


# Sustainability Committee

## SC(3)-03-09 Paper 4

12 February 2009

	<p><b>Sustainability Committee Inquiry</b></p> <p><b>The Marine and Coastal Access Bill</b></p> <p><b>Submission by RSPB Cymru</b></p>
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### SUMMARY OF KEY POINTS

The RSPB welcomes the Marine and Coastal Access Bill as crucial and ground-breaking legislation, and is pleased that the Welsh Assembly Government has worked with the UK Government to develop it.

A number of positive changes have been made since pre-legislative scrutiny was undertaken on the draft Marine Bill in 2008, but we believe the Bill still needs to be strengthened in a number of areas.

We welcome the Sustainability Committee's scrutiny of the Bill, and we are particularly pleased that the Committee is holding evidence sessions with both the Minister for Environment, Sustainability and Housing and the Minister for Rural Affairs.

We are very concerned about the Bill's provisions for inshore fisheries management in Wales, introduced since the consultation on the draft Bill. In particular we believe Welsh Ministers should be subject to the same duties as the English inshore fisheries managers.

The provisions for nature conservation have been improved since the draft Bill but further improvements are needed, including a clearer duty to designate Marine Conservation Zones and a reference to highly protected marine reserves. Public bodies' duties, and a general offence relating to MCZs, also need to be strengthened.

We would like to see stronger provisions to ensure co-operation between the Welsh Ministers and other bodies charged with delivering marine management.

We would like stronger provisions in the Bill to seek to ensure that all four UK administrations sign up to a shared Marine Policy Statement, and a duty to produce plans for the whole of the marine area covered by the Bill. The Bill should also allow the four administrations to produce joint plans for border areas or regional seas where appropriate.

We believe the Welsh Ministers should report regularly to the Assembly on the delivery of all of their marine management functions.

We are pleased that the Bill contains a new requirement for Welsh Ministers to establish a system for appeals against licensing decisions, and would welcome information on how this will operate in practice.

#### Introduction

The RSPB is Europe's largest wildlife charity, with over one million members; over 50,000 of them live in Wales. The Society manages one of the largest conservation estates in the UK, covering more than 140,000 hectares, of which approximately 17,000 are in Wales. We work to protect and enhance habitats for birds and other wildlife through land management on our reserves, provision of advice to farmers and land managers, and through advocating environmentally beneficial policies to government. We also undertake scientific research into the health of bird populations and the causes of species declines and promote solutions to government, partners and stakeholders. We have been campaigning for a number of years for new legislation to properly protect marine biodiversity and ecosystems, of which seabirds are a key component and upon which they depend.

The RSPB is grateful for the opportunity to give evidence to the Sustainability Committee on the Marine and Coastal Access Bill (the Marine Bill). We welcome the Committee's scrutiny of this crucial Bill which will bring about a number of major changes in the way Wales' marine environment is managed and protected. We are particularly pleased that the Committee will be holding evidence sessions with both the Minister for Environment, Sustainability and Housing and the Minister for Rural Affairs. Planning for and protecting the marine environment, and the management of sea fisheries, are functions which must go hand-in-hand if an ecosystem-based approach to managing the marine environment - a commitment of both Ministers' departments - is to be achieved.

In general, the RSPB welcomes the Marine Bill as a ground-breaking piece of legislation which is sufficiently broad in scope to greatly improve the management and protection of UK seas. We are very pleased that the Assembly Government has worked with the UK Government to develop the Bill. The process of consultation and pre-legislative scrutiny, undertaken on the draft Marine Bill in 2008, has resulted in a number of key improvements to the legislation. However, we still believe the Bill needs to be strengthened in a number of areas to ensure the protection of marine biodiversity is sufficiently robust. As requested by the Committee, this submission focuses on

changes to the draft Bill and highlights areas that we consider particularly important in Wales.

We hope the Committee members will carefully consider the issues we raise regarding the powers and duties provided for Welsh Ministers in the Bill, and take the opportunity to provide input to improve the Bill as it passes through Westminster, either working directly with the Welsh Ministers or with Party colleagues. Through the various stages of development of the Bill - from early consultations through the White Paper and pre-legislative scrutiny - we have noted that it has been difficult for the UK Government and Parliament to fully consider the implications of the Bill for Wales (or to pursue any observations or recommendations made by respondents to these processes relating specifically to Wales). Thus we believe the scrutiny of the Bill by this Committee, which will ultimately hold the Welsh Ministers to account, has a key role to play.

One reason why effective scrutiny in relation to Wales has been difficult has been the lack of information available as to how the Bill will be implemented in Wales. We look forward to providing our input to the development of the arrangements that will be put in place, work which we hope will be underway very soon. We urge the Committee to press the Assembly Government to initiate the necessary processes, so that once it comes into force the Marine and Coastal Access Act can be implemented in Wales in an effective and timely fashion. The Committee's input on these matters will be crucial.

## **The Marine Campaign**

The RSPB has been campaigning for many years for improved protection of marine wildlife and effective management of our seas. In doing so we have worked in collaboration with a number of NGO partners, in Wales, England, Scotland and Northern Ireland. In Wales, this work has been co-ordinated through the Wales Environment Link Marine Working Group (MWG). RSPB Cymru is very pleased to have been invited to give evidence to the Committee alongside our partners in the MWG, WWF Cymru, with whom our priority concerns over the Marine Bill are shared. To avoid duplication in the evidence submitted to the Committee we have agreed to focus our submissions on key points relating to different Parts of the Bill. This submission therefore focuses on the provisions for the management of inshore fisheries and marine nature conservation, with only short summaries on other matters (the Marine Management Organisation, marine planning and licensing). These matters are considered in more detail in the submission provided by WWF Cymru, but are also key issues for the RSPB.

### **Inshore fisheries management in Wales (Part 6, chapter 3)**

The new chapter of the Bill on inshore fisheries in Wales is the one part of the Bill for which there was no opportunity to input to pre-legislative scrutiny. In spite of uncertainty (at the time) over the future arrangements for Welsh inshore management, the Joint Committee that scrutinised the draft Marine Bill recommended that the Welsh inshore fisheries management body should be subject to the same duties and powers as Inshore Fisheries and Conservation Authorities, the new English inshore management

bodies established through the Bill. We are very disappointed that this recommendation has not been followed, and that the Bill provides no duties for the Welsh Ministers in relation to inshore fisheries. We are also concerned about the manner in which powers are conferred on Welsh Ministers.

## **Duties toward sustainable fisheries management and biodiversity protection**

The current drafting of the Marine Bill means that in future there will be no authority with an explicit duty to manage inshore fisheries in Wales, let alone to undertake such management in a comprehensive, sustainable way. In contrast, the new inshore fisheries managers in England - to be known as Inshore Fisheries and Conservation Authorities - are placed under two key duties: to manage the exploitation of fisheries resources in a sustainable way, and to seek to ensure that the conservation objectives of Marine Conservation Zones are furthered. This latter duty provides clarity as to the relative status of conservation objectives and fisheries in Marine Conservation Zones in England (i.e. it is clear that the conservation objectives will take priority), whereas this is lacking for Wales. Thus we are concerned that - in terms of the law - the protection of MCZs in Wales will be less robust than that in England.

Our view is that the duties are important in setting out what inshore fisheries management should achieve, and would give context and clarity for stakeholders regarding what to expect from Ministers acting as the Welsh inshore fisheries management body. This, in turn, we see as key to the accountability of the system. Further, we consider the duties would provide beneficial clarity and consistency in the context of the inevitable changes, from time to time, of the Minister or Assembly Government responsible for these functions in Wales - not only for stakeholders but also for other Assembly Government Ministers and departments. There is precedent both within the Marine Bill and in existing legislation (not least the Government of Wales Act 2006) for UK Acts to place duties upon Welsh Ministers. Therefore, we believe that equivalent duties to those placed on IFCAs should be placed on the Welsh Ministers.

## **Powers**

Welsh Ministers are given the power to make any provision in relation to Wales (by order) which an IFCA can make (by byelaw). However, this new power does not apply if Welsh Ministers have powers in pre-existing legislation to make provisions of the same kind. There are substantial overlaps between Welsh Ministers' powers under existing Fisheries Acts and the IFCA provisions, but the latter are more broad and so potentially more useful (enabling management of activities associated with fishing - e.g. bait digging - as well as

fishing itself).

We believe that this arrangement will be confusing to both regulators and stakeholders and could lead to legal challenges holding up the regulatory process. We are also concerned that the use of IFCA-equivalent powers could be excluded even where they would be more effective or appropriate than a pre-existing power, which could effectively result in regulatory powers in Wales being more limited than in England. We would like Welsh Ministers to be able to make IFCA-equivalent provisions wherever appropriate.

### **Additional duties**

Other duties of IFCAs include a duty to gather statistics to support sustainable fisheries management, and a duty to report yearly on fisheries management activities (a duty is also placed on the Secretary of State to report regularly to Parliament on the IFCAs' activities). We believe these duties would also improve the effectiveness and accountability of inshore fisheries management in Wales, and suggest equivalent duties should be applied to Welsh Ministers. The former, we believe, will be key to the effective implementation of the Wales Fisheries Strategy.

In addition, IFCAs are placed under a specific duty to co-operate with Welsh Ministers in border areas; it is not clear to us why a reciprocal duty is not placed on the Welsh Ministers.

## **Marine Nature Conservation (Part 5)**

Pre-legislative scrutiny of the draft Marine Bill has led to a number of positive changes in the provisions for Marine Conservation Zones (MCZs). However, we are concerned that not all of the commitments made by the UK Government in response to the recommendations arising from pre-legislative scrutiny have been implemented in full in the new clauses, and we would like to see some further improvements to make the provisions on MCZs as robust as possible.

### **Duty to designate MCZs**

In our response to the consultation on the draft Marine Bill, the RSPB called for a duty on Welsh Ministers (along with the Secretary of State) to designate MCZs, in line with an overarching statutory objective of achieving an ecologically coherent network of marine protected areas. We were therefore very pleased with the commitment to "confer a duty on the Secretary of State and Welsh Ministers to designate MCZs in order to contribute to an ecologically coherent network of sites which will include highly protected sites" (paragraph 3.4.1, Taking forward the Marine Bill: the Government response to pre-legislative scrutiny and public consultation. September 2008).

We believe the revised provisions go some - but not all - of the way to delivering this commitment. A clear duty to designate has not been included; this could be provided through a simple amendment to section 113 of the Bill:

"The appropriate authority may **shall** by order designate any area **s**...as a marine conservation zone **s**"

### **Network objective**

Section 119 of the Bill (added following consultation on the draft Bill) sets out the objective of creating a network of conservation sites (as per the commitment described above). Ministers are required to exercise their power under section 113 to contribute to the achievement of a network of sites which meets a number of conditions (set out in subsection 119(3)). The conditions go some way to describing the features of an ecologically coherent network, but do not completely reflect internationally accepted principles. They state that the range of features in UK seas should be protected (i.e. the network must be representative), and that the conservation of an individual feature may require the designation of more than one site (the principle of replication). They also require that the network contributes to the conservation of the marine environment - recognising that protected areas will play an important role in supporting wider marine ecosystems (beyond, as well as within, site boundaries). We feel this should be strengthened by inserting further conditions (to subsection 119(3)): to reflect the need for marine species to be able to move between different sites within the network, whether as spores, eggs, larvae, juveniles or adult organisms (the principle of connectivity); and to require that the network includes some highly protected sites. The objective should be explicitly for an "ecologically coherent network".

### **Highly protected sites**

We believe that highly protected sites (often called highly protected marine reserves or HPMRs) will be a critical part of an ecologically coherent network. They will be important in ensuring degraded habitats are allowed to recover and that vulnerable features are allowed to thrive (a recent CCW report highlighted that human activities such as fishing have had long term impacts on the marine environment, and that around 60% of protected features in Wales' European Marine Sites were likely to be at unfavourable conservation status). They will also play an important role in shaping our understanding of marine ecosystems and the way they respond to various pressures. WEL is pleased that WAG has committed to creating HPMRs in Wales, and we believe that an explicit reference to these sites within the Bill, coupled with a clear duty to designate, would strengthen WAG's hand in ensuring that they are delivered.

### **Reporting**

We are very pleased to see that the Bill includes a duty for the Minister to report regularly to the Assembly on MCZ designation and success. We would like this duty to include an assessment of progress towards achieving an ecologically coherent network. We also believe that a more robust monitoring duty on CCW is required to ensure that MCZ objectives can be met. We believe Welsh Ministers

should have similar duties to report to the Assembly on the delivery of other aspects of marine management - including inshore fisheries and marine planning and licensing.

#### Public authorities duties in relation to MCZs

Part 5 of the Bill sets out two duties for public authorities relating to the management of MCZs - a general duty for any authority whose functions could affect MCZs, and a more specific duty for authorities that license activities that may affect MCZs. These duties are fundamental to the management of MCZs and how they are exercised will have a major influence over whether conservation objectives are achieved. The RSPB therefore believes both duties need to be strengthened, particularly in relation to the requirements on public authorities to inform, and take advice from, the statutory nature conservation bodies (CCW in Wales) before deciding whether to undertake an action or grant a consent.

#### Offence of damaging the features of a MCZ

Since consultation on the draft Marine Bill, a general offence has been introduced making it illegal to intentionally damage a MCZ, e.g. by killing or injuring animals, picking plants or destroying habitats that are protected features (this is in addition to the offence of contravening specific conservation orders which Welsh Ministers can put in place to regulate unlicensed activities in MCZs). The RSPB called for a general offence to be introduced, but is very concerned that the offence provided is inadequate - it should cover disturbance as well as the killing or injuring of animals, and reckless as well as intentional acts. The offence also exempts any act connected with sea fishing - we believe this exemption should be removed.

#### Other matters

For more detail on the following matters please refer to the evidence submitted by WWF Cymru.

#### Marine Management Organisation (MMO)

Marine management in Welsh waters will involve a mix of reserved and devolved functions, with the UK Government's MMO responsible for many of the reserved functions. The MMO's general objective touches on the need for consistency and co-ordination in the management of marine activities, but we would like to see stronger provisions in the Marine Bill to ensure co-ordination and co-operation between the Welsh Ministers and the MMO (as well as other bodies, such as the IFCAs, charged with delivering marine management). The Bill should clearly provide for Welsh Ministers (as well as the Secretary of State) to obtain free advice and assistance from the MMO.

## Marine planning

We would like stronger provisions in the Bill to seek to ensure that all four UK administrations sign up to (and do not opt out of) a shared Marine Policy Statement (MPS). In addition, we believe the administrations should be under a duty, when the MPS is in effect, to produce marine plans to cover the whole of the area covered by the Bill. The Bill should also allow administrations to produce joint plans for border areas or regional seas (such as the Severn Estuary or the Irish Sea) to enable an ecosystem-based approach to marine management.

## Marine licensing

We welcome the new requirement in the Bill for Welsh Ministers to establish a system for appeals against licensing decisions, and would welcome information on how this will operate in practice.

## Reporting to the Assembly

As noted above, we believe the Welsh Ministers should be required to report regularly to the Assembly on the exercise of their marine management functions. This would mirror the reporting requirements on the MMO, IFCAs and the Secretary of State, which ensure Parliament will receive reports on the equivalent UK Government functions. A reporting duty for Welsh Ministers already exists in relation to MCZs, which we welcome.

## Contact

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