

# **Environment, Planning and Countryside Committee**

## **EPC(2) 07-06 (p5)**

**11 May 2006**

### **Marine Bill Consultation Package**

#### **Title and purpose of paper**

To consider the consultation on the draft Marine Bill and the implications of its proposals for Wales.

#### **The consultation process**

The Department for the Environment, Food and Rural Affairs (Defra), which is leading on the development of the Marine Bill, published the consultation package on 29 March.

12-week consultation period – closes 23 June 2006.

Stakeholder consultation event was held in Cardiff on 4 May.

There will be another consultation on more detailed proposals later in the year.

The Minister has written to Welsh stakeholders, encouraging them to participate in the consultation process and the development of the Marine Bill.

#### **Development of the Marine Bill**

Although Defra is leading on the development of the Marine Bill, management of the marine zone is not the sole responsibility of Defra. Several other Government departments, including the Department for Transport (DfT), Office of the Deputy Prime Minister (ODPM), Ministry of Defence (MOD) and Department of Trade and Industry (DTI), are involved in discussions on the development of the Marine Bill, along with the country administrations in Wales, Scotland and Northern Ireland, which have a range of devolved responsibilities out to 12 nautical miles (and further, in some cases).

#### **Devolution issues**

There is a complex mix of devolved and non-devolved powers in the marine environment, which is different in each of the devolved territories. The proposals set out in the consultation, therefore, have different implications for each of the country administrations.

The consultation package recognises that the Marine Bill might offer opportunities to devolve further and / or new powers.

## Wales' priorities

The Welsh Assembly Government is working closely with Defra to ensure the provisions of the "Better Governance for Wales" White Paper and the new Government of Wales Bill are fully taken into account in the development of the Marine Bill.

We would welcome the views of the Committee on all of the proposals in the consultation and their possible application in and for Wales.

## Structure of the consultation

Sections 1 – 6 of the consultation set out the introduction, background and reasons for considering the development of a Marine Bill, which include the findings of several recent reports concerning the management of the marine environment

Sections 7 – 11 outline the proposals for the main elements being considered in the development of the Marine Bill. Each section seeks views on the general way in which the system might operate. It does not address in-depth issues or the administration of any system.

Section 12 summarises all 141 questions contained in the consultation and the associated Regulatory Impact Assessments (contained in Annex 5 of the consultation).

There will be further consultation on more detailed proposals later in the year.

## Fisheries (Section 7)

Section 7 sets out areas for fisheries management that may be included in the Marine Bill. It does not set specific questions as a number of recent consultations have taken place on changes to fisheries management. This consultation package does not seek to duplicate any of this previous work. The outcomes of these previous consultations may lead to changes in the way fisheries are managed and some of these changes may be incorporated into a Marine Bill.

Section 7 points out that fisheries management is a devolved matter and it is, therefore, up to the devolved administrations to manage fisheries within their own waters.

## Wales' priorities

The Welsh Assembly Government is currently developing an all-Wales fisheries strategy and has been consulting with the fishing industry and other interested parties on this.

### **Planning in the Marine Area (Section 8)**

This section sets out possible options for a system of Marine Spatial Planning (MSP). Several recent reports have highlighted the lack of a strategic and long-term planning mechanism for the marine environment and the potential benefits that such a system could have. Marine spatial planning could provide a framework for decision making that takes into account the compatibility and conflict between different activities and the cumulative effects of activities that are currently managed on a sectoral basis.

Four options for marine spatial planning are set out in the consultation:

Do nothing – no change to the existing system i.e. no system of marine spatial planning is introduced.

Information only system – data would be collated in one place. This could then be used by developers and decision-makers to inform decisions.

Non-binding plan – collection of marine data, as above, but accompanied by objectives and priorities for the marine area that could suggest which activities might be considered together in the same area, or activities that are not suited to the same area. The non-binding nature of the plan would mean that there would be no statutory requirement for decision-makers or developers to take account of the objectives.

Binding plan – as option 3 above, but it would be a statutory requirement for decision-makers to act in accordance with the plan.

In addition to considering the general options for marine spatial planning, the consultation paper seeks views on a number of important issues associated with any system of marine spatial planning that might be introduced, including:

Marine Spatial Planning - what should it do, what shouldn't it do, what should a 'plan' look like?

Planning body – who should do marine spatial planning?

Area – what area(s) should marine spatial plans cover?

Land-sea boundary – how would a marine planning system integrate with the terrestrial planning system? Integrated Coastal Zone Management (ICZM) is seen as an important mechanism here.

Scale – the use of regional / sub-regional plans to cover different geographical scales?

Scope – what activities, developments, resources should / shouldn't be included?

Data – how / who should collect data and information and how should it be made available?

Plan-making process – how should conflicting demands be addressed?

Mapping – what role should mapping and Geographical Information Systems (GIS) play?

Environmental impact assessment – how can Strategic Environmental Assessment (SEA) and other impact assessments be incorporated into the process?

Stakeholder engagement – how can stakeholders be engaged in the process, how can it be made transparent and fair?

Monitoring and review – how often and by whom should plans be monitored, updated and reviewed?

Wales' priorities

It is important that any system of marine spatial planning helps with the delivery of "Wales a Better Country" and takes full account of the terrestrial planning system, which is different to that in England, and also the Wales Spatial Plan and our Integrated Coastal Zone Management Strategy.

In addition to general questions about marine spatial planning, there are issues that should be considered for Wales, such as:

Is marine spatial planning right for Wales, what benefits could it deliver, how could / should it work?

Cross-border issues - how could / should cross-border issues be dealt with e.g. Dee and Severn Estuaries, inside / outside territorial waters?

## **Licensing marine activities (Section 9)**

Most activities in the marine environment are controlled, but the processes have developed over many years. The current situation is complex for users and regulators and it is widely recognised that it needs updating. This section sets out proposals for simplifying and streamlining the marine licensing systems.

Several licensing regimes are within the scope of the consultation. Some of the functions under these regimes have been devolved, while others have not. The mix of devolved responsibilities is different in each of the country administrations. Briefly, the licensing systems being considered as part of the

consultation are:

Food and Environment Protection Act 1985 (FEPA) – functions under this regime are devolved to the National Assembly for Wales, within Welsh territorial waters (out to 12 nautical miles), except in relation to petroleum exploration and production.

Coast Protection Act 1949 (CPA) – responsibility has not been devolved to the National Assembly for Wales; administered by Defra.

Electricity Act 1989 and Energy Act 2004 – non-devolved responsibility; administered by DTI.

Harbours Act 1964 – only devolved to the National Assembly for Wales in relation to fishery harbours; administered by the DfT otherwise.

Transport and Works Act 1992 (TWA) – powers to authorise works are mostly devolved to the National Assembly for Wales where the orders in question have effect in Welsh territorial waters only.

Telecommunications Act 1984 and Communications Act 2003 – not devolved; administered by the ODPM.

Marine aggregate extraction – currently subject to a non-statutory ‘Government View’ process by each of the devolved administrations. It is in the process of being formalised by separate legislation.

In addition to the above list, there are a number of other activities, controlled by different legislative systems, that are not being considered as part of the consultation, most notably the management of oil and gas operations.

Four options are proposed in the consultation:

Do nothing – no change to the existing system.

Merged environmental and navigational system – this would effectively merge the FEPA and CPA licensing systems, as there is a large overlap between these two systems.

Simplified sectoral regime – a free-standing consent system for each of the main sectors operating in the marine environment – renewable energy, sub-sea cables, ports and harbours, marine dredging. Each system would have to consider all the controls currently considered under separate licences, such as environmental, human health and navigational controls.

Integrated regime – a system incorporating FEPA, CPA and the various sectoral licensing systems into a single system, probably administered by a single body.

Section 9 also asks for views on what provisions may be required for new and developing technologies in relation to carbon capture and storage (CCS) and sub-sea storage of natural gas and the opportunity to create purpose-built legislation for these activities as part of the development of a Marine Bill.

Wales' priorities

The existing licensing system has caused some frustrations for developers and administrators in applications for FEPA and other licenses in Wales. The Welsh Assembly Government supports any updating of the current system that would provide a more transparent and streamlined system for users and administrators, while enabling Wales to ensure that the coastal and marine zones are developed in a sustainable manner.

### **Nature conservation (Section 10)**

This section considers proposals for improving nature conservation in the marine environment under five headings:

Marine Ecosystem Objectives (MEOs) – a more holistic approach to nature conservation. Ecosystem objectives are already in use e.g. Good Ecological Status, set out in the Water Framework Directive, or the sustainable fishing limits set under the Common Fisheries Policy.

Marine protected areas (MPAs) – the introduction of a mechanism for the designation and protection of MPAs with different levels of protection, ranging from minimal restriction on activities to highly protected marine reserves. Various issues for consideration include the degree of flexibility of designations, how MPAs could interact with other site designations, how sites should be designated, and the land-sea boundary.

Controls on unlicensed activities – not all activities in the marine environment are controlled by licences (e.g. boating, recreational angling). Defra are seeking opinions on the need for and type of powers that could be introduced.

Species conservation – notwithstanding the move towards a more holistic approach to nature conservation, some species may require additional, special protection from specific activities or in specific areas. It may be appropriate to include additional protection mechanisms as part of the Marine Bill and views are sought on this.

Enforcement – a number of bodies operate in the marine environment with a range of nature conservation and other enforcement duties, leading to overlap and confusion concerning powers and responsibilities. The consultation asks for views on possible improvements.

Wales' priorities

Wales' coast and seas are already highly protected, with over 70 per cent of the coast designated for its international conservation importance. A tier of "National" sites may not, therefore, be appropriate for Wales. The Welsh Assembly Government supports a more holistic ecosystem-based approach to nature conservation, enabling the needs of nature to be considered alongside other priorities while recognising that some important habitats and species may require a greater degree of protection. We are working closely with our statutory conservation advisors, the Countryside Council for Wales (CCW), on these issues.

## **A potential new Marine Management Organisation (MMO) (Section 11)**

This aspect of the consultation considers whether there is a need for a new Marine Management Organisation (MMO) and the possible functions that such an organisation might undertake, including existing functions (e.g. fisheries enforcement) and potential new functions (e.g. marine spatial planning). Important issues for consideration include:

Does it make sense to have a single body carrying out some / all functions in the marine environment?

If functions are created / merged, who should carry them out?

Who should do marine spatial planning – an existing / new body?

Should one organisation deliver both marine spatial planning and licensing?

Are there any functions that can be grouped together i.e. undertaken within the same organisation? If so, should this be an MMO or a different organisation?

Are there any roles that are incompatible i.e. shouldn't be undertaken by a single body?

Wales' priorities

The establishment of a separate agency goes against the Welsh Assembly Government's intention for policy delivery to be close to policy development.

This does not mean that the functions of any new MMO or any new marine functions would not be undertaken in Wales. We would welcome the Committee's views on who they think should undertake marine management functions in and for Wales.