

# Sustainability Committee

12 February 2009

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## National Assembly for Wales' Sustainability Committee Inquiry into the Draft Marine and Coastal Access Bill:

### Submission by Environment Agency Wales

#### Summary

We are pleased to be given the opportunity to submit our views to the Sustainability Committee Inquiry into the draft Marine and Coastal Access Bill "the Bill".

We welcome the draft Bill. It goes a long way to establishing an effective future management framework for our seas.

We will continue to work with Welsh Assembly Government to clarify what the delivery mechanisms will be and how effective management arrangements will be achieved, particularly in estuaries and coastal waters that straddle National boundaries.

We believe marine plans should be developed for the entire marine area, underpinned by a UK marine policy statement.

We think that the drafting of the exemptions from the requirement to hold a marine licence needs to be reconsidered. We are concerned that potentially damaging activities will happen without the necessary environmental assessments being undertaken.

We would like the current ambiguity around the regulation of some waste activities that straddle the high water line to be clarified.

#### 1.0 Introduction

Environment Agency Wales' (EAW) job is to look after the environment and make Wales a better place. We provide support to meet the objectives within the Welsh Assembly Government's Environment and Integrated Coastal Zone Management Strategies.

We have a major role in the sustainable management of estuaries and coastal waters around England and Wales, including controlling polluting discharges up to 3 nautical miles and from land-based sources; flood risk management activities and coastal erosion; management of migratory fisheries (to 6 nautical miles and acting as sea fisheries committee in a number of estuaries); protecting and enhancing biodiversity and being the competent authority for the Water Framework Directive (WFD) (to 1 nautical mile).

We have published a Marine Strategy that sets out what we are doing to protect the marine environment, and presents our vision for the future. We are working to deliver our Marine Strategy with other regulators, businesses and coastal communities.

#### 2.0 - General Comments on the Draft Marine Bill

2.1 - We welcome UK Governments' commitment to introduce legislation to protect our seas and are broadly supportive of the changes that the Bill will introduce. We have been working closely with Defra and Welsh Assembly Government (WAG) during the recent consultation on the draft Bill and have provided evidence for the pre-legislative scrutiny committees.

2.2 - The Bill provides a strategic and joined-up approach to managing the many different uses of the marine environment through a new framework of marine planning. To deliver the Governments' vision of 'clean, healthy, safe, productive and biologically diverse oceans and seas', the Bill needs to put in place new important environmental safeguards and ensure an integrated approach to planning, regulation and biodiversity across land and sea.

2.3 - Whilst the Bill outlines the areas that Welsh Ministers will be responsible for, it does not provide detail on how the delivery in Wales will be implemented, particularly how WAG will deliver the functions assigned to the Marine Management Organisation in England and inshore fisheries management.

2.4 - We will continue to work with WAG to clarify how the proposals will be implemented in Wales and how effective management arrangements are to be achieved, particularly where estuaries and coastal waters straddle national boundaries.

#### 3.0 - Marine Management Organisation (MMO)

3.1 In Wales, WAG will be responsible for delivering devolved functions in Welsh waters. The MMO will have a limited remit to deliver non-devolved functions on behalf of UK Government. As our responsibilities apply to both England and Wales, we want to ensure that clear practical working relationships are agreed between WAG, MMO and the Environment Agency to enable effective management of our coastal waters, particularly in cross border estuaries.

3.2 - We are pleased that the Bill now states that the MMO has a duty to exercise its functions in a consistent and co-ordinated manner,

and with the objective of making a contribution to the achievement of sustainable development (Clause 2(1)). The draft Bill did not state this as a duty. However, we would like this duty to be amended to 'promote' sustainable development, given that the MMO is central to achieving this objective. We feel this is particularly important in Wales to complement the duties Wales Ministers already have to promote Sustainable Development. We would also like the MMO to have a duty to further the conservation of the marine environment.

3.3 - Welsh Ministers as Appropriate Authority for the Water Framework Directive (WFD) has clear responsibilities and objectives to support delivery of the WFD in transitional and coastal waters. This includes achieving a good ecological status (or in the case of modified water bodies, good ecological potential). We will continue to work with WAG, Defra and the MMO to ensure that marine plans at the coast support, and marine licence decisions comply with, requirements of the WFD.

## **4.0 Marine Planning**

4.1 - We support the introduction of Marine Planning and are generally pleased with the way that marine planning has developed.

We believe marine plans should be developed for the whole marine area within a reasonable timeframe and be underpinned by a UK marine policy statement with clear objectives. Whilst we understand that the plans might not contain the same level of detail in all areas, without comprehensive coverage of the marine area there will be an inconsistent approach to how marine licensing decisions are taken and in how the marine policy statement can be applied. We are seeking changes, through Defra, to the Bill along these lines.

4.2 - The marine plans will have to take account of a complex mix of devolved and non-devolved responsibilities in the marine area. WAG will need to ensure that these plans are comprehensive and it is of critical importance that where the plans cross administrative/political boundaries that they are complementary and not over-bureaucratic. We will work with WAG and Defra to help understand how these marine plans will interact with existing plans & strategies such as the Wales Spatial Plan, Shoreline Management Plans, local authority development plans and strategies.

4.3 - We also believe it is important that there is a requirement on the MMO and Infrastructure Planning Commission to make decisions in accordance with both the Marine Policy Statement and the National Policy Statements to ensure that one set of statements does not override the other, and that any decisions on major infrastructure developments are compatible with both policies.

## **5.0 Marine Licensing**

5.1 The new licensing regime will go some way to reducing the number of marine regulators and regimes whilst providing more certainty to industry in line with the principles of modern regulation. We are pleased that enforcement powers will be streamlined and modernised, with enforcement officers having a common set of powers for enforcement of fisheries, conservation and licensing.

5.2 We think that the current drafting for exempting dredging operations currently authorised by a local Act or Harbour Order from requiring a Marine Licence needs to be reconsidered. Such dredging activities will therefore not be subject to the same environmental checks and safeguards as would be required for a Marine Licence. It also means that most hydrodynamic dredging will not be regulated by the MMO or WAG.

The dredging of a port may cause the water body to fail the requirements of the Water Framework Directive and there needs to be a way to ensure that those requirements are met. We want to ensure that a risk-based approach to environmental assessment. This could either be achieved by amending the current wording in Clause 72 (as proposed to Defra/WAG officials separately) or alternatively through the new Environmental Impact Assessment (EIA) regulations. We would be very happy to meet with WAG's marine licensing lead to discuss these proposals.

5.3 We are pleased to see the introduction of clause 79 to the draft Bill which gives us the ability to disapply the requirement for a consent under section 109 of the Water Resources Act 1991, where we are satisfied our requirements can be addressed through a Marine Licence. We need to ensure that we are able to control works that would impact on flood risk. This compromise means that in most cases we will consent to including flood risk management conditions through a Marine Licence, thus ensuring there is a one-stop-shop, but giving us the ability to still grant a separate consent if necessary.

5.4 In a similar manner, we want licensing responsibilities for waste activities that take place across the high water mark to be clarified - currently these activities may require both an Environmental Permit and a Marine Licence. We want a clause similar to that drafted for our Flood Risk Management consenting powers to be introduced which would enable us to choose to disapply an Environmental Permit if our requirements can be addressed through a Marine Licence.

## **6.0 Marine Nature Conservation**

6.1 We support the introduction of Marine Conservation Zones (MCZ) and we would want to be able to nominate important areas of the marine environment as MCZs to the Secretary of State or Welsh Ministers who will have a duty to designate.

6.2 We believe the introduction of a network of MCZs will help contribute to the protection of marine flora and fauna. We are however concerned that if this is the only conservation measure taken, protection would only be in relation to certain species and habitats in the designated sites. This could result in impacts being displaced. It also does not support an ecosystem approach and a more general regard for wildlife its protection and enhancement. We would like to see a more generic duty to further the conservation of marine flora and fauna in all marine and coastal waters. This would increase the resilience of marine species overall.

## **7.0 - Inshore Fisheries**

7.1 We welcome proposals to modernise Sea Fisheries Committees in England and Wales, that will deliver high quality and professional management of inshore fisheries. This should include effective monitoring of stocks, fisheries and users, effective regulation and enforcement, inclusion of relevant interests in management processes and be adequately funded.

7.2 We have been invited into the stakeholder and working groups on sea fisheries management by WAG and we await the development of further details, particularly relating to management in estuaries where the interface with our delivery of WFD and management of migratory fisheries (particularly salmon, sea trout & eels) is most evident. It is important that we retain our powers in relation to migratory fisheries out to 6 nautical miles. It will also be important to ensure integrated, or at least complementary management at the borders between the jurisdiction of national authorities.

7.3 We are aware that Welsh Ministers have duties to promote sustainable development and to further conservation. To ensure England seek to achieve at least equivalent standards we have asked Defra to consider extending the duties for the Inshore Fisheries Conservation Authorities to include contributing to achieving sustainable development and to furthering conservation.

## **8.0 - Migratory and Freshwater Fisheries**

8.1 We strongly support the measures to modernise aspects of the current migratory and freshwater fisheries legislation within the Bill. In particular, we support the power to licence fishing for a wider range of species; limit fishing effort for eel and other species; to make emergency byelaws in response to unforeseeable pressures; and to reform the regulation of live fish movements.

8.2 We welcome plans to extend our fisheries duties to smelt and lampreys, but are disappointed that the opportunity has not been taken to extend these to shad. The continued split regulation of these migratory fisheries is unsatisfactory. However, we are pleased that Government has retained the option to transfer responsibility at a later date.

## **9.0 - Coastal Access**

9.1 We support WAG in the principle of establishing an All Wales Coastal Path by 2010 and support WAG in obtaining powers to enable Wales to bring forward Assembly Measures if necessary. It is important that the coastal path takes account of flood risk management and coastal erosion issues. For this reason, we need to be fully consulted on the establishment of routes,

Further Information

Further information or background to this response can be obtained from

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