



Summary of the Draft Marine Bill

Compiled by Jim Masters
April 2008
for the Devon Maritime Forum



Contents:

Disclaimer	4
Introduction	4
Policy context	4
What the Measures Cover	4
How the Enabling Measures Will Work	
Marine Policy Statement	7
Marine Management Organisation (MMO)	7
Marine Planning	8
Improved Marine Licensing	10
Marine Nature Conservation	11
Marine Fisheries	12
Migratory and Freshwater Fisheries	14
Marine Enforcement	15
Coastal Access	16
Transitional Arrangements	18
UK Map	19
Costs and Benefits	21

Disclaimer

This document summarises the draft Marine Bill, using the original Defra document as its source of reference. It is intended as an overview of the key aspects of the legislation in order to facilitate comment and debate. It has been packaged in to sections relating to the key themes of the Marine Bill. Official Defra language/phrasing has been used wherever possible but the content needs to be viewed as a distillation of complex legislation. It is recommended, therefore, that if there are specific aspects of concern or interest then the reader should refer to the full draft legislation document. The Devon Maritime Forum claims no mandate from Defra for the compilation of this summary.

Introduction

Our seas are some of the busiest in the world and demands on their resources are increasing. If we are to ensure that we can continue to make the best sustainable use of those resources we need to be able to take a more strategic approach to managing marine activities and protecting marine resources in the future. The draft Bill gives us the legislative tools we need to take this strategic, simplified and coherent approach.

The draft Bill helps fulfil the Government's 2005 election manifesto commitment to introduce a new framework for the seas based on marine spatial planning, that balances conservation, energy and resource needs.

The publication of the Bill in draft allows for pre-legislative Parliamentary scrutiny and public consultation. Views and comments are welcomed by Defra and must be submitted in writing by **26th June 2008** to:

Marine Bill Team
Department for Environment, Food and Rural Affairs
Area 2C Nobel House
17 Smith Square
London
SW1P 3JR

The introduction of the Bill to Parliament will depend on the availability of Parliamentary time.

Policy context:

The UK is party to the United Nations Convention on Law of the Sea (UNCLOS) which sets out the legal framework for all ocean activities. Shipping activity, whilst within the framework of UNCLOS, is managed by the UN's International Maritime Organization (IMO), of which the UK is a Member State. The UK is also party to a number of conventions and commissions which have specific implications for the marine environment.

EU legislation has been central to developing a variety of measures to manage important sectors and impacts in the marine environment. These cover areas such as conservation, fisheries, environmental pollution, renewable energy targets and water quality, and have been key to helping us improve and clean up our seas. The EU Marine Strategy Directive is about to be adopted. This requires member states to take the necessary measures to achieve "Good Environmental Status" (GES) in their waters. This will be developed using an ecosystem based approach; describing the environmental status of our waters to which we aspire, our impacts on them, and then developing a programme of measures to attain GES. The EU has also recently announced the publication of a Blue Book (a "vision document") on an Integrated Maritime Policy for the EU. The Marine Directive is seen by the European Commission as the environmental pillar of their Maritime Policy.

What The Measures Cover:

Creation of the Marine Management Organisation: the draft Bill provides for the creation of a Marine Management Organisation (MMO) to deliver marine functions in the waters around England and in the UK offshore area (for matters that are not devolved). The MMO will be an independent Non-Departmental Public Body, and will deliver marine functions for the UK Government as a whole. It is designed to be a suitable body to draw up marine plans for the purposes of the new planning regime. It will also administer marine

environmental licensing and harbour regimes, manage marine fisheries, undertake nature conservation functions and use enforcement powers to enforce fisheries, licensing and nature conservation legislation.

Marine planning: the draft Bill contains measures to deliver a new marine planning system. This includes articulating long term objectives for the marine area around the UK in a Marine Policy Statement (MPS). Marine plans will then set more detailed and spatial policy at a more local level, based on information about specific areas and their uses of the sea. At present marine policy is developed sector by sector, which makes it difficult for decision-makers and users of the sea to know what the relative priorities are.

Better licensing decisions: the proposals in the draft Bill will change the system for licensing activities in the seas from a slow and complex one to a simplified system where, as far as possible, a one-stop-shop is provided for each project. This will let us look at applications in the round, to consider all the costs and benefits at the same time, and therefore make better decisions. Existing regimes will be merged with some modifications. This requires the amendment of the relationship between marine licensing and certain other legislation governing activities in the marine area. It also provides for the mechanisms and powers for enforcing the licensing regime.

Nature conservation: the draft Bill provides for the designation of Marine Conservation Zones (MCZs), both for protection of individual habitats and species, and also for the creation of a network of sites representing marine ecosystems around the UK. They will replace existing Marine Nature reserves (MNRs) and will complement the network of Natura 2000 European sites. Designation will take account of environmental, social and economic criteria and will fulfil Government obligations under the OSPAR convention. The draft Bill also provides for measures to prevent activities from damaging sites once designated and requires public bodies to exercise their functions in a way that will further the conservation objectives set for MCZs. There will also be powers to make conservation orders and interim orders to protect sites and potential sites from otherwise unregulated activities.

Managing marine fisheries: the draft Bill introduces a number of measures to strengthen the management of marine fisheries. It includes measures to reform inshore fisheries management, replacing Sea Fisheries Committees with newly created Inshore Fisheries and Conservation Authorities (IFCAs), as well as enhancements to legislation underpinning sea fisheries conservation and shellfish management. There are also measures to increase the flexibility in the Government's existing power to charge for commercial fishing licences. In line with better regulation principles, the draft Bill repeals some out-of-date fisheries legislation. The Sea Fisheries (Shellfish) Act 1967 will be amended to modify the way that Several and Regulating Orders are used to establish and manage shellfisheries. It allows for the cost of fisheries management to be recouped from the fishing industry.

Reform of migratory and freshwater fisheries: the proposals in the draft Bill modernise powers for the licensing and management of fisheries and allow for the introduction of a scheme to manage live fish movement. The EA will have increased conservation and management powers to this end.

Enforcement: the draft Bill streamlines and modernises enforcement powers. It introduces a common set of powers so that officers enforcing fisheries, nature conservation and licensing legislation will have access to a core set of enforcement powers for the purposes of inspection and investigation. This will clarify enforcement powers for those being inspected. It amends the powers of British Sea Fisheries Officers to enforce fisheries legislation and deal with goods and monies, and confers power to introduce an administrative penalties scheme for fisheries offences.

Administrative penalties: the draft Bill introduces a civil sanctions scheme for licensing and nature conservation offences and an administrative penalty scheme for domestic fisheries offences. In combination with enforcement tools ranging from advice to prosecution, these will give the ability to address offences in a proportionate, flexible and risk-based manner.

Access to coastal land: the draft Bill places a duty on the Secretary of State and Natural England to secure a long-distance route ("the English coastal route") and land available for open-air recreation ("spreading room") accessible to the public around the coast of England. It amends existing legislation to provide a coastal margin, within which people will be able to walk along a long-distance route for the length of the English coast (with certain exceptions, including, for example, developed land, Ministry of Defence land, land used as a park or garden, railways and quarries). In addition people will have access to coastal land such as beaches, cliffs, rocks and dunes, for the purposes of open-air recreation on foot.

Territorial Extent

The draft Bill applies across the United Kingdom and is in line with the current devolution settlement. Defra would like to achieve a UK-wide regime as far as possible, and are continuing to work with the devolved administrations. As currently drafted, the UK Government will legislate for England, the waters around England, for some things in the “offshore waters” around the UK, and for certain functions within the territorial waters of Scotland, Wales and Northern Ireland (the “devolved administrations”) where there is agreement to do so.

Not all the proposals in the draft Bill will apply to the whole of the UK:

Policy area	England	Ireland	Scotland	Wales
Policy statement	√	√	√ (restricted content and impact)	√
MMO	√	Will apply for matters that are not devolved in the offshore area		
Marine Planning	√	Excluding territorial waters		√
Marine licensing	√	Excluding territorial waters		√
Marine Nature conservation	√	Excluding territorial waters		√
Marine fisheries	√	Excluding Scottish and Northern Ireland Zones		√
Migratory and freshwater fisheries	√		√ (only Border Esk)	√
Access to coastal land	√			

The **Welsh Assembly Government** is supportive of the need for a Marine Bill. This means that the majority of the proposals for England also apply for Wales. In areas where these changes are the responsibility of Welsh Ministers, it will be for them to decide how the powers will be used.

Northern Ireland is fully committed to the policy aims underpinning the draft UK Bill. Management of activities in the marine area will fall within a complex mix of devolved and reserved responsibilities.

The **Scottish Executive** plans new marine legislation to ensure the sustainable management of Scotland's seas and coasts. A Scottish Marine Management Organisation is planned which will lead delivery of the proposals within Scottish territorial waters and where matters are devolved. The Scottish Executive will undertake a full consultation on a Marine Bill because they believe that the waters around Scotland would be better served by legislation emanating from Holyrood. The Scottish Executive has indicated that it seeks clarification of responsibilities in respect of new powers, particularly in the offshore zones where Scotland has devolved responsibility for certain matters, whilst other matters are reserved to the UK Government.

How the Enabling Measures Will Work:

Marine Policy Statement:

A 'marine policy statement' (MPS) will be prepared for all UK waters that will set out policies for the delivery of sustainable development in the UK marine area. It will describe a long-term framework by setting out a vision and objectives for the marine area and its uses, incorporating economic, social, cultural and environmental priorities. It will be developed by the Secretary of State, Welsh Ministers and the Department of the Environment in Northern Ireland. Scottish Ministers will not participate.

The statement will contain high-level objectives and high-level information about the current use of marine resources, predicted future trends and environmental changes and allow any of the policy authorities to withdraw from it if it ceases to be effective. The UK Government is committed to creating National Policy Statements through the Planning Bill – the MPS will expand and explain these statements for the marine environment. The MPS will also explain how we are addressing our international commitments. It is intended to have the MPS in place within 2 years of Royal Assent, although no timetable has been given for this.

Marine Management Organisation (MMO):

The MMO will become the key strategic delivery body of the Marine Bill legislation with a focus on sustainable development. It will be the main regulating and planning body and will make decisions according to the MPS above. It will supersede the Marine Fisheries Agency (MFA). All the current functions, staff and offices of the MFA will be transferred to the MMO, which will work to integrate management of our seas with land at the coast. Its work will be guided by the Secretary of State, with respect to the resources available.

The MMO will be a Non-Departmental Public Body. It will work closely with marine stakeholders and other delivery bodies, therefore allowing Government departments to concentrate on developing policy. It will work closely with bodies with similar interests (NE, EA, JNCC, MCA), and will be expected to develop strong working partnerships with these in order to discharge its duties most effectively. It will aim to build strong relationships with stakeholders and Local Authorities and provide opportunities for stakeholders to have their say. It is to be expected to 'have regard' to the conservation of marine flora and fauna – replacing the Sea Fisheries (Wildlife Conservation) Act 1992.

Set up

- There will be a 'skeleton organisation' initially – establishing a framework body without functions
- 'Managed transition' will take place to ease the transformation from the MFA to the MMO – building on MFA staff expertise and practices and re-aligning these to the new functions of the MMO
- The MFA will cease to exist in the advent of the vesting of the MMO
- 8 board members will be elected from the 3 'pillars' of sustainable development (read Ecosystems Approach!) – economy, environment and culture
- A stakeholder advisory committee will be established to help improve input from across sectors
- It will be required to consult relevant bodies when making decisions
- The timing of establishment of the MMO is as yet unclear as it will follow from the granting of Royal Assent

Location

- There will be a network of coastal offices, with a larger Head Quarters functioning as a strategic centre of excellence
- The MMO coastal offices will make use of the 18 existing MFA offices

Staff

- Employees of the MMO will all be public servants
- It is estimated that 40 *new* posts will be required initially
- Existing MFA staff will be re-trained as necessary and transferred to the MMO

Finance

- The MMO will be funded by grants from the Secretary of State and can borrow up to £20 million in order to help it perform its functions (increasing to £80 million on agreement by the Secretary of State)

Post Launch

- The Secretary of State will be directly accountable to Parliament for all MMO activities
- An MMO Sponsorship Group will be formed in order to increase integration. This will consist of initially BERR, Defra, DfT, CLG, MoD, DCMS
- The MMO will make arrangements to ensure the most effective discharge of its functions through effective relationships with other delivery bodies. The detail of these relationships will be set out in a Memorandum of Understanding
- Agreements with other delivery bodies can only last a maximum of 20 years
- Local Authorities may be added to this list of competent delivery bodies in the future
- The MMO is required to keep abreast of all matters relating to its purpose and will undertake, commission or support research to this end (either jointly or alone), then make the results available
- The MMO will provide advice and assistance related to its work, either on request or on its own initiative
- It will have powers of enforcement and prosecution in order to pursue criminal or civil proceedings in relation to civil penalties through Magistrates Courts. This will allow it to have prosecutors on its staff (like the EA does)
- It will be able to make reasonable charges for the services it provides in order to recover costs

Marine Data and information

- The principle of “collect once and use many times” will be applied to data in order to maximise efficiency and economies of scale
- It will be important to secure access to a range of data types in order for the MMO to deliver its functions
- The breadth of information types used by or required by the MMO will increase with time
- The MMO will develop a diverse research programme to provide it with the information it will require

Marine Planning:

Marine plans will apply the Marine Policy Statement (MPS) in more detail within specific parts of UK waters. The Secretary of State will be the marine plan authority for the UK marine area, excluding the Northern Ireland inshore and offshore regions, the Welsh inshore region and the Scottish inshore region. Each plan authority will designate whole or parts of their region as “marine plan areas”. Each plan must be adopted by the marine plan authority for the region in which it lies, be prepared in accordance with a given framework and contribute to the sustainable development of the marine plan area.

The marine plans will clearly identify the areas to which they apply through maps or charts. They will set out how the policies and objectives of the MPS will be applied at the local level. It will be possible to develop marine plans without the MPS, however. Once a marine plan has been adopted by the relevant planning authority and comes in to effect, it has a legal effect on decision which will affect the UK marine area. The plans will need to remain flexible and up-to-date, being subject to review, amendment or withdrawal as required. They need to consider such things as: physical, environmental, social, cultural and economic characteristics, living resources; communication, energy and transport systems and any changes that might occur to any or all of these systems over time.

Planning areas

- Marine planning should reflect the current distribution of functions under the ‘devolution settlement’
- Responsibilities will vary within different administrative parts of the UK
- The MMO will plan in waters off the coast of England, and offshore area of GB beyond 12 nautical miles
- The Welsh Assembly will be the planning authority in Welsh waters
- Northern Ireland will lead in preparing plans taken forward through their own planning process
- Scotland will be pursuing their own plans
- Adjacent authorities will need to notify each other and ensure compatibility – e.g. cross boarder estuaries and the Irish Sea
- There will be a set of clear plans for a given area with no ‘nesting’ of plans anticipated.

Planning cycle

- Marine plan authorities will be required to monitor and report on the effects of a plan and its contribution to the implementation of the policies and objectives of the MPS at a minimum of every three years. There is no provision to replace plans within a given cycle

- People may challenge marine policy documents within 6 weeks of the adoption of the relevant document
- Marine plans will be developed gradually, with a phased approach to implementation
- Two marine plans will be created initially, focused on locations where they will be of most benefit

Planning teams

- Will need skilled individuals whose abilities will cover a range of disciplines
- Combination of formal town planning experience of strategic thinking, project management and policy development
- Marine expertise will also be important
- A project board will oversee the development of each marine plan – including budgets and setting of milestones

Preparation of plans

- Plans will need to draw on available spatial information and any changes that are forecast. They will use these to develop early options and plan proposals
- Guidance on the precise frameworks required to develop marine plans will be produced at a later stage
- An appraisal of the sustainability of marine plan options will be required by the planning authority and the extent to which they meet EU legislation

Coastal integration

- Marine planning will contribute to coastal integration but it is not clear how this is going to happen yet. A desk study is being undertaken with the EA to explore this
- The planning framework needs to take in to consideration changes to the planning structures on land that will be influencing coastal integration. An overview of these initiatives is being undertaken across Government

Involving others

- Marine planning will require the input of other bodies. The organisations that might be called on to give advice will be approached in advance by the MMO in order to prepare them for this
- Stakeholders need to shape the process and will play a key role in the development of the plans
- Regional planning bodies (EA, LAs, Crown Estates) will need to play a full and effective role throughout the process and ensure planning integrates with other processes
- Each planning authority will be required to publish a statement at the beginning of the development of each plan that sets out how it will involve people at each stage
- The relevant marine planning bodies will be responsible for involving stakeholders and any consultation process
- The nature and complexity of coastal communities and marine users will need to be considered throughout the development of the marine plans
- The planning authorities will need to consider what existing structures are already in place to facilitate engagement with local communities and marine users, such as coastal partnerships

Scrutiny of plans

- Each plan will be scrutinised by an individual person, focusing on consultation responses and any issues that have arisen
- The complexity of issues – and hence the above process – will vary depending on location, reflecting the communities, environment and marine users the plans are designed to serve

Effects of the plans

- Public authorities will be required to have regard to the “appropriate marine policy documents” (MPS and marine plans) when making decisions about the exercise of any of their functions that are capable of affecting the UK marine area
- Marine plans will not remove the need for the current licensing process
- The plans will advise and steer marine users towards a use of space that will make whole licensing process more efficient
- Developers will benefit from a reduction of stakeholder ‘show stoppers’ by ensuring the integration of all interests and issues at an early stage
- Decisions made by public bodies will be made in accordance with the plans unless other courses of action are more appropriate

- Licensing decisions will be the area most affected by the marine plans, as certain activities may become restricted within the plan area

Improved Marine Licensing:

The major change to the licensing regime is the consolidation and modernisation of two existing Acts: the Food and Environment Protection Act 1985 (FEPA)⁸ and the Coast Protection Act 1949 (CPA)⁹. When enacted, 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. Their consolidation removes the complexity and overlap that has grown up over the years with successive amendments and the advent of EU requirements. It draws together into a single licensing decision consideration of environmental, human health and navigational safety factors as well as other users of the sea. The list of activities that need a licence can be amended by order, produced by each devolved administration.

The new regime will simplify and streamline the process of getting a licence. The reforms enable the MMO (for reserved matters) to use a single consenting process for decisions that are currently subject to different procedural rules, running to different timescales and with different considerations. That will save effort for all concerned, and in combination with the ability to make further provisions about the procedure, such as setting timescales for decisions, bring greater certainty to the outcome.

The second objective is to enable the licensing authorities to consider all of the factors relevant to many projects simultaneously. This is fundamental to the MMO's ability to deliver sustainable development objectives. An independent appeals mechanism will be established clearly defined and transparent process. Each licensing authority can specify in what form an application for a marine licence should be submitted and may charge an application fee. Fees will be set according to the regulations laid by the licensing authority.

On processing a licence application, the licensing authority must have regard to: the need to protect the environment; the need to protect human health; the need to prevent interference with legitimate uses of the sea; and such other matters as the authority thinks of as relevant. The licensing authority may impose conditions on any licence it grants, and may bind persons other than those to whom the licence is given in the case of construction works. In other cases, the licensing authority can exempt activities from needing a licence if certain conditions are met e.g. re-distributing sand on a beach or small repairs to a harbour wall.

Integrating flood risk and marine licensing

- Development projects that raise land/sea boundary issues related to flood risk will be licensed under new agreements in collaboration with the EA in order to streamline this process

Harbour Development

- A single authority (MMO in England) will be responsible for the main marine consents required for harbour construction and alteration
- The Draft Marine Bill allows for both Harbour Empowerment or Revision Orders and marine environmental consents to be put through one simplified process
- Where an activity may require licences under both the draft Bill and either the Harbour Act or the Electricity Act 1989, then the licence will only be considered under the Harbour or Electricity Acts
- The Water Act and Telecommunications Act are also affected and licenses under these Acts will be brought in to the power of the Bill where appropriate
- Harbour Revision and Empowerment Orders will be able to consider the issues of flood risk and land drainage associated with harbour construction
- Inquiries in to draft Harbour Orders will be held only when serious or substantial issues are raised in order to reduce cost and time
- MMO to become the main/single point of contact for harbour developers

Dredging

- The Bill puts all forms of dredging on an equal footing
- Each operation is treated according to risks and impacts associated with it
- The Bill does not affect maintenance dredging where it is permitted by a local Act or Harbour Order
- The Bill outlines a framework where the MMO will work towards a system of evidence-based exemptions for dredging regimes that have been in existence for years with no apparent adverse impacts

Renewable electricity

- The Bill enables ministers to create provisions allowing the Marine Act license application to be considered through the Electricity Act procedure = single consent process for obtaining consent to build each new renewable energy development

Enforcement

- A breach of consent may lead to fines up to a maximum of £50,000
- Statutory notices will be introduced for licensing offences covering “stop” compliances and remediation purpose. Enforcement officers can therefore;
 1. Require an operator to stop a damaging activity
 2. Require an operator to quickly take steps to prevent harm
 3. Specify what remediation/compensation measures needed when the environment has been harmed
- There is also a scheme of civil sanctions for monetary penalties and voluntary undertakings (See the Regulatory and Enforcement Sanctions Bill)

Cross-border issues

- Developers will need relevant licenses from each licensing authority where their activity crosses a marine planning or administrative boundary. For example, a contractor wishing to dredge sand from Wales and dump sand in Northern Ireland will need to apply for consents from both authorities to do this

Infrastructure Planning Commission

- At sea, the Infrastructure Planning Commission (IPC) will be responsible for issuing development consents for large offshore renewable energy projects
- Both MMO and IPC will operate in accordance with relevant National Policy Statements
- Marine Enforcement Officers will use enforcement powers to monitor licenses and development consents except in territorial waters around Wales where Welsh Enforcement Officers will enforce Marine Bill licenses

Marine Nature Conservation

The draft Bill provides the tools needed to designate and protect a network of sites – Marine Conservation Zones (MCZs) – which will provide protected areas covering habitats and species which exist in our seas, excluding the territorial waters adjacent to Scotland and Northern Ireland. MCZs will be both large enough, and close enough together, to support functioning communities of marine wildlife. The Bill provides for new amendments and additions to the Wildlife and Countryside Act 1981 in order to designate new areas for conservation purposes.

Sites will need to be selected on the best available evidence, with consideration of social, environmental and economic factors integrated into the decision-making process. MCZs will contribute to a UK network of Marine Protected Areas (MPAs), alongside Special Protection Areas (SPAs) and Special Areas of Conservation (SACs) which are all designated under the European Habitat and Birds Directives. Natural England is proposing to set up stakeholder-led regional projects, based on the ‘Finding Sanctuary’ model to facilitate this process.

Early and full engagement in these regional projects will ensure that stakeholders, whether from relevant industries, conservation bodies or other sectors, are able to help shape the recommended networks of sites. Each site will have conservation objectives set out in the designating order, which will effectively determine the level of protection for the site. There will be scope to set stringent conservation objectives thereby effectively creating ‘Highly Protected Marine Reserves’. All public bodies will have a duty to exercise their functions in ways which further – or at least do not hinder – the conservation objectives set for MCZs.

The duties are framed in a way which will best enable MCZs’ conservation objectives to be achieved, whilst allowing an appropriate degree of flexibility – with safeguards – where it is considered that development needs to proceed in the public interest. There is also provision for consultation to take place between relevant designating authorities and statutory nature conservation bodies where proposals for MCZs has cross-boundary implications for activities.

Landward boundaries of MCZs can be set to follow the mean high water spring tide or to be defined by reference to it. They can also include 'land whether or not covered by water together with some or all of the water covering it.' Islands can also form part of MCZs, which will be of particular relevance to small islands, transient sand banks or rocky outcrops. They can also include an additional adjacent area of seashore above mean high water spring tide in limited circumstances.

Licenses for activities within MCZs will be restricted, particularly when the activity might affect the designated protected feature, or any ecological or geomorphological process on which the conservation of such features are dependent. Restoration or recreation of marine habitat when referring to compensatory measures of 'equivalent environmental benefit' may be difficult in the marine environment and, as such, Authorities will be required to take decisions on the balance of the best available evidence.

Conservation Orders

- MMO will be able to make conservation orders (similar to byelaws) to control otherwise unregulated activities (e.g. jet-skiing, anchoring boats, eco-tourism and wildlife watching) out to 12 nautical miles
- The powers granted to the MMO in this section are drafted widely to allow the MMO and Welsh Ministers to control any of the activities they may need to
- Assessments of conservation orders will be assisted by the statutory nature conservation bodies and will control both deliberate acts of damage or disturbance and other problematic activities, particularly those adjacent to MCZs
- The MMO will be required to carry out public consultation before making a conservation order, and they need to be confirmed by the Secretary of State before they can come in to force
- Conservation orders will control specific activities thereby simplifying nature conservation offences
- Breaches of conservation orders can lead to fines of up to £50,000 but will also allow for the allocation of fixed administrative penalties or the requirement to accept voluntary undertakings to mitigate the effects of an activity
- Urgent conservation orders can be made without the normal procedure but they must not exceed 12 months, with a possible extension for a further 6 months. These will only be allowed for the urgent protection of an MCZ
- There will also be provision for interim orders to protect features where the MMO considers an MCZ is required but does not exist and where there is urgent need to protect features of interest
- Urgent and Interim orders will also be available to the Welsh Assembly as a means of managing marine resources
- Defra and Welsh Assembly are preparing detailed guidance on how nature conservation provisions will be implemented, to include the selection and designation of MCZs, achieving conservation objectives, use of conservation orders and the setting of seaward boundaries of SSSi and NNRs
- Statutory nature conservation bodies will be allowed to notify land as an SSSi where it:
 1. lies above mean low water mark;
 2. is covered by estuarial waters;
 3. is land defined by new legislation as an amendment to section 28 of the Wildlife and Countryside Act 1981 (c.69). There must be conservation of practicable reasons for extending and SSSi into the subtidal area
- Inshore fisheries and conservation districts will be established to manage the exploitation of sea fisheries resources in a sustainable way

Marine fisheries

Inshore fisheries and conservation authorities

The draft Bill replaces Sea Fisheries Committees with Inshore Fisheries and Conservation Authorities (IFCAs), whose purpose will be to manage the exploitation of fisheries resources occurring in their inshore fisheries and conservation districts in a sustainable way. Whilst their focus will be sea fisheries management, IFCAs will also carry out an important role in enforcing the full range of marine environmental legislation.

IFCA districts will extend around the entire coastline of England and Wales out to six nautical miles and in estuaries. Membership will be limited to a maximum of 21 seats comprising one-third constituent local authorities; plus one seat each for the MMO (for IFCAs in Wales this will be a seat for the Welsh Ministers' representative), Natural England (for IFCAs in Wales this will be a seat for the Countryside Council for Wales) and the Environment Agency.

They will have powers to make byelaws for the management of sea fisheries resources as well as for wider environmental purposes such as the protection of species and habitats from fishing activity. Their powers will

be broad enough to enable the regulation of the full range of marine fisheries activities including the introduction of chargeable permits, effort limitation and areas restricted to fishing. They will be required to consult the Environment Agency, Natural England (CCW), neighbouring IFCA's and the MMO on byelaws as well as all stakeholders who have an interest. Impact Assessments will accompany the consultation process.

IFCA's will be able to introduce emergency byelaws at short notice to deal urgently with unforeseen events. An emergency byelaw would **not** need to be confirmed by the Secretary of State (in respect of IFCA's in England) or Welsh Ministers (in respect of IFCA's in Wales) but would expire after 12 months. Emergency byelaws would be extendable once for a further period of up to 6 months with the written approval of the Secretary of State or the Welsh Ministers as appropriate.

Maximum penalty for offences will be increased from £5,000 to £50,000. For offences involving a breach of a permit issued by an IFCA, the court may revoke or suspend the permit. IFCA's will also have powers to enforce national and EC fisheries legislation in their district as well as the full range of marine environmental legislation such as byelaws introduced by the MMO. The Secretary of State will also transfer powers to the MMO to give European Community grants within England for the purposes of Title IV of Council Regulation (EC) 1198/2006.

All local authorities with seashore must fund their local IFCA. This removes the current opt-out exercised by some local authorities. Defra will provide funding to local authorities to cover the additional financial burden. IFCA's will be able to charge fishermen to offset some of their costs of operating permit schemes. Anyone wishing to undertake commercially licensed fishing will be required to provide the IFCA's with certain information

Fisheries regulations

- Size limits may be set differently for different areas and for different sexes of fish and may restrict landing by any person of parts of fish below the size limit set for that species
- Ministers will be able to make orders setting a maximum or minimum size limit for sea fish or a size range outside which no fish may be landed, sold or carried
- There will be new offences for people fishing from the shore in contravention of any restrictions
- It will be clarified how Ministers will vary the amount of charge levied for different classes of fishing licence
- Fishing for sea fish of any description and by any method specified for any period can be restricted by Ministers and the bill creates an offence where any fishing boat is in contravention of such an order

Shellfish

- The Bill allows IFCA's to regulate, protect and develop fisheries for shellfish
- The Bill implements changes to reduce the cost burden of Several and Regulating Orders in England and Wales in order that they might better manage and conserve specified shellfish stocks in a designated area. The grantee will be able to introduce quotas for shellfish stocks and a system of licensing to restrict the number of persons authorised to exploit the fishery
- Public Inquiries will only be held where serious or substantial issues are raised or when the Secretary of State decides that one should be held
- IFCA's will be able to enforce the provisions of Several and Regulating Orders and a £50,000 maximum penalty for offences can be levied
- Licences to fish for shellfish can be cancelled after first offence, mirroring an amendment what was made in Scotland by section 32 of the Aquaculture and Fisheries (Scotland) Act 2007
- The Bill has also introduced greater flexibility over the use of certain fishing gears, although the implements to be used over oyster beds are restricted to hook, line and nets
- Crabs and lobsters can be taken for scientific purposes and are exempt from other legislation in these circumstances

Charging for commercial licenses

- Charges related to the use of certain types of fishing methods could help provide incentives towards less damaging gears
- The Bill introduces flexibility to levy charges according to different classes of vessel and gears in England and Wales
- Issues of competitiveness will need to be addressed before this is adopted

Recreational Sea Angling and unregulated fishing

- The powers of the Bill allow for the introduction of a 'bag limit' for particular species
- It also allows for the maximum size or range of sizes to be set for a species of fish
- Additional powers will only be used to extend controls based on conservation objectives and will be subject to consultation

Out of date and redundant fisheries legislation

- There are 9 out of date fisheries Acts. 6 will be repealed completely, together with a section of one other Act. The remaining two Acts are to be retained

Migratory and Freshwater Fisheries

The Bill fulfils a long-standing commitment to implement principle recommendations of the Salmon and Freshwater Fisheries Review, which went to public consultation and carries particular recommended courses of action. This aspect of the Marine Bill widens the powers available to the Environment Agency in its role as a fisheries manager. It also gives powers to the appropriate national authority to make regulations in respect of the keeping of live fish and their introduction in to and removal from inland waters. The Draft Bill modernises the tools available to the EA for enforcement of fisheries management.

Types of Fish

- Regulatory powers will be extended to include smelt and lamprey
- Flounder, mullet or bass could be included as freshwater fishes thereby complementing sea fisheries management regimes should these species be found increasingly in fresh water as a result of sea level rise

Licensing

- Three levels of rod licenses will be issued –
 1. Salmon, trout, smelt and coarse fish
 2. Trout and coarse fish
 3. Eels and lamprey
- This will result in little real change for anglers but will give more flexibility for the EA in fisheries management
- Net and trap fisheries will be either licensed or authorised, licensing will include:
 1. Compass nets, haaf nets, draft hand and trammel/whammel nets, wade nets, coracle nets, T&J nets, drift nets, gill nets and seine nets
 2. Fyke nets, dip nets, baskets and crigs
- EA will control "historic installations", where a previously privileged status has prevented coherent management of the fishery by protecting these fisheries from legislation

Authorisations

- There will need to be authorisations for fisheries not covered by licenses
- Formal separation of fisheries allows for better assessment of impacts on different species resulting from the fisheries

Effort limitation

- Net Limitation Orders (NLOs) will be extended to all migratory species
- EA required to consult on proposed NLOs
- EA will be obliged to consider compensation where catch or effort is reduced. Instruments will be established in order to safeguard fishermen's livelihoods

Illegal instruments

- Power will exist to ban instruments and implements that have the potential to take fish indiscriminately, damage them or take a large proportion of the fish present

Power for EA to make emergency Byelaws

- The EA will have powers to make emergency byelaws in response to situations such as serious drought, pollution, high temperatures
- The byelaws will be in existence for a maximum of 12 months with possible extension for a further 6
- There will need to be no consultation on the imposition of emergency byelaws

Reform of law on byelaws

- Existing closed-seasons will be repealed and the EA will set close-seasons through byelaws, giving them more flexibility for managing individual fisheries
- The right to remove freshwater fish by trout and salmon fishermen will be repealed
- New powers to make byelaws prohibiting the removal of fish over a certain size to help increase the spawning viability for a given species will be put in place
- There are additional powers which allow the EA to make byelaws which further the conservation of any MCZ within its area, and only apply in England

Reformation of law on introduction of live fish

- New powers to regulate the keeping, movement, release and removal of native species
- Authorisation would be a long-term consenting framework against which all future fish movements for a given site would be made
- Removes administrative burden for suppliers and EA
- All fish farms would be covered by this scheme
- Fish being transported would need a relevant “consignment note”
- Controls on most native species are expected to be minimal

Marine enforcement

The MMO will be able to appoint Marine Enforcement Officers (MEOs) to enforce sea fisheries, nature conservation and licensing legislation in the marine area. Similarly, Welsh ministers will be able to appoint Welsh Enforcement Officers (WEOs). The Department of the Environment in Northern Ireland may appoint people for the purpose of enforcing marine licensing. The area of enforcement depends on the regime (fisheries, licensing or nature conservation) and the vessel. Where the Marine Bill powers do not apply, enforcement powers will be provided by the appointment of British Sea Fisheries Officers and other enforcement officers.

In the inshore area (0-6nm), and in estuaries there will be shared responsibility between the MMO, EA and IFCAs for the management and enforcement of fisheries and nature conservation legislation. IFCAs will continue to lead on local sea fisheries management and the wider marine environment. The EA will continue to lead on migratory and freshwater fisheries enforcement. The MMO will take action where national measures are required and in cases where nature conservation is at risk from non-fisheries threats.

Common enforcement powers

- The draft Bill streamlines powers so that enforcement officers have access to a single set of common powers
- Enforcement Officers may be regarded at sea as similar to the police, they have powers to:
 1. stop, board, inspect and disembark a vessel/installation
 2. require a person to help them carry out their duties
 3. enter a premises to carry out their functions – with warrants as necessary
 4. to search, carry out investigations and seize objects
- Any offences against enforcement officers will be reviewed in the period preceding publication of the final Bill

Marine nature conservation-specific powers

- EOs will have powers to take sound recordings for the purpose of enforcing certain rules

Marine fisheries specific powers

- There will be new powers to inspect gear at sea and forfeit gear and fish
- There will be new powers to seize and destroy gear and under-sized fish
- Powers for detaining boats will be clarified in future drafts of the Bill
- The MMO will have the power to sell any fish seized under its powers

Administrative penalties

- Monetary penalties will offer an efficient and cost effective proportionate approach to enforcement – if offenders pay the penalty they will avoid a criminal record
- For marine licensing there will be fixed penalty notices for low level offences
- Variable monetary penalties will be used for more serious breaches – where non-compliance brings greater benefits for the operator
- The MMO will be able to vary, suspend or revoke licences

- A fixed penalty scheme or the requirement to carry out voluntary undertakings for breaches of a conservation order will exist where the breach refers to a single instance e.g. anchoring a vessel in prescribed area. Such undertaking might include: paying for leaflets, education, undertaking a training event, contributing to the costs of site condition monitoring or survey work

Enforcement responsibility around England (estuaries and the 0 – 6 nautical mile belt)

Enforcement of	Currently	Intended post Marine Act
Environment Agency byelaws	EA & SFCs	EA & IFCAs
IFCA (currently SFC) byelaws	SFCs & EA	IFCAs, EA & MMO
Domestic sea fisheries legislation	SFCs, MFA & EA	IFCAs, MMO & EA
European sea fisheries legislation	SFCs & MFA	IFCAs & MMO
MMO conservation orders	N/A	IFCAs, MMO & EA
Marine environmental licensing (currently under the Food and Environment Protection Act (1985) and the Coastal Protection Act (1949)) under the Marine Bill	MFA	MMO
Offshore renewables licensing under the Electricity Act (1989)	Secretary of State	MMO
Nature conservation species protection legislation (Wildlife & Countryside Act (1981))	Police	IFCAs, MMO, EA & Police
Habitats Regulations (1994)	Police	IFCAs, MMO, EA & Police

Key:

SFC – Sea Fisheries Committee
MFA – Marine and Fisheries Agency
MMO – Marine Management Organisation
IFCA – Inshore Fisheries and Conservation Authority
EA – Environment Agency

Coastal Access

Provision for extending access to the coast was made in the Countryside and Rights of Way Act 2000 (the CROW Act). The Government's vision is of "A coastal environment where rights to walk along the length of the English coast lie within a wildlife and landscape corridor that offers enjoyment, understanding of the natural environment and a high quality experience; and is managed sustainably in the context of a changing coastline". The coastal access provisions in the draft bill only apply in relation to England. The Welsh Assembly Government is considering appropriate statutory provisions for Wales, subject to consultation, which might be included in the final Bill. There is no time limit for completion of the duty. Where "the sea" becomes an estuary, the rights of way covered can be treated as reaching as far inland as the first bridge, tunnel or ferry by means of which the public can cross on foot

Policy package

- Natural England's (NE) report highlighted the fact that there are parts of the coast where public access on foot is not currently possible, making parts of our wonderful coast unavailable for the public to enjoy
- The coast is vitally important for nature conservation and wildlife
- The draft Bill aims to improve public access to and enjoyment of the English coastline, providing secure and consistent rights for people to enjoy the whole English coast with confidence and certainty

How will the measures work?

- The long-distance route proposed will take account of local features, physical features, nature conservation and existing access
- Consultation will be required to further any changes to access
- Discussion will take place with landowners and other local interests
- NE will work through access authorities in achieving much of detailed setting out
- The Countryside and Rights Of Way Act provides for access to the route and spreading room

- NE and the Secretary of State for Defra will be under a duty to strike a fair balance between the interests of the public and the interests of the owner or occupier over which the new right of access would apply
- Right of access will be subject to restrictions or exclusions reflecting different conditions on the coast
- The route report will indicate which land will be subject to access as a result of setting out the route
- Establishment work will be undertaken where needed – including infrastructure such as signs, gates etc.
- Establishment will take place over a number of years
- Legislation removes occupiers liability in respect of any natural feature and removes occupier's liability in respect of any non-natural feature
- NE owes no duty of care when proposing the route
- Secretary of State owes no duty of care when approving the long-distance route

Transitional arrangements:

MMO

- Few transitional arrangements will be associated with this

Marine Planning

- Clear guidance to decision makers that plans in preparation will not have legal influence until they have been published in draft
- Once in draft they will be required to consider the proposals when carrying out their functions

Marine licensing

- Plans will become clearer as the Bill progresses

Marine Nature Reserves

- Will be superseded by MCZs and Wildlife and Countryside Act applying to marine reserves will be repealed
- Existing MNR byelaws will remain in force until MCZ conservation orders are made
- European marine sites (SPA, SAC) can be protected by conservation orders similar to those proposed in the Bill
- Secretary of State will exercise power to make conservation orders until the MMO is vested

Inshore fisheries management

- Transition arrangements will be made

Migratory and freshwater fisheries

- New rod licences will be introduced in April 2010
- Net and trap licences from January 2010
- Authorisations available from January 2010
- Remaining provisions will come in to effect immediately on being granted Royal Assent

National Marine Limits





Costs and Benefits:

An impact assessment (IA) of the draft Bill's provisions has been published alongside the draft Bill, and sets out where there will be an impact on business, Government and the third sector. The evidence indicates that total discounted benefits of the draft Bill's provisions over a 20 year period are estimated at £1.9 - £4.2bn. Total discounted costs over a 20 year period are estimated at £0.7bn - £1.5bn. Therefore, the best estimate net benefit of implementing the draft Bill is £1.9bn.

The IA outlines that the Bill will aid reduction of carbon emissions and help the UK Government and devolved administration meet targets to limit greenhouse gas emissions. The net value of these savings is estimated to be £72.5mn over a period 20 years.

The coastal access impacts have been assessed separately. The benefits from these over a 20 year period are estimated to be £57 - £285mn, with total discounted costs at £31 - £106mn. The best estimated net benefit is therefore £89mn.