



Sustainability Committee

Marine and Coastal Access Bill Inquiry

Memorandum from the Countryside Council for Wales

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1. Introduction

CCW welcomes the publication of the Marine and Coastal Access Bill and congratulates Government on progress to date.

The Countryside Council for Wales champions the environment and landscapes of Wales and its coastal waters as sources of natural and cultural riches, as a foundation for economic and social activity, and as a place for leisure and learning opportunities. We aim to make the environment a valued part of everyone's life in Wales, and in this capacity has been actively involved for a number of years in advising on the developing Bill.

CCW believes that the overall framework of the Bill is comprehensive. We have, however, identified a number of issues that we advise need to be addressed.

This memorandum summarises where we consider changes to the Bill are necessary. We are actively advising WAG on these issues.

2. Headline issues

The provisions in the Bill should provide a framework to integrate, simplify and clarify marine resource and access management in a way that promotes and leads to sustainable use. To achieve this we advise that:

- Nature conservation and maritime ecosystem health need to be more clearly integrated throughout the Bill, and
- Planning, conservation and fisheries tools in the Bill need to be made more practical with clearer duties. This is needed to ensure the tools in the Bill provide more certainty that they *will*, rather than *might* if used, and will therefore lead to tangible, stated outcomes for the environment and people.

Individual headline issues are summarised below. Some further issues are summarised in section 3 of this memorandum.

Further details on the headline issues are provided in individual topic notes provided at the end of this document (see contents page).

Fisheries

1. The Bill should contain clearer measures for improved inshore fisheries management in Wales that, in particular, establish a clear remit for management of environmental impacts of fisheries, similar to the clear remit created for Inshore Fisheries and Conservation Authorities (IFCAs) in England. To provide greater clarity in this respect for Wales, it is advised that the Marine Bill should place some duties on Welsh fisheries managers (i.e. Welsh Ministers) equivalent to some IFCA duties, in particular, to:
 - a. Seek to ensure the exploitation of sea fisheries resources is carried out in a sustainable way, and to balance social and economic benefits of exploitation with the need to protect the marine environment from, or promote its recovery from, the effects of exploitation;
 - b. Seek to ensure the conservation objectives of any MCZ are furthered;
 - c. Collect information relating to the exploitation of sea fisheries;
 - d. Report to the National Assembly for Wales on the discharge of fisheries management functions in Wales, and
 - e. Co-operate with neighbouring fisheries managers.

See Note 1 for further details on fisheries issues.

Marine planning

2. Planning authorities should be under a duty to plan, and plans should be required for all marine waters covered by the Bill.
3. The Bill should provide a power to prepare and adopt joint plans for border areas where desirable, and neighbouring marine planning authorities should be required to work jointly and collaborate in preparing plans for adjoining areas

See Note 2 for further details on headline planning issues.

Marine nature conservation

4. Public bodies should be required to *consult* statutory nature conservation bodies (SNCBS) *before* carrying out any activity themselves that they consider may affect the features of a Marine Conservation Zone (MCZ). This could be most simply achieved by applying the same 28-day notification period to the general duty on public bodies

(section 121), which they are under when considering authorisations to other bodies (section 122).

5. Public bodies should be required to notify Ministers where they are minded to consent a potentially damaging activity on public interest grounds. Ministers should have a call-in power for decisions in relation to activities that may impact upon MCZs.
6. The general offence in relation to MCZs should cover *disturbance*, and *reckless* damage and disturbance.
7. The duty to designate MCZs should include a requirement for the network to include some highly protected sites.
8. The Bill should provide conservation management mechanisms outside of designated sites; specifically conservation orders should be able to be used to control disturbance to mobile species outside of MCZs and European Marine Sites (EMS).

See Note 3 for further details on headline nature conservation issues.

Marine management and licensing: the MMO, WAG and IFCA

9. The MMO, WAG and IFCA should be required to further the conservation of marine flora and fauna and to discharge their Marine and Coastal Access Bill functions in a way that contributes to the achievement of sustainable development.

Coastal Access

10. The provisions in Part 9, section 300, of the Bill confer legislative competence on the National Assembly for Wales in relation to public access to, and routes for, the coast of Wales. CCW has previously advised the Assembly on extending and improving access to the Welsh coast, and will continue to provide advice on these matters as and when Welsh Ministers initiate use of the framework powers added to the Government of Wales Act 2006 by this Part of the Bill.

See Note 4 for further details on coastal access provisions.

3. Further issues

Fisheries

1. **Reducing regulatory complexity:** Section 180(2) of the Bill limits Welsh fisheries managers (Welsh Ministers) ability to pass fisheries management orders in Wales using the same provisions as the IFCA bylaw powers in the Bill (Section 151). CCW seeks confirmation that the full range of IFCA bylaw powers will be available for use in Wales without the need to use a plethora of older legislative powers in preference to the Marine Bill powers, thus creating increased regulatory complexity.
2. **Emergency management provisions:** We advise that Welsh Ministers should be provided with a procedural ability to pass emergency orders which are guaranteed to remain in place for 12 months initially without the risk of annulment. This would provide similar measures to the emergency bylaw powers for IFCA's in section 153.

See Note 1 for further details on the above fisheries issues.

Planning

3. **Opting out of the Marine Policy Statement:** We note that if Wales did opt out of the UK MPS and, for example, prepared a Wales-only MPS, it would not be a MPS as defined by the Bill and it would therefore be unlawful to require marine plans to have regard to its contents. For Wales, therefore, the only option would seem to be part of a UK MPS if the benefits of a MPS are to affect Wales.

Should it remain possible for an administration to decide not to participate in the production of, or subsequently pulls out of, the UK Marine Policy Statement, we believe that they should be required to make publicly available the reasons for their decision (sections 43 and 46).

4. **Independent scrutiny of plans:** Scrutiny ('independent investigation') of the final plan should be a consistent requirement, rather than a requirement to *consider the need* for independent investigation (Schedule 6, part 13). This is essential to avoid inconsistencies and a perception, with stakeholders, of a lack of transparency.
5. **Marine heritage considerations:** marine heritage considerations should form an essential part of planning and licensing processes and decisions. CCW does not, however, believe it is appropriate to amend the scope of the MCZ designation to include heritage features. Instead, there may be more useful aspects of the (stalled) draft Heritage Protection Bill that it may be worth considering adding to the Marine and Coastal Access Bill.

Licensing and marine management

6. **Relationship between regulatory bodies:** In Wales, delivery of marine regulation will mainly be split across the Welsh Assembly Government (WAG), the MMO, and the IPC. There are no provisions in the Bill to establish joint working arrangements between these three bodies in order to provide clarity on the roles and relationships between the various key regulatory bodies and avoid increased regulatory complexity in Wales.

The Bill should contain a requirement for regulatory bodies (specifically the MMO, WAG and IPC) to establish joint working arrangements and the IPC should be

required to have regard to the advice of the MMO and WAG in determining marine developments.

Marine nature conservation

7. **SSSI notification powers:** CCW believes that statutory nature conservation bodies (CCW and NE) should retain the independent power to notify and confirm all SSSIs, regardless of whether they extend seaward or not. (This power is removed in section 144 and the accompanying Schedule 13).
8. **Timescales for designation of MCZs:** We advise that there should be a specified timescale for completing the statutory consultation (section 116) and designation (section 113(1)) stage once sites have been recommended to the designating authority. This is in order to reduce uncertainty, prevent the long delays experienced with the designation of Marine Nature Reserves under the Wildlife and Countryside Act, and avoid unnecessary damage to potential MCZs during a protracted consideration period.
9. **Definition of a marine protected area network:** The definition of the sites that constitute a marine protected area network (section 119(2)) should include all statutory designations in the intertidal and subtidal environment, hence intertidal and subtidal SSSI and Ramsar sites should be included as a minimum (See supplementary Note 3 to this briefing paper for further details).
10. **Omission of sea fishing from the general offence:** The general offence (section 135 to 137) should not exclude 'sea fishing'. This omission may lead to the necessity for a large number of local fisheries management orders that could otherwise be prevented.
11. **Monitoring of MCZs:** SNCBs are to be 'directed' to carry out monitoring by the designating authority (section 120(3)) and must comply with any directions given. CCW would prefer a more direct duty on CCW to monitor, giving CCW direct scope to determine necessary condition and compliance monitoring to undertake, or advise others on as appropriate.
12. **Defining 'benefit to the public and 'environmental benefits' in relation to authorisation of activities in MCZs:** The terms 'public benefit' and 'environmental benefit' related to the authorisation of activities in MCZs (section 122(7)) should be amended to provide clearer protection to sites:
 - 'Benefit to the public' should be improved to more closely resemble the meaning of the phrase 'imperative reasons of overriding public interest' used in the Habitats Regulations. In other words, the benefit should be of sufficient scale and importance for it to be acceptable to over-ride the potential damage to the *national* designation – the MCZ.
 - 'Benefit to the public clearly outweighs the damage to the environment' – this should be re-phrased to make it clear that it is damage to the site, and the features of the site, that is of concern.
 - 'Measures of equivalent environmental benefit' – should be tightened up so that compensatory measures apply to the marine environment, and ideally to the site or network of sites.

4. Summary of key recommended changes to the Bill, including changes to duties and powers

Shaded rows relate to CCW's ten headline issues.

Recommendation for amended powers or duties	Why the changes are needed
Marine planning	
1. A duty on planning bodies to plan for all areas of marine waters covered by the Bill (clause 46).	To ensure creation of a consistent, strategic framework of planning and delivery of the marine policy statement.
2. A power for planning bodies to prepare and adopt joint plans for border areas.	As above.
3. A duty on neighbouring planning bodies to work jointly and collaborate when planning for border areas (Schedule 5 part 1).	As above.
4. Add a requirement to review the <i>process</i> of planning to the matters that a planning authority must keep under review (section 52).	To ensure the <i>process</i> followed for planning fully and appropriately integrates with other plans, planning authorities and stakeholders.
5. A duty for administrations to make public their reasons for not participating in and signing up to a Marine Policy Statement (relevant sections - 43 and 46)	To encourage active participation in the production of the MPS and ensure legitimate reasons for withdrawal, and hence loss of MSP benefits for that administration
6. A duty for planning authorities to arrange independent investigation of final plans (Schedule 6, part 13).	To establish consistency in the planning process and avoid a perception of a lack of transparency from stakeholders.
Licensing and marine management	
7. A duty on the MMO, Welsh Ministers and the IFCA to further the conservation of marine flora and fauna and to discharge their Marine and Coastal Access Bill functions in a way that contributes to the achievement of sustainable development.	For consistency with other existing regulatory bodies, and to ensure environmental and sustainable use considerations are central to planning and decision-making.
8. A duty on the MMO, WAG, the IPC (and any other key marine regulatory bodies) to establish joint working arrangements.	To ensure effective integration between marine regulatory bodies and improve management of border areas.
9. A duty on IPC to have regard to the advice of the MMO and WAG on marine proposals.	To ensure appropriate expertise is taken account of in all marine regulation decisions, and ensure consistency of policy.
Nature conservation	
10. Public bodies should be required to <i>consult</i> statutory nature conservation bodies (SNCBS) <i>before</i> carrying out any activity themselves that they consider may affect the features of an MCZ. Could achieve by adding a 28-day notification period to the general duty on public bodies (section 121), as per section 122.	To ensure appropriate management of sites, and enable appropriate expert advice to be made available to public bodies in order to meet marine protected area network aims and commitments.
11. A duty on public bodies to notify Ministers where they are minded to consent a potentially damaging activity on public interest grounds.	As above, and because Government should be able to be involved in significant decisions in the public interest.
12. A power for Ministers to call in decision on authorisations in MCZs (clause 110)	As above.
13. Add 'disturbance' and reckless damage and disturbance' to the list of prohibited activities covered by the general offence in section 136(2).	To provide a robust offence that captures the full breadth of activities that could significantly affect features of an MCZ.
14. Add to the conditions for a network of marine protected areas in section 119(3), that the	To fulfil Government commitments and ensure the network is ecologically coherent

Recommendation for amended powers or duties	Why the changes are needed
network should include some highly protected sites.	in terms of varying levels of protection.
15. A power for the MMO / Welsh Ministers to use nature conservation byelaws/orders outside designated sites, e.g. to protect mobile species from damage or disturbance.	To allow appropriate use of regulation, and ensure nature conservation measures are integrated into the marine planning regime and wider sustainable management of our seas.
16. Add all statutory designations at and below MHWS, in particular SSSIs, to the list of designations in section 119(2) that constitute the network of marine protected areas.	To ensure the full breadth of existing site that contribute to the objectives of a network are incorporated and prevent unnecessary designation of additional MCZs.
17. Remove the exclusion for sea fishing from the general offence in section 135 – 137.	To avoid a loophole in the provisions and prevent the necessity of a large number of local fisheries management orders.
18. Remove duty on SNCBs to notify Ministers for SSSI and NNR notifications/declarations below MLW, and retain current arrangements for SSSI and NNR notifications/declarations for all sites.	To provide consistency in SSSI and NNR legislation, and avoid unnecessary legislative complexity
19. Alter the wording for 'public benefit' and 'measures of equivalent environmental protection' in section 122(7).	To provide less ambiguous wording and hence more robust protection to MCZs.
20. A duty to complete the statutory MCZ consultation (section 116) and designation (section 113(1)) within a specific time period.	To ensure sites are actually implemented, marine protected area network aims and commitments can be met, and appropriate protection is secured for proposed sites swiftly preventing damage during a protracted consideration phase
Fisheries management	
21. Extend duty under section 149(1) and (2) to apply to Welsh fisheries managers, i.e. Welsh Ministers (this could be done by repeating similar wording at the start of the Welsh clauses, (starting at section 180). In applying the section 149 duty to Welsh fisheries managers, include the use of and definitions of the terms "sea fisheries resource", "exploitation", "fishing community", "marine environmental matters" and "marine environment".	To provide an equivalent clear, stated and modernised purpose to fisheries management in Wales, as is created for fisheries management in England.
22. Amend duty in the Sea Fisheries (Wildlife Conservation) Act 1992 to require fisheries managers to 'further the conservation of flora and fauna'.	To ensure environmental and conservation considerations are embedded within fisheries management.
23. Extend duty under section 150 to Welsh fisheries managers (i.e. Welsh Ministers) to seek to ensure that the conservation objectives of any MCZ in the district are furthered. This could be done by repeating an equivalent duty at the beginning of the Welsh fisheries clauses (which start at section 180).	The omission of Wales from this requirement weakens current legislation integrating fisheries and nature conservation obligations.
24. A power for Welsh fisheries managers to put in place emergency orders that are guaranteed for 12 months, rather than open to annulment within 40 days through the negative resolution procedure.	To provide equivalently strong and durable emergency measures as are available to IFCA through section 153.
25. A duty on Welsh fisheries managers (i.e., Welsh Ministers) to collect information relating	To ensure the best available information about fishing activity is available to inform

Recommendation for amended powers or duties	Why the changes are needed
to the exploitation of sea fisheries within the area of their jurisdiction	fisheries management decisions, including nature conservation provisions via fisheries management.
26. A duty on Welsh fisheries managers (i.e., Welsh Ministers) to report to the National Assembly for Wales periodically (e.g. every 4 years) on the discharge of fisheries management functions.	To ensure fisheries management in Wales is as automatically accountable and accessible as the management regime in England.
27. A duty on Welsh fisheries managers (i.e., Welsh Ministers) to “take such steps as it considers appropriate to co-operate with the fisheries management bodies in adjoining areas” (i.e. a Welsh version of section 165).	To help ensure more effective, efficient and ecologically meaningful management is achieved at border areas such as in the Dee and Severn estuary.

Note 1: Fisheries

Effective fisheries regulation is of primary importance to nature conservation and sustainable resource use outcomes. CCW considers the existing IFCA proposals a positive and well overdue reform of Sea Fisheries Committees that assigns clearer, broader duties to inshore managers, making them better able to secure sustainable management of fisheries resources.

CCW has previously advised¹ that provisions for inshore fisheries management in Wales are needed that deliver the same improvements to sustainable management of fisheries resources as the IFCA proposals. CCW has also consistently recommended using the Bill to give the duties and powers of the IFCA to the relevant management body in Wales.

On the basis of the Welsh Assembly Government's (WAG) recent consultation, the fisheries management body in Wales will be the Welsh Assembly. It is understood that it was the Assembly's intention to use the Bill to secure equivalent functions to IFCAs, for fisheries management in Wales.

Currently, the Welsh inshore fisheries clauses appear to omit some of the provisions that establish the powers, duties and breadth of function of IFCAs. CCW considers it necessary to provide a comparatively clear, transparent and robust inshore fisheries structure for Wales as in provided for IFCAs, giving equivalent protection to the marine environment. We are in active discussions with WAG fisheries to ensure that this can be achieved.

CCW therefore advises that, as drafted, the following areas required amendments.

1. Issue: lack of duty on Welsh fisheries managers (i.e. Welsh Ministers) to manage the fisheries resource in a particular way

In section 149 of the Bill IFCAs are under a clear, modernized duty in relation to fisheries management. There is no equivalent duty placed on Welsh Ministers and it therefore remains the position that there is no duty provided by the Bill for Welsh Ministers to manage inshore fisheries in a particular way.

As a result of the above omission, the only duty that Welsh fisheries managers will have to take into account in respect of the environment will remain a general duty under the Sea Fisheries (Wildlife Conservation) Act 1992 to *"have regard to the conservation of flora and fauna"*. This duty to *'have regard to'* seems relatively weak, and means the protection of the environment could be overruled or outweighed by other considerations. By contrast, the more modern duty on IFCAs (Marine Bill section 149) requires sustainable use of marine environmental resources and the balancing of social and economic benefits with the needs to protect and recover the marine environment from the impacts of exploitation.

There is precedent elsewhere in the Bill for applying a specific duty such as this to Welsh Ministers. For example section 119 places a duty on Welsh Ministers to exercise their power to designate MCZs so as to contribute to the objective of creating a network of marine protected areas (for which particular conditions are set). This duty clearly requires Welsh Ministers (and the SoS) to act in particular way to deliver certain objectives within an area of their general jurisdiction (in this case nature conservation).

¹For example, these statements were made in CCW's response to Defra's consultation on the draft Marine and Coastal Access Bill and CCW's written evidence submission to the draft Marine and Coastal Access Bill Joint Committee, in July and June 2008 respectively.

Fisheries Recommendation 1:

- a) **Extend the duty under section 149(1) and (2) to apply to Welsh fisheries managers, i.e. Welsh Ministers. This could be done by repeating an equivalent clause to section 149(1) and (2) at the beginning of the Welsh fisheries clauses (which start at section 180).**
- b) **In addition, it would be advisable to use the Bill to amend the duty on Welsh Ministers in the Sea Fisheries (Wildlife Conservation) Act 1992 to require the 'furthering of the conservation of flora and fauna' in discharging their fisheries management functions, rather than the current 'have regard to the conservation of flora and fauna'.**

2. Issue: No specific duty on Welsh fisheries managers to further the conservation objectives of Marine Conservation Zones

WAG will have a general duty under section 121 in respect of Marine Conservation Zones to exercise its functions so as to further or least hinder the achievement of site conservation objectives. This does not, however, provide protection for MCZs to the same extent as the duty on IFCA in section 150 which states that IFCA "must seek to ensure the conservation objectives of any MCZ are furthered".

Section 150 places a stronger and more positive duty on IFCA as any operation of their functions *must not interfere* with this duty (150(2)), hence the duty to further MCZ objectives taken precedence over other general duties. Section 121, on the other hand, is a limited protective measure rather than a positive duty and is only applicable: (a) if any functions exercised will have more than an insignificant impact on a MCZ (121(1), and (b) to the extent that it is consistent with the powers/function being exercised (121(2)). For consistency with IFCA functions, and to ensure positive and proactive management of the impacts of the exploitation of fisheries resources in MCZs, CCW advises extending the stronger duty under 150 to Wales.

Fisheries Recommendation 2:

Extend the duty in section 150 to Welsh fisheries managers, i.e. to Welsh Ministers, in the discharge of Welsh inshore fisheries management functions, by repeating an equivalent clause to section 150 at the beginning of the Welsh fisheries clauses (which start at section 180).

3. Issue: A restricted breadth of powers available to fisheries managers in Wales due to the lack of application and definition of specific terms

The following terms have been defined within the Bill as applicable to the discharge of IFCA functions in sections 147(8), 149 (6) and (8) and 177 (1): -

*"sea fisheries resource",
"exploitation",
"fishing community",
"marine environmental matters" and
"marine environment".*

The use and interpretations provided for these terms have the effect of broadening the scope of powers available to IFCA, and providing clarity of purpose and duties of fisheries management. The gap in application of these terms to similar duties and powers for Wales could leave a short fall. For example, WAG is provided with the *means* (through section 180(1)) to control activities such as bait digging, the use of vehicles on intertidal land and

use of devices such as bird scarers. However, they would be under no *requirement* to control such activities, or to consider doing so (whereas IFCA's are due to their general duties relating to the exploitation of the sea fisheries resource). These examples may be locally highly important mechanisms to manage environmental impacts of fishing activity.

Fisheries Recommendation 3:

Extend the definitions of the terms listed above to measures for the management of fisheries in Wales, to ensure Welsh Ministers have broad and modernised regulatory powers and duties equivalent to IFCA's. This could be done through applying the terms in an equivalent general duty to section 149 for Welsh fisheries managers.

4. Issue: the current restriction of the use of Bill fisheries bylaw/order powers in Wales may lead to disjointed and restricted application of beneficial new fisheries management measures for Wales

Section 180 provides Welsh Ministers with the power to make any provision by order that an IFCA could make by byelaw under section 151. However, this is restricted by section 180(2) which will only allow Ministers to use the IFCA byelaw powers to pass orders in Wales where no alternative legislation can be used to provide provisions of that "kind".

CCW is concerned that the wording of the clause may lead to increased regulatory complexity in Wales, compared to England, as Welsh Ministers may have to use a complex mix of other fisheries legislation in preference to using the more modern powers in the Bill. We seek confirmation that clause 180(2) will not create increased regulatory complexity in Wales, and that the full range of IFCA bylaw powers will be able to be available for use in Wales without the need to use a plethora of alternative legislative powers in preference to the Marine Bill powers.

Fisheries Recommendation 4:

CCW seeks confirmation that the full range of IFCA bylaw powers will be available for use in Wales without the need to use a plethora of older legislative powers in preference to the Marine Bill powers which could create increased regulatory complexity.

5. Issue: There are no equivalent specific provisions for Welsh Ministers to the emergency byelaw powers for IFCA's in section 153

Section 153 of the Bill provide IFCA's with powers to pass emergency byelaws where there is an urgent need, and these byelaws can remain in force for up to 12 months.

There is no equivalent power to section 153 provided for the Welsh Ministers within the Bill. This may create a potential problem if emergency measures are required. Welsh Orders (i.e. Statutory Instruments) will be subject to the negative resolution procedure, which, in Wales, means the instrument can be subject to negative resolution within 40 days of being laid. Although in Wales it is possible to put in place an Order instantly (i.e. to come into force on the day it is laid), there is a possibility that that Order (as with any Order made under section 180) could be subject to negative resolution, and so annulled.

In England, by comparison, it is open to IFCA's to put in place emergency byelaws, which can remain in place for up to 12 months without the possibility of interference from any other party. The emergency bylaw power in England therefore offers a more secure, quick and efficient means of managing environmental impacts that require urgent attention, until

such time as long-term management solutions can be put in place. CCW advises that it seems sensible to future-proof Welsh fisheries management powers by ensuring similarly secure emergency measures are available for use in Wales.

Fisheries Recommendation 5:
Provide Welsh Ministers with a procedural ability to pass emergency orders, for inshore fisheries management, which are guaranteed to remain in place for 12 months initially without risk of annulment, (equivalent to IFCA powers under section 153).

- 6. Issue: Welsh fisheries managers are under no equivalent duty to IFCAs, or the Secretary of State, to collect information relating to the exploitation of sea fisheries or formally report on the discharging of fisheries management functions.**

Sections 166, 168 and 169 require IFCAs to:

- s166: collect information relating to the exploitation of sea fisheries within the area of their jurisdiction
- s168: publish an annual plans
- s169: to publish an annual report

Section 174 requires the Secretary of State to report to parliament every four years on the conduct and operation of the IFCAs.

There are no equivalent information and reporting requirements on Welsh fisheries managers, i.e. Welsh Ministers, to the above. The result is that fisheries management in Wales may appear less automatically accountable and accessible than the regime in England. There also appear to be fewer guarantees that adequate information will be available on the exploitation of sea fisheries to inform management, and the consideration of marine environmental matters as part of fisheries management.

Welsh Ministers are under a duty in section 120 to report to the National Assembly on progress to securing a network of marine protected areas, so the Bill does contain a precedent for reporting duties on Welsh Ministers.

Fisheries Recommendation 6:
To ensure the management of inshore fisheries is properly regulated and automatically accountable, place duties on Welsh fisheries managers, i.e. Welsh Ministers, to:

- a) **collect information relating to the exploitation of sea fisheries (equivalent to section 166), and**
- b) **report periodically (e.g. every 4 years) to the National Assembly for Wales on the discharge of fisheries management functions in Wales (to have an effect similar to a combination of sections 168, 169 and 174).**

- 7. Issue: Welsh fisheries managers are not directed to co-operate with neighbouring fisheries management authorities, whereas IFCAs are; such a requirement seems crucial to securing the co-ordinated management of border areas such as the Dee and Severn estuary**

Section 165 provides IFCAs with a duty to take such steps as it considers appropriate to co-operate with the IFCA adjoining the district or the Welsh Ministers, in a case where that

district adjoins the Welsh inshore region. Section 164 also provides IFCA's the ability to enter into arrangements with any person or body for the provision of services in connection with the exercise of functions.

These provisions do not currently apply to the Welsh Ministers, and although an IFCA could use section 164 to initiate and enter into an arrangement with the Welsh Ministers, in terms of specific fisheries management powers, these are one-sided.

The duty to take steps to co-operate with neighbouring fisheries managers should help ensure more effective, efficient and ecologically meaningful protection is achieved at border areas such as in the Dee and Severn estuary.

This amendment should be straightforward as a principle because comparable duties already exist for Welsh Ministers in the Bill. For example, in the marine planning provisions, Welsh Ministers are under a duty to take all reasonable steps to ensure their plan is compatible with related neighbouring plans (Schedule 6, part 3).

**Fisheries Recommendation 7:
Extend the section 165 duty for co-operation with neighbouring fisheries management bodies to Welsh Ministers.**

Note 2: Marine planning

- 1. Issue: To ensure a comprehensive and integrated system of marine planning, the planning authorities should be under a duty to plan, and plans should be required for all marine waters covered by the Bill.**

Given that a system of planning is central to the Bill proposals, it is hard to see how a strategic framework of sustainable marine resource use and management will be established, and the marine policy statement delivered, without some statutory requirement to prepare plans for all areas of UK seas (planning for some 'less busy' areas could always be done at a lower level of detail). The power to prepare marine plans in section 49(1) would be significantly improved by changing this to a duty to prepare marine plans. This would also be in keeping with the terrestrial land use planning system.

A provision to *require* preparation of plans for all UK seas could be included similar to Part 6 of the Planning and Compulsory Purchase Act (2004), which make provisions for the preparation of the Welsh Spatial Plan as follows: 60(1) "There must be a spatial plan for Wales"; 60(3) "The Assembly must (a) prepare and publish the plan" (etc).

A requirement to plan would also make the Bill tools more compatible with the requirements of the European Marine Strategy Directive, which requires Marine Strategies to be prepared for all Member States' marine waters.

**Planning Recommendation 1:
Create a duty on planning bodies to prepare plans for all UK waters within their jurisdiction.**

- 2. Issue: The Bill should provide a power to prepare and adopt joint plans for border areas where desirable and neighbouring marine planning authorities should be required to work jointly and collaborate in preparing plans for adjoining areas.**

Cross border areas, such as the Dee and Severn estuaries and Irish Sea, are, under the provisions in the Bill, likely to be the subject of separate, independently produced plans, potentially produced to quite different timetables. A consistent policy approach to planning and decision-making in relation to activities within these cross-border areas will be required, and a mechanism for ensuring cross-border integration of planning process will need to be developed.

CCW, the Environment Agency (EA) and Natural England (NE) recently commissioned a study in 2008 into cross-border planning². The conclusion of this study was that statutory basis for cross-border working is strongly preferred amongst practitioners for the following reasons:

- Government are more likely to put in place a clear process for making it happen;
- ecological/environmental objectives are more likely to be achieved in cross border areas, and
- it would make it easier for the relevant agencies (and WAG planners in Wales) to prioritise internal resources to support the extra effort required.

² Atkins (2008) *Marine planning and licensing across national borders and implications for statutory environmental advisors*. Report to CCW, EA and NE)

Critically, CCW believes that:

- Marine planning authorities should be required to work in a collaborative and coordinated manner across boundaries.
- The Bill should make provision to allow the preparation and adoption of joint plans for neighbouring areas, if a planning authority should choose to do so. It would be sensible to future-proof the Bill and enable this option in the future – we do not think it would be possible or lawful to do so within the current measures.
- The process of planning should be kept under regular review to ensure other plans, planning authorities and stakeholders are fully and appropriately integrated into the *process* of planning.

Planning Recommendation 2:

- a. Create a power for marine planning authorities to jointly prepare and jointly adopt marine plans for adjoining or related areas, and**
- b. Create a duty for marine planning authorities to “work jointly and collaborate in preparing plans for adjoining areas”, by amending the wording of Schedule 6, part 3(1)**
- c. The requirement to keep certain matters under review (section 52) should include a requirement to review the *process* of planning, including processes for planning across borders.**

Note 3: Marine nature conservation

Effective and comprehensive measures to protect and improve the health and diversity of our marine environment are urgently needed and long over due. Strong measures are needed that will deliver nature conservation benefits, that in turn will underpin provision of important environmental goods and services central to economic and social well-being. In addition to effective MCZs and wider conservation tools, marine planning needs to take account of and protect wider ecosystem health.

We think that the nature conservation provisions in the draft Bill need further strengthening. This is primarily because:

- a. despite improvements to the MCZ mechanism since publication of the draft Bill, the management and governance procedures are still insufficiently robust to ensure conservation objectives are furthered and site features conserved, and
- b. the measures are limited to designated sites, with no measures for the wider environment that would allow a more holistic approach appropriate to a marine planning system underpinned by the principles of the ecosystem approach.

Our concerns are summarised below.

- 1. Issue: Arrangements for external scrutiny of management decisions are currently patchy and inadequate due to the lack of requirement for public bodies to *consult* statutory nature conservation bodies (SNCBs) *before* carrying out any activity themselves that they consider would or might affect site features of conservation objectives of an MCZ.**

The addition of a 28-day notification period to statutory nature conservation bodies (SNCBs) under section 122 is a welcome improvement to the rigour with which proposed licensed/authorised activities are assessed. However, it is not clear why a notification period is not also added to section 121 – the general duty on public bodies. We consider the notification period should apply to activities undertaken by public bodies *in relation to their own functions*, as well as activities they authorise/licence etc. to ensure *all* potential impacts on MCZ conservation objectives can be comprehensively assessed and advised on.

Consultation with SNCBs over potentially significantly damaging activities is standard procedure with a number of other conservation designations and environmental assessment procedures. This should therefore be a familiar and straightforward activity for public bodies, who are used to standard consultation on their own activities over, for example:

- SSSIs permissions
- Appropriate assessment for SACs and SPAs
- Environmental Impact Assessments
- Strategic Environmental Assessments

Requiring consultation need not be an onerous requirement as it would be possible for SNCBs, in discussion with public bodies, to issue general advice (using section 123 powers) covering a variety of types of activities with relatively minor, or easily predictable, impacts. This could act as an alternative to regular consultation each time activities covered by the advice are proposed. More significant activities, falling beyond generic guidance, would then require individual consultation.

Nature Conservation Recommendation 1:

The 28-day notification period in section 122 should also be inserted in section 121, to also apply to public bodies in carrying out their own activities that may affect features and conservation objectives of an MCZ.

- 2. Issue: The balance of decision-making power in relation to carrying out damaging activities in MCZs is currently inappropriate, due to the lack of any requirement on public bodies to notify Government when minded to consent damaging activities on the ground of 'public interests'.**

SNCBs can advise, but ultimately the decision to undertake an activity lies with the public body. At times this may be a very significant decision, requiring a justification in the public interest (using section 122(7)(b)). There should be an opportunity for Government to be involved in these decisions and the agreement of any mitigation measures, as it should be for Government, not public bodies to decide what is in the 'public interest', beyond the local operations of that public body.

Nature Conservation Recommendation 2:

- a. Public bodies should also be required to notify Ministers where they are minded to consent a potentially damaging activity on public interest grounds, and**
- b. The Bill should contain a call in power for Government (SoS and Welsh Ministers), similar to the land use planning system, to allow Ministers to make decisions on activities with more than local significance.**

- 3. Issue: The general offence in relation to MCZs is currently weak due to the omission of disturbance, and reckless damage and disturbance of site features from the list of prohibited activities.**

The addition of a general offence at sections 135 - 137 is welcome as necessary to capture all activities that may hinder the achievement of MCZ conservation objectives. However, we do not consider the general offence to be sufficiently robust as yet. We strongly recommend that section 136(2) should be expanded to include *disturbance* and *reckless* (rather than only intentional) damage and disturbance to features of an MCZ in the list of prohibited activities.

Disturbance is not the same as damage, destruction, removal, killing etc, and control of *disturbance* will be vital to securing conservation objectives for some sites and features, and especially for highly protected sites.

Including *reckless* damage and disturbance also strengthens the offence to be more in keeping with equivalent general offences in relation to Sites of Special Scientific Interest, and captures a more effective breadth of potentially significantly damaging activities.

Nature Conservation Recommendation 3:

The list of prohibited acts in section 136 (2) should be expanded to include disturbance, and reckless damage and disturbance of protected features of an MCZ.

- 4. Issue: The duty to designate MCZs does not include a requirement for the network to include some highly protected sites and the definition of a network is restricted.**

Section 119 creates a welcome duty to designate MCZs in order to contribute to the objective of securing as network of marine protected areas. The Government, in its response to the clear recommendations made by the Marine and Coastal Access Bill Joint

Committee in 2008, committed to conferring “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”³. Section 119, however, makes no reference to highly protected sites (although they *are* referred to in the *reporting* duty in section 120(2)(c)). CCW considers highly protected sites a vital component of any ecologically coherent network of marine protected areas, and advise that the above commitment to including highly protected sites in the duty to secure a network of sites should be followed through in the Bill.

In addition, the definition of the network in section 119(2) limits the network to consist of only MCZs and European Marine Sites. In Wales, CCW has notified a number of important intertidal SSSIs that we consider a key part of the network of marine protected areas in Wales. The Bill would be significantly improved by including SSSIs (or parts of SSSIs) at and below mean high water spring tides in the list of sites in 119(2). It may also be appropriate to add Ramsar sites to section 119(2). Without the addition of SSSIs and other designations to the statutory definition of sites that constitute the network, Government may be forced to designate further MCZs to cover aspects of a marine protected area network that are otherwise protected by intertidal SSSIs.

Nature Conservation Recommendation 4:

- a. **Section 119(3) should include a condition that the network of sites must include some highly protected sites (the terminology to indicate highly protected sites used in 120(2)(c) could be applied).**
- b. **Section 119(2) should include any SSSIs and Ramsar sites (whole or part) at and below MHWS in the description of sites that form part of the marine protected area network.**

5. **Issue: The nature conservation measures in the Bill are limited to designated sites only with no new conservation management mechanisms outside of sites, for example to control disturbance to mobile species outside of MCZs and EMSs.**

Currently, the nature conservation proposals are limited to a new site designation (MCZ) and associated byelaw/order provisions. If the goal of sustainable management of our seas is to be achieved, however, we advise wider nature conservation measures are needed, that can be applied through a system of marine spatial planning as appropriate. For example, The Marine Bill White Paper proposed the use of nature conservation orders outside of MCZs to protect mobile species. Species that would benefit from such proactive protection in Welsh waters include harbour porpoise, bottle-nosed dolphins and grey seals. It is unclear why these sensible proposals, that allow proportionate use of regulation, are omitted from the Bill, and CCW would wish to see them added, as per the original White Paper proposals. Application of conservation byelaw/order powers outside designated sites also future-proofs the legislation, by providing a suite of tools for a variety of current and future conservation management issues.

Nature Conservation Recommendation 4:

The original White Paper proposal of allowing the use of conservation byelaws/orders outside designated sites in order to be able to protect mobile species from disturbance and damage should be added to the Bill, as an extension of the site byelaw/order provisions in sections 125 and 130 (England and Wales, respectively).

³ Defra (2008) *Taking forward the Marine and Coastal Access Bill: The Government response to pre-legislative scrutiny and public consultation*, TSO, September 2008

Note 4: Coastal Access

The provisions in Part 9 of the Bill confer legislative competence on the National Assembly for Wales in relation to public access to, and routes for, the coast of Wales. CCW has previously advised the Assembly on extending and improving access to the Welsh coast, and will continue to provide advice as and when Welsh Ministers initiate use of the framework powers provided by the Bill.

Before the Bill's drafting CCW provided 2 main pieces of advice to Government about extending and improving access to the Welsh coast. The first, provided in April 2006, considered:

- The objectives for coastal access;
- The state of existing access;
- The scope, options and estimated costs for optimising benefits from existing access;
- The scope, options and estimated costs for extending access; and
- Integrating new and existing access.

Government requested additional advice in September 2007 in relation to possible new legislation to deliver a coastal access margin in Wales, and specifically to assist in delivering:

- Improved and extended opportunities for the Welsh public and visitors to Wales to access the Welsh coast;
- More clarity and certainty for the public in accessing the Welsh coast;
- A coastal access margin⁴ which is readily understood by key stakeholders and by the public and which can be implemented in a practical and uncomplicated manner so far as possible (minimising the need for additional regulations, statutory guidance, etc)

In response to WAG, CCW was asked to address the following issues:

- Coastal Access Margin
- Coastal Access Improvement Programme and new legislation
- Foreshore and beach access
- Estuaries and public access
- Climate change and future proofing
- Compensation for landowners
- Nature conservation

The investigations carried out were primarily desk-based assessments of existing information held by CCW and information collected from coastal local authorities in relation to developing the Wales Coast Path.

While substantial investigations were carried out in preparing CCW's advice, we noted that the complexity of land in some places on the coast means that further work will be needed. If framework powers are enacted, WAG has stated that they would ask CCW to investigate how a statutory approach might work in practice in Wales, while maximising the investment under the Coastal Access Improvement Programme and securing stakeholder and public support.

Our detailed advice can be downloaded from CCW's website at:

<http://www.ccw.gov.uk/enjoying-the-country/visiting-the-coast.aspx>

⁴ The term 'coastal margin' (used in CCW's May 2008 advice) was adopted within the drafting of the Bill and Natural England's coastal access draft scheme. 'Coastal access corridor' is the term that was often used previously.