintain and, where necessary, actively contribute to the rebuilding of living aquatic resources and their supporting ecosystems, thereby enabling sustainable exploitation; and
- optimise the social and economic benefits derived from living aquatic resources whilst ensuring their long-term sustainability.

7.20 We propose duties on SFCs, including those to:

- take timely management action (e.g. to introduce a by-law or other measure) in pursuance of their core purpose;
- undertake appropriate monitoring and enforcement of fisheries and marine environmental legislation; and
- collect data relating to fisheries and the impact of fishing activities on the marine ecosystem consistent with an ecosystem-based approach to fisheries management.

Constitution and governance

7.21 SFCs and their districts are established only upon application by local authorities. This has led to funding difficulties and gaps in coverage around our coasts, where constituent authorities have withdrawn support for their local SFC. This could lead to the possibility of established SFCs disbanding themselves, leaving inshore fisheries unmanaged.

7.22 We intend to remove the permissive nature of local authority engagement. We plan to require all upper and single tier authorities with a sea or estuary coastline (tidal waters) to participate in and contribute to the running of its local SFC(s). We will also clarify the status of SFCs to enable them to charge for services undertaken on behalf of another authority, keep receipts and assign ownership of capital assets.

7.23 The membership of each SFC is 50% local authority members (upper and single tier authorities), one member from the EA, and the balance appointed by the Secretary of State for Environment, Food and Rural Affairs as able to represent local fisheries interests or having knowledge of local marine environmental matters. Appointments by the Secretary of State last for four years and are typically chosen to ensure geographical coverage and according to their experience of different types of fisheries and marine interests (e.g. potting, angling, trawling, aquaculture, etc.).

7.24 A SFC may appoint one or more further members with knowledge of or expertise in marine environmental matters for those occasions when it is considering any proposed by-law for marine environmental purposes or any proposed amendment or revocation of any such by-laws. The local District Inspector of the MFA is normally invited to Committee meetings as an observer.

7.25 We intend to improve the operation of SFCs through the following changes to their membership:

- Local authority membership – The strength of SFCs as managers of coastal fisheries depends on the involvement of local fisheries and environmental interests. We wish to reinforce this, but for the Committees to remain a manageable size local authority membership must be reduced. We propose to reduce the proportion of local authority members from one half to one third. To enable local authorities to retain control over their funding contribution we intend that votes concerning the levy will be restricted to local authority members.
- 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.
- 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.

7.26 Some SFCs currently have over 30 members. This can hinder decision-making and make for cumbersome operation. There is a risk the problem will be exacerbated if, in future, there are fewer, larger SFCs. We therefore propose that Committees should comprise a total of 15 members. This would provide for a maximum of five seats for local authorities. In cases where there are more or less than five constituent local authorities, seats shall be awarded proportionately according to the length of coastline (and therefore funding contribution) of each authority. We propose that the balance of the membership should comprise one member from the EA, 1 from NE, 1 from the MMO and 7 from the fishing industry, anglers, conservation bodies and other relevant interests.

Table 5: Proposed SFC membership structure

Voting members	**No. of seats**
Local authorities (upper and single tier)	5
Marine Management Organisation	1
Environment Agency	1
Natural England	1
Fisheries, angling and other relevant interests	7
Total	**15**

7.27 At present, the Secretary of State appoints a proportion of SFC members, those with fisheries, angling and other relevant interests. We intend to transfer this task to the MMO. Bringing the MMO and SFCs together in this way will help foster closer working relationships between the two organisations. It would also distance Defra from matters that should rightly be dealt with at an operational level. To ensure a balanced representation of interests, we intend to establish a clear framework under which

appointments must be made, providing as much flexibility as possible so that the membership structure could be amended in light of experience. Local authorities, the EA and NE will appoint their own members.

7.28 We propose that appointments should 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.

7.29 In accordance with a code of conduct required by the Local Government Act 2000 (LGA 2000), members of SFCs appointed by the Secretary of State are able to debate at Committee but must not vote on items where they may directly benefit from the decision of the Committee. There is an anomaly where Secretary of State appointees to Committees comprising more than one constituent council are not bound by the requirements of the LGA 2000. We propose that all SFCs will be covered by the LGA 2000.

7.30 The Association of Sea Fisheries Committees (ASFC) performs some coordination of SFCs and their work. The ASFC was established on a voluntary basis some years ago and undertakes such tasks as replying on behalf of all SFCs to national consultation exercises and representing SFC interests. The ASFC's function could be enhanced to include work such as promoting consistency in by-laws; promulgating best practice; negotiating the provision of services for the benefit of all SFCs; and coordinating recruitment and training programmes.

7.31 We believe effective coordination would bring real benefits to the operation of all SFCs and where SFCs choose to enhance the role currently performed by the ASFC we will ensure all reasonable costs are met from the general expenses of the Committees.

By-laws

Making by-laws

7.32 We intend to enhance the by-law making process currently set out in the Sea Fisheries (Regulation) Act 1966 and in the Sea Fisheries (By-laws) Regulations 1985 so that they are made in accordance with good regulation principles. The key change will be a requirement for SFCs to consult fully on proposed by-laws, including consultation with the EA, NE, neighbouring SFC(s) and the MMO. An RIA[ee] must accompany the consultation in order to encourage a more rigorous approach to assessing the cost and benefits of proposed measures.

7.33 We also want SFCs to be able to introduce interim measures at short notice in particular circumstances. These could be used to prevent, stop or introduce restrictions on a damaging activity (e.g. to regulate a new type of destructive fishing gear or to regulate a long-standing practice in the light of new information). In these circumstances, SFCs would not be required to go through the full procedure for adopting new by-laws. This would remove a current barrier to SFC's acting effectively to address, for example, threats from fishing activity to sites such as Special Areas of Conservation (SACs).

ee http://www.cabinetoffice.gov.uk/regulation/ria/overview/the_ria_process.asp

7.34 Interim measures would be exercisable immediately, but with safeguards. The measure would be time limited applying for an initial period of up to 6 months, extendable for a maximum of a further 6 months. An interim measure would only be available in the event of circumstances that could not have been reasonably foreseen to prevent it being used to circumvent the normal by-law making process. It will not be possible to re-confirm an interim measure upon expiry nor to introduce one retrospectively. The Secretary of State and SFC would be able to revoke an interim measure if circumstances changed or if there was evidence that the measure was not effective in tackling the threat for which it was introduced. With an interim measure in place, SFCs would have time to pursue a by-law in the usual manner if a permanent measure was considered necessary.

7.35 We will expect SFCs to regularly review their by-laws and any interim measures and to amend or revoke these if they are not effective.

By-law scope

7.36 SFCs are able to introduce by-laws applicable throughout their districts for the management of fisheries as well as for wider marine environmental purposes, such as the protection of species and habitats from fishing activity. We intend to update and strengthen these powers to address a number of deficiencies that have been identified by SFCs and other stakeholders. Our key proposals are set out below:

7.37 Marking of fishing gear – we intend to clarify SFCs' powers to require, through by-law, the marking of fishing gear carried on board or deployed within their districts. Marking of fishing gear (e.g. pots, lines, trawls, etc.) is a way of attributing ownership by attaching a marker buoy or a tag(s) usually displaying the name and registration number of the vessel from which they were deployed. Different configurations of marker buoys may also be used to signal the direction in which the gear extends. Marking of fishing gear will enable SFCs to regulate more effectively. It also helps avoid conflict between vessels using different types of gear, which can cause extensive damage, and claims for compensation (e.g. conflict between static and towed gears). It would also mean that SFCs will able to introduce measures that are consistent with EC requirements on marking of gear in offshore waters.

7.38 Permit schemes – a number of SFCs operate permit schemes for fisheries within their districts. Permits help SFCs obtain information about the number of vessels/ people operating in the fishery. We intend however, to put beyond doubt the use of permit schemes to control fishing effort for conservation and enforcement purposes by enabling SFCs to restrict the number of permits issued. We will also clarify that SFCs should be able to attach reasonable conditions to permits.

7.39 SFCs are currently able to regulate activities involving the taking of sea fish and shellfish (including crustaceans and molluscs). They are not, however, able to regulate a number of high impact activities such as bait digging for ragworms and lugworms, or seaweed gathering. We believe SFCs should be able to manage such activities and propose therefore to extend SFC competence to cover living aquatic resources.

7.40 To reduce inconsistency between fisheries regulations and to strengthen SFC management, we will extend the list of actions that may be controlled by SFC by-laws to include: fishing, taking, retaining on board, trans-shipping, landing, transporting, storing, selling,

displaying, exposing or offering for sale or possessing living aquatic resources. This would bring by-law making powers into line with Common Fisheries Policy (CFP) provisions, with national fisheries legislation, would close potential loopholes in the law, make enforcement easier and increase consistency.

7.41 Basic information about the numbers of fish caught, where they were caught and the fishing effort employed is fundamental to effective fisheries management. Without this information, it is not possible to set realistic catch or effort limits or to know when and where seasonal or area closures might serve a useful purpose. Many SFCs already operate limited catch recording schemes but we intend to provide SFCs with a clear authority to require the provision of the full range of information they require.

7.42 SFCs need to undertake scientific research and other related operations to properly discharge their management responsibilities. This may involve the collection of undersize specimens, fish tagging and use of gears that do not comply with fisheries legislation (e.g. the use of undersize mesh). This work may be carried out by the SFC itself or delegated to contractors. We believe SFCs should be able to undertake this work under a general exemption from fisheries legislation.

7.43 The inland jurisdiction of SFCs ends at the high water mark in most cases. This can lead to monitoring and enforcement difficulties for SFC officers when pursuing infringements inland. It also means that SFCs are not able to introduce by-laws that may need to extend inland of the high water mark in order to be fully effective. To address these issues we intend to extend the jurisdiction of SFCs throughout the area of any council liable to pay, or contribute to the payment of, the expenses of the Committee.

7.44 Water Framework Directive (WFD)[26] – SFCs may in future need to introduce by-laws relating to fisheries in support of WFD objectives. The Directive covers estuarine and coastal water out to 1nm from land. Its main objective is to enhance the status and prevent further deterioration of aquatic ecosystems and associated wetlands through the achievement of 'good ecological status'.

7.45 Fishing has been identified as a significant pressure in coastal waters that may prevent water bodies from achieving 'good ecological status'. We will ensure SFCs will be able to take action in these circumstances, for example, to reduce or prevent damage to bottom habitats resulting from the use of towed fishing gears.

Enforcement

7.46 Officers appointed by an SFC have powers to undertake monitoring and inspections of fisheries activities taking place within their jurisdiction. These range from powers to stop and search a vessel to powers of seizure of suspected undersize fish and illegal gears.

7.47 Many of these powers need reform to take account of modern fishing practices and to ensure SFCs are properly equipped to discharge their responsibilities in the future. We intend to update the powers of SFC sea fisheries officers and will bring them into line with the powers of British Sea Fishery Officers (BSFOs) as discussed further at 7.143 – 7.147. This is part of our plan to establish a comprehensive list of powers from which different enforcement officers operating in the marine environment may draw.

Penalties

7.48 We believe penalties for by-law offences should be proportionate to the offence and act as a deterrent against future offences. The maximum fine available to the courts for a by-law offence upon summary conviction is currently £5,000. The courts may also order forfeiture of the catch and any net or other fishing gear.

7.49 In high value fisheries, a maximum fine of £5,000 does not act as a deterrent and is often not perceived as a proportionate penalty following a conviction. We will consider increasing the maximum fine available to the courts upon summary conviction, possibly to £50,000 in line with other fisheries legislation (e.g. failure to observe quota limits and for logbook offences). We will also consider a similar increase to the penalty for obstructing an officer of an SFC.

7.50 We intend to modify the courts' powers of forfeiture. In future, the courts should be able to impose a fine to the value of the catch and fishing gear, in lieu of forfeiture. This is because the courts and SFCs are not necessarily equipped to handle and dispose of large quantities of forfeited gear or catch. To overcome the practical difficulties associated with storing loose fish we will also extend powers of forfeiture to any box or receptacle used to store the forfeited catch.

7.51 Suspend or withdraw a permit – we believe the courts should be able to suspend or withdraw any permit issued by an SFC in cases where permit conditions have not been observed. This proposal would bring the court's powers into line with those available to ministers for other fisheries offences under Section 4 of the Sea Fish (Conservation) Act 1967.

7.52 Remedial action – We propose that the courts should be able to order remedial actions, or award reasonable costs to an SFC to cover remedial action, in cases where environmental damage has occurred. Human intervention to promote restoration of the environment at sea can be difficult and natural regeneration may be the most appropriate response. In such cases, compensatory remediation elsewhere in the environment might be appropriate.

Remedial Action

The are a number of examples where remedial or compensatory action may be appropriate:

- a person convicted for taking undersize lobsters might be required to contribute to a re-stocking programme operated by an SFC; and
- a person successfully prosecuted for scallop dredging in an area closed to fishing (for the protection of sensitive habitat) might be required to pay for research and monitoring into the damage caused and the rate of recovery. Such research would benefit the future management of that site and other sites.

7.53 Administrative penalties – To promote consistency in relation to fisheries offences we believe that SFCs should be able to offer an administrative penalty for offences against SFC by-laws in line with the national scheme of administrative penalties set out at 7.135 – 7.142. Administrative penalties for by-law offences will be separate from a national scheme because the legislation used for by-laws is different. We will pursue powers so that in future a system of administrative penalties for by-law offences could be introduced using the national scheme as a model. This would be subject to any requirements to meet standards of good regulation introduced in response to the Macrory[47] review.

Funding and administration

Funding

7.54 SFCs are funded by constituent local authorities with whom SFCs negotiate a voluntary levy. Some SFCs claim that these arrangements have resulted in insufficient funding for the full ranges of services expected of them. Some local authorities have opted out of contributing to their local SFC(s) altogether.

7.55 To strengthen SFC funding we propose that:

- all local authorities (upper and single tier authorities) with a sea or estuary coastline (tidal waters) shall be constituent members of an SFC;
- a levy for all reasonable expenses of the Committee in carrying out any of its duties shall be decided by the local authority members who will have exclusive voting rights on such matters; and
- the levy must be funded by the constituent local authorities.

7.56 As part of the new funding arrangements, we will enable SFCs to recover a proportion of their costs of operating permit schemes from those who directly benefit. The costs would include set up, monitoring and general management costs associated with operating permit schemes as well as costs of completing appropriate assessments required under nature conservation legislation.

7.57 Furthermore, we propose to enable SFCs to charge for services undertaken on behalf of other authorities and keep receipts. We will also ensure SFCs are able to assign ownership of capital assets (e.g. patrol vessels).

7.58 Modernising SFCs and imposing new duties on them will represent a new funding burden on constituent local authorities. A proportion of this will be offset through efficiency savings, such as increased cooperation with the MMO and the EA and through any reduction in the overall number of SFCs. Proposals for recovering the costs of operating permit schemes and for keeping receipts for work undertaken on behalf of another authority will also reduce the new burden.

7.59 We propose that the additional new burden will be met by central government through a one-off adjustment to the Revenue Support Grant.

Administration

7.60 SFCs need access to a wide range of services for their effective operation, including advice on employment law as well as legal and financial guidance. SFCs also need advice on drafting by-laws, taking prosecution cases, carrying out scientific research, enforcement training, etc. These are areas where a number of SFCs encounter difficulties securing adequate funding.

7.61 Some SFCs are able to use local authority resources whereas others employ their own expertise or buy in services. Certain SFCs operate sub-committees and advisory boards to assist the running of the Committee. We intend that the provision of such services and the operation of sub-committees and advisory boards should form part of the general running costs of SFCs and should be funded accordingly.

Working with others

7.62 SFCs operate alongside the MFA and the EA. Collaborative working has improved considerably in recent years and has addressed inefficiencies that can arise from overlapping jurisdiction. SFCs also work closely with other authorities operating along the coast and at sea including:

- harbour authorities
- Police Service
- Fire Service
- HM Revenue and Customs
- Natural England (NE)
- Fish Health Inspectorate
- local authorities (e.g. environmental health officers)
- Maritime and Coastguard Agency (MCA)
- Food Standards Agency
- The Crown Estate
- Gangmaster Licensing Authority
- Health and Safety Executive

7.63 Our proposals will strengthen the working relationship between SFCs and these organisations. We also intend that SFCs should be able to undertake functions in the marine environment on behalf of other authorities where empowered to do so. This is because SFCs have a significant sea-going and on-shore capability and extensive local knowledge and experience that could be used in a wider management role.

7.64 We envisage that SFCs will be able to provide enforcement services on behalf of the MMO in relation to wider marine nature conservation measures falling within SFC's geographic jurisdiction (for example, in relation to Marine Conservation Zones (MCZs) as proposed in 6.26 – 6.98). SFCs might also make available waterborne resources in the event of a local emergency (for example, as a command and control platform for the fire service); undertake water sampling; and enforce shellfish Several and Regulating Orders not held by SFCs.

Number of SFCs

7.65 The Bradley Review[9] proposed that the 12 SFCs in England and Wales might be reduced to about 6. Reducing the number of SFCs and increasing their size would improve the scope for a developed staffing and career structure. It could further improve collaboration with the MMO and the EA and drive efficiency savings though the better utilisation of expensive capital assets.

7.66 We will develop proposals later this year for any changes in the future number and borders of SFC districts in consultation with the Committees, the fishing industry and with other stakeholders. In doing so we will take account of factors such as existing fisheries management areas; the pattern of fishing activity; as well as political and administrative boundaries.

The Environment Agency

7.67 The EA has powers of an SFC in a number of estuaries. In this capacity, the EA does not operate a formal Committee nor is it able to levy local authorities for funding. The absence of a formal Committee and the resulting less direct involvement of local stakeholders can lead to difficulties when making and implementing by-laws. The absence of a clear funding mechanism has meant the EA must prioritise its resources to the Thames, Dee and a small number of estuaries in Cornwall.

7.68 As part of the exercise to review the number and borders of SFCs we will look at the arguments for transferring management responsibility for estuarine areas from the EA (acting as an SFC) to the adjacent coastal SFC.

7.69 We do not propose to change the EA's general fisheries duties (to maintain, improve and develop salmon, trout, eel and freshwater fisheries throughout its area of jurisdiction) nor its responsibilities as a competent authority under the WFD.

SFC Title

7.70 This reform represents a significant change for SFCs. Management of fish and shellfish stocks would remain a key focus but there would be greater consideration of wider environmental impacts. A change of name could be beneficial to mark the reform. Suggestions put forward for a new name include:

- Inshore Fisheries and Environment Authority
- Inshore Marine Managers
- Inshore Fisheries and Environmental Managers
- Coastal Fisheries and Environment Authority
- Coastal Waters Committees

7.71 In view of the potential benefits of a name change, we will consider a new title for SFCs, possibly Coastal Waters Committees.

Several and Regulating Orders for shellfish

Introduction

7.72 Sections 1 – 11 of the Sea Fisheries (Shellfish) Act 1967 (the Act) have two key aims. The first is to facilitate the establishment and improvement of shellfisheries (for private commercial exploitation) by granting a Several Order. The second is to preserve and improve existing (wild) shellfisheries that may be at risk from over-exploitation through the granting of a Regulating Order. Orders must specify the particular species of shellfish[ff] they relate to and currently can be made in relation to oysters, mussels, cockles, clams, lobsters, scallops, queen scallops and crabs.

ff Shellfish are defined in the Act under s.22 as including crustaceans and molluscs of any kind.

7.73 Regulating Orders either impose restrictions or make regulations (or both) respecting the dredging, fishing for and taking of shellfish specified in the Order. Such an Order is usually granted to a SFC or other public body. Orders confer the right of regulating the shellfishery in relation to the specified shellfishery, but do not confer property rights in those shellfish. They may also enable those to whom the Order is granted (grantees) to impose restrictions and make regulations, with the consent of the Secretary of State (for Orders in England) or the Welsh ministers (for Orders in Wales). Often they allow for the introduction of a licensing scheme within the shellfishery. They can also enable the grantees to levy tolls or royalties on those exploiting the fishery.

7.74 A Several Order grants an exclusive right to develop and exploit specified types of shellfish listed in the Order. In effect, such an order establishes a private fishery for the benefit of the members of the grantee (often a group of fishermen).

7.75 It is also possible to make Hybrid Orders combining Several and Regulating rights. Where such an order exists, it sets up a regulated fishery that either has within its boundary one or more areas designated as several fisheries, or allows one or more areas to be so designated by the grantees. The designated Several areas are leased out for private exploitation to companies or individuals by the Regulating Order grantee.

7.76 Orders may be granted for up to 60 years, although they are usually for shorter periods. Orders can be brought to an end early if the grantees are not carrying out their obligations.

7.77 There are currently 18 Several Orders, 7 Regulating Orders and 2 Hybrid Orders in England and Wales covering a total area of 224143 hectares. Several Orders range from a size of between 11 and 894 hectares and Regulating Orders range from 156 to 116,000 hectares. The dominant activity for current Orders is mussel cultivation and cockle fishing. An individual Several Order can generate a first sale value of around £0.5m and an individual Regulating Order up to £5m per annum.

7.78 The process of application, extension and operation of Several and Regulating Orders can be burdensome and costly. This means that over time more and more orders might lapse with adverse consequences for long-term sustainability, the marine environment and local economies. In England and Wales, there are currently 17 Orders that could lapse in the next 10 years.

7.79 Other difficulties arise because the extent of the enforcement powers of grantees of Regulating and Hybrid Orders is unclear. Clarity is also needed over the costs that can be recovered from those operating under these Orders by way of tolls or royalties. In relation to Several Orders, the practical ability to tackle infringements is also problematic.

Geographic scope

7.80 Several and Regulating Orders can be made in relation to England, Wales or Scotland out to a distance of six nautical miles from the usual baselines. Apart from proposals relating to enforcement which apply in relation to England only (see 7.85, 7.89 and 7.90), these proposals apply in relation to England and Wales.

Consultation

7.81 We consulted stakeholders in England during the summer of 2006 on a range of proposals to address these issues. Views submitted as part of that exercise helped shape our final proposals and these are set out below.

Proposals

Application process

7.82 Applying for Several or Regulating Orders and extensions to them can be expensive and burdensome. This is largely because a public inquiry is triggered in the event of even a relatively minor objection to the proposed Order. The same objection can trigger a second inquiry should there be an application to extend the period of an existing Order. The costs of dealing with an application including the costs of holding a public inquiry must be met by the applicant. Where a public inquiry is held the costs can range from £30,000 up to £100,000.

7.83 Our aim is to reduce the likelihood that a public inquiry will be called, which we understand can deter applicants. We plan to do this by removing the criteria under which a public inquiry is presently triggered. In future, public inquiries will only be held where serious or substantial issues are raised or where the Secretary of State or Welsh ministers consider that in the circumstances, an inquiry should be held.

Enforcement – Regulating Orders

7.84 Grantees of Regulating Orders have powers under the Act to enforce restrictions and regulations specified in their Orders. These regulations and restrictions can set quotas, limit access and restrict the types of activity permitted within the fishery. Those powers however, are ill defined. This has led to confusion on the part of grantees as to the extent of their powers to enforce Orders.

7.85 To address this problem we propose that for SFCs in England their sea fisheries officers' powers be extended so that they can enforce the provisions of Regulating Orders. This will allow local SFCs to provide enforcement services to grantees, should they request them.

7.86 SFCs are grantees of nearly all current Regulating Orders and it is our intention in future to grant new Regulating Orders only to SFCs as part of our proposals to reform inshore fisheries management arrangements in England.

Enforcement – Several Orders

7.87 Grantees of Several Orders are in general individuals or private companies. They own the specified shellfish on the bed and the taking, disturbing or damaging of the shellfish or the shellfishery by anyone else is prohibited. The Act places restrictions on the equipment allowed for fishing and on other activities that take place within a Several Order area.

7.88 The Act, however, does not give any specific enforcement powers to grantees of Several Orders. They must rely on the Police to follow-up any complaints of suspected theft or other offences.

7.89 We believe that for SFCs in England their sea fisheries officers should be empowered to enforce the law in relation to Several Orders in much the same way as we propose in relation to the provisions of a Regulating Order. SFCs however are not usually the grantees of Several Orders and therefore would only undertake enforcement activities where requested by the grantee.

Enforcement – Private shellfisheries

7.90 There are a number of privately owned shellfish beds. These are normally in relation to oysters and establish private rights in much the same way as Several Orders. Private oyster beds are also protected under the Act in the same way as several fisheries. To ensure that the shellfish cultivated under these rights can be effectively protected we plan in relation to SFCs in England to extend their sea fisheries officers' enforcement powers to include these private fisheries. SFCs would only use their enforcement powers where requested by the owner to do so.

7.91 Under these proposals, we will also extend to all privately owned shellfish beds the protection currently available under the Act in relation to privately owned oyster beds. This proposal will make for consistent management of both several and privately owned shellfisheries and will mean fishermen and others know where they stand when operating near shellfish beds.

Tolls and Royalties

7.92 At present grantees of Regulating Orders may be able to levy tolls and royalties on those exploiting the fishery and these must be applied in the improvement and cultivation of the fishery. We intend to clarify that grantees may levy tolls and royalties to cover start-up costs already incurred that are associated with applying for an Order as well as ongoing management costs once an Order is in place.

7.93 Start-up costs would include application costs, including costs of any public inquiry and outlay on any environmental assessments. Management costs would include stock survey, monitoring and inspection costs and the general administration of the fishery.

7.94 Clarifying the scope of tolls and royalties in this way will enable grantees of Regulating Orders to recover a proportion of the costs associated with the Order from those who benefit directly from it. As now, the tolls and royalties would be set out in each order thus safeguarding against unreasonable charges. Any subsequent increase in tolls and royalties would need the consent from the Secretary of State or Welsh ministers, again as they are now.

Offences

7.95 Grantees of Regulating Orders are usually able to issue licences to users of the fishery. The grantee, with the consent of the Secretary of State or Welsh ministers, may cancel a licence if the licence holder is convicted of two offences of contravening a restriction imposed by the Order.

7.96 This mechanism only applies however, where the licence holder is convicted and not where a person acting on behalf of a licence holder, for example the skipper of a fishing vessel, is convicted for offences of breaching a restriction imposed by the Order. This means that the licence holder may profit from illegal activity undertaken by the skipper of his vessel but is unlikely to face the prospect of prosecution and therefore any real prospect of the grantee cancelling his licence.

7.97 To address this we intend to make it clear that insofar as a vessel is used to commit an offence, the vessel master, owner or charterer or any one of them can be liable for that offence. This approach is consistent with other fishing vessel licensing arrangements.

7.98 In order for our proposal to be effective, it will be necessary for the grantee to only issue a licence to the master, owner or charterer of a vessel and for the vessel to be specified on the licence. This is already common practice.

7.99 As part of these changes, we plan to enable grantees to cancel licences following a single conviction, rather than two, subject to consent from the Secretary of State or Welsh ministers.

7.100 Under the Act, the maximum fine available to the courts for an offence upon summary conviction is currently £5,000. In high value shellfisheries this is neither sufficient to act as a deterrent, nor a proportionate penalty. We will consider increasing the maximum fine available to the courts upon summary conviction, possibly to £50,000, in line with certain other fisheries legislation and with our proposals to reform inshore fisheries management.

7.101 The extent of the fine in each individual case will continue to be for a court to determine. Raising the maximum will allow for a fine to be set at a level high enough to be a real deterrent to those committing fisheries offences.

Activities within a Several Fishery

7.102 The use of certain equipment for fishing and certain other activities within a several fishery is restricted under the Act for the protection of the specified shellfish, bed or fishery. We propose to introduce greater flexibility over the use of fishing gear, subject to certain safeguards. This is because some fishing gear currently prohibited (such as pots and creels) could be used without an adverse impact. Under this proposal, we will provide for such matters to be specified in the Order establishing the individual fishery. This proposal may also have the benefit of limiting objections to applications for new Several Orders from people who operate such fishing gear in the area of a proposed several fishery.

Lobster Orders

7.103 The Secretary of State, the Welsh ministers and the Scottish ministers may make orders prohibiting the landing and sale of lobsters carrying spawn. Amendments to the Act in 1978 in relation to Wales, and in 1999 in relation to Scotland have resulted in inconsistencies in procedures for making Orders. We intend to improve consistency by enabling the Secretary of State and the Welsh ministers to make orders without the need to act jointly with others.

Other improvements

7.104 In addition to the above proposals, we intend to pursue a number of minor amendments to the Act largely for simplification and consolidation purposes. These include allowing the Secretary of State and the Welsh ministers to make an Order in relation to any shellfish without first having to make Regulations to add a species of shellfish if it is not on the current list (see 7.72 above). Our proposals also include allowing the taking of edible crab that is carrying spawn or which has recently cast its shell for scientific purposes, currently prohibited under s.17 of the Act. Finally, we wish to ensure that information sharing between organisations can occur where appropriate.

Recreational sea angling and unregulated fishing

Introduction

7.105 Recreational sea angling can be defined as 'a leisure activity in which an individual uses a rod, line and hook to catch fish on a non-commercial basis'. The Drew Report[22] into the economic impact of recreational sea angling reported in 2002 that 1.1m households contain at least one member who had been sea angling in the past year and total expenditure by sea anglers resident in England and Wales on their sport (e.g. on fishing equipment, travel, food and accommodation) is estimated at £538m per year.

7.106 We will pursue a framework for the development of Recreational Sea Angling (RSA) recognising its economic importance and reliance on effective fisheries management. To fund delivery of some aspects of this work we propose to introduce a rod licence fee. We will also ensure powers are available to safeguard the sustainability of stocks by managing exploitation by sea anglers and unregulated fishermen. The planned provisions will:

- enable the establishment of a chargeable licensing scheme to deliver, though the funds generated, improved services and benefits for sea anglers; and
- extend the relevant sections of the Sea Fish (Conservation) Act 1967 to recreational sea anglers and unregulated fishermen (i.e. fishermen not covered by the commercial fishing vessel licensing system), including the power to place limits on the number of fish which can be retained (for example, through the introduction of bag limits).

Consultation

7.107 In addition to stakeholder engagement on the development of a RSA Strategy, a number of anglers and other interested parties took the opportunity of the 2006 Marine Bill consultation to comment on RSA provisions. There were mixed reactions to the suggestion of a chargeable licensing scheme with some support provided that there were clear benefits to anglers from the revenue generated. Other respondents opposed licensing on the grounds that it would interfere with the public right to fish, asserting that sea angling has a relatively low impact on fish stocks.

7.108 Responses to the suggestion of bag limits for anglers were also mixed. This issue was also identified by respondents to Defra's consultation on an increased minimum landing size for bass. Taken together, there is some support for targeted measures for the control of

sea angling activities. We propose however, only to extend controls to angling and unregulated fishing activities on a case-by-case basis, for particular species, where justified on conservation or enforcement grounds. Their introduction would be subject to consultation.

Scope

7.109 Our proposals would cover recreational sea angling from the shore and from vessels. This would include anglers on their own boats or on charter vessels, but exclude those activities already regulated by the EA under its rod-licensing scheme generally applicable to inland fisheries.

7.110 The proposals would apply to all recreational angling taking place on the shores of England and Wales and, at sea, to angling activities within the seaward extent of British fishery limits adjacent to England and Wales. Everybody fishing from the shore or from a boat would be covered, irrespective of nationality.

Chargeable licensing scheme

7.111 The introduction of a chargeable licensing scheme for sea angling activities was discussed in the Prime Minister's Strategy Unit Report in March 2004, 'Net Benefits'[2], and Defra's 'Review of Marine Fisheries and Environmental Enforcement'[9] (the 'Bradley Review') March 2004. Both reports suggested that relevant departments should consider a licensing and catch recording scheme for sea anglers.

7.112 The Bradley Review[9] proposed that a licensing scheme for sea anglers should be considered, similar to the EA's inland rod licensing regime. It also recommended that increased weight could be given to anglers' requirements through a range of measures. Defra has already increased the representation of sea anglers on SFCs, is collecting some scientific information in relation to species of interest to anglers and has announced management measures for bass. However, additional sources of funding will be required to make significant improvements in the services to anglers.

7.113 The funding provided from the introduction of a licensing and charging system would be used to help support measures such as:

- improved scientific data to inform the development of management measures for stocks of specific interest to anglers;
- protection and improvement of shore access and parking;
- provision of more small boat launching facilities;
- access to existing and new shore structures;
- creation of artificial inshore and offshore reefs; and
- clear displays of relevant rules, codes of conduct and other useful data on the shore, at boat launch sites and aboard charter boats.

7.114 The charge would also cover the costs of administration, monitoring and inspection, and evaluation of any measures introduced which directly benefit anglers. We want to be able to introduce a chargeable licence applicable to all recreational sea fishing activities involving a rod and line.

7.115 The scheme would be similar to that operated by the EA for freshwater and salmonid species and would include the following key elements:

- revenue from the charge would provide benefits for sea angling;
- the rate of charge and any change to it would require the approval of the Secretary of State (in relation to England) and Welsh ministers (in relation to Wales);
- licences would be available at different rates, to cover varying periods (for example, a daily, weekly or an annual licence);
- there would be a range of charges varying by age or personal situation (for example concessionary rates for senior citizens, eligible disabled persons, children between 12 and 16 years old with exemptions for younger children);
- group licences could be available to cover, for example, charter skippers taking people on trips who are not individual licence holders; and
- failure to produce a valid licence on request would constitute an offence.

7.116 In implementing any scheme, no limits would be placed on the number of licences issued. Our aim would be to put in place flexible, user-friendly arrangements for purchasing licences, drawing on the EA scheme where licences can be bought at post offices and on-line through the EA website.

7.117 There is a range of delivery bodies available with the capacity to either administer and/or enforce a licensing and charging regime, including the EA, SFCs and the MMO. We have not as yet determined an appropriate delivery body (or bodies) but we would be looking to ensure that it has the administrative capacity to issue licences effectively and either has or can call on adequate enforcement capability on the shore and at sea to ensure a high level of compliance.

7.118 Fisheries managers need information about the numbers and location of fish caught by anglers to inform their decision-making on any conservation measures for stocks of interest to the sport. We may require licence holders to provide information on their activities from time to time. We will be able to request the provision of this information but could initially pursue this on a voluntary basis.

7.119 There are precedents for chargeable licensing schemes for sea angling within the EU, in Denmark and Germany, and elsewhere in Canada, the United States and Australia.

Controls on sea angling and unregulated fishing

7.120 The Sea Fish (Conservation) Act 1967 ('the 1967 Act') currently provides powers to regulate a range of fisheries activities. Limitations to these powers however, means that the level of exploitation by anglers and unregulated fishermen cannot be managed effectively. In some circumstances, catches by anglers and unregulated fishermen have the potential to impact on the sustainability of stocks. For example, the RIA supporting the decision to increase the minimum landing size of bass[gg] stated:

gg A summary of these responses and a Regulatory Impact Assessment, which evaluates the costs and benefits of the proposals are available from bassmls@defra.gsi.gov.uk

"If each of the 350,000 bass anglers took home only one fish with an average weight of 1.1kg each year, then the total quantity of fish taken by bass anglers would be around 400 tonnes, though the true figure may well be higher. It is therefore likely that the quantity of bass caught by recreational anglers is significant."

7.121 Limitations to powers available under the 1967 Act have also been highlighted in the context of recent proposals for conservation measures in relation to tope.[16] The inability to apply controls on fishing from the shore could limit the effectiveness of any future conservation measures.

7.122 Under our proposals we will ensure that it is possible to apply controls to shore based fishing activity and to set limits on the number of fish ('bag limits') which may be retained over a specified period (e.g. per day). Such limits would be required in relation both to those fishing from the shore and from vessels not subject to the commercial fishing vessel licensing system. Enforcement could be undertaken at sea and on the shore by the MMO, SFCs and the EA.

7.123 In general, having the ability to apply the range of conservation controls applicable to commercial fishing under the 1967 Act to anglers and unregulated fishermen could be justified on equity and sustainability grounds, particularly for stocks such as cod, bass and tope, and would also aid enforcement. There would be full consultation in any circumstances where it is intended to make use of these controls.

Enforcement and control of commercial fishing

Introduction

7.124 Compliance with fisheries legislation is essential for sustainability and the long-term future of the industry. This is achieved by encouraging the fishing industry to comply with the law and by ensuring effective deterrents are in place to guard against non-compliance.

7.125 The EC has made a firm commitment to conserve fish stocks and thus protect the fishing industry through the development of the CFP. The CFP sets out specific roles and responsibilities for member states of the European Union in relation to control and enforcement. As a member state, we have an obligation to take the inspection and enforcement measures necessary to ensure compliance with the rules of the CFP.

7.126 Defra is the lead UK department for fisheries at EC level and works closely with its counterparts in Scotland, Northern Ireland and Wales. Fisheries is a devolved matter and each devolved administration is responsible for implementing and enforcing the CFP regulations in its area of jurisdiction.

7.127 The MFA was established in 2005 and is an executive agency of Defra. It is responsible in practice for fisheries enforcement in relation to matters that are the responsibility of the Secretary of State or the National Assembly for Wales. This work is carried out by BSFOs. Enforcement activity covers inspections, surveillance, satellite monitoring of fishing vessels and fishing activity. It also covers investigations and administrative functions such as fishing vessel licensing. The purpose of the MFA's enforcement work is to achieve

compliance with legislation and thus ensure fish stock management measures are given the opportunity to have an effect and hence to ensure sustainability in fish stock levels. Enforcement therefore plays a crucial role in the future of sustainable fisheries management. The Scottish Fisheries Protection Agency (SFPA) carries out similar tasks in the UK territorial sea in Scotland and the Scottish zone, as does the Department of Agriculture and Rural Development (DARD) in the UK territorial sea in Northern Ireland and the Northern Ireland zone.

7.128 Community fisheries legislation is made under the CFP framework and member states have an obligation to take the inspection and enforcement measures necessary to ensure compliance with that Community legislation. We need to create the conditions to do that within our national legal system. We use powers in a complicated framework of existing primary and secondary legislation to grant licences and permits for fishing, to make breaches of the rules criminal offences, to give fisheries officers the powers to investigate, and to give the courts the powers to try and to punish offenders.

7.129 The body of CFP rules which we need to apply to our fishing boats, includes both rules emanating from Europe and rules emanating from international agreements entered into by the Commission on behalf of member states.

7.130 The CFP delegates limited powers to member states to take measures in their territorial waters or waters under their jurisdiction in certain circumstances. We generally use the delegated powers to make legislation applying to our fishing boats within our territorial waters. Legislation made in this way is generally referred to as domestic legislation. We also have power to take emergency measures. Similar legislative powers are enjoyed by the appropriate devolved authorities in relation to Scotland and Northern Ireland.

Geographic scope

7.131 We will pursue measures that will generally apply to England, Wales and Northern Ireland and their respective marine areas as well as to English, Welsh and Northern Ireland vessels wherever they are.

Proposals

Control of UK nationals

7.132 The first area where we plan to strengthen our powers is in relation to the control of activities of our nationals on non-UK fishing boats outside EC waters.

7.133 Currently our legislation provides for enforcement of the rules against masters, owners and charterers of UK boats fishing anywhere in the world, and non-UK boats when they are fishing in our waters. As part of the Commission's drive to combat illegal fishing on the High Seas, certain provisions of the CFP go further and require member states to control fishing activities of their nationals on other states' boats when those boats are outside of EC waters, without prejudice to the primary responsibility of the flag state. We interpret this to mean that we need to apply the body of CFP fishing rules to our nationals who are owners, masters and charterers of non-UK boats outside EC waters. We need to amend powers in our current legislation to enable us to deliver this EC requirement.

7.134 Fishery officers are currently not able to carry out inspections of non-UK vessels outside of British fishery limits. However, the MFA, SFPA and DARD will work closely with enforcement agencies around the world to ensure that inspection reports are shared such that they are made aware of the activities of any British nationals on non-UK vessels. Arrangements currently exist for the sharing of inspection reports and other evidence (such as sightings at sea). Such evidence will be used where appropriate to prosecute our nationals who transgress the rules as either masters or owners of other states' boats.

Administrative Penalties

7.135 The second area where we are seeking additional powers concerns the introduction of a system of administrative penalties for fisheries offences. The current system of sanctions for fisheries offences relies exclusively on the criminal court procedure. However 'Net Benefits'[2] said that:

"criminal penalties should be reserved for persistent and extreme 'criminal' behaviour. For the rest the imposition of administrative penalties ….would be a sufficient deterrent"

7.136 In our response to 'Net Benefits'[2], we said that we supported the aim of using a responsive system of administrative penalties for breaches of fisheries regulations and would develop proposals for a greater use of penalties which provide the safeguard of appeal mechanisms but which do not automatically involve recourse to the courts.[13]

7.137 This is in line with the recommendations made by Philip Hampton[34] who said that:

"administrative penalties should be introduced as an extra tool for all regulators, with the right of appeal to magistrates' courts….."

7.138 He also said that administrative penalties are quicker and simpler than court proceedings and could reduce the burden of time and worry placed on businesses under threat of prosecution, while allowing regulators to restrict prosecution to the most serious cases. Such a system could also make it easier for regulators to deter potential offenders. We aim to ensure that our proposals are consistent with these goals.

7.139 In looking in further detail at the Hampton recommendations, Professor Richard Macrory has recommended the use of monetary administrative penalties backed up by an appropriate appeal mechanism. He has acknowledged that this could be provided by the courts, although his preference is for a right of appeal to an independent tribunal.

7.140 Against this background we have worked closely with our stakeholders and counterparts in the devolved administrations to create a system of administrative penalties for minor offending that could provide streamlined arrangements and yet be sufficiently flexible to provide for a very wide variety of fisheries offences (most of which can be committed in a wide variety of ways from very minor to very serious). We have looked at the options for a transparent system, where the ability to deal with offences outside of the court system would reduce uncertainty for fishermen. We have concluded that a scheme where Financial Administrative Penalties (FAPs) are offered in appropriate cases as an alternative to criminal prosecution would be the most appropriate type of system. We consulted the industry on the introduction of such a system in February 2006.

7.141 As the process model below demonstrates, an individual who is offered a FAP will have the option of either paying the penalty and discharging liability for prosecution in relation to the matter, or opting to have his case heard in court in the usual way. Once the FAP has been issued, it is proposed that the fisherman will have 28 days to make this decision. If the fine is paid within the specified time, no criminal proceedings will be taken and no criminal conviction will be recorded in relation to the offence. If the penalty is not paid, the matter will be forwarded for prosecution. FAPS will only be offered in appropriate cases – serious breaches will continue to be prosecuted in the usual way. The system will be applied to both UK and foreign vessels.

7.142 The response to our consultation was generally positive and in 2008, we will take forward proposals for such a scheme in relation to offences that are breaches of EC rules, using powers in existing legislation. We plan to extend these powers so that the scheme can be applied to all offences. Similar arrangements for an administrative penalty system in Scotland are in hand.

Officers' powers to enforce fisheries legislation

7.143 BSFOs and officers appointed by an SFC currently enforce fisheries legislation and need a range of powers to allow them to perform their duties and functions effectively. These officers can only do what the legislation gives them the power to do. Their powers are currently derived from a variety of legislative sources including the Sea Fish (Conservation) Act 1967, the Sea Fisheries Act 1968, the Fisheries Act 1981, the Sea Fisheries (Regulation) Act 1966, and a number of statutory instruments made under those Acts. Not all powers are available to all officers in all situations: they can be limited to certain offences depending upon which Act or Order applies. Whilst in general the powers available are consistent in most situations, there are a number of discrepancies resulting in lack of clarity for fishermen and exploitable loopholes in the law. This has led to circumstances in which officers are unable to carry out their functions fully.

7.144 For example, in relation to most offences, BSFOs have the power to require the master of a fishing boat to take it and its crew to the nearest convenient port and to detain the boat in that port during investigations or a court hearing. With licensing offences (which only apply to UK boats), the power is not available in relation to any offence committed outside of British fishery limits. Although sparingly used, this is an essential power that needs to be available to officers in relation to all offences and in relation to UK boats, wherever the offence in question occurs.

7.145 In addition, officers currently have wide powers to order that gear is hauled in, and to examine gear on boats. But they have very limited powers to examine and seize gear in the sea that has been set illegally and may be causing harm to the marine environment. We will give officers the powers to seize gear where it is being used in the commission of an illegal act, and to deal appropriately with gear so seized.

7.146 Our overall aim is not to seek a sweeping extension of existing BSFO powers but rather to improve their consistency and coherence. We shall do this by creating, as far as possible, one list of modernised and improved powers that are automatically applicable to all officers in all enforcement situations. This will include improved powers to search, rationalised powers to require vessels to go to the nearest suitable port and to detain vessels in port and powers to use reasonable force in all enforcement functions.

7.147 Under obligations stemming from the CFP, we will in future also need to make provision for BSFOs operating in other member states' waters. We are considering whether additional powers will be necessary for this and we may consult other coastal states in the EC.

Fisheries Act 1981

7.148 This Act provides that certain provisions of EC fisheries Regulations automatically become criminal offences within our legal system and officers and courts are automatically (i.e. without secondary legislation) given the powers that they need to enforce those criminal offences. In other circumstances, the law requires us to make secondary legislation implementing the EC regulation and giving the regulators the required powers. This is unnecessary complexity that we need to rectify. We intend to do so by extending the circumstances in which the powers are granted automatically without the need for secondary legislation. In particular we intend to amend the geographic extent of the provision (which is currently limited to British fishery limits) in relation to UK fishing boats.

Charging the fishing industry

Introduction

7.149 The 2004 Prime Minister's Strategy Unit report 'Net Benefits'[2] proposed that cost recovery be introduced for fisheries management and enforcement. In their joint response to the report, 'Securing the Benefits'[13], the UK fisheries administrations undertook to consider this issue, taking into account questions such as the possible impact on the international competitiveness of the fleet, the variable costs of managing different parts of the UK fleet and the need for equitable treatment across fishing sub-sectors.

7.150 'Net Benefits'[2] estimated that the total cost of fisheries management is in the order of £100m per annum. Having carefully considered the recovery of these costs, we have concluded that, at this time, it would not be possible to recover a significant proportion of these costs without introducing significant cross-subsidies that could distort the operation of the market or make the UK fleet less competitive in international markets.

7.151 There may be benefit in recovering some of the costs of fisheries management however, in a way that helps to meet wider social and environmental goals. For example, a charge that was related to the environmental costs of certain fishing methods could help to provide incentives to select less damaging fishing gear. This implies a modest, targeted charging scheme might be appropriate. Such a scheme could be delivered though the use of our existing powers to charge for fishing vessel licences.

7.152 Because the vessel licensing scheme is unified across the UK, levying a charge for licences would require agreement between the devolved administrations. The amount recovered could not be more than the total costs of administering the licensing scheme. Any scheme would also require the approval of the Treasury and full consultation before introduction. These factors would help ensure that any future proposed scheme met the broad objectives set out above and addressed concerns relating to cross-subsidy and competitiveness.

Proposal

7.153 Although the existing charging power allows some flexibility, for example allowing different charges to be set for different types of licence, it may not be sufficiently flexible to allow charges to vary according to fishing method for example. We therefore propose to ensure that we can recover licensing administration costs in a more flexible manner.

Out-of-date and redundant fisheries legislation

Introduction

7.154 There are a number of Acts of Parliament concerning fisheries that date back to 1771 and which are largely redundant or out of date. We intend to review these and, where its makes sense to do so, repeal out-of-date or redundant provisions.

7.155 Reviewing and, where appropriate, repealing out-of-date or redundant fisheries legislation is consistent with recommendations made in the Davidson Review[4] on implementation of EU legislation.

Proposals

7.156 The Acts we will review include:

- **White Herring Fisheries Act 1771** – an Act for the encouragement of the White Herring fishery.
- **Sea Fisheries Act 1868** – an Act to carry into effect a Convention between Her Majesty and the Emperor of the French concerning the Fisheries in the Seas adjoining the British Islands and France, and to amend the laws relating to British Sea fisheries.
- **Seal Fishery Act 1875** – an Act for the establishment of a close time in the seal fishery in east Greenland waters.
- **North Sea Fisheries Act 1893** – an Act to carry into effect an International Convention respecting the liquor traffic in the North Sea.
- **Behring Sea Award Act 1894** – an Act to provide for carrying into effect the award of the Tribunal of Arbitration constituted under a treaty between Her Majesty the Queen and the United States.
- **Seal Fishery (North Pacific) Act 1895** – An Act to provide for prohibiting the catching of seals at certain periods in Behring Sea and other parts of the Pacific Ocean adjacent to Behring Sea, and for regulating the seal fisheries in those seas.
- **Seal Fisheries (North Pacific) Act 1912** – An Act to make such provisions with respect to the prohibition of catching seals and sea otters in certain parts of the Pacific Ocean, and for the enforcement of such prohibitions as are necessary to carry out a Convention between His Majesty the King, the United States of America, the Emperor of Japan, and the Emperor of All the Russias.

- **Sea Fish Industry Act 1951** – An Act to make provision for the reorganisation, development and regulation of the white fish industry; to amend the law relating to fishery harbours, the catching and landing of sea fish and other matters affecting or connected with the sea fishing and whaling industries; to abolish the Scottish Fisheries Advisory Council; and for purposes connected therewith.
- **Sea Fish Industry Act 1962** – An Act to make further provision, by way of financial assistance and otherwise, with respect to the white fish and herring industries, including provision relating to the White Fish Authority and the Herring Industry Board; to make further provision for the regulation of fishing for, and the landing and commercial use of, sea-fish, and with respect to shellfish; to enable the charges leviable at certain harbours to be varied, and to facilitate borrowing for certain harbour and marine work undertakings; and for purposes connected with the matters aforesaid.

Our Aim

The UK Government intends to set up a new Marine Management Organisation (MMO) to deliver many of our objectives for the marine area. A new organisation would be a centre of marine expertise, provide a consistent and unified approach, deliver improved coordination of information and data and reduce administrative burdens. The integration proposed would provide benefits from joined up delivery and economies of scale that could not be realised by placing those functions in separate organisations.

Summary of our proposals

8.1 The UK Government has decided to create a new MMO to carry out many of the marine delivery functions for which it has responsibility. Northern Ireland ministers also currently support the delivery of functions for which they have responsibility through a regional office of the MMO.

8.2 The MMO will act as a champion for the integrated management of our seas. It will make a unique contribution to sustainable development by bringing together the delivery of many of the marine functions of the UK Government and Northern Ireland administration within a single independent body, including functions relating to strategic planning, streamlined marine licensing, fisheries management and enforcement and nature conservation enforcement.

8.3 We envisage that the MMO will have approximately 300-350 staff – including posts currently within the Marine Fisheries Agency (MFA), which will be incorporated within the MMO. It will have a headquarters function located outside of London, and offices around the coast. The current ministerial preference for Northern Ireland envisages a regional office, likely located in Belfast. Taking account of the volume and nature of functions to be delivered, it is envisaged that approximately 35-40 staff would be located there, including a number of posts currently within the Sea Fisheries Inspectorate (SFI), for which the Department of Agriculture and Rural Development (DARD) in Northern Ireland is responsible.

Introduction

Marine Management Organisation Vision

8.4 The vision of the UK Government and Northern Ireland administration for the MMO is of a professional and proactive marine manager, trusted by all stakeholders to contribute to sustainable development of the marine area. The MMO will achieve this by developing forward looking marine plans, which provide a sound framework for:

- decision-making within streamlined licensing regimes;
- expert marine fisheries management;
- proportionate nature conservation; and
- the effective, fair and consistent enforcement of regulation.

8.5 The MMO will create a comprehensive system to identify, acquire and access the key data and information sets needed to deliver its functions.

Geographic scope

8.6 The MMO will have responsibilities in relation to England and Northern Ireland and, in each case, the adjacent UK territorial sea and the UK offshore area.

8.7 UK Government and the devolved administrations are committed to working in a joined up way whilst respecting the devolution settlement. The Welsh Assembly Government and Scottish Executive are considering the arrangements for delivery of devolved marine functions that will work best for them – as detailed below.

8.7 Our intentions for the MMO described in this section therefore relate throughout to the delivery of non-devolved functions, functions in relation to England and the adjacent UK territorial sea and devolved functions in relation to Northern Ireland only. This does not preclude the MMO delivering services on behalf of Welsh and / or Scottish ministers by arrangement.

8.8 The UK Government, Northern Ireland administration and other devolved administrations will develop a close working relationship between the MMO and other marine delivery organisations to maximise coordination and consistency throughout UK waters.

Northern Ireland

8.10 In relation to Northern Ireland, it is proposed (subject to the views of the Northern Ireland Assembly on restoration of devolution) that a regional office of the MMO will deliver devolved functions similar to those delivered by the MMO on behalf of the UK Government.

Scotland

8.11 Scottish ministers with the assistance of the Advisory Group on Marine and Coastal Strategy (AGMACS) are currently considering how to deliver marine functions in relation to Scotland that are devolved.

8.12 In the offshore area adjacent to Scotland, we intend that UK Government and Scottish ministers would be jointly responsible for planning. The MMO might administer planning in this area, if after further consideration both Governments decide this is the best approach.

Wales

8.13 The Welsh Assembly Government is committed to improving integration and co-ordination and believes this is best achieved in Wales by bringing together policy development and policy delivery functions. The Welsh Assembly Government vision for improving public services in Wales is set out in 'Making the Connections'.[60] Key to this vision is ensuring more coordination between service providers and achieving economies of scale in service delivery to get value for money. This is why the Welsh Assembly Government believes that giving the MMO functions that have been devolved in relation to Wales or setting up an MMO for Wales would not be right (for Wales).

8.14 In Wales, Welsh ministers will be responsible for preparing marine plans. The experience gained from the Wales terrestrial spatial planning process will help guide how marine planning develops in Wales. Welsh ministers will also have responsibility for the establishment of Marine Conservation Zones (MCZs) and for delivering and enforcing other nature conservation measures outlined in section 6 in Welsh waters. Welsh ministers will also retain responsibility for devolved licensing functions.

8.15 The Welsh Assembly Government is considering how best to take forward marine management and policy in Wales that creates synergies between fisheries, nature conservation, licensing, marine planning and enforcement similar to those proposed under the MMO. This will be influenced by the outcome of consultation on the future of Sea Fisheries Committees (SFCs) and inshore fisheries management in Wales (see section 7).

8.16 The UK Government and Welsh Assembly Government intend to create a close working relationship between the MMO and Welsh ministers to ensure coordination and consistency across the England-Wales border. Our aim is to respect devolution but not to disadvantage businesses that interact with Welsh Assembly Government, the MMO or both. Welsh ministers will work with other bodies, such as the MMO, to ensure that licensing decisions and enforcement of marine legislation are undertaken in the most efficient manner. Defra and the MFA currently undertake some activities on behalf of Welsh ministers – who may ask the MMO to deliver these or other activities in the future.

Integrated management within a single organisation

8.17 The main benefits of a single MMO are that integrating functions within a single body will lead to more transparent and efficient arrangements and better outcomes. The synergies created will deliver significant benefits.

8.18 An outline of the functions we intend the MMO to deliver is set out in Table 6. The MMO will bring these together, separating them from the policy-making roles of the UK Government and Northern Ireland administration in keeping with the overall strategy to separate policy and delivery. Combining the delivery of a wide range of marine management functions within a single independent organisation will result in more than the sum of these parts. Establishing an MMO will create synergies between activities that will improve the delivery, coordination and enforcement of individual functions and the overall management of our seas.

8.19 The MMO will result in multiple benefits. As well as being a strong champion for our seas it will provide:

- the ability to pro-actively implement UK Government policy in the marine area through a comprehensive cycle of marine management – planning, fisheries management, nature conservation, licensing and joined-up enforcement;
- a significant step forward from a sectorally based approach to a more flexible, integrated, sustainable approach to management of the marine environment;
- a clearer framework for resolving potentially conflicting objectives between conservation and the use and enjoyment of our marine environment – and between different uses of the marine environment;
- integration and consistency between marine licensing regimes;
- integration of fisheries management with environmental priorities;
- a flexible set of modern fit for purpose sanctions that are consistent with the risk based approach to enforcement outlined in the Hampton report – and increased consistency between marine management regimes;
- more effective use of data – free flow of information within the MMO so that each function is informed by material gathered as a result of the MMO's other functions;
- more effective relationships with marine developers, nature conservation bodies and recreational users of the sea – who will be able to communicate with a single organisation at the planning, licensing and enforcement stages of marine management;
- thematic rationalisation of enforcement services by combining the enforcement of fisheries, nature conservation and licensing regimes within a single regulator; and
- improved efficiency through shared corporate services and operational synergies.

Table 6: Summary of MMO functions	
	MMO functions
Marine Planning	Prepare and deliver a series of marine plans to implement the shared UK marine policy statement – in areas where UK Government and Northern Ireland are responsible (whether individually or jointly with others) for marine planning.
Marine Licensing	Deliver the reformed licensing regime to regulate environmental, navigational and other impacts of constructions, deposits / removals, dredging, licensing of oil dispersants and carbon dioxide storage – in UK offshore waters (apart from the Scottish zone and adjacent areas of the continental shelf), and in the territorial sea and internal waters around England and Northern Ireland.
	Deliver licensing of renewable energy installations under s36 of Electricity Act 1989 in UK offshore waters (apart from the Scottish zone & adjacent areas of the continental shelf) & under that Act or Article 39 of the Electricity (Northern Ireland) Order 1992 in the territorial sea & internal waters adjacent to England, Wales or Northern Ireland.[hh] The UK Government's proposals for making decisions in relation to major renewable energy development in the sea adjacent to England and Wales will be in the Planning Reform White Paper in the near future.
	Administer regulation of orders under the Harbours Act 1964 and of local and private harbour Acts – in England and the adjacent territorial sea and, where not devolved, Wales.[ii]
Fisheries Management	Fisheries functions delivered by the MFA – in relation to UK offshore waters (apart from the Scottish zone and adjacent areas of the continental shelf), and in the territorial sea and internal waters around England. Fisheries functions delivered by the SFI in relation to the UK territorial sea in Northern Ireland and the Northern Ireland zone.
Nature Conservation	Provide advice and information to Natural England (NE) and the JNCC on socio-economic issues relating to site selection of MCZs in UK offshore waters and in the territorial sea and internal waters around England. Provide similar advice to the Department of the Environment (DOE) in relation to the territorial sea and internal waters in Northern Ireland.
	Where necessary, and where no other suitable controls exist, develop and implement by- laws and interim measures to prevent unregulated activities damaging the marine environment – in UK offshore waters and in the territorial sea and internal waters around England. Provide a similar function in relation to UK territorial waters in Northern Ireland.
Monitoring and Enforcement	Monitoring and enforcement functions carried out by the MFA (including current functions and those scheduled for transfer from 'core' Defra into the MFA in April 2007) – in England and the adjacent territorial sea. Monitoring and enforcement functions currently carried out by the SFI in relation to Northern Ireland.
	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.
	Bring together monitoring and enforcement activities across the MMO's functions and geographic scope – from gathering information and data collection, through monitoring in a proportionate and cost-effective manner, to enforcement officers equipped with a modernised enforcement "toolbox".
Data	Implement a system for managing data, information and knowledge, both that generated 'in house' and that collected by third parties. This system will enable information to be shared across all MMO functions, and be able to provide data and information to the public where appropriate.

hh Northern Ireland will consider further the extent of the role of the MMO in renewable energy licensing in Northern Ireland in light of the UK Government's proposals to be set out in a Planning Reform White Paper.

ii Northern Ireland is considering whether the MMO will exercise equivalent functions under the Harbours Act (Northern Ireland) 1970. The UK Government's proposals for making decisions in relation to major port developments in England and Wales (where not devolved) will be included in a Planning Reform White Paper in the near future.

8.20 There are strong regional and local components both to protecting the marine environment and developing our seas as an economic and social asset for our and future generations. The UK Government and Northern Ireland administration recognise this and its importance in achieving its vision for sustainable development. The MMO through wide consultation on draft plans (including establishing marine planning steering groups where appropriate) will ensure that both local and regional issues are fully understood and taken into consideration when delivering its plan making function. This will also contribute to ensuring such issues are properly understood when making licensing decisions.

8.21 The MMO could also contribute to the successful delivery of marine related functions by others. For example at a local level, the MMO may participate in MCZ management schemes where established. Where appropriate, the MMO will act jointly with other bodies to ensure a joined-up approach to sustainable development. For example, building on existing relationships between the MFA and SFCs, we envisage that SFCs will provide enforcement services on behalf of the MMO where this will provide a more effective and efficient service.

8.22 Looking beyond UK waters, the MMO will be able to provide a consolidated source of advice to support UK representation at European and international forums, based on its experience and interaction with marine stakeholders.

Regulating better

8.23 The UK Government and Northern Ireland administration are committed to a more integrated approach to sustainable development of the marine area. However, existing arrangements for managing marine activities and protecting the marine environment have developed piecemeal over many years and are delivered by a number of different bodies. For example, in relation to UK Government responsibilities alone, four different UK Government departments currently license marine activities.

8.24 Northern Ireland's arrangements have developed in a similarly piecemeal fashion and marine licensing, whilst comparatively small in volume, is also spread across four Government departments. Furthermore, unlike in England there has been no attempt to coordinate activity through the establishment of a dedicated marine consents unit.

8.25 These arrangements are complex for both Government and stakeholders and lead to added burdens. We lack an organised framework through which Government can realise its marine strategy.

8.26 Our proposals are designed to ensure that activities in the marine area are properly managed through strategic planning, decision-making, management and enforcement. The creation of an MMO will introduce additional benefits by combining these functions within a single organisation. In particular, the MMO will be equipped with a modernised suite of enforcement tools, and obliged to exercise them in a way that gives effect to best regulatory practice.

Functions of the new Marine Management Organisation

8.27 Our ambition is a holistic marine management system. We want a MMO to take responsibility for the bulk of this system – this is key to achieving our vision.

8.28 The marine policy statement that the UK administrations will come together to prepare and agree as the first stage of marine planning will provide the framework for the management of the marine area. Guided by this statement, the MMO will undertake specific functions that together comprise a cycle of marine management. These are outlined below and described in more detail in other sections. The MMO will be more than the sum of its individual functions. Combining the delivery of these functions within a single body will maximise synergies between functions and improve their effectiveness.

8.29 The MMO will act in a transparent manner and involve marine stakeholders wherever appropriate. The expertise that will exist and develop amongst the MMO's staff (and its access to specialist advisors) will create a body of marine knowledge and experience.

Marine Planning

8.30 The purpose of marine planning will be to contribute towards the achievement of sustainable management of the UK's waters. The UK Government and Northern Ireland administration respectively intend to delegate the preparation of plans to the MMO where they have sole responsibility for planning. This will support the development of a body of marine planning expertise.

8.31 Section 4 explains that the proposed new system of marine planning will be based on a shared UK marine policy statement, which will play a crucial role in harmonising marine related policies and priorities and resolving conflicts. Stakeholders have indicated that they value the concept of an MMO as a neutral organisation to deliver marine plans. The UK Government and Northern Ireland administration intend to create an MMO that can be trusted to deliver marine plans that implement the planning statement and not to be unduly biased towards any particular marine stakeholder group or objective.

8.32 Separating delivery of planning from marine policy in this way will require our intentions for the marine area to be articulated clearly to the MMO. Publishing the aims, objectives and performance management framework agreed between Government and the MMO will improve the transparency of the planning process. Delegating planning to a discrete planning body rather than preparing plans within central government will also target resources to front-line delivery.

8.33 The policy statement will provide a clear direction for decision-making on issues such as conservation, fisheries, construction and development. Bringing planning together in an MMO with the elements of these regimes for which the UK Government and Northern Ireland administration have responsibility will enable consistency in interpreting the plan as well as increased transparency of decision-making – benefiting all users of the marine environment.

8.34 The inclusion of marine enforcement activities (and other functions currently delivered by the MFA) within the MMO will give it a local presence. The MMO's organisational structure

of the MMO will ultimately be determined by its management – however, at present, the MFA has 18 local port offices organised in six regions across England that will initially become part of the MMO. We anticipate that the bulk of marine planning functions will be delivered from a head office, but the port offices will provide a network of coastal locations from which marine planning officers will be able to operate. This should prove particularly useful to the MMO in setting up and supporting the proposed 'marine planning steering groups', which will facilitate community input into some local coastal plans. The regional presence of an MMO in Northern Ireland will similarly facilitate the inclusion of local input into the marine planning process.

8.35 Furthermore, marine planning is defined in section 4 as 'a way of considering and influencing decision-making about the range of activities occurring in the marine environment.' Locating planning officers alongside the MMO officers responsible for monitoring and enforcing these activities will provide benefits for the planning process through the additional information exchange and communication that will be encouraged. This co-location of functions will make it easier to meet the requirements (listed in section 4) to keep under review matters that may affect a plan's content or effectiveness, as well as to monitor progress towards the plan's objectives.

8.36 To take forward the development of detailed plans in coastal waters, our intention is that the MMO will set up Marine Planning Steering Groups for some or all coastal plans where there is a clear need. Steering groups will contribute to the planning process and facilitate an integrated approach to coastal management. The primary role of these steering groups will be to advise the MMO. Steering group members will apply their knowledge and experience to contribute to the content of the plan. They will do this in the context of the shared UK marine policy statement and any guidance issued to, or advice provided by the MMO. Steering group members will be drawn from various organisations with an interest and with expertise, such as local authorities, coastal groups, local strategic partnerships, environmental organisations, industry, fishing and recreational users. They will draw on existing structures wherever possible.

8.37 The combination of planning, licensing and other functions within the MMO mirrors the system that has developed on land (without replicating its complexity). Local authorities are able to use their experience in taking decisions on planning permissions to improve their plans. We want marine planning to benefit from these same synergies.

8.38 The management of marine data will be important. We intend to enable the free flow of information around the MMO, so that the planning process (and marine plans themselves) will, wherever possible, benefit from access to data gathered by the MMO in undertaking its other functions.

Marine Licensing

8.39 Licensing in the marine area is currently undertaken by multiple bodies creating a complicated and overlapping regime, which can cause difficulties for both developers and other stakeholders. Section 5 sets out our proposals to reform the marine licensing process. The proposed new system will streamline and simplify the process, providing integration and consistency between licensing regimes. This can be summarised in the objective *one project:one licence*.

8.40 These reforms will provide many of the benefits that we are seeking to bring to the marine area and overcome some of the tensions that the currently fragmented system creates. To fully realise our vision for the marine area, we intend to complement these legislative changes by bringing them together where possible within a single delivery body – the MMO. Delivering as many of these new streamlined regimes as possible within the same organisation will provide significant benefits for the marine area and for marine stakeholders.

Delivery of marine licensing under the reformed generic licensing regime

8.41 We intend the MMO to assume responsibility for licensing and enforcement under the reformed generic marine licensing regime.

Delivery of offshore licensing under the amended Electricity Act 1989 and Energy Act 2004

8.42 We generally intend the MMO to assume responsibility for all stages of this licensing regime in relation to offshore renewable energy projects. A Planning Reform White Paper will, in the near future, include the UK Government's specific proposals for making decisions in relation to major renewable energy development in the sea adjacent to England and Wales.

Harbour Revision or Empowerment Orders and Harbour Acts licensing

8.43 We generally intend the MMO to assume responsibility for administering the regulation of harbour developments that is currently carried out by the Department for Transport (DfT). As above, the Planning Reform White Paper will include the UK Government's proposals for making decisions in relation to major port developments in England and Wales (where not devolved).

8.44 The responsibilities of the MMO will include administering all harbour revision orders, harbour empowerment orders, and local and private harbour Acts, in England and the adjacent territorial sea and, where not devolved, Wales. In so doing, the MMO will consult with central Government departments with policy responsibility as appropriate.

8.45 These responsibilities will remain within the Scottish Executive in relation to Scotland. Northern Ireland is considering whether the MMO will exercise equivalent functions under the Harbours Act (Northern Ireland) 1970.

Delivery of licensing of sub-seabed storage of carbon dioxide

8.46 The MMO may in future have a role in the regulation of offshore Carbon Capture & Storage (CCS) activities (see 5.74 – 5.89).

Approach to delivering licensing functions

8.47 In making licensing decisions, the MMO will take a risk-based approach. Where appropriate, the MMO will make use of proposed provisions to minimise regulation of activities with little or no adverse impact. Licensing decisions will be made in accordance with the shared UK marine policy statement and any relevant marine plan, unless relevant considerations indicate that another course of action would be more appropriate. This is discussed further in section 4 (4.84 – 4.97).

8.48 Linking the licensing system to the proposed new system of planning will be fundamental in ensuring the optimal performance of both, and in incorporating sustainable development into the overall management of the seas. The UK Government and Northern Ireland administration see placing both planning and licensing within an MMO – a single body with a single organisational philosophy – as the most efficient and effective way of achieving this. Combination of the functions within one body will ensure consistent interpretation of marine plans when making licensing decisions, and improve consistency of decision-making between different sectors.

8.49 Combining licensing with other marine management functions will add further benefits. For example, we intend the experience of enforcement officers working within the MMO to achieve compliance with licence conditions to inform and potentially improve the conditions attached to future licences. Similarly, whilst the MMO will not be responsible for the selection or designation of MCZs, it will provide advice and information on the socio-economic context. This will give the MMO a better understanding of MCZ objectives, which may better inform the conditions the MMO attaches to licences.

Fisheries management functions

8.50 The MFA was established as an Executive Agency of Defra on 1 October 2005. It was created to take responsibility for a number of delivery activities before which were the responsibility of policy teams within the Fisheries Directorate in Defra. It also provides the Welsh Assembly Government with services in relation to devolved fisheries and other functions that mirror the functions it has in relation to England and the adjacent territorial sea[jj]. The MFA will take on additional functions before the creation of the MMO (see 8.107). The MFA will be incorporated within the MMO, which will deliver all its (existing and new) functions.

8.51 The existing fisheries functions of the MFA cover UK offshore waters (apart from the Scottish zone and adjacent areas of the continental shelf), and the territorial sea and internal waters around England and Wales and are summarised below:

- enforcement of sea fisheries legislation (see section 7 for details);
- implementation of EC marketing regime;
- vessel licensing and economic links;
- management of fleet capacity;
- management of fisheries quotas;
- biological sampling activities;
- fishing industry grants and UK state aids;
- Data Collection Regulation (EC) 1543/2000;
- management, recording and provision of data on fishing activities and catches; and
- advisory role and general liaison with the fishing industry.

jj The Scottish Fisheries Protection Agency (SFPA) is responsible for enforcement of UK, EU & International Fisheries Law and regulations in the waters around Scotland.

8.52 In Northern Ireland, the SFI has responsibility for fisheries and other functions. It carries out the same functions as the MFA in relation to the UK territorial sea in Northern Ireland and the Northern Ireland zone. It also undertakes the following other functions:

- the regulation of sea and inland aquaculture;
- enforcement of the EC Fish Health Directive; and
- provision of technical staff to the Department of Culture, Arts and Leisure (DCAL) for the conservation, protection and development of inland fisheries.

8.53 The Northern Ireland administration propose that the MMO should deliver the functions of the SFI within a Northern Ireland regional office of the MMO, with the exception of the other functions outlined above.

8.54 Section 7 sets out our proposals for a licensing and charging system for recreational sea fishing. It has not yet been determined whether this will be delivered through the MFA / MMO or by another organisation.

8.55 In addition to these fisheries management functions, the MFA already has broader responsibilities – one of its existing objectives is 'to contribute to the sustainable use of the marine environment'. Activities in support of this include:

- advising on activities that may impact on fisheries and the marine environment (e.g. coast protection, offshore windfarms, port developments, aggregate dredging, etc);
- enforcing operations that involve deposits in the sea under Food and Environment Protection Act 1985 (FEPA);
- undertaking an advisory role in marine pollution response to oil and chemical spills and acting as Defra's representative on Standing Environment Groups set up to assist in marine pollution response and clean-up operations; and
- promoting liaison between the fishing industry and other marine users in order to minimise interference between fishing and other marine activities.

8.56 Incorporating the MFA, and much of the SFI in Northern Ireland, into the MMO is essential to realise our vision of creating a holistic marine manager to successfully deliver the reformed licensing regimes and produce well-informed, practicable marine plans. It will also add value to the MMO proposals through: allowing greater harmonisation between monitoring, enforcement and data collection activities, improving consistency for industries operating in the marine environment and by providing an already well-established base of marine knowledge and expertise for the MMO to build upon.

8.57 Inshore fisheries management in England is the responsibility of SFCs, which can make by-laws for the management and conservation of their districts' fisheries and enforce some national and EC fisheries legislation. It is not intended to merge the SFCs into the MMO, but to modernise SFCs themselves. The challenges of inshore fisheries and environmental management often relate to conditions in very local areas and therefore require local solutions. Local input to decision-making and local accountability is a key strength of SFCs and often means they are able to effectively resolve local issues. Maintaining decision-making at a local level in this way is consistent with the Government's wider devolution agenda as emphasised in the Local Government White Paper.[6] The MMO will work closely with SFCs, building on the existing relationship between the MFA and SFCs.

Nature conservation functions

8.58 Section 6 explains our proposals for the establishment of MCZs. As NE and JNCC already provide Defra with scientific advice on nature conservation and have the expertise to identify possible sites, we do not intend the MMO to be responsible for the selection or designation of MCZs. However, it will provide advice to NE, JNCC and the DOE in Northern Ireland on the socio-economic context for their selection. The Secretary of State will be responsible for formally designating MCZs (see 6.57 – 6.59).

8.59 We intend to make use of existing tools wherever possible to deliver the objectives of MCZs without introducing unnecessary additional regulatory burdens on business. However, there could be cases where unregulated activities are (or could be) causing significant damage to protected areas, areas under consideration for designation as protected areas, or mobile marine species at key life stages. Where no other suitable controls exist and voluntary measures have failed to work, the MMO will be responsible for developing and implementing by-laws and interim measures. As the delivery body responsible for many of these other controls, the MMO will be uniquely well placed to undertake this function.

8.60 In practice, it is likely that the need for action will be identified by nature conservation agencies. The MMO will then use its regulatory expertise to:

- consider the need for action in the context of the Government's Marine Policy statement;
- determine the most appropriate measures to control activities;
- develop either by-laws or interim measures to deliver those measures and
- enforce the resulting measures.

Monitoring

8.61 Effective and targeted monitoring of the marine environment and of activities occurring in or related to the sea is central to improving marine regulation. If we do not know the current state of the environment, and the location, nature and scale of marine activities and their impacts, then we cannot plan for future activities or future environmental protection. Likewise, monitoring is an important tool in ensuring compliance with legislation.

8.62 The MMO will work within the UK Marine Monitoring and Assessment Strategy (UKMMAS), the purpose of which is to coordinate monitoring across the marine environment on behalf on academia, industry and government. Building on Defra's 'Safeguarding our Seas'[7], the UKMMAS report[18] highlighted the need for greater integration of government marine monitoring programmes, and more generally the need for a significant restructuring of the system by which marine data are collected, collated and interpreted. The MMO's monitoring responsibilities mean it will be well placed to assist in addressing these needs.

8.63 There is scope to add value by rationalising some monitoring activities through the creation of an MMO. Monitoring carried out by the MMO will build upon that presently conducted by the MFA, who monitor fishing activities taking place in English and Welsh waters through:

- operating a Fisheries Monitoring Centre to track the position of all UK fishing vessels exceeding 15 metres anywhere in the world, and all foreign vessels over 15m in UK waters, using Vessel Monitoring System (VMS) satellite technology. VMS provides an automatic cross-checking function with information held in the MFA's Fisheries Activities Database (which include both data collected by the MFA and data from other sources – e.g. ship, logs, sales notes), and thus enables targeted use of monitoring resources;
- inspection of fishing vessels and fishing industry premises in the major fishing ports, fish markets and other locations around the coast by MFA's British Sea Fishery Officers (BSFOs);
- inspection of fishing vessels at sea by the Royal Navy's (RN) Fishery Protection Squadron (operating under an MFA / MoD agreement);
- participation in joint deployment plans drawn up by the pan-European Community Fisheries Control Agency (this may involve, for example, the deployment of RN vessels in other member states' waters or the provision of BSFOs to serve on other member states' patrol vessels); and
- aerial surveillance (conducted under contract by a private sector firm).

8.64 The MFA's monitoring activities will be further expanded prior to its incorporation into the MMO. The transfer of functions from Defra's Marine Consents and Environment Unit (MCEU) (scheduled for April 2007) will give the MFA additional responsibilities, not only for processing licence applications, but also for monitoring compliance with FEPA and CPA licence conditions. In addition to this, the MFA is also broadening its functions to include monitoring (and enforcing) the provisions of the Birds and Habitats Directives (including wildlife licenses relating to the offshore area), which will be implemented through the forthcoming Offshore Marine Conservation Regulations in the offshore area in early 2007.

8.65 It is envisaged that existing MFA infrastructure (namely, their databases and VMS) will be adapted for these purposes. On their incorporation into the MMO, the potential also exists for these systems to be more widely used in monitoring other activities (for example, compliance with by-laws and interim measures relating to MCZs).

Enforcement

8.66 Modernised and targeted marine planning, licensing, conservation and fisheries functions will be undermined if they are not complemented by effective enforcement. However, carrying out enforcement in the marine environment is extremely challenging. The area under consideration is vast, and the resources required to work safely and effectively are considerable. For this reason, a risk-based approach is already widely adopted.

8.67 Moreover, the current situation is complex – whilst a range of bodies have enforcement responsibilities in UK waters none has the full range of powers, responsibilities and capabilities to effectively enforce new and existing marine legislation.

8.68 The creation of an MMO offers an opportunity to bring together modernised enforcement functions into one body, bringing benefits in consistency, clarity, predictability and proportionality.

8.69 Enforcement involves a variety of tools, from inspection, advice and collection of data, to provision of incentives and, as a last resort, penalty regimes to punish non-compliance and remedy harms arising from it. The reforms proposed will make important improvements in marine regulation. We will equip regulators with the tools to enforce the law in a targeted, proportionate and risk-based way, and thus avoid imposing unnecessary costs on the regulated community.

8.70 Our proposals are based on best regulatory practice and the outcomes of a number of recent cross-cutting reviews of regulation and regulatory sanctions. They provide, in particular, for the application to marine regulation of the core recommendations of the Hampton Review[34], the complementary work recently concluded by Professor Macrory[47] and recent work also undertaken by Defra[17] in relation to the enforcement of environmental regulation.

8.71 Designing good regulation is no guarantee that regulatory powers will be exercised in the most effective way. Thus, we want to make sure that, in creating an MMO, we take a fresh view of how those improvements can be applied to best effect in the places, and in relation to the functions, for which the MMO will have responsibility.

Enforcement of licensing legislation

8.72 The licensing process and the exercise of licensing powers should anticipate monitoring and enforcement needs. For example, licensing authorities would often normally expect regulators to ensure that licensees themselves are subject to appropriate monitoring and reporting requirements. Those authorities, including the MMO, will retain this discretion to adapt the terms of a licence to make it fit for a particular, site- and licensee-specific purpose. As now, a licence will therefore often include monitoring obligations to ensure, both during its life and possibly beyond it, that:

- conditions of the licence have been complied with; and
- impacts on the environment and other uses of the sea are within the limit anticipated when granting the licence.

8.73 When enforcing licensing requirements, we would also expect the MMO to exercise oversight in a risk-based way. The MMO should apply appropriate risk assessment techniques comprehensively, to inform all aspects of the regulatory lifecycle from the selection and development of appropriate regulatory policy instruments, through to data collection, inspection and the application of licensing-related sanctions.

8.74 We also propose that reformed licensing controls should be complemented by a modernised suite of enforcement tools and sanctions – these are set out in detail in section 5.

Enforcement of fisheries and conservation legislation

8.75 Proposals in relation to the modernisation of the fisheries enforcement powers of BSFOs and officers appointed by SFCs are set out in section 6. It is intended that identical enforcement powers should be available for the enforcement of nature conservation legislation. This will make it easier for officers already responsible for fisheries enforcement to enforce nature conservation legislation as well.

8.76 In waters beyond 6 nautical miles around England, UK offshore waters and in Northern Ireland, it is proposed that the MMO will be responsible for the enforcement of both fisheries and nature conservation legislation. We propose that officers of the MMO, and those acting on behalf of the MMO (including members of the armed services), should have a common set of enforcement powers applicable to enforcement of both.

8.77 In the area covered by an SFC in England, the MMO and SFCs will work closely together to deliver fisheries and marine nature conservation enforcement and we envisage a system of cross-warranting of officers to enable a flexible approach to this task.

8.78 Fisheries enforcement in the Scottish zone will remain the responsibility of the Scottish Fisheries Protection Agency (SFPA).

8.79 Some wildlife offences in the marine area will fall outside the expertise of the MMO, for example where protected land-based animals are being illegally transported by ship. Where MMO enforcement officers have reason to suspect such an offence may be being committed, they will work closely with the Police, or other specialist enforcement agents such as Customs Officers or Wildlife Inspectors as appropriate.

8.80 In a limited number of situations the MMO itself may need to call on local police forces for assistance, for example where it might be necessary to arrest someone.

Science and data

The MMO's data needs

8.81 Many bodies currently collect and use various different types of marine data for a number of reasons. This will not be changed by the establishment of an MMO and it will need to rely heavily on data collected by third parties in order to deliver its functions. In particular, the MMO will need to work closely with the Marine Data and Information Partnership (MDIP), and the Marine Environmental Data Action Group (MEDAG).

8.82 The MMO will need to identify, acquire and access key data and information sets to undertake its functions. This information needs to be easily shared and updated by all functions of the MMO, across its coastal offices and at its central hub. The scale of information that the MMO will need to manage will range from a UK wide basis to very local issues. It will need scientific and environmental data as well as socioeconomic data.

8.83 The need to create maps, charts and graphs as part of the marine planning process will provide a strong driver for the development and implementation of standards for data capture, categorisation and display of 'features' on a map. The MMO's planning function means it will be a significant user of datasets displayed as geographic information layers and is likely to become a centre of expertise for this type of information.

8.84 The MMO will also need to draw on applied or pure research from bodies such as SFCs, CEFAS, NERC labs, NE, JNCC and the Agri-Food and Biosciences Institute (AFBI) in Northern Ireland. For example the MMO may use ecosystems models to predict possible future scenarios or anticipate the cumulative effects of multiple activities in an area – such as those developed by the National Centre for Ocean Forecasting.

Data management within the MMO

8.85 Our intention is that the MMO will adopt at its highest level a data management policy that will be fully compliant with the UK Marine Data Policy and the work of MDIP.

8.86 Central to this policy will be a comprehensive IT and data system for managing data, information and knowledge – both that generated 'in house', and that collected by other organisations. But the system will be more than just a database. To realise its full potential it must encompass a range of practices to identify, create and distribute knowledge for reuse, awareness and learning across the organisation.

8.87 The MMO's data management policy will be complemented by its own systems for using data. In developing these the MMO will take account of statutory EU Directive requirements for example the new Infrastructure for Spatial Information in the Community (INSPIRE).

8.88 The MMO will also need to work closely with the UKMMAS, MEDAG and with MDIP towards developing standards for data and becoming expert in the use and application of data. This will benefit not only the MMO but also all users of marine information, as it will improve standardisation and harmonisation of data.

Availability of data

8.89 We will expect the MMO to work closely with MDIP and MEDAG to contribute to a culture of sharing, circulation and reuse of data. MDIP and MEDAG are promoting the 'collect once, use many times' principle with those who collect data. Implicit within this philosophy is the need to maintain a network of UK Marine Data Archive Centres (DACs) to ensure secure long-term archival for key marine data sets.

8.90 The MMO itself will need to undertake public consultations and its actions will potentially place restrictions on marine users. So it is essential that the MMO can make relevant information freely available. For example, it will need to publish maps as part of marine plans and the coordinates defining the area of a MCZ. It may need to make a reasonable charge for making some information available.

Research coordination

8.91 The MMO will need to be aware of what marine research is being undertaken and keep abreast of new developments and discoveries in marine science. It could additionally coordinate existing efforts to ensure there are no significant gaps or overlaps between existing research programmes.

Other functions

8.92 Our primary aim in establishing the MMO is to deliver the new and improved mechanisms for developing and protecting our seas that the Marine Bill will introduce, and the synergies in incorporating within the new organisation the functions of the MFA and SFI. The MMO may also take on other functions (not necessarily derived from the Marine Bill) where these are complementary to its overall aim.

Establishing the MMO

8.93 The MMO will be established as an Executive Non-Departmental Public Body (NDPB), following standard procedure as outlined in Cabinet Office guidance[5]. NDPB status is the most appropriate and cost-effective way to establish the MMO. To make this assessment, the necessary characteristics of an organisation delivering the functions outlined above were identified, and different status options were evaluated against them.

8.94 These included:

- having the confidence of all relevant government departments and being sufficiently independent from any one government department or minister;
- consistency with wider (i.e. non-marine) government initiatives – such as Hampton, Lyons[46] and Gershon[32];
- recognisable by stakeholders outside of government to reflect the overall priorities of government (rather than individual departments)
- value for money; and
- ability to exercise a marine planning role with propriety – and attract the 'right' staff.

8.95 We intend the MMO to exhibit best practice as an employer, maximising the potential of staff by encouraging personal development, promoting effective governance throughout the organisation and ensuring maximum transparency and accountability.

8.96 Where existing posts are delivering functions that will in future be delivered by the MMO, those posts will generally transfer. Staff in those posts will be given the option of transferring to the MMO. Early consideration will be given to pay, pensions and other terms and conditions of service for staff transferring to the MMO. Information for staff and consultation about the proposed changes has begun and will continue throughout the process. The MMO will also recruit new staff by fair and open competition.

Governance

8.97 It is crucial that the MMO is accepted as serving the government-wide sustainable development agenda rather than delivering only Defra and DoE specific aims (e.g. environmental, nature conservation and fisheries objectives). Ensuring recognition of this independence by both stakeholders and across Government is essential in realising our vision for the MMO.

8.98 Thus, whilst governance arrangements for the MMO will be based on the standard Cabinet Office NDPB guidelines[5], they will additionally recognise that UK Government departments other than Defra (whose policy interests include fisheries, marine nature conservation, integrated coastal management, flood and coastal erosion risk management and the marine environment) have a direct interest in the sustainable management of our seas, including:

- Department of Trade & Industry (DTI) – policy interests – energy generation – oil and gas and renewables;
- Department for Transport (DfT) – policy interests – shipping and ports and harbours;
- Communities and Local Government (CLG) – policy interests – marine aggregates, interaction with terrestrial planning system and local authority responsibilities;
- Department for Culture, Media & Sport (DCMS) – policy interests – marine heritage, recreation and tourism; and
- Ministry of Defence (MoD) – policy interest – defence activities in the marine area.

8.99 In Northern Ireland, DOE is leading on work towards a Marine Bill on behalf of the Northern Ireland administration. The DOE's policy concerns include marine nature conservation, marine aggregates, maritime heritage, the marine environment and interaction with the terrestrial planning system and local authority responsibilities. However, several other departments also have a direct interest here, including:

- Department of Agriculture and Rural Development (DARD) – policy interests – sea fisheries and fisheries harbours;
- Department of Enterprise, Trade and Investment (DETI) – policy interests – energy generation (renewables), telecommunications, tourism;
- Department for Regional Development (DRD) – policy interests – shipping and ports and harbours and
- Department of Culture, Arts and Leisure (DCAL) – policy interests – inland fisheries including the management of salmon and eel stocks, recreation.

8.100 As the MMO will be an NDPB of Defra, the Secretary of State (Defra) will in practice be formally accountable to Parliament for the activities and performance of the MMO and public money spent by the MMO. He will be advised on the discharge of his responsibilities in relation to the MMO by a cross-government MMO sponsorship group, which will include Northern Ireland representation. This will enable the interests of UK Government departments and Northern Ireland to be represented, without compromising the clear lines of responsibility necessary to ensure proper accountability. The MMO sponsorship group will advise the Secretary of State on matters such as an appropriate framework of objectives and targets for the MMO, how well the MMO is achieving its strategic objectives and whether it is delivering value for money.

8.101 In addition to the cross-government sponsorship group, a further safeguard to ensure the MMO's independence will be provided by guidance agreed jointly across all relevant UK Government departments and Northern Ireland. The MMO will be required to take this into account, and the guidance will be renewed as necessary.

8.102 Northern Ireland will be fully integrated into the organisational structure of the MMO. Arrangements will be put in place that will respect the devolution settlement. If incoming Northern Ireland ministers adopt the MMO model, they will have full accountability for devolved functions delivered by the MMO.

8.103 The MMO Board will have corporate responsibility for ensuring that the MMO fulfils the aims and objectives set by Government and for promoting the efficient and effective use of staff and other resources by the MMO. The Chairman of the Board will be responsible to the Secretary of State. We anticipate a mix of Board members from the public, private and voluntary sectors, and that members of the MMO Board will be part-time non-executives.

8.104 Board members will be selected based on their skills, experience and ability and from a broad spread of interest groups / organisations. In appointing Board members the intention will be to include a wide range of marine experience and interest – across all three 'pillars' of sustainable development:

- economic – for example aggregate extraction, energy (oil & gas & renewable), fishing (commercial and recreational), tourism, ports / harbours & shipping, submarine cables and pipelines;
- environmental – for example species, habitats, fish stocks, water quality; and
- social – for example defence / military operations, heritage and recreation.

8.105 Detailed funding arrangements for the MMO will be determined in due course. Financial, auditing, and accountability arrangements for the MMO will all be in line with Treasury guidance, the Government Accounting Manual and the Government Financial Reporting Manual[42,43].

Steps in advance of creating an MMO

8.106 We will make a number of changes to Defra's functions in the marine environment in advance of the Marine Bill. These include the merger of licensing functions currently delivered by Defra's MCEU and MFA to form a broader Marine and Fisheries Agency as of April 2007. Its nature conservation functions will also be extended at this time to include enforcement of the 2007 Offshore Marine Regulations.

8.107 Regulation of marine aggregates licensing, which is currently delivered by CLG, will also be transferring to Defra, and specifically to the new Marine and Fisheries Agency in advance of the Marine Bill (also scheduled for April 2007).

8.108 Bringing together existing marine functions in this way prior to the Marine Bill will ease the transition towards establishing a truly holistic marine manager (the MMO).

Relationships with other bodies

8.109 The MMO will need to develop and maintain effective working relationships with a large number of government bodies and external stakeholders. The detail of these relationships will be subject to agreement and development over time. However, the outline of how we anticipate some of these relationships might work is set out below.

Relationship between the MMO and Natural England and JNCC

8.110 NE's advisory functions include giving advice to public authorities on the conservation, enhancement and management of the natural environment. The JNCC is the forum through which the four UK conservation bodies – NE, Countryside Council for Wales, Scottish Natural Heritage and the DOE in Northern Ireland through the Environment and Heritage Service (EHS) – deliver their statutory responsibilities for the United Kingdom as a whole and internationally.

8.111 The MMO will look to NE for advice when discharging its functions within 12 nautical miles, whilst JNCC will be consulted beyond 12 nautical miles.

8.112 Likewise, NE and JNCC will consult with stakeholders to identify sites for consideration for designation as MCZs. The nature conservation agencies will seek advice and information from the MMO with respect to socio-economic factors.

Relationship between the MMO and CEFAS

8.113 CEFAS is an Executive Agency of Defra. It is the largest UK Government body delivering applied marine science. Although one of an array of bodies carrying out marine research and monitoring, it is the only one in England and Wales whose primary focus is to meet the specific needs of UK government policy-makers, managers and regulators. Fisheries Research Services provides the same function in Scotland.

8.114 CEFAS provides scientific assessment and advice for managing and conserving fisheries, and for the conservation of marine and freshwater ecosystems. It undertakes environmental monitoring and assessment of nutrients, radionuclides, chemicals and other contaminants in the environment. Specifically, CEFAS provides Defra (and MFA) DTI and CLG with advice in relation to marine licensing and the Government View procedure (GV)[kk] for marine aggregate extraction. CEFAS also provides advice on aquaculture, disease control and hygiene of fish and shellfish; an incidents and emergency response support service and undertakes research and project management in support of all these services.

8.115 We do not intend to merge CEFAS as a whole into the MMO. This is consistent with the views of most respondents to the March 2006 Marine Bill consultation that expressed a view on the potential incorporation of CEFAS within the MMO. The main reasons for our decision to retain CEFAS as a separate entity from the MMO are as follows:

- CEFAS has almost twice the number of staff that we anticipate the MMO will need to deliver its functions. We don't want the MMO to lose focus on its functions by combining it with such a large science and research oriented organisation;
- CEFAS is working to deliver a new business plan designed to preserve Government's access to essential marine scientific services. This includes increasing the proportion of science / business that CEFAS delivers for customers outside Defra. Including CEFAS

kk Shortly to be replaced by regulations (The Environmental Impact Assessment and Natural Habitats (Extraction of Minerals by Marine Dredging) (England and Northern Ireland) Regulations 2007 being prepared by the CLG, and equivalent Welsh and Scottish provisions.

within the MMO could introduce tensions between the MMO's need to focus on delivery of its functions and CEFAS' need to focus on expanding science / business opportunities to secure its long term future and

- we believe keeping the two organisations separate will make it easier for the MMO to seek the information and advice it needs from the most appropriate of the array of bodies carrying out marine research and monitoring – including but not limited to CEFAS.

8.116 CEFAS currently maintains the scientific expertise and broader experience Government requires to support the management of human activities in the marine area. We intend to maintain the provision of high quality sound, impartial, scientific advice to underpin decision-making by the MMO and are considering how best to satisfy this need. This could mean a core group of scientists advising from within the MMO, with further input from CEFAS and others as needed. To avoid duplicating the scientific advisory capability we are considering whether the team currently providing scientific advice from within CEFAS should transfer to the MMO.

8.117 CEFAS is also the repository for a large amount of knowledge and data about the state of the marine environment and the impact of human activities over time. The MMO will need to draw on a range of data, including that currently held by CEFAS in delivering its functions. We envisage a two-way exchange of information between the two organisations.

Relationship between the MMO and the Agri-Food and Biosciences Institute (AFBI) Northern Ireland

8.118 AFBI is a DARD – sponsored NDPB. AFBI carries out a wide range of research, development, testing and environmental monitoring functions for DARD, other Government departments and a range of other private and public sector customers. Specifically, AFBI also provides DARD Fisheries Division (and DoE / EHS) with advice in relation to marine licensing.

8.119 We do not intend to merge AFBI with the MMO. The main reasons for our decision to retain AFBI as a separate entity from the MMO are as follows:

- In Northern Ireland DOE and DARD operate as two distinct departments. In order for AFBI to deliver its functions to its core customers, it seems more manageable to develop two-way agreements through a Service Level Agreement, or similar agreement, with the MMO, in line with its existing working relationship with DARD Fisheries Division. This would also allow those relevant parts of DoE / EHS to enter into similar agreements.
- We believe keeping the two organisations separate will make it easier for the MMO to seek the information and independent advice it needs from the most appropriate of the array of bodies carrying out marine research and monitoring – including but not limited to AFBI.
- AFBI has an extensive and diverse range of research and other scientific interests, and its inclusion could skew the focus of the MMO away from wider marine management issues

8.120 AFBI currently holds the greater body of scientific expertise and broader experience Government requires to support the management of human activities in the marine area in Northern Ireland. We intend to maintain their provision of high quality, sound, impartial, scientific advice to underpin decision-making by the MMO, and are proposing to satisfy this need via an appropriate agreement such as an Service Level Agreement.

8.121 AFBI is also the repository for a large amount of knowledge and data about the wider state of the marine environment and the impact of human activities over time. The MMO will need to draw on such a range of data, including that currently held by AFBI in delivering its functions. We envisage a two-way exchange of information between the two organisations.

Relationship between the MMO and Sea Fisheries Committees

8.122 Our proposals for the reform of SFCs are detailed elsewhere in this document. Whilst SFCs will remain outside of the MMO, both organisations will work closely together to deliver joined-up management of inshore waters. In doing so they will build on the collaborative working with the MFA that has developed significantly over recent years.

8.123 We will strengthen this working relationship by enabling SFCs to undertake functions in the marine environment on behalf of the MMO; assigning a seat on each SFC to the MMO; and transferring from the Secretary of State to the MMO the responsibility for appointing SFC members with fishing angling and other relevant interests. We envisage a two-way exchange of data and information between the two organisations.

Relationship between the MMO and English Heritage

8.124 The role of English Heritage (EH) includes providing advice on the historic environment, including designated or scheduled sites in or on the seabed in the UK territorial sea adjacent to England. Beyond 12 nautical miles EH gives heritage advice on a voluntary basis. The MMO will look to EH for advice on these matters when discharging its functions.

8.125 The MMO may also need access to appropriate heritage advice beyond 12 nautical miles in order to fulfil its functions and ensure that protection of the historic environment is given adequate consideration. The UK Government is considering the most appropriate mechanism to achieve this.

Relationship between MMO and the Environment and Heritage Service Northern Ireland

8.126 The EHS is an agency of DOE in Northern Ireland. EHS currently has a number of roles and responsibilities that extend into the marine area adjacent to terrestrial Northern Ireland. These include protecting wildlife species and habitats, conserving maritime heritage and ensuring compliance with a number of European Directives such as Bathing Waters and Shellfish Waters. DOE is also the licensing authority for deposits in the sea under Part II of FEPA, and EHS currently has full responsibility for this function. EHS is the competent authority regarding integrated river basin management for inland, estuarine and coastal waters out to 1nm in UK territorial waters adjacent to Northern Ireland through the Water

Framework Directive (WFD), and has responsibility for most water pollution control out to 3 nautical miles under the Water (Northern Ireland) Order, 1999. It also has certain statutory responsibilities, including monitoring functions in relation to coastal waters.

8.127 The MMO, through its Northern Ireland regional office, will develop a close working relationship with EHS, which we envisage including two-way sharing of advice and expertise in support of each other's functions. We would expect, for example;

- EHS to be represented on any marine planning steering groups that the Northern Ireland regional office of the MMO may establish;
- EHS to be a consultee in relevant marine licensing decisions;
- the MMO, through the Northern Ireland regional office, to make an important contribution to the delivery of WFD objectives in Northern Ireland;
- the Northern Ireland regional office of the MMO to be an EHS consultee with regard to WFD management plans for coastal areas and
- the potential involvement of the Northern Ireland regional office of the MMO in EHS' River Basin Catchment Groups as these are established.

Relationship between the MMO and the UK Hydrographic Office

8.128 The United Kingdom Hydrographic Office (UKHO) is an agency of the MoD undertaking both civil and defence roles. It provides hydrographic services for UK waters, is responsible for the provision of hydrographic and environmental information in support of UK national defence and produces officially recognised navigational charts and publications for use by the RN and commercial shipping. The UKHO also holds a variety of marine navigational and environmental data. Central to this is bathymetric and seabed data.

8.129 The data held by the UKHO and its expertise in hydrographic services will be important to the MMO in delivering its functions in the marine area. The relationship between the two organisations will need to facilitate the identification, acquisition and accessing of key data and information sets so that the MMO can undertake functions such as planning and licensing accurately and arrive at informed decisions. We envisage a two-way flow of data and information about the marine environment between the MMO and the UKHO to build on our understanding of the sea and enable geographic information datasets to be created that will greatly assist both the MMO and other users of marine data, such as academic institutions and industry.

8.130 Additionally, the UKHO will interact with the MMO through the proposed planning steering groups where appropriate.

Relationship between the MMO and the Crown Estate

8.131 The Crown Estate Commissioners ("Crown Estate") exercise the rights of the Crown as landowner of almost the entire UK seabed out to the 12 nautical mile territorial limit, in addition to the sovereign rights to explore and utilise the natural resources of the UK Continental Shelf (including the sub soil, minerals and substrata below the surface of the foreshore and bed, but excluding oil, gas and coal). Most recently the Energy Act 2004 vested rights in the Crown Estate to license the generation of renewable energy on the

continental shelf within the Renewable Energy Zone out to 200 nautical miles.[37] The Crown also owns around 55% of the foreshore, the area between mean high and mean low water (spring tides in Scotland) and approximately half of the beds of estuaries and tidal rivers in the United Kingdom.

8.132 The Crown Estate Commissioners have a general duty to maintain and enhance the value of the Crown Estate and the return obtained from it, with due regard to the requirements of good management with an emphasis on the long term stewardship and sustainable development of the marine environment.

8.133 The Crown Estate Commissioners currently have an interest in relation to licensing decisions and will have an interest in the preparation of marine plans. The MMO will therefore need to develop a close working relationship with the Commissioners when exercising its functions.

8.134 This close relationship will evolve through the marine planning process, and the MMO will benefit from understanding the Crown Estate Commissioner's position. In turn, the Crown Estate's involvement in the preparation of marine plans will enhance its understanding of Government policy in the marine area, which will assist in its performance of its general duty – for example, through granting licences in relation to the Crown's property interests in relation to the seabed.

Relationship between the MMO and the Environment Agency

8.135 The Environment Agency (EA) has a number of roles and responsibilities that extend into the marine area. These include managing flood risk, in part by building defences and issuing flood warnings; the regulation of sea fisheries in certain areas where it has the powers of a SFC; the management of stocks of salmon, sea trout and eels; protecting wildlife species and habitats; and promoting recreation. The EA 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 WFD) and has responsibility for most water pollution control out to 3 nautical miles. It also has certain statutory responsibilities in relation to monitoring of coastal waters.

8.136 The MMO will develop a close working relationship with the EA, which will include two-way sharing of advice and expertise in support of each other's functions. We would expect, for example;

- the EA to be represented on the proposed marine planning steering groups that the MMO will establish;
- the EA to be a consultee in relevant marine licensing decisions;
- the MMO to make an important contribution to the delivery of WFD objectives; and
- the MMO to be an EA consultee with regard to WFD River Basin Management Plans (RBMPs) for coastal areas.

Relationship between the MMO and Maritime and Coastguard Agency

8.137 The Maritime and Coastguard Agency (MCA) is responsible throughout the UK for implementing the government's maritime safety policy, including the coordination of search and rescue at sea, ensuring that ships meet UK and international safety rules, and also the legislation and policy concerning the environmental control of shipping in UK waters.

8.138 There will be considerable overlap between the geographic areas of operation of the MMO and the MCA. However, they will have discrete and very different functions. We envisage their general relationship as primarily one of mutual cooperation as and when appropriate.

8.139 The MCA could potentially be a member of the proposed marine planning steering groups, play a role in the preparation of marine plans, and will be a consultee in relation to marine licensing decisions that have an impact on navigation.

8.140 The MCA also holds significant data about the marine environment. Consideration will be given to how the MMO and MCA will work together to maximise the benefit derived from this.

Relationship between the MMO and the Marine Data and Information Partnership

8.141 MDIP was set up to increase the availability of marine data that is currently collected and held by different organisations. This will enable the dissemination of marine data and information and facilitate its use by marine decision-makers and users under the 'capture once and use many times' principle.

8.142 The core activities of MDIP are to:

- agree DACs and get the first wave, potentially UKHO, the British Oceanographic Data Centre and the Data Archive for Seabed Species and Habitats up and running;
- agree a set of standards for collection and transfer of data (these will be part of the requirements of the DACs) and
- make sure data is accessible to end-users, and in a readily usable format (mapping and test use cases).

8.143 The Marine Bill consultation[14] (March 2006) suggested that the MMO could potentially take on MDIP's role. On further reflection, we are not now minded to follow this course of action as the strength of MDIP lies in its partnership both across Government agencies and with the private sector and academia.

8.144 The MMO will however need to participate in MDIP and a culture of sharing, circulation and re-use of data will need to be fostered between the MMO and the partnership to contribute fully to the vision of increased amounts of quality-controlled data, readily available at reasonable cost to the end user.

Relationship with Regional Assemblies, Local Authorities and Regional Development Agencies

8.145 Regional assemblies work towards improving the economic, social and environmental standards within regions. They function as a partnership of local government, business, public sector agencies, education and training bodies, trade unions and the voluntary and community sector. Regional assemblies have been designated as Regional Planning Bodies and are responsible for preparing, monitoring and reviewing the Regional Spatial Strategies followed by local authorities.

8.146 The primary role of Regional Development Agencies is to strategically drive regional economic planning and sustainable development in their region Their aim is to coordinate regional economic development and regeneration, enabling the regions to improve their relative competitiveness and reduce the imbalance that exists within and between regions. They also have formal strategies for sustainable tourism, and in conjunction with their tourism delivery partners, contribute to the regeneration of many coastal settings.

8.147 It will be important for the MMO to build sound working relationships with regional assemblies, local authorities and Regional Development Agencies to ensure that it can consider objectives on land and particularly to ensure a joined up approach to major coastal issues and developments such as ports, which will feature in both land and marine plans. These relationships will also enable these terrestrial bodies to consider marine impacts on land.

Implications of previous reviews for the MMO

8.148 The decision to establish an MMO follows several previous reports and reviews that suggested an integrated delivery body for the marine area. These have been complemented by reports and reviews identifying best practice in delivery, regulation, location and enforcement across Government more broadly. Our proposals build on the principles set out in those reports and reviews.

8.149 Responses to the 2006 Marine Bill consultation[15] indicated broad support for setting up an MMO to deliver specific marine functions such as marine planning and licensing.

Bradley review

8.150 The Bradley 'Review of Marine Fisheries and Environmental Enforcement'[9] considered the case for creating a single marine agency with responsibility for managing fisheries. The aim of the review was to recommend options for the most effective organisation of enforcement to meet conservation objectives and the long-term needs of the fishing industry. The review identified organisational complexities for the delivery of marine fisheries functions, which had led to a fragmented approach to the management of the marine area. Bradley's assessment was that this hinders the effective management of the marine area and therefore the sustainable development of our seas.

8.151 The UK Government has made some organisational changes in relation to the delivery of its fisheries functions with the creation of the MFA in October 2005. This brought

together for the first time in one organisation the service delivery, inspection and enforcement activities provided by the UK Government to the fishing industry and other marine stakeholders in England.

8.152 The UK Government has now gone beyond the remit of the Bradley review to consider the organisational complexities for the delivery of other marine functions. As a result, the MFA will be subject to substantial rebalancing, and broadening of its functions beyond fisheries in preparation for its inclusion in the MMO. This will include:

- transfer of existing marine licensing and consents work from 'core' Defra – scheduled for April 2007; and
- enforcement and wildlife licensing in the offshore area which will arise with the introduction of the Offshore Marine Conservation Regulations (which transpose the Habitats[25] and Birds[23] Directives in the offshore area) in early 2007.

Safeguarding our Seas and Seas of Change

8.153 The UK Government and the devolved administrations set out their strategy for the conservation and sustainable development of our marine environment in 'Safeguarding our Seas'.[7] We explained that our vision of clean, healthy, safe, productive and biologically diverse oceans and seas would be delivered by pursuing policies that promote sustainable development, integrated management, stakeholder involvement, robust science and the precautionary principle.

8.154 The UK Government set out its proposals for delivering this vision in the 'Seas of Change' consultation.[8] The consultation outlined the proposed development of an operational framework for ecosystem based management which would include elements such as an interdisciplinary approach to policy, establishing more integrated and adaptive marine management / policy, assessing the status of marine resources, incorporating mechanisms for decision-making, identifying delivery and recovery tools and setting out the infrastructure for delivery.

8.155 Responses to that consultation raised concerns that there was no single body or minister responsible for the overall marine environment and hence marine management and conservation was not joined-up.

8.156 The UK Government's response to the 'Seas of Change' consultation[10] proposed a supporting approach to our proposed strategic goals and objectives for the marine environment, including coordinating its activities with those of its agencies and with the devolved administrations to enable streamlined and effective mechanisms of regulation.

Net Benefits and Securing the Benefits

8.157 In 'Net Benefits'[2] the Prime Minister's Strategy Unit recommended (recommendation 33) that "In the medium to long term, the UK Government and devolved administrations should consider integrating fisheries management tasks inside a marine environment agency responsible for broader management tasks…".

8.158 In 'Securing the Benefits'[13], the joint UK administrations response to 'Net Benefits'[2], we accepted that fisheries and wider marine environment priorities should be jointly managed within the framework of sustainability and that this should be part of an integrated marine management system where environmental and economic objectives are managed together to ensure a healthy, diverse and productive marine environment. 'Securing the Benefits'[13] also recognised that close collaboration would be required to achieve the aim of a more integrated approach to marine management. It explained that one of the main actions that the four administrations would be taking, both together and within their own areas of responsibility was to examine the case for creating one or more integrated marine agencies.

Report on the Marine Environment & Government response

8.159 This report was published in March 2004 by the UK Parliament's Environment, Food and Rural Affairs Committee.[44] It found that the current legislative and institutional regimes governing the marine area were too complex due to a lack of coordination between government departments. It recommended that the "Government should consider whether a coordinating agency should be established to ensure that the links are made between all the many activities that may affect the marine environment."

8.160 In reply to this recommendation, the UK Government concluded that it would need to consider whether improved arrangements would be needed to provide greater coordination in taking forward recommendations of the cross-cutting marine reviews. The UK Government is now certain that such a coordinating role could best be fulfilled through the creation of an MMO.

Hampton review

8.161 The final report in the 'Hampton review, Reducing Administrative Burdens: effective inspection and enforcement', considered the scope for reducing administrative burdens by promoting more efficient approaches to regulatory inspection and enforcement, without compromising regulatory standards or outcomes. Much of the final report considered the case for change in regulatory inspection and enforcement, and made specific recommendations concerning regulatory practice and data collection, which are considered elsewhere in this White Paper. Chapter 4 of the report turned its attention to the structure of regulators, and made recommendations for rationalisation, to create a regulatory system that delivers the same or better outcomes more efficiently, and to simplify cross-boundary working leading to reduced administrative burdens. It was concluded that taking this forward would reduce the number of regulators businesses have to interact with, ensure the same or better outcomes, and a more comprehensive approach to risk assessment.

8.162 The incorporation of the MFA within the MMO will mean no net increase in the number of marine delivery bodies.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

By-law
Legislation introduced at a local level to meet a specified need. Local authorities, Sea Fisheries Committees, ports and harbour authorities, for example, all have the power to introduce and enforce by-laws that can have a bearing on the marine environment and its resources.

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

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

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

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

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

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

Continental shelf
The area of seabed extending from the shoreline to a depth of about 200 metres or where the slope increases sharply to abyssal depths. In the UK, it is defined by the Continental Shelf Act

1964 and generally extends from the edge of the territorial sea to 200 nautical miles from the prescribed baseline in most cases.

Convention on Biological Diversity (CBD)
Convention dedicated to promoting sustainable development. Signed by 150 government leaders at the 1992 Rio Earth Summit.

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

Crown Dependencies
Crown dependencies are possessions of the British Crown, as opposed to overseas territories or colonies. They include the Channel Islands of Jersey and Guernsey and the Isle of Man in the Irish Sea. None forms a part of the United Kingdom, being separate jurisdictions, nor do they form part of the European Union, instead having associate member status.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Fisheries No Take Zone
Area of the sea closed to some or all types of fishing activity on a permanent or temporal basis.

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

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

Geomorphology
The study of the evolution and configuration of landforms.

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

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

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

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

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

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

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

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

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

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

International Council for the Exploration of the Sea
Independent international scientific advisory body founded in 1902, funded by 19 member states.

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

Jurisdiction
The territorial range of authority or control.

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

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

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

Marine Area
Broad term used to imply a geographic area of UK waters.

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

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

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

Marine Spatial Planning
Proposed system for strategically managing activities in the marine area.

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

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

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

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

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

Mean Low Water Mark
The average of all low water heights observed over a period.

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

Natura 2000
The European network of protected sites that represent areas of the highest value for natural habitats and species of plants and animals, which are rare, endangered or vulnerable in the European Community. The network is made up of Special Areas of Conservation and Special Protection Areas for birds.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Sessile species
A species that is permanently attached to the substratum

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

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

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

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

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

Statutory Instrument (SI)
A form of delegated legislation. Ministers can be given powers by an Act of Parliament to make SIs in order to supplement the rules contained in that Act. SIs usually therefore contain detailed legal rules governing such things as the procedure for granting a licence.

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

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

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

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

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

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

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

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

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

Acronyms

AFBI	Agri-food and Biosciences Institute
AGMACS	Advisory Group on Marine & Coastal Strategy
ASCOBANS	Agreement on the Conservation of Small Cetaceans of the Baltic and North Seas
ASFC	Association of Sea Fisheries Committees
ASSI	Area of Special Scientific Interest
BSFO	British Sea Fisheries Officer
CCS	Carbon Capture and Storage
CEFAS	Centre for Environment Fisheries and Aquaculture Science
CFP	Common Fisheries Policy
CLG	Communities and Local Government (formerly Office of the Deputy Prime Minister)
CPA	Coast Protection Act 1949
CROW	The Countryside and Rights of Way Act 2000
DAC	UK Marine Data Archive Centre
DARD	Department of Agriculture and Rural Development (NI)
DCAL	Department of Culture, Arts and Leisure (NI)
DCMS	Department for Culture, Media and Sport
DEFRA	Department for Environment, Food and Rural Affairs
DETI	Department of Enterprise, Trade and Investment (NI)
DfT	Department for Transport
DOE	Department of the Environment (NI)
DRD	Department for Regional Development (NI)
DTI	Department of Trade and Industry
EA	Environment Agency
EEZ	Exclusive Economic Zone
EH	English Heritage
EHS	Environment & Heritage Service (NI)
EIA	Environmental Impact Assessment
EPP	Environmental Permitting Programme
EU	European Union
FAPS	Financial Administrative Penalties
FEPA	Food and Environment Protection Act 1985

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

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

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