

National Assembly for Wales

Marine and Coastal Access Bill [HL] Research Paper

July 2009

This paper provides briefing on the Marine and Coastal Access Bill [HL].

The provisions relating to marine planning, licensing of marine activities, marine nature conservation, fisheries, creation of a Marine Management Organisation and improved access to the coast are summarised.

The Welsh implications are outlined, and changes made to the Bill following its progression through the House of Lords have been included.

Members'
Research
Service



The National Assembly for Wales is the democratically elected body that represents the interests of Wales and its people, makes laws for Wales and holds the Welsh Government to account.

The Members' Research Service is part of the National Assembly for Wales. We provide confidential and impartial research support to the Assembly's scrutiny and legislation committees, and to all 60 individual Assembly Members and their staff.

Members' Research Service briefings are compiled for the benefit of Assembly Members and their support staff. Authors are available to discuss the contents of these papers with Members and their staff but cannot advise members of the general public. We welcome comments on our briefings; please post or email to the addresses below.

An electronic version of this paper can be found on the National Assembly's website at:
www.assemblywales.org/bus-assembly-publications-research.htm

Further hard copies of this paper can be obtained from:

Members' Research Service
National Assembly for Wales
Cardiff Bay
CF99 1NA

Email: MembersLibrary@wales.gsi.gov.uk

Enquiry no: 09/2345

National Assembly for Wales

Marine and Coastal Access Bill [HL] Research Paper

Tim Jones

July 2009

Paper Number: 09/025

© National Assembly for Wales Commission 2009

© Comisiwn Cynulliad Cenedlaethol Cymru 2009

Members' Research Service gratefully acknowledges the parliamentary fellowship provided to Mr Jones by the Natural Environmental Research Council, which enabled this paper to be completed

Members'
Research
Service



Executive Summary

The seas around the UK are some of the busiest in the world and the resources that they contain are in ever increasing demand. In addition, climate change is already having a significant impact on the marine environment, affecting the goods and services that it provides and the way in which marine space is used.

With these pressures in mind, the *Marine and Coastal Access Bill* [HL] outlines the UK Government's provisions for better management of the seas and is the first piece of UK legislation to consider the marine environment as a whole. The *Bill* aims to ensure clean, healthy, safe, productive and biologically diverse oceans and seas, by putting in place better systems for delivering sustainable development of the marine and coastal environment.

The *Bill* was published in December 2008 following pre-legislative scrutiny and public consultation of a draft version. It was introduced to the 2008-09 session of Parliament and has progressed to the Commons Stage, which began on 9 June 2009. The development of the *Bill* can be traced back to the publication of the *Marine Stewardship Report* in 2002, and numerous reports since have added support to the need for a new approach to managing the marine environment.

The *Bill* introduces a new UK-wide system of marine planning which aims to balance the economic, social and environmental impacts and objectives of marine activities in a way that promotes sustainable development. The *Bill* will modernise and consolidate the *Food and Environmental Protection Act 1985* (FEPA) and the *Coast Protection Act 1949* (CPA) so that a single licensing decision can be made which takes into account environmental, human health and navigational safety factors and the interests of other sea users.

A network of Marine Conservation Zones will be created, which aim to conserve biodiversity and fulfil numerous international commitments.

The Welsh Government will have control over fisheries matters for a new Welsh Zone, which will extend to the median line between Wales and Ireland. Provisions are also made to improve management and legislation relating to marine, freshwater and migratory fisheries.

The *Bill* will modernise and streamline the enforcement regime so that enforcement officers have access to a single set of common enforcement powers. A civil sanctions scheme is introduced for marine licensing and nature conservation.

The Welsh Government has worked with Defra throughout the development process to ensure that the *Bill* is suitable for the needs of Wales. Welsh Ministers will receive executive powers in relation to marine licensing, marine nature conservation and fisheries. New marine planning functions will also be given to Welsh Ministers to allow for the preparation and adoption of statutory marine plans for the Welsh inshore and offshore regions. The *Bill* will also confer Measure making powers on the National Assembly for Wales for coastal access.

Contents

| | | |
|----------|---|-----------|
| 1 | Introduction | 1 |
| 1.1 | Purpose of the Marine and Coastal Access Bill [HL]..... | 1 |
| 1.2 | Components of the Marine and Coastal Access Bill [HL]..... | 2 |
| 2 | Scrutiny and consultation on the Draft Marine Bill..... | 4 |
| 2.1 | Summary of pre-legislative scrutiny and public consultation responses | 4 |
| 2.2 | Summary of major changes following consultation on the draft Bill | 5 |
| 2.3 | Summary of major changes to the Bill following scrutiny by the House of Lords | 6 |
| 3 | The Marine Management Organisation (Part 1 of the Bill) | 7 |
| 3.1 | Summary of provisions..... | 7 |
| 3.2 | Summary of scrutiny and consultation responses to creation of the MMO | 8 |
| | <i>Table 1. Issues arising from the draft legislation with regard to the creation of the MMO and UK Government response</i> | <i>8</i> |
| 3.3 | Implications for Wales | 9 |
| 4 | Definition of Marine Areas (Part 2 of the Bill)..... | 11 |
| 4.1 | Implications for Wales | 11 |
| 5 | Marine Planning (Part 3 of the Bill)..... | 12 |
| 5.1 | Summary of provisions..... | 12 |
| 5.2 | Summary of scrutiny and consultation responses to marine planning issues | 13 |
| | <i>Table 2. Marine Planning issues arising from the draft legislation and UK Government response.....</i> | <i>13</i> |
| 5.3 | Implications for Wales | 15 |
| 6 | Marine Licensing (Part 4 of the Bill) | 16 |
| 6.1 | Summary of provisions..... | 16 |
| 6.2 | Summary of scrutiny and consultation responses to marine licensing issues | 18 |
| | <i>Table 3. Marine Licensing issues arising from the draft legislation and UK Government response.....</i> | <i>18</i> |
| 6.3 | Implications for Wales | 20 |
| | <i>Table 4. Lead bodies responsible for marine licensing in Wales at present and under the Marine and Coastal Access Bill and Planning Act.....</i> | <i>21</i> |
| 7 | Nature Conservation (Part 5 of the Bill) | 22 |
| 7.1 | Existing obligations | 22 |
| 7.2 | Existing protection | 22 |
| 7.3 | Summary of provisions..... | 23 |
| 7.4 | Summary of scrutiny and consultation responses to nature conservation issues .. | 25 |
| | <i>Table 5. Nature conservation issues arising from the draft legislation and UK Government response.....</i> | <i>25</i> |
| 7.5 | Implications for Wales | 27 |
| 8 | Management of Inshore Fisheries (Part 6 of the Bill) | 28 |
| 8.1 | Summary of provisions..... | 28 |
| 8.2 | Summary of scrutiny and consultation responses to management of inshore fisheries..... | 28 |
| 8.3 | Implications for Wales | 29 |
| 9 | Fisheries (Part 7 of the Bill)..... | 30 |
| 9.1 | Marine fisheries amendments | 30 |
| 9.2 | Summary of scrutiny and consultation responses to Marine fisheries amendments | 31 |
| | <i>Table 6. Marine fisheries issues arising from the draft legislation and UK Government response.....</i> | <i>31</i> |
| 9.3 | Migratory and freshwater fisheries amendments | 32 |
| 9.4 | Summary of scrutiny and consultation responses to migratory and freshwater fisheries amendments..... | 35 |

| | | |
|----------------|--|-----------|
| | <i>Table 7. Migratory and freshwater fisheries issues arising from the draft legislation and UK Government response</i> | 35 |
| 9.5 | Implications for Wales | 36 |
| 10 | Enforcement (Part 8 of the Bill) | 37 |
| 10.1 | Summary of provisions..... | 37 |
| 10.2 | Summary of scrutiny and consultation responses to enforcement provisions | 38 |
| | <i>Table 8. Enforcement issues arising from the draft legislation and UK Government response</i> | 38 |
| 10.3 | Implications for Wales..... | 39 |
| | <i>Table 9. Enforcement responsibility around England and Wales</i> | 39 |
| 11 | Coastal Access (Part 9 of the Bill) | 41 |
| 11.1 | Summary of provisions..... | 41 |
| 11.2 | Implications for Wales..... | 41 |
| 12 | Miscellaneous and Supplementary Provisions (Parts 10 and 11 of the Bill) .. | 43 |
| 12.1 | Implications for Wales..... | 43 |
| 13 | Impact Assessment | 44 |
| Annex A | Development of the Marine and Coastal Access Bill [HL] | 45 |
| Annex B | Existing Welsh Competence | 47 |
| Annex C | Existing Welsh strategies | 48 |
| Annex D | EU and International Policy and Obligations | 49 |
| Annex E | UK Marine Management | 51 |
| Annex F | Indicative Area for Welsh Zone | 52 |
| Annex G | Current Protected Marine Areas in the Welsh Inshore Region | 53 |
| Annex H | Acronyms | 54 |

N.B: All page numbers in the footnotes that relate to the *Marine and Coastal Access Bill* and the associated *Explanatory Notes and Policy Paper* refer to the documents as introduced to the House of Lords. These do not correspond in all cases to the documents as introduced to the House of Commons.

Marine and Coastal Access Bill [HL]

“Our oceans, seas and coasts have a huge impact on our lives. The UK marine area is a vast and important resource that is vital to our well-being: not only does it provide us with valuable economic, environmental and cultural benefits, it plays a major role in influencing our climate and in sustaining life. To ensure that future generations continue to see these benefits, we need to balance the pressures on the seas and create a healthier, productive and more biologically diverse marine environment.”¹

Hilary Benn, Secretary of State for the Environment
Jonathan Shaw, Marine and Fisheries Minister (2008)

1 Introduction

The UK Government’s *Marine and Coastal Access Bill* [HL]² was published in December 2008. The *Bill* was introduced to the 2008-09 session of Parliament, and has progressed to the Commons Stage, which commenced on 9 June 2009. Development of the *Marine and Coastal Access Bill* started in 2002 with the publication of the *Marine Stewardship Report*³, and numerous reports since have added support to the need for a new approach to managing the marine environment (Annex A).

The draft *Marine Bill*⁴ was published in April 2008 for pre-legislative scrutiny and public consultation. Pre-legislative scrutiny was completed by a Joint Committee of the House of Lords and House of Commons, and by the Environment, Food and Rural Affairs (EFRA) Select Committee for the coastal access provisions. Over 100 witnesses gave evidence in either a written or oral form and 119 specific recommendations were made to the government in the two resultant reports⁵.

The public consultation was conducted through the Department of Environment, Food and Rural Affairs (Defra) website. In total, 3,500 responses were received which were part of specific campaigns organised by the Royal Society for the Protection of Birds (RSPB), International Fund for Animal Welfare (IFAW) and Friends of the Earth; and 399 ‘non-campaign’ responses were received. In addition, the Ramblers’ Association contributed 11,000 responses supporting coastal access⁶.

1.1 Purpose of the Marine and Coastal Access Bill [HL]

The seas around the UK are some of the busiest in the world and the resources that they contain are in ever increasing demand. In addition, climate change is already having a significant impact on the marine environment, affecting the goods and services that it provides and the way in which marine space is used. To ensure the best sustainable use of resources, a more strategic approach

¹ UK Government, [Taking forward the Marine Bill: The Government response to pre-legislative scrutiny and public consultation](#), September 2008

² Defra, [Marine and Coastal Access Bill](#) [HL] 1 2008-09

³ Defra, [Safeguarding our seas: A strategy for the conservation and sustainable development of our marine environment](#), 2002

⁴ Defra, The [Draft Marine Bill](#), April 2008

⁵ UK Government, [Taking forward the Marine Bill: The Government response to pre-legislative scrutiny and public consultation](#), September 2008, p6

⁶ UK Government, [Taking forward the Marine Bill: The Government response to pre-legislative scrutiny and public consultation](#), September 2008, p6

to managing marine activities and protecting marine resources is required for the future. The *Marine and Coastal Access Bill* provides the legislative tools to achieve this goal⁷.

The *Bill* introduces a framework for the management of the marine environment, integrating conservation and socio-economic objectives to provide maximum benefit for all marine users and greater protection of marine resources⁸. It will allow better decisions to be made about activities that will help mitigate climate change, such as renewable energy projects, and proposals in the *Bill* will be adaptable to allow management and use of new technologies that emerge⁹. The scope of marine and freshwater fisheries management will be increased, in terms of practices that require licenses and type of species covered. A network of Marine Conservation Zones (MCZs) will be created to protect important habitats and there will be greater public access to the coast¹⁰.

The Welsh Assembly Government (Welsh Government) has worked with Defra through the development process to ensure that the *Bill* is “as suitable for the needs of Wales as it is for the needs of England and the UK as a whole.”¹¹ Through provisions outlined in the *Bill*, Welsh Ministers will receive executive powers in relation to marine licensing, marine nature conservation and fisheries. New marine planning functions will also be given to Welsh Ministers to allow for the preparation and adoption of statutory marine plans for the Welsh inshore and offshore regions. Subject to the approval of Parliament, the *Bill* will also confer Measure making powers on the National Assembly for Wales for coastal access¹².

Existing legislative competence in Wales, existing Welsh strategies and current EU and international policy and obligations which have a bearing on marine issues are listed in Annexes B-D.

1.2 Components of the Marine and Coastal Access Bill [HL]

The *Marine and Coastal Access Bill* consists of 11 parts¹³:

- **Part 1.** The **Marine Management Organisation** (MMO) is to be created to deliver marine functions in the waters around England and the UK offshore area (for non-devolved matters). The MMO will also deliver some non-devolved functions in Welsh inshore waters;
- **Part 2.** The **UK marine area** is outlined. This part allows the UK and Welsh Governments to designate a **Welsh Zone** for fisheries matters;
- **Part 3.** A UK-wide system of **marine planning** is introduced with the aim of allowing strategic and effective management of our seas. The long term framework for managing sustainable development in the UK marine area will be set out in a Marine Policy Statement;
- **Part 4.** A streamlined, transparent and consistent system for **licensing** marine developments is introduced;

⁷ Defra, [Marine and Coastal Access Bill Policy Document](#), December 2008, p3

⁸ *ibid*, p1

⁹ *ibid*, p3

¹⁰ Members' Research Service, Research Paper 08/041, [Draft Marine Bill](#), July 2008

¹¹ Defra, [Draft Marine Bill](#), April 2008, Policy Paper, p 21

¹² Welsh Assembly Government, Jane Davidson (Minister for Environment, Sustainability and Housing), [Marine and Coastal Access Bill](#), Cabinet Written Statement, 11 December 2008

¹³ Defra, *The Marine and Coastal Access Bill* [HL] 1 2008-09, [Explanatory Notes](#), p 3

- **Part 5.** A flexible mechanism for **marine nature conservation** is introduced, including Marine Conservation Zones (MCZs) with clear objectives;
- **Part 6.** Proposals to improve management of **inshore fisheries** in relation to England and Wales are outlined;
- **Part 7.** Improvements to legislation are outlined regarding management of commercial and recreational fishing, management of shellfisheries and management of **migratory and freshwater fisheries** in England and Wales;
- **Part 8. Enforcement** practices will be streamlined and modernised through common powers and the introduction of a civil sanctions scheme for marine licensing and nature conservation;
- **Part 9.** Contains provisions for **improved coastal access** in England and provides legislative powers on coastal access for Wales; and
- **Part 10 and 11.** Contains Miscellaneous and supplementary provisions relating to Natural England and the **Countryside Council for Wales**, and cross-cutting issues such as offences by directors.

Further details of the provisions in each of these areas and the implications for Wales will be discussed in the research paper. Major issues raised through pre-legislative scrutiny and public consultation are also raised and the UK Government's response to these issues is presented.

2 Scrutiny and consultation on the Draft Marine Bill

2.1 Summary of pre-legislative scrutiny and public consultation responses

The *draft Marine Bill* was published in April 2008¹⁴. A Joint Committee of the House of Lords and House of Commons scrutinised the draft and submitted a report in July 2008¹⁵. The Environment, Food and Rural Affairs Select Committee scrutinised the coastal access provisions and also reported on this in July 2008¹⁶. The UK Government's *Summary of responses to the public consultation on the draft Marine Bill*¹⁷ was published in September 2008. Annex A outlines how the *Bill* has progressed to date. A series of key overarching themes were identified in the public consultation:

- Respondents sought **clarification** on proposals and approaches across the range of policy areas. In particular, comments focused on areas such as the timescale and procedure of transitional periods, such as the creation of a Marine Management Organisation (MMO) in England and new marine planning and licensing arrangements. In addition, the relationship between marine and terrestrial legislation required clearer explanation;
- **Devolution** was identified as an important concern across the range of policy areas. Consistency and co-ordination between Devolved Administrations is seen as crucial for many proposals in the *Bill* being put into effective practice. Clarity on the form that legislation and implementation would take for the UK Government and Devolved Administrations was required. It was also highlighted that certain issues ought to override political boundaries and jurisdictions, such as marine planning and collection of marine data;
- In some policy areas, respondents suggested that powers be replaced with **duties**. For example, with regard to marine nature conservation, it was suggested that there should be a duty on authorities to designate Marine Conservation Zones (MCZs). The duty to consult was also sought. For instance, in marine licensing, statutory consultees to decision making were called for.
- Clarification and modification of **roles and responsibilities** of various bodies across the legislation was sought. The introduction of certain roles was also put forward. For example, no one body was given responsibility for day to day management of MCZs in the draft *Bill*;
- **Stakeholder engagement** was emphasised as crucial to the success of the *Bill*; and
- **Accountability** was highlighted as a central priority across a range of policy areas and respondents were asking for establishment of effective mechanisms for public scrutiny.

The main areas of interest or concern identified by the Joint Parliamentary Committee's report¹⁸ on the *draft Marine Bill* were as follows:

¹⁴ Provisions outlined in the draft *Bill* are summarised in Members' Research Service Research Paper 08/041, [Draft Marine Bill](#), July 2008

¹⁵ Joint Committee on the Draft Marine Bill, [First Report](#), July 2008

¹⁶ Environment, Food and Rural Affairs, [Ninth Report](#), July 2008

¹⁷ Defra, [Summary of responses to the public consultation on the draft Marine Bill from 3 April 2008-26 June 2008](#), September 2008, p9

¹⁸ Joint Committee on the Draft Marine Bill, [Draft Marine Bill](#), 16 July 2008, HL 159-I/HC 552-I

- There were reservations over the **framework nature** of the draft *Bill*, with much of the policy contained in secondary legislation or guidance;
- Greater clarity was required on which bodies/agencies have **responsibility** for implementation of *Bill* provisions;
- The **Marine Management Organisation (MMO)** in England requires a clear statement of purpose, defined duties and adequate resources;
- The report called for the **Marine Policy Statement** to be published as soon as possible, it must be subject to a high degree of Parliamentary scrutiny and adoption should not occur until every effort has been put into achieving agreement with the Devolved Administrations;
- The committee thought that a **duty** should be imposed on the Secretary of State to create a network of MCZs. Statutory nature conservation bodies should be given a duty to monitor MCZs and report on them to Parliament;
- It was recommended that new **Inshore Fisheries and Conservation Authorities** in England are required to work collaboratively to an agreed set of minimum standards, and that they should have a duty to further conservation of coastal and marine fauna and flora;
- There was a concern that provisions for **enforcement** lacked clarity.

The EFRA Select Committee¹⁹ scrutinised Part 9 of the draft *Bill*, which covered provisions relating to improving coastal access in England. This had little impact on Wales and is not discussed further.

2.2 Summary of major changes following consultation on the draft Bill

The *Policy paper*²⁰ for the revised *Bill* summarises the major changes that have been made to the legislation following pre-legislative scrutiny and public consultation on the draft. The *Marine and Coastal Access Bill* aims to be clearer in numerous ways, including:

- requiring policy authorities to periodically review the Marine Planning Statement;
- ensuring adequate resources and clear general objectives for the MMO;
- requiring marine plans to be as compatible with terrestrial plans as possible;
- outlining functions/responsibilities of various bodies in relation to marine nature conservation on the face of the *Bill*;
- outlining transitional arrangements for provisions on marine licensing;

Greater transparency and accountability will be provided in the *Bill* through:

- requiring appeals mechanisms to be created for each appropriate licensing authority;

¹⁹ Environment, Food and Rural Affairs Committee, [Draft Marine Bill: Coastal Access Provisions](#), 22 July 2008, HC 656

²⁰ Defra, [Marine and Coastal Access Bill Policy Document](#), December 2008, p7

- providing a power to establish an appeals process for statutory notices under the licensing provisions;
- providing a statutory duty on the appropriate authority (Welsh Ministers for Wales) to report to Parliament on progress towards designating a network of MCZs;
- changes to the proposed powers of Natural England regarding coastal access.

New provisions for Wales include:

- providing for the creation of a Welsh Fisheries Zone to bring Wales into line with Scotland and Northern Ireland;
- providing legislative competence, in the form of framework powers under the *Government of Wales Act 2006*²¹, for coastal access for the National Assembly for Wales; and
- enabling of the Welsh Ministers (as a marine plan authority) to prepare marine plans for the offshore area adjacent to Wales, that is the fisheries zone beyond 12 nautical miles (nm), but to require plans to be agreed by the UK Government before they are implemented²².

2.3 Summary of major changes to the Bill following scrutiny by the House of Lords

The *Marine and Coastal Access Bill* passed to the House of Lords in December 2008. This involved 17 sessions of debate on over 1,000 potential amendments to the *Marine and Coastal Access Bill*. The following changes to the *Bill* are summarised by Defra²³:

- A stronger and clearer general objective for the Marine Management Organisation (MMO) is provided in relation to sustainable development, its use of science and other evidence to underpin decision-making; and its relationship with the Infrastructure Planning Commission (IPC);
- Additional provisions for parliamentary scrutiny with new duties on Ministers to report on marine planning progress;
- Requirement to publish sustainability appraisals of marine documents;
- Clearer description of roles for local authorities in marine licensing;
- Clearer duty to designate marine conservation zones, introduction of a 12 month time limit to designation once intention has been published, and the addition of reckless damage into general offence.

²¹ The [Government of Wales Act 2006](#) (chapter 32)

²² Defra, [Marine and Coastal Access Bill Policy Document](#), December 2008

²³ Defra, [Marine and Coastal Access Bill, Changes made by the House of Lords](#), 19 June 2009

3 The Marine Management Organisation (Part 1 of the Bill)

3.1 Summary of provisions

A Marine Management Organisation (MMO) will be created by the *Marine and Coastal Access Bill*. This will be an executive Non-Departmental Public Body (NDPB) charged with exercising marine functions for waters around England and the UK offshore area, for matters that are not devolved²⁴. It will also deliver some non-devolved functions in Welsh inshore regions. The map in Annex E outlines areas for which the MMO is charged with exercising these functions. As well as being the UK Government's strategic delivery body for the marine area, the MMO will be the regulator of most activities in this area.

The general objective of the MMO is to perform marine functions in a consistent and coordinated manner, taking into account the effect that decisions in one area will have on other areas. A further objective is to contribute to the achievement of sustainable development. The MMO will formally report to Parliament through the Secretary of State²⁵.

The functions of the MMO will include²⁶:

- Marine licensing – the MMO will regulate most activities in the marine environment for the Government. Exceptions include oil and gas installations, renewable energy installations (if they are larger than 100 mega-watt (MW) capacity) and ports classified as 'nationally significant infrastructure'²⁷, and shipping which will be regulated by the Maritime and Coastguard Agency (MCA);
- Marine planning – the MMO will publish marine plans to outline what the Government's marine policy statement means for different areas of the sea and coast;
- Nature conservation – enforcement of marine nature conservation legislation (e.g. *Wildlife and Countryside Act 1981*²⁸) and contribution to selecting sites for designation as Marine Conservation Zones (MCZs);
- Enforcement – the MMO will appoint marine enforcement officers to enforce licensing legislation, sea fisheries and nature conservation;
- Marine fisheries management – the MMO is to deliver Defra's fisheries management functions;
- Marine emergencies – the MMO will review and maintain an oil spill contingency plan.

The MMO will be discharging new functions as well as taking over existing functions of the Marine and Fisheries Agency (MFA), Defra, the Department of Energy and Climate Change (DECC) and the Department for Transport. Resources (including staff) that are currently involved in delivery of these functions can be transferred to the MMO²⁹.

The *Bill* allows the Secretary of State to delegate marine functions (e.g. planning and licensing functions) to the MMO where required. The MMO is also able to authorise eligible bodies to

²⁴ Defra, [Marine and Coastal Access Bill Policy Document](#), December 2008, p 12

²⁵ Defra, *Marine and Coastal Access Bill* [HL] 1 2008-09, [Explanatory Notes](#), p 9

²⁶ Defra, [Marine and Coastal Access Bill Policy Document](#), December 2008, p 17

²⁷ 'Nationally significant infrastructure' is outlined in the [Planning Act 2008](#) (Chapter 29). For offshore generating stations, a capacity of over 100MW is classified as 'nationally significant infrastructure'.

²⁸ The *Wildlife and Countryside Act 1981* (Chapter 69)

²⁹ Defra, *Marine and Coastal Access Bill* [HL] 1 2008-09, [Explanatory Notes](#), p 18

perform its functions. Eligible bodies include the Environment Agency, Natural England, harbour authorities and any inshore fisheries and conservation authority³⁰.

General powers, duties and guidance for the MMO are outlined in the *Bill* and include power to charge for services, power to institute criminal proceedings in England, Wales or Northern Ireland, and borrowing powers (along with borrowing limits). Provisions are also made to cover the period of transition when the MMO takes over functions from other bodies. Staff, premises and other facilities will be made available to the MMO on a temporary basis during this time. *Schedule 1* provides detailed arrangements for the establishment of the MMO including appointments, terms of appointment of the MMO Chair (appointed by the Secretary of State) and other board members and staff³¹.

3.2 Summary of scrutiny and consultation responses to creation of the MMO

The majority of respondents to the public consultation on the draft *Marine Bill* were in support of the creation of a MMO as the UK Government’s strategic delivery body for marine issues, and as an overarching licensing authority. However, some of the concerns and/or recommendations expressed by respondents as well as by the Joint Committee on the draft *Marine Bill* are listed in Table 1. Due to constraints of space it is not possible to cover all the points raised.

Table 1. Issues arising from the draft legislation with regard to the creation of the MMO and UK Government response³²

| MMO: Issues raised through pre-legislative scrutiny and public consultation | UK Government response |
|---|--|
| Further clarification of roles and responsibilities of the MMO are required, as well as clarification of the relationship between the MMO and other public bodies such as the Infrastructure Planning Commission (IPC) ³³ , the Environment Agency and Natural England. | Some functions that will be transferred to the MMO are set out in secondary legislation or are derived from EU regulations. It is not possible to transpose these functions directly into primary legislation. Therefore other means will be used to clarify the functions of the MMO for stakeholders. Memoranda of Understanding will be drawn up between the MMO and other key regulators with which it will work. Respective roles and responsibilities and joint working arrangements will be outlined. The Government does not see the need to designate statutory consultees in the <i>Bill</i> as bodies consulted will change over time. The <i>Bill</i> gives the MMO flexibility to determine the appropriate level of consultation and with whom to consult. However, separate guidance will be |

³⁰ Defra, [Marine and Coastal Access Bill](#) [HL] 1 2008-09, p9

³¹ Defra, [Marine and Coastal Access Bill](#) [HL] 1 2008-09, p 212

³² UK Government, [Taking forward the Marine Bill: The Government response to pre-legislative scrutiny and public consultation](#), September 2008, p 16-24

³³ The Infrastructure Planning Commission (IPC) will have responsibility for 'Nationally significant infrastructure' as outlined in the [Planning Act 2008](#) (Chapter 29). For offshore generating stations, a capacity of over 100MW is classified as 'nationally significant infrastructure'.

| | |
|--|--|
| | published suggesting with whom the MMO should normally consult. |
| Many responses thought that the MMO would have insufficient resources in terms of funding and staff expertise. The MMO would require legal, planning, marine research, data management and communication expertise. | Staff numbers remain the same in the revised impact assessment (40 new posts, in addition to staff transferring from the Marine and Fisheries Agency). As and when the MMO takes on more functions, the funding and staff resources required will be reviewed. |
| Some organisations (e.g. from the fishing, energy, shipping, navigational safety and dredging sectors) suggested that it should be ensured that the MMO is balanced between environmental, social and economic interests. | The Government does not intend to change the general objective or duties of the MMO to alter emphasis on environmental or economic aspects. |
| Concerns were raised over how the MMO would work with the structures set up by the Devolved Administrations . Some respondents in Wales also reinforced the point that the MMO will have some functions in Wales, and that the Welsh Government forms one of the key regulatory bodies alongside the MMO. | The MMO will have responsibility for delivering existing and proposed marine functions of the UK Government wherever they apply. The Welsh Government will consider what arrangements for delivery of devolved marine functions are suitable for them. Devolved Administrations will benefit from interacting with a joined-up MMO acting for the UK Government, and in the future the MMO might be able to deliver certain functions for the Devolved Administrations if requested. |

A number of changes have been made to this section of the *Bill* following progression through the House of Lords. The MMO would now be able to take any action in the pursuit of its general objective which it considers necessary or expedient for the purposes of furthering any social, economic or environmental purposes. The *Planning Act 2008*³⁴ will be amended to make the MMO a statutory consultee at the pre-application stage, and an interested party once the Infrastructure Planning Commission (IPC) has accepted an application for consideration. The MMO must also appoint a Chief Science Advisor to advise the MMO board on marine science³⁵.

3.3 Implications for Wales

Overall strategy for management and delivery of functions in the Welsh Zone will be the responsibility of the Welsh Government. The MMO will complete its functions in England only for devolved matters, and will have responsibility for performing non-devolved functions in Wales³⁶. Non-devolved activities include regulation of non-fisheries harbours and offshore renewable energy. The MMO will, however, only be responsible for renewable energy developments of 1-100 MW capacity. Small marine developments of less than 1 MW will be the responsibility of the Welsh Ministers, while developments of more than 100 MW are designated 'nationally significant infrastructure' and will be the responsibility of the Infrastructure Planning Committee as of 2010³⁷.

³⁴ OPSI, The *Planning Act 2008* (chapter 29)

³⁵ Defra, *Marine and Coastal Access Bill, Changes made by the House of Lords*, 19 June 2009

³⁶ Members' Research Service, Research Paper 08/041, *Draft Marine Bill*, July 2008, p14

Two clauses in this part of the *Bill* refer to Wales specifically:

- Provisions are made to allow the MMO to charge fees in respect of the cost of providing its services. This includes services provided by the MMO under any arrangements made between the MMO and Welsh Ministers under the *Government of Wales Act 2006* (section 83)^{38,39}.
- The MMO can institute proceedings in England, Wales or Northern Ireland⁴⁰.

³⁷ The Infrastructure Planning Commission (IPC) will have responsibility for 'Nationally significant infrastructure' as outlined in the [Planning Act 2008](#) (Chapter 29). For offshore generating stations, a capacity of over 100MW is classified as 'nationally significant infrastructure'.

³⁸ The [Government of Wales Act 2006](#) (chapter 32)

³⁹ Defra, [Marine and Coastal Access Bill](#) [HL] 1 2008-09, p 14

⁴⁰ *ibid*, p 14

4 Definition of Marine Areas (Part 2 of the Bill)

Exclusive Economic Zone

An Exclusive Economic Zone can be designated through the *Marine and Coastal Access Bill* to remove inconsistencies in the current maritime zone claimed by the UK. One zone can then replace the areas within British fishery limits, the Renewable Energy Zone, the Pollution Zone, and the Gas Importation and Storage Zone. Management of UK offshore maritime areas will therefore be simplified and the UK will then be abiding with accepted international good practice⁴¹. Precise boundaries of the Zone will be determined following negotiations with neighbouring States⁴².

UK marine area

The UK marine area in this *Bill* consists of:

- The area of sea within the seaward limits of the territorial sea⁴³ adjacent to the UK;
- Any area of sea within the boundary of the aforementioned economic zone;
- Any area of the sea within the limits of the UK sector of the continental shelf.

The UK marine area also includes the bed and subsoil of the sea within these areas, any area submerged at mean high water spring tide, and the waters of every estuary, river or channel as long as the tide flows at mean high water spring tide⁴⁴.

Welsh zone

The *Bill* contains an amendment to the *Government of Wales Act 2006* (chapter 32)⁴⁵. The Welsh Zone is introduced and defined as the sea adjacent to Wales that goes as far out as the British fishery limits. To the west of Wales, this is the median line between Wales and Ireland⁴⁶. An order will be made to set the boundaries of the zone by specifying its co-ordinates, in particular to define the southern boundary. Functions of the UK Government in this zone that relate to fishing, fisheries and fish health will be transferred to Welsh Ministers⁴⁷.

4.1 Implications for Wales

The Welsh Government has had control of fisheries management and enforcement capability out to 12 nm since April 2008. With the creation of the Welsh zone, control for these functions will be extended to the median line between Wales and Northern Ireland, the Isle of Man, England and Republic of Ireland (see Annex F).

⁴¹ Defra, [Marine and Coastal Access Bill](#) [HL] 1 2008-09, p19

⁴² Defra, [Marine and Coastal Access Bill](#) [HL] 1 2008-09, [Explanatory Notes](#), p 7

⁴³ The UK territorial sea is defined by the [Territorial Sea Act](#) 1987 (chapter 49) as the sea extending 12 nm from the baseline. The baseline is usually the low water mark around the coast (although there can be straight baselines across the mouths of bays, see the [Territorial Waters Order in Council](#) 1964)

⁴⁴ Defra, [Marine and Coastal Access Bill](#) [HL] 1 2008-09, p20

⁴⁵ The [Government of Wales Act](#) 2006 (chapter 32)

⁴⁶ This British fishery limits were outlined in the [Fishery Limits Act](#) 1976 (chapter 86).

⁴⁷ Defra, [Marine and Coastal Access Bill](#) [HL] 1 2008-09, [Explanatory Notes](#), p 19

5 Marine Planning (Part 3 of the Bill)

5.1 Summary of provisions

The *Marine and Coastal Access Bill* introduces a new system of planning which intends to balance economic, social, cultural and environmental priorities for the marine area⁴⁸. Current legislation is developed sector by sector, and this can make it difficult for decision-makers and users of the sea to know what the relative priorities are. The provisions in this part of the *Bill* provide for the preparation of a Marine Policy Statement (MPS) to articulate priorities and objectives of the UK Government and the Devolved Administrations in their marine areas. It also provides for preparation of marine plans which take into account the MPS and which will cover the majority of the marine area⁴⁹.

Marine Policy Statement (MPS)

The long term framework for managing sustainable development in the UK marine area will be set out in a MPS⁵⁰. Provisions enable the UK Government and the Devolved Administrations to work together on the MPS and adopt it jointly. The MPS will need to address EU and international obligations and commitments. The MPS is likely to include information about current use of marine resources, predicted future trends and environmental changes, and the approach to dealing with these. It may also include information about the location and extent of resources, activities and pressures⁵¹.

Schedule 5 of the *Bill* contains the requirements regarding preparation of an MPS and amendments that can be made to it. This includes requirements for consultation and community engagement during preparation, including publication of a Statement of Public Participation (SPP) by relevant authorities (the Welsh Ministers are the relevant authority for Wales); and details of the appropriate legislative procedures⁵².

Marine Plans

Once policy priorities have been set out in the MPS, a series of marine plans are to be created under this part of the *Bill* to apply that policy in more detail within more specific parts of the UK's waters. The UK marine area comprises of eight marine planning regions:

- English inshore region;
- English offshore region;
- Scottish inshore region;
- Scottish offshore region;
- Welsh inshore region;
- Welsh offshore region;
- Northern Ireland inshore region;
- Northern Ireland offshore region

⁴⁸ Members' Research Service, Research Paper 08/041, [Draft Marine Bill](#), July 2008, p11

⁴⁹ Defra, *Marine and Coastal Access Bill* [HL] 1 2008-09, [Explanatory Notes](#), p 4

⁵⁰ Members' Research Service, Research Paper 08/041, [Draft Marine Bill](#), July 2008, p11

⁵¹ Defra, [Marine and Coastal Access Bill Policy Document](#), December 2008, p 20

⁵² Defra, [Marine and Coastal Access Bill](#) [HL] 1 2008-09, p 226

The Scottish inshore region and Northern Ireland inshore region are not covered by the provisions for marine plans in this *Bill*. These regions are to be covered by the *Scottish Marine Bill*⁵³ (currently before the Scottish Parliament) and a future Northern Ireland *Marine Bill* respectively. However, the MPS provisions do encompass these regions.

Welsh Ministers will be the marine planning authority for the Welsh inshore and offshore regions and will agree final versions of any plans produced in the Welsh offshore area with the UK Government⁵⁴.

Marine plans are intended to offer certainty about the UK Government and Devolved Administration’s policy intentions, using the priorities set out in the MPS. They will guide developers about where they are able to carry out activities, or where conditions or restrictions may be placed on what they do. Certainty will result from the fact that all operators and regulators in a given area are steered by the same plan, thereby achieving consistency in the decision making process. Plans will advise and point marine users towards a more efficient, co-ordinated use of marine space that will make the marine licensing process (see section 6) more efficient⁵⁵.

Schedule 6 of the *Bill* outlines requirements regarding preparation and adoption of marine plans. Provisions include requirement of the marine plan authority to notify related planning authorities (e.g. adjoined or adjacent authorities) of the decision to prepare plans; the requirement to consult and encourage community engagement through production of an SPP; and the requirement on the plan authority to appraise the proposals of their sustainability⁵⁶.

When public authorities make decisions affecting the UK marine area, they must do so in accordance with any marine plan and MPS for that region, unless relevant considerations indicate otherwise⁵⁷. The *Planning Act 2008*⁵⁸ established the IPC to make decisions about proposed new nationally-significant infrastructure projects. Decisions are taken in accordance with sector-specific National Policy Statements (NPSs) which will be agreed by UK Government. With regard to the marine area, the IPC must take into account the MPS and plans when taking decisions⁵⁹.

5.2 Summary of scrutiny and consultation responses to marine planning issues

Table 2. Marine Planning issues arising from the draft legislation and UK Government response⁶⁰

| Marine Planning: Issues raised through pre-legislative scrutiny and public consultation | UK Government Response |
|--|--|
| Concern was raised regarding the fragmentary effect of having different marine plan authorities around the UK. Some respondents suggested that enabling Devolved Administrations to articulate their own policies on marine plans would cause | The UK Government believes that the provisions outlined in the <i>Bill</i> will allow effective marine management of UK waters to be achieved. All four administrations have acknowledged the need to work closely to achieve the goals of the <i>Bill</i> . |

⁵³ Scottish Parliament, [Marine \(Scotland\) Bill](#), 2009, SP Bill 25

⁵⁴ Defra, [Marine and Coastal Access Bill](#) [HL] 1 2008-09, p28

⁵⁵ Defra, [Marine and Coastal Access Bill Policy Document](#), December 2008, p 28

⁵⁶ Defra, [Marine and Coastal Access Bill](#) [HL] 1 2008-09, p230

⁵⁷ Defra, [Marine and Coastal Access Bill](#) [HL] 1 2008-09, p28

⁵⁸ OPSI, The [Planning Act 2008](#) (Chapter 29)

⁵⁹ Defra, [Marine and Coastal Access Bill Policy Document](#), December 2008, p 28

⁶⁰ UK Government, [Taking forward the Marine Bill: The Government response to pre-legislative scrutiny and public consultation](#), September 2008, p 25-31

| | |
|--|---|
| inconsistencies. It was thought that this might pose problems for regulators operating in more than one administration. | |
| The Joint Committee recommended that further detail on the structure and content of the Marine Policy Statement (MPS) should be included in the <i>Bill</i> . | The UK Government decided against including further details in the <i>Bill</i> as the marine environment and its uses are expected to change, and policies will be developed to address the situation at any given time, in consultation with stakeholders. Including content of the MPS on the face of the <i>Bill</i> would reduce flexibility. |
| Respondents raised concerns that the draft <i>Bill</i> lacked clarity regarding the relationship between the Marine and Planning Bills . | Now that the <i>Planning Act 2008</i> ⁶¹ has received Royal Assent direct references have been made to it in the <i>Marine and Coastal Access Bill</i> . Provisions have been made to ensure that under the <i>Planning Act</i> , applications for development consent for nationally significant infrastructure projects must have regard to the MPS when making decisions. |
| Recommendations were put forward that the MPS should be subject to formal scrutiny and approval by Parliament. | The draft <i>Bill</i> has been amended to make the MPS subject to a similar Parliamentary process as the NPSs. The draft MPS will be laid before both Houses in the UK Parliament and before the Devolved Administrations. |
| Many respondents thought that the draft <i>Bill</i> should impose duties to create an MPS and marine plans, within a defined timetable . | It is the intention that an MPS will be created within two years of Royal Assent, followed by a series of marine plans. However, a timetable will not be included on the face of the <i>Bill</i> as marine planning is a new system, and it is thought that it is more important to take time to get the early plans right, rather than rush to meet a deadline. |
| One of the most common issues raised in the consultation was the perceived weak nature of the provision requiring marine plan authorities to 'take all reasonable steps to secure compatibility ' between marine plans either side of the border. | The <i>Marine and Coastal Access Bill</i> now includes provisions to ensure that marine plan authorities are obliged to do what they can to ensure compatibility with terrestrial plans, as well as marine plans prepared by an adjacent marine plan authority. |
| A number of responses considered that the current marine planning proposals lacked democratic legitimacy , and that the local authorities should be given a formal role in marine planning for estuaries and inshore areas. | The UK Government agrees that local authority support for, and involvement in, planning will be crucial. They disagree that the proposals lack democratic legitimacy as there are extensive obligations to involve and consult the local community throughout the preparation of the plan. |

The main changes made to this part of the *Bill* following House of Lords scrutiny include⁶²:

⁶¹ OPSI, [The Planning Act 2008](#) (chapter 29).

⁶² Defra, [Marine and Coastal Access Bill, Changes made by the House of Lords](#), 19 June 2009

- As well as being required to report on marine plans every 3 years, marine plan authorities will be required to report on the marine planning activity that they have undertaken in their region every 6 years until 2030. These reports and the triennial reports produced on individual marine plans will have to be laid before the appropriate legislature to ensure appropriate legislative oversight of marine planning activity;
- All UK legislatures are to be given sufficient time to properly scrutinise the MPS;
- A marine planning duty has been inserted to the *Bill*, requiring plan authorities to “seek to ensure” whole coverage of its marine planning region.
- A sustainability appraisal of the MPS is now required prior to its publication in draft for public consultation. The UK Minister confirmed during discussions in the House of Commons Committee that this would include Strategic Environmental Assessment.

5.3 Implications for Wales

Marine Policy Statement

Welsh Ministers are the “policy authority” for the Welsh inshore and Welsh offshore marine areas, and they are empowered to act jointly with the Secretary of State and other policy authorities to develop the MPS in accordance with Schedule 5 of the *Bill*. The policy authorities that prepare and adopt an MPS must review it whenever they consider it appropriate to do so. The Welsh Ministers are able to withdraw from the statement if deemed necessary and must bring the withdrawal to the attention of any interested parties⁶³. Once a devolved policy authority has withdrawn from an MPS, the MPS ceases to have any further effect on decisions which relate to matters within the authority’s devolved competence⁶⁴. The Welsh Ministers do not have the powers to create a MPS unilaterally; it must be developed with the Secretary of State.

Marine Plans

As the marine planning authority for the Welsh inshore and offshore areas, the Welsh Government may make marine plans to put the MPS into practice. Once plans are adopted, the Welsh Government is required to report on marine plans every 3 years and on marine planning activity every 6 years until 2030⁶⁵. As with the MPS, if the marine plan authority comes to the conclusion that there is a problem with the plan that cannot be resolved by making an amendment, a marine plan may be withdrawn⁶⁶.

The EC Marine Strategy Directive⁶⁷ requires Member States to achieve “good environmental status” in the marine area by 2021. Member States will need to coordinate activities in European Marine Regions which may be shared with other countries. For Wales, these would be the Southwest Approaches and Irish Sea regions⁶⁸.

⁶³ Defra, [Marine and Coastal Access Bill](#) [HL] 1 2008-09, p21

⁶⁴ Defra, [Marine and Coastal Access Bill](#) [HL] 1 2008-09, [Explanatory Notes](#), p 21

⁶⁵ Defra, [Marine and Coastal Access Bill, Changes made by the House of Lords](#), 19 June 2009

⁶⁶ Defra, [Marine and Coastal Access Bill](#) [HL] 1 2008-09, [Explanatory Notes](#), p 23

⁶⁷ Council common position for adopting a directive of the European Parliament and of the Council establishing a Framework for Community Action in the field of Marine Environmental Policy ([Marine Strategy Framework Directive](#)), 2008.

⁶⁸ Members’ Research Service, Research Paper 08/041, [Draft Marine Bill](#), July 2008, p11

6 Marine Licensing (Part 4 of the Bill)

6.1 Summary of provisions

The process of marine licensing will be used to achieve the desired objectives in the marine area for the environmental, social and economic aspects of sustainable development. The major change brought about by this Part of the *Marine and Coastal Access Bill* will be the consolidation and modernisation of two pieces of existing legislation:

- Part 2 of the *Food and Environment Protection Act 1985* (FEPA)⁶⁹. This Act aimed to control dumping and incineration at sea, and to protect the marine environment, human health and other legitimate uses of the sea from the adverse effects of construction on the sea bed;
- Part 2 of the *Coast Protection Act 1949* (CPA)⁷⁰. This Act was designed to ensure a safe environment for navigation.

The new legislation is designed to remove overlap and complexity that results from having two Acts with successive amendments and further EU requirements. It will bring together into a single licensing decision consideration of environmental, human health and navigational safety factors along with interests of other users of the sea⁷¹. In addition, provisions outlined in the *Marine and Coastal Access Bill* require Ministers to establish a new appeals mechanism that will work to a clearly defined and transparent process⁷².

Activities covered by the new license in the UK marine area include:

- depositing, scuttling or incinerating any object or substance⁷³;
- loading or towing in the UK marine licensing area⁷⁴;
- construction on the sea bed⁷⁵;
- electronic communications apparatus⁷⁶;
- dredging⁷⁷;
- some aspects of harbour construction or alteration⁷⁸.

Some activities currently require consent under FEPA and/or CPA as well as another Act. Provisions are created in the *Marine and Coastal Access Bill* to allow the “Marine Act license” application to be considered through that other relevant Act only:

- The *Harbours Act 1964*⁷⁹ – for harbour works⁸⁰ (not devolved for non-fishery harbours);
- The *Electricity Act 1989*⁸¹ – for marine renewable electricity installations⁸² (not devolved for installations greater than 1 mega watt capacity).

⁶⁹ OPSI, [Food and Environment Protection Act 1985](#) (chapter 48)

⁷⁰ OPSI, [Coast Protection Act 1949](#) (chapter 74)

⁷¹ Defra, [Marine and Coastal Access Bill Policy Document](#), December 2008, p 31

⁷² *ibid*, p 31

⁷³ Defra, *Marine and Coastal Access Bill* [HL] 1 2008-09, [Explanatory Notes](#), p 29

⁷⁴ *ibid*, p29

⁷⁵ Defra, [Marine and Coastal Access Bill Policy Document](#), December 2008, p 31

⁷⁶ Defra, [Marine and Coastal Access Bill](#) [HL] 1 2008-09, p46

⁷⁷ Defra, [Marine and Coastal Access Bill Policy Document](#), December 2008, p 32

⁷⁸ *ibid*, p32

⁷⁹ OPSI, [The Harbours Act 1964](#), (chapter 40)

⁸⁰ Defra, [Marine and Coastal Access Bill](#) [HL] 1 2008-09, p43

⁸¹ OPSI, [The Electricity Act 1989](#) (chapter 29)

⁸² Defra, [Marine and Coastal Access Bill](#) [HL] 1 2008-09, p44

In Wales, such an approach would need to be agreed between the Welsh Ministers (responsible for the Marine Act license) and the UK Government (responsible for the *Electricity Act 1989* and *Harbours Act 1964* licenses).

Exemptions

The licensing authority will be able to exempt certain activities from needing a license, or set conditions which mean that a license is not required. This could include routine works such as redistributing sand along a beach or minor repairs to seawalls⁸³. The *Bill* also provides that Harbour authorities can continue dredging operations authorised under the *Harbours Act 1964* or a local Act, without the need for a marine license. The Marine Act license will not apply to certain oil and gas activities and carbon dioxide storage⁸⁴, these will continue to be licensed under the *Petroleum Act 1998*⁸⁵ and *Energy Act 2008*⁸⁶.

Delegation of powers

Provisions are made in the *Bill* to allow Ministers (Welsh Ministers for Wales) to delegate their powers as marine licensing authority to other competent bodies. In England these functions will be delegated to the MMO⁸⁷, in Wales there will be different arrangements. With the Environment Agency's (EA) consent, there can be collaboration between the MMO (or equivalent) and the EA on projects which take place across the land/sea boundary and that are mainly marine in nature. The necessary flood risk management and land drainage conditions can be incorporated as a part of a license under the *Marine and Coastal Access Bill*⁸⁸.

Enforcement, penalties, notices and appeals

Under provisions in this part of the *Bill*, breaching a marine license may lead to a fine of up to £50,000 on summary conviction or an unlimited fine and/or up to two years' imprisonment on indictment⁸⁹. The *Bill* also provides for the issue of fixed⁹⁰ or variable⁹¹ monetary penalties for any offences committed. The provision for monetary penalties is similar to that established by the *Regulatory Enforcement and Sanctions Act 2008*⁹².

To provide a range of more proportionate enforcement sanctions, the following statutory notices will be introduced:

- *Stop notices*: the enforcement authority can issue a notice to a person prohibiting them from carrying on a licensable marine activity if that activity is causing or will cause serious harm to the environment, human health or is causing or will cause serious interference with legitimate uses of the sea⁹³.
- *Emergency safety notices*: the enforcement authority is able to issue a notice to a person if it appears that serious interference with legitimate uses of the sea is occurring, or is likely to occur, from their activity. The notice can require the provision of lights, signals, other aids to

⁸³ Defra, *Marine and Coastal Access Bill* [HL] 1 2008-09, [Explanatory Notes](#), p 32

⁸⁴ *ibid*, p 32

⁸⁵ OPSI, [The Petroleum Act 1998](#) (chapter 17)

⁸⁶ OPSI, [The Energy Act 2008](#) (chapter 32)

⁸⁷ Defra, *Marine and Coastal Access Bill* [HL] 1 2008-09, [Explanatory Notes](#), p 38

⁸⁸ Defra, [Marine and Coastal Access Bill Policy Document](#), December 2008, p 32

⁸⁹ Defra, [Marine and Coastal Access Bill](#) [HL] 1 2008-09, p48

⁹⁰ *ibid*, p53

⁹¹ *ibid*, p54

⁹² OPSI, [The Regulatory Enforcement and Sanctions Act 2008](#) (chapter 13)

navigation or guard ships to be placed around the activity until the serious interference (or threat of it) is removed⁹⁴.

- *Compliance notices*: for less serious situations, a compliance notice can be issued to make sure that the licensee is left in no doubt as to what actions they need to undertake to comply with their license⁹⁵.
- *Remediation notices*: these can be issued to those in breach of their license or those without a license, requiring them to put right any damage caused by their activity, pay for another body to put that damage right, or to undertake steps elsewhere in compensation for the damage caused⁹⁶.

Each appropriate licensing authority is under an obligation to establish a mechanism through which people can appeal its decision to issue compliance, remediation, stop and emergency safety notices⁹⁷.

Detailed provisions relating to civil sanctions are set out in Schedule 7 of the *Bill*.

Transitional Provisions

Schedule 9 of the *Bill* sets out transitional provisions to cover the change to the new licensing legislation.

6.2 Summary of scrutiny and consultation responses to marine licensing issues

Table 3. Marine Licensing issues arising from the draft legislation and UK Government response⁹⁸

| Marine licensing: Issues raised through pre-legislative scrutiny and public consultation | UK Government Response |
|---|---|
| The Joint Committee recommended a clear mechanism for appealing against licensing decisions of the appropriate authority be included on the face of the <i>Bill</i> . Respondents were also concerned that there was no mention of a mechanism for appealing against the decisions of the Welsh Ministers. | New provisions are included in the <i>Bill</i> that require each appropriate licensing authority to establish through regulations a mechanism for applicants to appeal against decisions to award, or not, marine licenses. |
| Several respondents to the public consultation sought clarification on details and timescales for interim arrangements that would operate before the new licensing procedures were established. | The revised <i>Bill</i> contains detailed transitional provisions to cover the move from the old licensing system to the new, and treatment of existing licenses under the new regime is outlined. |
| The Joint Committee advised the Government to revisit the dual-body regulatory structure of offshore energy | The UK Government maintain the stance that decisions on projects that are not nationally significant, and therefore not subject to many of |

⁹³ Defra, *Marine and Coastal Access Bill* [HL] 1 2008-09, [Explanatory Notes](#), p 39

⁹⁴ Defra, *Marine and Coastal Access Bill* [HL] 1 2008-09, [Explanatory Notes](#), p 40

⁹⁵ Defra, [Marine and Coastal Access Bill Policy Document](#), December 2008, p 33

⁹⁶ Defra, *Marine and Coastal Access Bill* [HL] 1 2008-09, [Explanatory Notes](#), p 36

⁹⁷ Defra, *Marine and Coastal Access Bill* [HL] 1 2008-09, [Explanatory Notes](#), p 41

⁹⁸ UK Government, [Taking forward the Marine Bill: The Government response to pre-legislative scrutiny and public consultation](#), September 2008, p 32-35

| | |
|---|---|
| installations. Opinions are divided between industry, environmental groups and public bodies regarding the role of the IPC in the marine environment. | the challenges faced by nationally significant infrastructure, should be determined by the appropriate local system (i.e. marine licensing for marine based projects). |
| Concern was expressed in some quarters regarding the omission of oil and gas from the scope of licensing. | Oil and gas are not included in the marine licensing provisions as they are already highly regulated by a specialised regulatory framework which is compatible with the stringent international obligations on the industry. |
| The Joint Committee and several respondents recommended statutory consultees in the licensing process. | The UK Government still sees no need to create statutory consultees for licensing decisions on the face of the draft <i>Bill</i> . If this was the case, each body would have to be consulted on every application regardless of its size or nature. The main concern is related to the affect of this on application for small developments. Consultation can be a lengthy and expensive process and costs would be passed on to applicants. The <i>Bill</i> gives the licensing authority the flexibility to determine what level of consultation, and with whom, it feels is appropriate in each circumstance. |

The main changes made to this part of the *Bill* following House of Lords scrutiny include⁹⁹:

- The licensing authority or applicant will be required to notify the local authorities in whose adjoining marine area a licensed activity is taking place;
- An amendment has been made to make it clear that when exempting activities from the need for a license, licensing authorities must have regard to the need to protect the environment; the need to protect human health; the need to prevent interference with legitimate users of the sea; and such other matters as the authority thinks relevant;
- With regard to remediation notices, an amendment has been made to ensure that if someone has caused harm or interference, they can be made to make amends for that harm or interference, for instance by restoring the condition of places affected by that harm to the condition they would have been in had the harm not been caused.

⁹⁹ Defra, [Marine and Coastal Access Bill, Changes made by the House of Lords](#), 19 June 2009

6.3 Implications for Wales

The Welsh Ministers will be the appropriate licensing authority for Wales and the Welsh inshore region¹⁰⁰ and will be required to keep a register of licensing information¹⁰¹. However, within this region the Secretary of State will remain as the appropriate licensing authority for:

- any activity concerning or arising from the exploration for, or production of, petroleum; and
- any defence activity other than an excepted activity¹⁰².

Licensing of offshore renewable developments with a capacity above 1 MW and non-fisheries harbours will also remain outside of the Welsh Ministers jurisdiction.

As the appropriate licensing authority for Wales and the Welsh inshore region, the Welsh Ministers will be also be the appropriate enforcement authority for dealing with issues relating to enforcement, penalties, notices and appeals in this area¹⁰³.

A Marine Consents Unit (MCU) has been established by the Welsh Government and is taking over responsibility for license administration from various Welsh Government departments and the Marine Fisheries Agency (MFA). The activities that Welsh Ministers are *currently* responsible for include:

- activities covered by FEPA (including disposal of materials or construction below the Mean High Water Spring tide mark, either in the sea or below the seabed);
- marine aggregate dredging;
- marine species protection legislation¹⁰⁴.

The MCU will be a single point of contact for license applications for these activities. Its staff will work closely with the MFA and later the MMO to ensure that, as far as possible, the licensing process will be consistent with the regime proposed in the *Bill*¹⁰⁵.

Where activities or projects take place in waters controlled by two or more licensing authorities, developers will need to obtain the relevant license from each authority. The *Policy Paper* for the *Bill* gives the following example¹⁰⁶:

A project that involved dredging material in Wales and depositing where the MMO was the licensing authority would need:

- A license to dredge from Welsh Ministers (assuming the activity); and
- A license to deposit from the MMO.

¹⁰⁰ "Welsh inshore region" means the area of sea within the seaward limits of the territorial sea (i.e. out to 12 nm from the baseline) adjacent to Wales.

¹⁰¹ Defra, [Marine and Coastal Access Bill](#) [HL] 1 2008-09, p58

¹⁰² Defra, [Marine and Coastal Access Bill](#) [HL] 1 2008-09, p65

¹⁰³ *ibid*, p66

¹⁰⁴ Defra, *Draft Marine Bill*, April 2008, [Policy Paper](#), p62

¹⁰⁵ *ibid*

¹⁰⁶ Defra, [Marine and Coastal Access Bill Policy Document](#), December 2008, p 34

Table 4. Lead bodies responsible for marine licensing in Wales at present and under the Marine and Coastal Access Bill and Planning Act.

| Licensing Function | At present | Proposed in the <i>Marine and Coastal Access Bill</i> / covered by the <i>Planning Act</i> |
|---|---|---|
| Large marine renewable energy developments (>100 MW) | DECC ¹⁰⁷ (currently) Welsh Government (issue licenses for environmental aspects connected with the developments out to 12nm e.g. deposits in the sea) | IPC ¹⁰⁸ (as of early 2010) under the <i>Planning Act</i> 2008 ¹⁰⁹ Welsh Government (merged FEPA and CPA licence i.e. environmental aspects out to 12 nm) |
| Small marine renewable energy developments (1–100MW) | DECC Welsh Government (issue licenses for environmental aspects connected with the developments out to 12nm e.g. deposits in the sea) | MMO (<i>Electricity Act</i>) Welsh Government (merged FEPA and CPA licence i.e. environmental aspects out to 12 nm) |
| Very small scale marine renewable energy developments (<1MW) | Welsh Government | Welsh Government |
| Oil and gas | DECC | DECC |
| Small scale marine developments requiring licensing under the merged FEPA ¹¹⁰ and CPA ¹¹¹ | N/A | Welsh Government |
| Aggregates and dredging | Welsh Government | Welsh Government |
| Fisheries harbours | Welsh Government | Welsh Government |
| Non-fisheries harbours | Secretary of State (for Harbour Orders) Welsh Government (issue licenses for environmental aspects) | MMO/IPC for nationally significant works Welsh Government (merged FEPA and CPA license i.e. environmental aspects) |

¹⁰⁷ [Department of Energy and Climate Change](#)

¹⁰⁸ The Infrastructure Planning Commission (IPC) has responsibility for 'Nationally significant infrastructure' as outlined in the [Planning Act](#) 2008 (Chapter 29). For offshore generating stations, a capacity of over 100MW is classified as 'nationally significant infrastructure'.

¹⁰⁹ OPSI, The [Planning Act](#) 2008 (chapter 29)

¹¹⁰ OPSI, [Food and Environment Protection Act 1985](#) (chapter 48)

¹¹¹ OPSI, [Coast Protection Act 1949](#) (chapter 74)

7 Nature Conservation (Part 5 of the Bill)

Provisions are made in the *Marine and Coastal Access Bill* to designate and protect a network of sites – Marine Conservation Zones (MCZs) – which will provide protected areas important for the conservation of rare, threatened and representative habitats and species, including the fan shell (*Atrina fragilis*), the ocean quahog clam (*Arctica Islandica*) and seagrass (*Zostera*)¹¹².

7.1 Existing obligations

The UK has a number of international and European obligations with regards to marine conservation. These include:

- halting biodiversity loss across the EU by 2010¹¹³ and recovery underway by 2026¹¹⁴;
- selecting and protecting Special Areas of Conservation and Special Protected Areas to be part of the Natura 2000 Network¹¹⁵;
- creating a network of marine protected areas by 2012 and, where possible, restoring depleted fish stocks by 2015¹¹⁶;
- requiring Member States to achieve “good ecological status” in their waters by 2021 under the EU *Marine Strategy Directive*, using an ecosystem based approach¹¹⁷;

7.2 Existing protection

At present only 2.2 per cent of UK waters¹¹⁸ are protected for marine conservation. These are:

- 76 coastal Special Areas of Conservation for habitats;
- 72 coastal Special Protection Areas;
- 3 Marine Nature Reserves.¹¹⁹

Research has suggested that protecting 14-20 per cent of UK seas may be sufficient to safeguard internationally important species and habitats¹²⁰. Other reviews have suggested that higher percentages, in the region of 30 per cent of UK waters, should be protected as marine reserves to enable environmental recovery and sustainable fisheries¹²¹.

At present 30 per cent of the Welsh inshore region sea and 70 per cent of the Welsh coast is protected, mostly as Special Areas of Conservation and Special Protection Areas. These sites are designated under the EC *Habitats* and *Bird Directives* and together form part of the Natura 2000 network. Specifically, in Wales there are:

¹¹² Defra, [Marine and Coastal Access Bill Policy Document](#), December 2008, p 37

¹¹³ European Commission, Nature and Biodiversity, [EU Biodiversity Action Plan](#), webpage [on 11 June 2009]

¹¹⁴ Welsh Assembly Government, [Environment Strategy for Wales](#), May 2006, webpage [on 19 June 2009]

¹¹⁵ European Commission, Nature and Biodiversity, [Natura 2000 Network](#), webpage [on 11 June 2009]

¹¹⁶ Defra, [Marine and Coastal Access Bill Policy Document](#), December 2008, p 9

¹¹⁷ [OJ L 164, 25.6.2008](#)

¹¹⁸ For the purposes of the *Bill*, conservation legislation will apply to the territorial seas of England, Wales and Northern Ireland, and within the limits of the Exclusive Economic Zone.

¹¹⁹ Defra, [Protecting our marine environment through the Marine Bill](#), p 8

¹²⁰ Defra, [Protecting our marine environment through the Marine Bill](#), p.9.

¹²¹ Royal Commission on Environmental Pollution, [25th Report – Turning the Tide: Addressing the Impact of Fisheries on the Marine Environment](#), December 2004

- 17 Special Areas of Conservation wholly in Wales with a marine component;
- 13 Special Protection Areas wholly in Wales with a marine component¹²²;
- 1 Marine Nature Reserve (Skomer).

However, a Countryside Council for Wales (CCW) report¹²³ on the current state of the environment has shown that 60 per cent of features in Special Areas of Conservation are not in a favourable state. In the report, this is attributed to poor management which allows damaging activities to continue in protected areas.

Annex G is a map of the current protected marine areas in the Welsh inshore region.

7.3 Summary of provisions

Marine Conservation Zones

Provisions in the draft *Bill* allow the appropriate authorities (Welsh Ministers for the Welsh inshore region; that is out to 12 nm) to designate, after consultation, an extensive network of Marine Conservation Zones (MCZs). These zones can be designated to conserve:

- marine flora or fauna;
- marine habitats or types of marine habitat;
- features of geological or geomorphological interest¹²⁴.

The MCZs are to conserve species that are rare or threatened and also to conserve the diversity of flora, fauna and habitat, whether or not they are considered rare or threatened. Ministers may take account of economic and social consequences of designation. This ensures that MCZs can be designated in such a way that biodiversity can be conserved whilst social and economic impacts can be minimised¹²⁵.

The designation of an MCZ requires conservation objectives, boundaries and protected features to be identified. The level of protection for an MCZ will depend on the conservation objectives of the site, which take account of the relevant conservation, social and economic considerations¹²⁶.

Public authorities who carry out functions within the MCZ must do so in a way that best furthers – or where this is not possible, least hinders the conservation objectives for the MCZs. If the performance of the functions will significantly affect the conservation objectives, the statutory nature conservation body (SNCB) must be informed (in Wales this is the Countryside Council for Wales)¹²⁷. Public authorities responsible for licensing activities may not consent any activity that poses a significant risk of hindering the conservation objectives of a MCZ, except under specified circumstances. If these circumstances apply, the person seeking consent must arrange for measures of equivalent environmental benefit to be undertaken, to compensate for damage to a MCZ¹²⁸.

¹²² Figures provided by an official from the CCW, 12.6.09

¹²³ CCW, [Implementing the Ecosystem Approach in Wales: Current status of the maritime environment and recommendations for management](#), May 2006.

¹²⁴ Defra, [Marine and Coastal Access Bill](#) [HL] 1 2008-09, p68

¹²⁵ Defra, [Marine and Coastal Access Bill](#) [HL] 1 2008-09, [Explanatory Notes](#), p 43

¹²⁶ *ibid*

¹²⁷ Defra, [Marine and Coastal Access Bill](#) [HL] 1 2008-09, [Explanatory Notes](#), p 46

¹²⁸ Defra, [Marine and Coastal Access Bill](#) [HL] 1 2008-09, [Explanatory Notes](#), p 46

The MCZ network will complement the Natura 2000 network of European sites and will help to fulfil commitments under the OSPAR convention¹²⁹. Amendments will be made to the *Wildlife and Countryside Act 1981* (c.69) in relation to Sites of Special Scientific Interest (SSSI) and National Nature Reserves (NNRs). SSSIs can be re-designated as (or part of) an MCZ¹³⁰. Skomer Marine Nature Reserve, the only Marine Nature Reserve in Wales, will be designated as an MCZ¹³¹.

Byelaws/Orders

Biodiversity is threatened by a number of unregulated activities, particularly motorised recreation, wildlife watching and land-based recreation. The MMO is given power to make byelaws for the England inshore region, which will help control activities such as these in order to enhance nature conservation¹³².

Welsh Ministers are given the power to make conservation orders, in order to protect MCZs in the Welsh inshore region (out to 12 nm) and to help further their conservation objectives¹³³. Before issuing a conservation order, the Welsh Ministers must consult with any authority or persons who may be affected, unless Welsh Ministers think there is an urgent need to make the order¹³⁴.

In order to allow flexibility in different areas of MCZs and at different times of year, specified exceptions and provisions can be made within a conservation order and permits can be issued to allow activities which would otherwise be unlawful under the order. This means that particularly damaging methods can be controlled without unnecessarily burdening more environmentally benign activities¹³⁵. Welsh Ministers will also be able to issue interim orders to protect areas that are not yet designated MCZs¹³⁶.

Enforcement

A person found guilty of contravening a byelaw/conservation order is liable on summary conviction to a fine not exceeding £5,000. Those found guilty of damaging protected features of an MCZ are liable to a fine not exceeding £50,000¹³⁷. The *Bill* currently contains a defence for any act associated with sea fishing¹³⁸.

Provisions in this Part of the *Bill* also enable the Secretary of State or the Welsh Ministers to make an order which confers a power on an enforcement authority to issue fixed monetary penalties for the breach of byelaws or conservation orders. The maximum fixed financial penalty will be £200¹³⁹.

¹²⁹ The Oslo-Paris Convention for Protection of Marine Environment of the North East Atlantic (OSPAR) commits the UK to prevent and eliminate pollution in the North East Atlantic and to establish a network of marine protected areas.

¹³⁰ Defra, [Marine and Coastal Access Bill](#) [HL] 1 2008-09, p258

¹³¹ Defra, [Protecting our marine environment through the Marine Bill](#), p 12

¹³² Defra, [Marine and Coastal Access Bill](#) [HL] 1 2008-09, [Explanatory Notes](#), p 47

¹³³ Defra, [Marine and Coastal Access Bill](#) [HL] 1 2008-09, p80

¹³⁴ Defra, [Marine and Coastal Access Bill](#) [HL] 1 2008-09, [Explanatory Notes](#), p 50

¹³⁵ Defra, [Marine and Coastal Access Bill](#) [HL] 1 2008-09, [Explanatory Notes](#), p 49

¹³⁶ Defra, [Marine and Coastal Access Bill](#) [HL] 1 2008-09, p80

¹³⁷ Defra, [Marine and Coastal Access Bill](#) [HL] 1 2008-09, [Explanatory Notes](#), p 51

¹³⁸ Defra, [Marine and Coastal Access Bill](#) [HL] 1 2008-09, p84

¹³⁹ Defra, [Marine and Coastal Access Bill](#) [HL] 1 2008-09, [Explanatory Notes](#), p 52

7.4 Summary of scrutiny and consultation responses to nature conservation issues

This part of the *Marine and Coastal Access Bill* received widespread and cross-sector support. However, it also received the largest number of responses to public consultation on any part of the *Bill*. Some of the issues raised are outlined in Table 5 along with the UK Government response.

Table 5. Nature conservation issues arising from the draft legislation and UK Government response¹⁴⁰

| Nature conservation: Issues raised through pre-legislative scrutiny and public consultation | UK Government Response |
|--|--|
| The UK Government is committed to establishing an ecologically coherent network of Marine Protected Areas (MPAs). The <i>Bill</i> will play a role in delivering this commitment by making provisions for the designation and protection of MCZs. | Amendments have been made since the draft <i>Bill</i> which 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. |
| There was considerable desire to see the inclusion of a timetable relating to the designation of MCZs on the face of the draft <i>Bill</i> . Such a timetable would ensure delivery of the network in good time. | A time-based reporting duty has been added to the <i>Bill</i> . This should ensure that the Secretary of State and the Welsh Ministers are held accountable for progress in developing marine protection areas, but without risking a sub-optimal network being rushed through to meet a fixed legal date. A duty is therefore placed on the Welsh Ministers to submit a report to the National Assembly for Wales on progress in developing the network of marine protection areas, and on progress towards achieving conservation objectives of the MCZs, in 2012 and at least every six years thereafter. |
| Some respondents were concerned with proposed powers that allow the appropriate authority (the Welsh Ministers for Wales) to designate MCZs without prior consultation where there is urgent need to protect an area. | This power has now been qualified by only allowing this designation to stand for two years before which consultation will be required to confirm the designation. |
| SNCBs are intended to monitor and report on the state of MCZs. There was a desire from numerous respondents to see greater clarity and certainty on this matter in the <i>Bill</i> . | New provisions in the <i>Bill</i> require the appropriate authority (the Welsh Ministers for Wales) to direct the appropriate SNCB for an area to carry out monitoring of MCZs in that area. |
| The Joint Committee recommended that provisions are included in the <i>Bill</i> to make it an offence to damage or destroy a feature for which an MCZ has been designated. | Provisions have been added to the <i>Bill</i> to include a general offence which is intended to prevent deliberate acts of damage to the designated features of an MCZ. The maximum fine for a general offence is set at |

¹⁴⁰ UK Government, [Taking forward the Marine Bill: The Government response to pre-legislative scrutiny and public consultation](#), September 2008, p 36-43

| | |
|--|---|
| | £50,000. |
| Several respondents considered that a need existed to identify a lead agency to undertake and co-ordinate enforcement of protection measures within MCZs. | The UK Government think that public authorities should retain responsibility for enforcing their own regulations, licensing conditions, byelaws and other measures. However, a single body should collate and record instances where a public authority considers that an offence has occurred which hindered conservation objectives for an MCZ. A duty has therefore been placed on public authorities in the <i>Bill</i> to submit information to SNCBs when an offence has taken place. |
| Consultation respondents suggested additions to the list of persons to be consulted before MCZ designation or in respect of conservation orders in the draft <i>Bill</i> . | The detailed statutory list of consultees has been removed from the <i>Bill</i> as the UK Government believes that this could easily become out of date, or give the impression that the views of those on the list are more important than those of others who may have an interest. This Part of the <i>Bill</i> is now in line with other Parts which also preclude statutory consultees. |
| The Joint Committee recommended that Environmental Impact Assessments should be undertaken on planned and existing activities within proposed MCZs; | This is thought to be unnecessary because these activities, as well as the other social, economic and environmental consequences of designation, will be taken into account during the process of selecting and designating MCZs. |
| The Joint Committee recommended that a duty should be conferred on any Welsh inshore fisheries body to protect MCZs. | It is intended that any orders necessary for the protection of an MCZ in Wales will be made by the Welsh Ministers, using powers available to them in the <i>Bill</i> . |
| It was proposed by the Joint Committee that conservation orders should be made by means of statutory instruments , with an appeals mechanism on the face of the <i>Bill</i> . | The aim of the UK Government is to create a regulatory mechanism akin to local byelaws. It is not considered appropriate to introduce these regulatory measures by statutory instrument, and a formal appeals mechanism on the face of the <i>Bill</i> is not deemed necessary. |

The main changes made to this part of the *Bill* following House of Lords scrutiny include¹⁴¹:

- The appropriate authority (the Welsh Ministers for Wales) will now be required to make a statement to the relevant legislature on the principles and other factors it intends to follow in implementing the duty to contribute to the “network of sites”.
- “Reckless” damage has been added to the general offence of causing damage to the protected features of a marine conservation zone.

¹⁴¹ Defra, [Marine and Coastal Access Bill, Changes made by the House of Lords](#), 19 June 2009

- The Ministers' duty to designate MCZs to contribute to a network of marine protected areas has been made clearer.

7.5 Implications for Wales

Welsh Ministers are to designate MCZs in the Welsh inshore region (out to 12 nm) in order to contribute to an ecologically coherent network of sites across the UK and EU. The Secretary of State has responsibility for the Welsh offshore region¹⁴².

Defra and the Welsh Government have issued draft guidance on the designation of MCZs. The Welsh Government is committed to establishing an ecologically coherent network of well-managed marine protected areas by 2012, and is working with CCW to establish a project for the selection of potential highly protected MCZs within Welsh territorial waters. This process will include stakeholders, with the Welsh Ministers taking the final decision¹⁴³. Each site will have conservation objectives and all public bodies will have a duty to exercise their functions so as to best further these¹⁴⁴. The SNCB (CCW in Wales) can hold public bodies (including the Welsh Ministers) accountable for failure to comply with their duties, or failure to act in accordance with guidance relating to MCZs¹⁴⁵.

If appropriate authorities from outside the Welsh Ministers' jurisdiction are designating an MCZ which lies in the Welsh offshore region or whose activities may affect an activity which is or may be carried out in the Welsh zone, then the authority must consult the Welsh Ministers¹⁴⁶.

The Welsh Ministers will have powers to make conservation orders, as outlined above, which will help control certain activities in MCZs in order that the conservation objectives can be achieved¹⁴⁷. Fines can be issued if conservation orders are contravened or if damage is done to protected features within an MCZ¹⁴⁸.

If the MMO make any byelaws (in England) that would or might affect any activity in Wales, the MMO must send a copy of a draft of the byelaw to the Welsh Ministers¹⁴⁹.

¹⁴² Defra, *Marine and Coastal Access Bill* [HL] 1 2008-09, [Explanatory Notes](#), p 42

¹⁴³ Defra, [Draft guidance on selection and designation of Marine Conservation Zones \(Note 1\)](#), May 2009

¹⁴⁴ Defra, [Marine and Coastal Access Bill Policy Document](#), December 2008, p 37

¹⁴⁵ Defra, [Marine and Coastal Access Bill](#) [HL] 1 2008-09, p 75

¹⁴⁶ Defra, [Marine and Coastal Access Bill](#) [HL] 1 2008-09, p 70

¹⁴⁷ Defra, [Marine and Coastal Access Bill](#) [HL] 1 2008-09, p 80

¹⁴⁸ Defra, *Marine and Coastal Access Bill* [HL] 1 2008-09, [Explanatory Notes](#), p 51

¹⁴⁹ Defra, [Marine and Coastal Access Bill](#) [HL] 1 2008-09, p 77

8 Management of Inshore Fisheries (Part 6 of the Bill)

8.1 Summary of provisions

This part of the *Marine and Coastal Access Bill* aims to modernise inshore fisheries and environmental management arrangements in England and Wales. In England, Inshore Fisheries and Conservation Districts (IFC districts) and Inshore Fisheries and Conservation Authorities (IFC authorities) will be established. These will replace current Sea Fisheries Districts and Sea Fisheries Committees (SFCs)¹⁵⁰. The main role of the IFC authorities will be to manage the exploitation of sea fisheries resources in a way that:

- is sustainable;
- balances social and economic benefits with protection of the marine environment; and
- balances the different needs of persons engaged in the exploitation of sea fisheries¹⁵¹.

IFC authorities are given powers to make byelaws for the management of sea fisheries resources within their districts as well as for wider environmental purposes, such as the protection of species and habitats from fishing activity. Powers will allow regulation of the full range of marine fisheries activities including the introduction of chargeable permits, effort limitation and areas restricted to fishing. IFC authorities are able to appoint IFC Officers to carry out enforcement. The maximum penalty for breaching a byelaw will be £50,000¹⁵². Each IFC authority must also exercise its powers to seek to ensure that the conservation objectives of any MCZs in their district are furthered¹⁵³. Funding for IFC authorities comes from any local authority with a seashore¹⁵⁴.

On 1 April 2008, the Welsh Government assumed responsibility for fisheries management and enforcement capability in the seas off Wales out to 12 nm. This was previously the responsibility of the Marine and Fisheries Agency (MFA). Inshore fisheries in Wales are currently managed by two SFCs, but in September 2008, the Welsh Government announced that this function would be brought in-house¹⁵⁵. Under the *Bill*, the two SFCs that work in Wales will be disbanded, but the provisions in this part of the *Bill* regarding IFC districts and IFC authorities do not apply in Wales. Powers are conferred on the Welsh Ministers to make any provision by Order which the IFC authorities may make by byelaw, but only to the extent that the Welsh Ministers do not already have the power to make such a provision¹⁵⁶.

8.2 Summary of scrutiny and consultation responses to management of inshore fisheries

The Joint Committee and majority of respondents welcomed the creation of IFC districts and authorities in England and supported their increased responsibility to protect and conserve the marine environment. As the majority of this Part of the *Bill* relates to provisions for England, many of the issues raised through pre-legislative scrutiny and public consultation do not have implications specifically for Wales.

¹⁵⁰ Defra, *Marine and Coastal Access Bill* [HL] 1 2008-09, [Explanatory Notes](#), p 53

¹⁵¹ Defra, [Marine and Coastal Access Bill](#) [HL] 1 2008-09, p 90

¹⁵² Defra, [Marine and Coastal Access Bill Policy Document](#), December 2008, p 39

¹⁵³ Defra, *Marine and Coastal Access Bill* [HL] 1 2008-09, [Explanatory Notes](#), p 55

¹⁵⁴ Defra, [Marine and Coastal Access Bill Policy Document](#), December 2008, p 40

¹⁵⁵ Welsh Assembly Government, [Welsh Assembly Government to manage Welsh fisheries](#), 12 September 2008, website [on 8 May 2009]

¹⁵⁶ Defra, *Marine and Coastal Access Bill* [HL] 1 2008-09, [Explanatory Notes](#), p 61

One point that did concern Wales was raised by the Joint Committee and several consultation respondents, who felt that a duty should be placed on the Welsh Ministers to protect MCZs in order to ensure a consistent MCZ system throughout English and Welsh Waters. However, this provision was not added to the *Bill* as the Welsh Ministers are to be the primary guardian of marine conservation issues and Welsh fisheries matters. Powers are available in the *Bill* to allow the Welsh Ministers to make orders to protect MCZs in Welsh Waters¹⁵⁷.

Concern has also previously been expressed by some stakeholders that the Welsh Government may lack the management resources to adequately cover the entire Welsh zone¹⁵⁸.

8.3 Implications for Wales

Part 2 of the *Bill* creates a 'Welsh Zone' extending as far as the British fishery limits of Wales – the median line between Wales and Ireland. Within this zone the Welsh Government will have control of functions connected with fishing, fisheries and fish health¹⁵⁹. The inclusion of this provision in the *Marine and Coastal Access Bill* followed a public consultation by the Welsh Government which closed in June 2008¹⁶⁰.

The IFC districts and authorities provided for in Part 6 of the *Bill* in England will not be introduced in Wales. Rural Affairs Minister Elin Jones announced in September 2008, following a public consultation, that the Welsh Government will assume full responsibility for management and enforcement of sea fisheries in Wales. The roles and responsibilities of the existing SFCs in Wales and the Environment Agency Wales (EAW) will be taken in-house. The SFCs will be abolished. It is proposed that the Welsh Government Fisheries Unit will manage and enforce sea fisheries as an integral part of coherent policies for safeguarding the marine environment¹⁶¹. One exception to the transfer of powers is that it is proposed that the EAW will continue to be responsible for salmonid legislation out to 6 nm¹⁶².

Part 6 of the *Bill* does allow the Welsh Ministers to make by order any provision in relation to Wales that IFC authorities may make for a district in England through the use of byelaws. Should any of these provisions be contravened a fine not exceeding £50,000 can be delivered. Following conviction, the court can order the forfeiture of any fishing gear used in the commission of the offence and any sea resources connected to the offence. The *Bill* also provides for Ministers to enter into arrangements, with or without charge, with third parties, for marine enforcement officers (MEOs) to undertake enforcement activities within those third party fisheries¹⁶³.

It is also provided for in the *Bill* that where any IFC district is being established in England that adjoins to a Welsh inshore region, the Secretary of State must consult the Welsh Ministers¹⁶⁴.

¹⁵⁷ UK Government, [Taking forward the Marine Bill: The Government response to pre-legislative scrutiny and public consultation](#), September 2008, p 94

¹⁵⁸ Members' Research Service, Research Paper 08/041, [Draft Marine Bill](#), July 2008, p27

¹⁵⁹ Defra, *Marine and Coastal Access Bill* [HL] 1 2008-09, [Explanatory Notes](#), p 19

¹⁶⁰ Welsh Assembly Government, [Welsh Assembly Government proposal for a Welsh Fisheries zone](#), April 2008

¹⁶¹ Welsh Assembly Government, [Welsh Assembly Government to manage Welsh fisheries](#), 12 September 2008, website [on 8 May 2009]

¹⁶² Welsh Assembly Government, [A proposal for the future management and enforcement of sea fisheries in Welsh waters](#), 9 June 2008.

¹⁶³ Defra, *Marine and Coastal Access Bill* [HL] 1 2008-09, [Explanatory Notes](#), p 62

¹⁶⁴ Defra, [Marine and Coastal Access Bill](#) [HL] 1 2008-09, p 88

9 Fisheries (Part 7 of the Bill)

9.1 Marine fisheries amendments

This Part of the *Marine and Coastal Access Bill* makes a number of amendments to current legislation.

Amendments to the *Sea Fisheries (Conservation) Act 1967* (c.84)¹⁶⁵:

- The Ministers (Welsh Ministers for Wales) can make new restrictions on the size of sea fish that can be landed, carried and sold¹⁶⁶;
- The Ministers (Welsh Ministers for Wales) can make orders restricting the use of certain nets and other fishing gear for specific species of fish¹⁶⁷;
- The ability to charge for commercial sea fishing licenses is introduced to Ministers. This can incorporate a scale of charges for different types of license¹⁶⁸;
- Powers are introduced to prohibit fishing by fishing boats in any specified area, including for environmental purposes, without authorisation by a license. Licenses can be granted to authorise fishing subject to certain conditions such as conserving natural beauty/coastal areas or conserving flora or fauna¹⁶⁹; and
- The Ministers (Welsh Ministers for Wales) can make orders restricting fishing for sea fish of any description and placing limits on the amounts fished in any given period¹⁷⁰.

Fines not exceeding £50,000 will result from offences relating to these amendments. In addition, obstructing or assaulting an enforcement officer can lead to fines of £20,000 and £50,000 respectively¹⁷¹.

Amendments have been made to the *Sea Fisheries (Shellfish) Act 1967* (c.83)¹⁷². Currently, under this Act the Welsh Ministers can allow establishment and improvement of commercial shellfisheries through a Several Order. This grants an exclusive right to develop a private fishery to the grantee. Preservation and improvement of existing wild shellfisheries that may be at risk of over-exploitation can be achieved using a Regulating Order. This can restrict or regulate the dredging, fishing for, and taking of Shellfish¹⁷³. The following amendments have been made:

- Changes are made to reduce the cost and burden of the administration relating to Several and Regulating Orders¹⁷⁴;
- The Ministers (Welsh Ministers for Wales) now have powers to make orders regarding all types of shellfish¹⁷⁵;

¹⁶⁵ OPSI, [Sea Fish \(Conservation\) Act 1967](#) (chapter 84)

¹⁶⁶ Defra, *Marine and Coastal Access Bill* [HL] 1 2008-09, [Explanatory Notes](#), p 62

¹⁶⁷ *ibid*, p 63

¹⁶⁸ *ibid*, p 63

¹⁶⁹ Defra, [Marine and Coastal Access Bill](#) [HL] 1 2008-09, p 108

¹⁷⁰ Defra, *Marine and Coastal Access Bill* [HL] 1 2008-09, [Explanatory Notes](#), p 64

¹⁷¹ *ibid* p 64

¹⁷² OPSI, [Sea Fisheries \(Shellfish\) Act 1967](#) (chapter 83)

¹⁷³ Defra, [Marine and Coastal Access Bill Policy Document](#), December 2008, p 46

¹⁷⁴ Defra, [Marine and Coastal Access Bill Policy Document](#), December 2008, p 46

¹⁷⁵ Defra, *Marine and Coastal Access Bill* [HL] 1 2008-09, [Explanatory Notes](#), p 66

- An increase in the maximum penalty fine for offences relating to fisheries for shellfish to £50,000, in line with other fisheries¹⁷⁶;
- When any sea fishing boat is used in the commission of an offence the person in command of the boat, the owner and the charterer will each be guilty of an offence and liable to a fine¹⁷⁷;
- Licenses can now be removed after a single offence, rather than two previously¹⁷⁸;
- Grantees of regulated fisheries must hold a register of current license-holders' names and addresses and make it available free of charge¹⁷⁹;
- Protection afforded to private oyster beds is extended to all privately owned shellfish beds¹⁸⁰;
- The Ministers (Welsh Ministers for Wales) can specify by order implements of fishing that can be used in areas where there is a right of several fishery (where there are exclusive rights to deposit, propagate, dredge, fish for and take specified shellfish). Previously it has been an offence to use any implement of fishing, apart from a line and hook or a net for catching floating fish, in any area where there is a right of several fishing¹⁸¹;
- Taking of crabs and lobsters for scientific purposes may no longer be an offence if authorisation is granted by the Welsh Ministers¹⁸²; and
- The Ministers (Welsh Ministers for Wales) are provided with greater discretionary powers with regard to holding public inquiries in matters related to fisheries for shellfish¹⁸³.

9.2 Summary of scrutiny and consultation responses to Marine fisheries amendments

Table 6. Marine fisheries issues arising from the draft legislation and UK Government response¹⁸⁴

| Marine Fisheries: Issues raised through pre-legislative scrutiny and public consultation | UK Government Response |
|---|---|
| The Joint Committee recommended that the <i>Bill</i> should ensure that commercial fishing vessel licenses issued under the <i>Sea Fish (Conservation Act) 1967</i> are varied for marine environmental purposes . | A clause has been added to the <i>Bill</i> to allow imposition of conditions of license for marine environmental purposes. |
| Some respondents to the consultation were concerned about how order making powers being sought in the <i>Sea Fish (Conservation) Act 1967</i> to regulate recreational and | The order-making powers are included for conservation purposes and are consistent with existing powers for regulating commercial fishing practices. The UK Government believe |

¹⁷⁶ *ibid*, p 60

¹⁷⁷ *ibid*, p 66

¹⁷⁸ *ibid*, p 67

¹⁷⁹ *ibid*, p 67

¹⁸⁰ *ibid*, p 67

¹⁸¹ *ibid*, p 67

¹⁸² Defra, [Marine and Coastal Access Bill](#) [HL] 1 2008-09, p 115

¹⁸³ Defra, *Marine and Coastal Access Bill* [HL] 1 2008-09, [Explanatory Notes](#), p 68

¹⁸⁴ UK Government, [Taking forward the Marine Bill: The Government response to pre-legislative scrutiny and public consultation](#), September 2008, p 45-49

| | |
|---|---|
| <p>unlicensed fishing activities would work in practice.</p> | <p>that limiting these powers or applying conditions to their use in the <i>Bill</i> could affect future ability to respond effectively to future conservation challenges.</p> |
| <p>With regard to the <i>Sea Fish (Conservation) Act 1967</i>, the consultation raised a number of issues which respondents wished to see in the <i>Bill</i>, including maximum size of a Several Order, a reduction in the tenure period for orders, provision to terminate orders where they are detrimental to the marine environment and application of tolls under Regulating Orders for marine environmental purposes.</p> | <p>The UK Government response states that these are issues already provided for under the <i>Act</i> and fall to be dealt with through guidance or where the problem described can be addressed under other legislation. No amendments in relation to these issues were therefore proposed.</p> |

Some Government amendments relating to this Part of the *Bill* have been tabled and accepted in the House of Commons Public Bill Committee¹⁸⁵:

- Removal of the requirement for the Ministers (Welsh Ministers for Wales) to obtain permission from the Crown Estate Commissioners (CECs) when creating new Several/Regulating Orders relating to shellfisheries, although the Ministers would have to have regard to the powers and duties of the CECs.
- A new procedure is introduced for the Ministers (Welsh Ministers for Wales) to vary or revoke Several or Regulating Orders where a proposed development would make it impossible or impractical to exercise the rights conferred by the orders. It also makes provision for compensation to be paid in such cases to holders of rights of Several fishery.

9.3 Migratory and freshwater fisheries amendments

The responsibility for regulation and management of salmon and freshwater fisheries in England and Wales lies with the EA. Part 7 of the *Bill* modernises the tools available to the EA for their management and enforcement role¹⁸⁶. It also gives powers to the appropriate national authority relating to the keeping of live fish and their introduction into and removal from inland waters¹⁸⁷.

Taking of fish

The *Marine and Coastal Access Bill* amends:

- The *Salmon and Freshwater Fisheries Act 1975*¹⁸⁸
- The *Water Resources Act 1991*¹⁸⁹
- The *Environment Act 1995*¹⁹⁰

The EA's regulatory powers (including a licensing system, byelaw making powers, enforcement powers and certain other powers to restrict fishing effort) will be extended to include smelt,

¹⁸⁵ House of Commons Public Bill Committee, [Marine and Coastal Access Bill \[Lords\]](#), 7 July 2009

¹⁸⁶ Defra, [Marine and Coastal Access Bill Policy Document](#), December 2008, p 41

¹⁸⁷ Defra, *Marine and Coastal Access Bill* [HL] 1 2008-09, [Explanatory Notes](#), p 68

¹⁸⁸ OPSI, [Salmon and Freshwater Fisheries Act 1975](#) (chapter 51)

¹⁸⁹ OPSI, [Water Resources Act 1991](#) (chapter 57)

¹⁹⁰ OPSI, [Environment Act 1995](#) (chapter 25)

lamprey, and (in respect of byelaw-making powers) shad; these migratory species are currently outside the remit of fisheries management measures. The Ministers (Welsh Ministers for Wales) are also able to add by order any other species of fish to the EAW's remit. For example, flounder, mullet and bass can currently be found in significant numbers in freshwater, and as climate change proceeds, other species of fish may start to colonise English and Welsh inland waters¹⁹¹.

Welsh Ministers can by order allow the EAW to limit the number of licenses available for fishing for salmon and trout (except rainbow trout) by methods other than a rod and a line¹⁹². The EA will be able to impose conditions on the use of 'historic installations', which include nets or traps that have been fished under privileged status since at least the 19th century. The privileged status has prevented the EA from taking action to control fishing pressure. New powers may be used to rectify this, for example, by limiting the number of fish that may be taken¹⁹³.

Fines for unauthorised fishing are increased to a maximum of £50,000 (unlimited on indictment).¹⁹⁴

Enforcement

Amendments are made to the *Salmon and Freshwater Fisheries Act 1975*¹⁹⁵:

- Water bailiffs are the enforcement officers of the EAW. They are given power of search and seizure where instruments or baits that contravene regulations are used¹⁹⁶;
- Water bailiffs will be able to check partially submerged fishing gear to ensure hooks or bait prohibited under byelaws are not being used¹⁹⁷;
- Bailiffs are able to disable or destroy dams, fishing weirs, fishing mill dams or fixed engines suspected of having been operated or used, or likely to be used in contravention of the *Salmon and Freshwater Fisheries Act 1975*¹⁹⁸;
- Powers of the bailiffs are extended to enter lands adjoining or near to any waters, subject to restrictions¹⁹⁹;
- Provisions are made to enable a justice of the peace to issue a warrant (which can now remain in force for three months) authorising a water bailiff to enter land for the purpose of seizing illegal nets and other similar instruments as well as salmon, trout, freshwater fish or eels that may have been illegally taken²⁰⁰;
- Any person who has illegally taken or killed fish can be seized without warrant by bailiffs at any time of the day²⁰¹;
- Water bailiffs can demand to see the fishing license of anyone who is, or is intending to, fish²⁰².

¹⁹¹ Defra, [Marine and Coastal Access Bill Policy Document](#), December 2008, p 41

¹⁹² Defra, *Marine and Coastal Access Bill* [HL] 1 2008-09, [Explanatory Notes](#), p 71

¹⁹³ Defra, [Marine and Coastal Access Bill Policy Document](#), December 2008, p 42

¹⁹⁴ The [Marine and Coastal Access Bill](#) [HL] 1 2008-09, p 121

¹⁹⁵ OPSI, [Salmon and Freshwater Fisheries Act 1975](#) (chapter 51)

¹⁹⁶ Defra, *Marine and Coastal Access Bill* [HL] 1 2008-09, [Explanatory Notes](#), p 72

¹⁹⁷ *ibid*, p 72

¹⁹⁸ Defra, *Marine and Coastal Access Bill* [HL] 1 2008-09, [Explanatory Notes](#), p 73

¹⁹⁹ Defra, *Marine and Coastal Access Bill* [HL] 1 2008-09, [Explanatory Notes](#), p 73

²⁰⁰ *ibid*, p 73

²⁰¹ *ibid*, p 73

- A fine of £50,000 is payable if any explosive substance, poison or other noxious substance, or any electrical device is used with the intent to take or destroy fish in contravention with the *Salmon and Freshwater Fisheries Act 1975*²⁰³.

Byelaws

Amendments are made to the *Water Resources Act 1991*²⁰⁴, which outlines the EA's powers to make fisheries byelaws. The movement of fish will be regulated in a more consistent and effective manner²⁰⁵. The reform of regulations on the keeping, introduction and removal of fish includes:

- Removal of statutory close seasons and close season lengths. The EA will now have the power to set close seasons through byelaws. This will provide greater flexibility to adapt to future challenges and to protect fish stocks when they are vulnerable²⁰⁶;
- Introduction of an upper size limit on fish that can be taken can be set by byelaw as larger fish generally produce a greater number of more viable eggs²⁰⁷;
- Removal of the rights for owners of salmon and trout fisheries to remove freshwater fish by rod and line during the close season²⁰⁸;
- The EA is enabled to authorise a person to act in breach of a byelaw. For instance, to allow scientific research²⁰⁹;
- Contravention of byelaws will result in a fine not exceeding £50,000²¹⁰.

Emergency byelaws

Under provisions in this part of the *Bill*, the EAW will be able to introduce emergency byelaws in response to situations such as serious drought, collapse in numbers of returning fish, high temperatures (which can cause de-oxygenation of the water) or water pollution. Initially, the byelaws would exist for a maximum of 12 months, although there will be an option to extend them a further 6 months where necessary. Consultation will not be required for emergency byelaws, but Ministers will be required to revoke or amend the byelaws if they believe that they are no longer necessary for the protection of fisheries²¹¹.

²⁰² Defra, *Marine and Coastal Access Bill* [HL] 1 2008-09, [Explanatory Notes](#), p 73

²⁰³ *ibid*, p 74

²⁰⁴ OPSI, [Water Resources Act 1991](#) (chapter 57)

²⁰⁵ Members' Research Service, Research Paper 08/041, [Draft Marine Bill](#), July 2008, p 28

²⁰⁶ Defra, [Marine and Coastal Access Bill Policy Document](#), December 2008, p 44

²⁰⁷ *ibid*, p 44

²⁰⁸ *ibid*, p 44

²⁰⁹ Defra, *Marine and Coastal Access Bill* [HL] 1 2008-09, [Explanatory Notes](#), p 75

²¹⁰ *ibid*, p 76

²¹¹ Defra, [Marine and Coastal Access Bill Policy Document](#), December 2008, p 44

Supplementary

Various other provisions in the *Bill* include:

- The penalty for theft or destruction of fish from private fisheries is raised to £5,000²¹²;
- It is an offence to handle in suspicious circumstances eels, lampreys, smelt, freshwater fish and other fish designated by order, as well as salmon and sea trout²¹³;
- The Welsh Ministers are able to make regulations to prohibit persons from keeping any fish, introducing any fish into inland waters or removing any fish from inland waters²¹⁴.

Obsolete fisheries legislation

In order to simplify regulation, the following Acts will be repealed:

- a) The *White Herring Fisheries Act 1771* (chapter 31);
- b) The *Seal Fishery Act 1975* (chapter 18);
- c) Section 13 of the *Fisheries Act 1891* (chapter 37);
- d) The *North Sea Fisheries Act 1893* (chapter 17);
- e) The *Behring Sea Award Act 1894* (chapter 2);
- f) The *Seal Fisheries (North Pacific) Act 1895* (chapter 21);
- g) The *Seal Fisheries (North Pacific) Act 1912* (chapter 10);
- h) Sections 86, 87 and 163 of the *Port of London Act 1968*²¹⁵.

9.4 Summary of scrutiny and consultation responses to migratory and freshwater fisheries amendments

Table 7. Migratory and freshwater fisheries issues arising from the draft legislation and UK Government response²¹⁶

| Migratory and Freshwater Fisheries: Issues raised through pre-legislative scrutiny and public consultation | UK Government Response |
|--|---|
| Consultation respondents and the Joint Committee called for repeal of current legislation which provides compensation to fishery owners (paid by the EA) when their interests have been adversely affected by an introduction of a byelaw | The EA will now have a discretionary power rather an obligation to pay compensation. Therefore, the EA should not be discouraged by the prospect of compensation from proposing byelaws necessary for conservation of fishstocks. |
| Many respondents commented on the introduction of enabling powers to make a scheme to control the keeping, introduction and removal of live fish . This regulation would help protect national biodiversity. However, | These concerns are to be considered in drafting secondary legislation, and associated guidance. Key stakeholders will be consulted during development of the consultation document. |

²¹² Defra, *Marine and Coastal Access Bill* [HL] 1 2008-09, [Explanatory Notes](#), p 76

²¹³ *ibid*, p76

²¹⁴ *ibid*, p77

²¹⁵ The *Marine and Coastal Access Bill* [HL] 1 2008-09, p 131

²¹⁶ UK Government, [Taking forward the Marine Bill: The Government response to pre-legislative scrutiny and public consultation](#), September 2008, p 50-53

| | |
|---|---|
| some were concerned that the scheme could potentially be disproportionate to the risks, imposing financial and administrative burdens. | |
| The Joint Committee recommends prohibition on the use of any fishing device for the taking of any fish in freshwater unless its use has been authorised by the EA. | It is thought that this would result in there being only one offence as regards unlicensed fishing, which is fishing without a license. This could be a disadvantage and fishing with a prohibited instrument is potentially more serious than fishing without a license. The list of prohibited instruments is therefore retained and with it the offence of fishing with such prohibited instruments without the authorisation of the EA. |

9.5 Implications for Wales

The Welsh Ministers will have responsibility for all aspects of fisheries in the Welsh Zone following enactment of this *Bill*. Therefore, the array of amendments outlined for existing marine fisheries legislation confers power onto the Welsh Government for the Welsh Zone.

The Environment Agency Wales (EAW) is the fisheries manager for salmon and freshwater fish in Wales²¹⁷ and the Welsh Ministers are responsible for ensuring that legislation for inland fisheries is implemented correctly²¹⁸. The amendments made through this *Bill* to migratory and freshwater fisheries legislation will widen the powers of the EAW with regard to management and enforcement of these fisheries. The Welsh Minister are able to make orders to add fish species into the EAW's management remit and to limit the number of licenses for fishing salmon and trout (except rainbow trout)²¹⁹.

The Welsh Ministers are also able to make regulations relating to the keeping of live fish and their introduction into and removal from inland waters²²⁰.

²¹⁷ Members' Research Service, Research Paper 08/041, [Draft Marine Bill](#), July 2008, p 28

²¹⁸ Welsh Assembly Government, [Fisheries](#), webpage [on 15 June 2009]

²¹⁹ Defra, *Marine and Coastal Access Bill* [HL] 1 2008-09, [Explanatory Notes](#), p 71

²²⁰ Defra, *Marine and Coastal Access Bill* [HL] 1 2008-09, [Explanatory Notes](#), p 68

10 Enforcement (Part 8 of the Bill)

10.1 Summary of provisions

The *Marine and Coastal Access Bill* aims to streamline and modernise marine enforcement powers. The MMO and the Welsh Ministers are able to appoint enforcement officers for the purpose of enforcing marine licensing, nature conservation and sea fisheries legislation. For licensing and nature conservation, monetary penalties will be introduced (See Section 6 and 7). For sea fisheries, an administrative penalties scheme for domestic fisheries will be introduced similar to that already available under EU legislation. This scheme can also be extended to Inshore Fisheries and Conservation (IFC) byelaw offences²²¹.

Marine Enforcement Officers

The MMO and the Welsh Ministers will be able to appoint Marine Enforcement Officers (MEOs) for the purpose of enforcing marine licensing, nature conservation and sea fisheries legislation. Commissioned officers of the Royal Navy, and any person in charge of an aircraft or hovercraft of the armed services are also MEOs. MEOs will have access to a common set of enforcement powers and will automatically become British Sea Fisheries Officers (BSFOs), enabling them to use BSFO powers in areas where their *Marine and Coastal Access Bill* powers do not apply²²².

Non-compliance with a requirement made, or a direction reasonably given by an MEO, in the exercise of any power conferred by this legislation is an offence, and is liable on summary conviction to a fine not exceeding £5,000, and an unlimited fine on indictment²²³.

MEOs will be protected from being liable in any civil or criminal proceedings for anything done or not done as a result of carrying out their duties under the Act, except when the officer acts in bad faith or is unlawful in relation to the *Human Rights Act 1998*²²⁴. It is an offence to obstruct an MEO in the performance of their functions, and those found guilty are liable to a fine on summary conviction not exceeding £20,000. A person found guilty of assaulting an MEO is liable on summary conviction to a fine not exceeding £50,000²²⁵.

The Secretary of State will be able to appoint persons to enforce Marine Act licenses for a limited range of oil and gas related activities in the marine area. In the Welsh inshore region these activities are limited to those that relate to the exploration or production of petroleum²²⁶.

Common Enforcement Powers

Currently, enforcement powers come from an array of legislation from across marine fisheries, marine licensing and nature conservation. These powers are modernised into a single set of 'common enforcement powers' in the *Bill*. Powers will include ability to:

- stop, board, inspect and disembark a vessel or marine installation;
- require a person to help MEOs carry out their duties e.g. opening a locked door on a vessel;
- enter premises to carry out investigations and seize objects;

²²¹ Defra, [Marine and Coastal Access Bill Policy Document](#), December 2008, p 49

²²² Defra, *Marine and Coastal Access Bill* [HL] 1 2008-09, [Explanatory Notes](#), p 78

²²³ Defra, [Marine and Coastal Access Bill](#) [HL] 1 2008-09, p 168-169

²²⁴ Defra, *Marine and Coastal Access Bill* [HL] 1 2008-09, [Explanatory Notes](#), p 93

²²⁵ Defra, [Marine and Coastal Access Bill](#) [HL] 1 2008-09, p 168

- stop and detain somebody who has been undertaking a regulated activity and require them to show a license for it;
- require somebody's name or address if they are suspected of committing an offence²²⁷.

Fisheries Enforcement Powers

MEOs are given powers to inspect fishing gear in the sea. Powers relating to seizure and forfeit of fish and gear are strengthened and clarified, and powers to detain fishing boats are also clarified. Wherever fish or gear is seized or a fishing boat detained, the relevant authority will have the power to release the property on payment of a bond²²⁸.

Fixed Administrative Penalties (FAPs) are introduced to domestic fisheries offences. These are offences that do not originate in community law. The vast majority of fisheries offences are breaches of community law for which FAPs can already be introduced. A person will be under no obligation to pay the penalty if he wishes to have the matter dealt with in court in the usual way²²⁹.

The appropriate national authority (the Welsh Ministers for Wales) is given the power to make provision by order for the issuing of penalty notices for domestic fisheries offences²³⁰.

10.2 Summary of scrutiny and consultation responses to enforcement provisions

Table 8. Enforcement issues arising from the draft legislation and UK Government response²³¹

| Enforcement: Issues raised through pre-legislative scrutiny and public consultation | UK Government Response |
|--|--|
| There will be a number of enforcement bodies working in the marine area alongside the MMO. Respondents were concerned that there could be overlap and lack of clarity where different pieces of legislation were implemented by different bodies. | It is acknowledged that collaborative working arrangements and close cooperation between bodies enforcing in the same parts of the marine area are essential. Where more than one organisation has enforcement responsibilities, the lead organisation in each area has been identified. |
| Respondents sought further clarity on the role of the Maritime and Coastguard Agency (MCA) in enforcing the <i>Bill</i> . It was recommended that the role of the MCA should be reviewed, and reflected explicitly in the <i>Bill</i> if appropriate. | It is recognised that it is important to ensure close co-operation between the MMO and MCA. However, specific provisions have not been included on the face of the <i>Bill</i> . |
| The Joint Committee wanted to see more detail in the <i>Bill</i> as to how the appeals mechanism for civil sanctions would work and for guidance to be published on the scheme. | The appeals mechanism has been adapted from the <i>Regulatory Enforcement and Sanctions Act 2008</i> ²³² . This Act has been subject to rigorous scrutiny by both Houses and is thought to have resulted in a clear and transparent framework. |

²²⁶ Defra, *Marine and Coastal Access Bill* [HL] 1 2008-09, [Explanatory Notes](#), p 81

²²⁷ *ibid*, p 50

²²⁸ *ibid*, p 50

²²⁹ Defra, *Marine and Coastal Access Bill* [HL] 1 2008-09, [Explanatory Notes](#), p 94

²³⁰ *ibid*, p 94

²³¹ UK Government, [Taking forward the Marine Bill: The Government response to pre-legislative scrutiny and public consultation](#), September 2008, p 53-58

²³² OPSI, [Regulatory Enforcement and Sanctions Act 2008](#) (chapter 13)

| | |
|--|---|
| The Joint Committee raised concerns over the training and regulation of those empowered to make judgements and issue penalties. | In practice, MEOs will need to have been appropriately trained and to have met competency standards before being able to use the enforcement powers provided. The UK Government do not think it necessary to include further details on training requirements in the <i>Bill</i> itself as it will be in the best interests of the MMO/Welsh Ministers to ensure that this is the case. |
| Concerns were raised over the definition of specific terms used in the <i>Bill</i> such as activities that cause ‘serious harm’, ‘serious interference’, and are ‘legitimate uses of the sea’. It was thought that terms such as these are not clear enough and might invite legal challenge. | The UK Government are concerned that defining these terms on the face of the <i>Bill</i> would reduce flexibility to adapt to future changes. |

Following scrutiny by the House of Lords, an amendment has been made to this Part of the *Bill* to enable marine enforcement officers to go into inshore areas and on land anywhere in the UK to investigate a suspected nature conservation or licensing offence which was committed in the area where they have jurisdiction²³³.

10.3 Implications for Wales

The Welsh Ministers are able to appoint MEOs. Common enforcement powers relating to licensing, nature conservation offences and sea fisheries will all apply to Wales, see Table 9. Officers are also able to pursue those who have committed an offence across a national boundary within the UK using “domestic hot pursuit” powers²³⁴.

The policy document for the *Bill* states²³⁵:

The common enforcement powers have been drafted to reflect the devolution settlements where Devolved Administrations have chosen to adopt the powers to enforce the legislation for which they are responsible.

The Welsh Government believes that issuing penalties should be a last resort and that voluntary approaches such as codes of conduct of sea users, should be fully explored, where appropriate²³⁶.

Table 9. Enforcement responsibility around England and Wales.

| Enforcement of | Limits (Nautical Miles) | Currently | Intended post Marine Act (England) | Intended post Marine Act (Wales) |
|------------------------------|-------------------------|----------------|------------------------------------|----------------------------------|
| EA Byelaws | 0-6 | EA/SFCs | EA/IFCAs/MMO | EAW |
| SFC Byelaws (IFCA) | 0-6 | SFCs/EA | IFCAs, EA & MMO | WAG |
| UK sea fisheries legislation | 0-6 | MFA/WAG/SFC/EA | IFCAs/MMO/EA | WAG |

²³³ Defra, [Marine and Coastal Access Bill, Changes made by the House of Lords](#), 19 June 2009

²³⁴ Defra, [Marine and Coastal Access Bill Policy Document](#), December 2008, p 51

²³⁵ *ibid*, p51

²³⁶ Minister for Environment, Sustainability and Housing, *Paper for the National Assembly of Wales Sustainability Committee*, 4 June 2008

| | | | | |
|--|------------|------------------------------------|-------------|--------------------------------|
| UK sea fisheries legislation | 6-200 | MFA/WAG | MMO | WAG |
| EU fisheries legislation | 0-6 | MFA/WAG/ SFCs | IFCAs/MMO | WAG |
| EU fisheries legislation | 6-200 | MFA/WAG | MMO | WAG |
| Marine environment licensing | 0-200 | MFA | MMO | WAG MCU (0-12 nm) |
| Offshore renewables | 0-200 | Secretary of State | IPC/MMO | IPC/MMO/ WAG ²³⁷ |
| Byelaws/conservation orders (in Wales), general offence of damaging an MCZ | 0-6 | N/A | IFCA/MMO/EA | WAG |
| MMO byelaws/Conservation orders (in Wales) | 6-200 | N/A | MMO | MMO/WAG (6-12 nm) |
| Nature conservation (<i>Wildlife and Countryside Act 1981</i>) | 0-12 | Police/ Natural England/ CCW | IFCA/MMO/EA | WAG |
| General offence of damaging an MCZ | 6-200 | N/A | MMO/IFCA | MMO/WAG (6-12 nm) |
| Site/species offences under <i>Habitats Regulations (1994)</i> | 0-12 | Police/ Natural England/ CCW | IFCA/MMO/EA | WAG |
| Site/species offences under <i>Habitats Regulations (2007)</i> | 12-200 | MFA | MMO | MMO |
| Legislation applying in international waters | Beyond 200 | MFA | MMO | MMO |

Key:

SFC – Sea Fisheries Committee
MFA – Marine and Fisheries Agency
MMO – Marine Management Organisation
IFCA – Inshore Fisheries and Conservation Authority
IPC – Infrastructure Planning Commission
EA – Environment Agency
EAW – Environment Agency Wales
WAG – Welsh Assembly Government
MCU – Marine Consents Unit
MCZ – Marine Conservation Zone

²³⁷ The Welsh Government are able to license very small scale marine renewable energy development (<1MW)

11 Coastal Access (Part 9 of the Bill)

11.1 Summary of provisions

The *Marine and Coastal Access Bill* aims to improve public access to, and enjoyment of, the English coastline. It intends to provide secure and consistent rights for people to enjoy the coast with confidence and certainty²³⁸.

A duty is imposed on the Secretary of State and Natural England to, firstly, ensure that there is a route around the whole of the English coast consisting of one or more long-distance routes and which is available to the public for recreational journeys on foot or by ferry. Secondly, there should be a margin of land along the length of the coast which the public can enjoy. The margin should be 'in association with the route' and 'accessible to the public for the purposes of its enjoyment by them in conjunction with that route or otherwise'. The route and margin are linked objectives, but the margin does not have to be accessed directly from the route. An exception to the requirement for the margin to be accessible to the public is the case where the land falls within any category of "excepted land" listed in Schedule 1 to the *Countryside and Rights of Way Act 2000*²³⁹ ("the CROW Act").²⁴⁰

11.2 Implications for Wales

Wales is already further underway with the development of an All Wales Coastal Path than the equivalent in England²⁴¹. The Wales Coastal Access Improvement Programme (WCAIP) is a six year programme (2007-2013) which aims to improve and promote public access, on foot, on horseback and by bicycle, to the Welsh coastline. It fully takes into account Least Restrictive Access principles²⁴². It is being funded by the Welsh Government, who have made money available to the Countryside Council for Wales (CCW) to grant-aid to all of the coastal local authorities in Wales, each of which is delivering a local coastal access programme. The Welsh Government allocated £1.5 million in grant-aid in 2007/2008 and £2 million has been allocated in 2008/2009. Each of the authorities is required to establish a Local Partnership of stakeholders to input into programme development and delivery plans²⁴³.

The main purposes of the programme are:

- to encourage and enable the public, both locals and visitors, to enjoy the coastline of Wales;
- to encourage and enable more people to enjoy physical recreation at the coast thus helping in efforts to become a fitter, healthier nation; and
- to make coastal access a 'flagship' tourism product, bringing economic benefit to local communities²⁴⁴.

The majority of clauses in this section of the *Marine and Coastal Access Bill* relate to England. However, provisions are made to further the powers of the National Assembly for Wales and this

²³⁸ Defra, [Marine and Coastal Access Bill Policy Document](#), December 2008, p 54

²³⁹ OPSI, [Countryside and Rights of Way Act 2000](#) (chapter 37)

²⁴⁰ Defra, *Marine and Coastal Access Bill* [HL] 1 2008-09, [Explanatory Notes](#), p 95

²⁴¹ Members' Research Service, Research Paper 08/041, [Draft Marine Bill](#), July 2008, p 32

²⁴² The principles of Least Restrictive Access require that access is made as easy as possible for as many people as possible, including people with disabilities and families with young children.

²⁴³ Countryside Council for Wales, [The Wales Coastal Access Improvement Programme](#), webpage [on 18 June 2009]

²⁴⁴ Countryside Council for Wales, [The Wales Coastal Access Improvement Programme](#), webpage [on 18 June 2009]

will help to achieve the objectives of WCAIP. Schedule 5 of the *Government of Wales Act 2006*²⁴⁵ is amended to confer legislative competence on the National Assembly for Wales under 'Field 16: sport and recreation' to establish and maintain a route (or a number of routes) for the coast to enable the public to make recreational journeys. This does not include competence to create new highways by Assembly Measure or to enable journeys by mechanically propelled vehicles, except permitted journeys by qualifying invalid carriages. Competence is also provided in relation to securing of public access to relevant (coastal) land for the purpose of open-air recreation in association with the route or routes²⁴⁶.

²⁴⁵ OPSI, [Government of Wales Act 2006](#) (chapter 32)

²⁴⁶ Defra, *Marine and Coastal Access Bill* [HL] 1 2008-09, [Explanatory Notes](#), p 95

12 Miscellaneous and Supplementary Provisions (Parts 10 and 11 of the Bill)

Part 10 of the *Bill* amends legislation relating to Natural England and the Countryside Council for Wales. It also modifies the regime governing harbours set out in the *Harbours Act 1964*²⁴⁷; and introduces navigational controls into the *Energy Act 2008*²⁴⁸ in place of the *Coast Protection Act 1949*^{249, 250}.

Part 11 of the *Bill* contains supplementary provisions including commencement arrangement and repeals²⁵¹.

12.1 Implications for Wales

Countryside Council for Wales

The *Environmental Protection Act 1990*²⁵² is amended to clarify the area over which the CCW may exercise its functions. CCW's functions are, except where otherwise expressly provided, exercisable in relation to Wales only. Wales is defined by reference to the definition of Wales in the *Government of Wales Act 2006*. CCW's functions will therefore be exercisable in the marine realm out to 12 nm²⁵³.

The *Bill's* explanatory notes state that the CCW will be able to²⁵⁴:

- provide advice to Welsh Ministers on development and implementation of policies for or affecting nature conservation in Wales and the Welsh Zone;
- provide advice and the dissemination of knowledge to any persons about nature conservation in Wales and the Welsh zone;
- commission or support (by financial means or otherwise) research which in their opinion is relevant to any of their functions in relation to Wales and the Welsh Zone.

Through amendments to the *Harbour's Act 1964*, the authority responsible for issuing harbour orders will have the power, by order, to delegate some or all of its functions for making certain orders to another body. However, the body with delegated power could not make such an order or scheme that would repeal or modify any provision made by the Secretary of State, whether under the *Marine and Coastal Access Act*, an instrument made under the Act or a provision of local application, without the prior consent of the Welsh Ministers. The new sections also provide that if the Welsh Ministers have not refused their consent within a period to be set, the Secretary of State may continue with the process of making the order.

Part 11 contains general provisions relating to the making of and regulation of orders under the *Bill* which apply to the Secretary of State and the Devolved Administrations²⁵⁵.

²⁴⁷ OPSI, [The Harbours Act 1964](#) (chapter 40)

²⁴⁸ OPSI, [The Energy Act 2008](#) (chapter 32)

²⁴⁹ OPSI, [The Coast Protection Act 1949](#) (chapter 74)

²⁵⁰ Defra, *Marine and Coastal Access Bill* [HL] 1 2008-09, [Explanatory Notes](#), p 5

²⁵¹ *ibid*, p 5

²⁵² OPSI, [The Environmental Protection Act 1990](#) (chapter 43)

²⁵³ Defra, *Marine and Coastal Access Bill* [HL] 1 2008-09, [Explanatory Notes](#), p 110

²⁵⁴ *ibid*, p 140

²⁵⁵ Defra, [Marine and Coastal Access Bill](#) [HL] 1 2008-09, p 204

13 Impact Assessment

The impact assessment²⁵⁶ for the *Marine and Coastal Access Bill* presents estimated costs and benefits of the *Bill* for England and Wales combined.

Costs

Proposals in the *Bill* will cost the Government and marine related industry an estimated average annual total in the range of £42 million to £82 million. The total present value costs over 20 years are estimated to be in the range of £751 million to £1.6 billion²⁵⁷.

Benefits

Average annual benefits to Government, marine related industry and the environment are estimated in the range of £756 million - £1.7 billion per year. The total present value benefits over 20 years are estimated at being in the range of £8.7 billion to £19.6 billion. Marine Nature Conservation provisions account for the vast majority of the costs and benefits²⁵⁸.

Summary

It is therefore concluded that the benefits of implementing the *Marine and Coastal Access Bill* proposals outweigh the costs of implementation²⁵⁹.

Carbon Impact

The *Bill* will aid reduction of carbon emissions and help the UK Government and Devolved Administrations meet targets to limit greenhouse gas emissions. The carbon impact has been estimated on the basis of offshore renewable projects being brought forward one year due to provisions in the *Bill* such as licensing, creation of the MMO and planning. The net value of carbon savings brought forward each year from the reduced time required in the licensing stage was estimated using the shadow price of carbon. The present value of the net annual benefits (over 20 years) is given at £79.5 million²⁶⁰.

²⁵⁶ Defra, [Marine and Coastal Access Bill Impact Assessment](#), June 2009

²⁵⁷ *ibid*, p 44

²⁵⁸ *ibid*, p 67

²⁵⁹ *ibid*, p 78

²⁶⁰ Defra, *Marine and Coastal Access Bill* [HL] 1 2008-09, [Explanatory Notes](#), p 143

Annex A Development of the Marine and Coastal Access Bill [HL]

2002

- *Safeguarding our Seas – Marine Stewardship report*²⁶¹ - set out the UK vision for 'clean, safe, healthy, productive and biologically diverse seas'.

2004

- *Turning the Tide: addressing the impact of fisheries on the marine environment – Royal Commission on Environmental Pollution report.*²⁶²

2005

- *Charting Progress: an integrated assessment of the state of UK seas*²⁶³ - the first report in the 'Charting Progress' series that sets out the current state of UK seas and helps to measure progress towards the vision. Work has begun on preparing Charting Progress 2 for publication in 2010.

2006

- *A Marine Bill: a consultation document – the first consultation.*²⁶⁴
- Summary of responses.²⁶⁵
- Summary of Welsh responses.²⁶⁶

2007

- *A Sea Change – A Marine Bill White Paper.*²⁶⁷
- Summary of responses.²⁶⁸
- Summary of Welsh responses.²⁶⁹
- *Regulatory Impact Assessment of the Marine Bill in Wales – Baseline report.*²⁷⁰
- *Regulatory Impact Assessment of the Marine Bill in Wales – Options assessment.*²⁷¹
- Wales Coastal and Maritime Partnership advice to the Welsh Government on the practical aspects of marine spatial planning for Wales.²⁷²
- Minister for Environment, Sustainability and Housing's response to Wales Coastal and Marine Partnership's advice.²⁷³

2008

- *Draft Marine Bill package.*²⁷⁴
- *Joint Parliamentary Committee Report – pre-legislative scrutiny of draft Bill.*²⁷⁵
- *EFRA Committee Report – pre-legislative scrutiny of the coastal access provisions of the Marine Bill.*²⁷⁶
- *Taking Forward the Marine Bill: The Government response to pre-legislative scrutiny*

²⁶¹ Defra, [Safeguarding our Seas: A strategy for the conservation and sustainable development of our marine environment](#), webpage [on 19 June 2009]

²⁶² RCEP, [25th Report: Turning the Tide – Addressing the impact of Fisheries on the Marine Environment \(2004\)](#), webpage [on 19 June 2009]

²⁶³ Defra, [Charting Progress: An integrated assessment of the state of UK seas](#), March 2005

²⁶⁴ Defra, [A Marine Bill: A consultation document](#), March 2006

²⁶⁵ Defra, [A Marine Bill: A consultation document by the Department for Environment, Food and Rural Affairs, summary of responses](#), 2006

²⁶⁶ Welsh Assembly Government, [Summary of Marine Bill Consultation Responses](#), 2006

²⁶⁷ Defra, [A Sea Change: A Marine Bill white paper](#), March 2007

²⁶⁸ Defra, [Summary of responses to the consultation on: A Sea Change, A Marine Bill White Paper](#), October 2007

²⁶⁹ Welsh Assembly Government, [Welsh responses to Defra's consultation on the Marine Bill White Paper](#), 2007

²⁷⁰ Welsh Assembly Government, [Marine Bill](#), webpage [on 19 June 2009]

²⁷¹ *ibid*

²⁷² *ibid*

²⁷³ *ibid*

²⁷⁴ Defra, The [Draft Marine Bill](#), April 2008

²⁷⁵ Joint Committee on the Draft Marine Bill, [First Report](#), July 2008

²⁷⁶ Environment, Food and Rural Affairs, [Ninth Report](#), July 2008

and public consultation²⁷⁷.

- *Survey to Assess the Impact of Marine Bill Proposals on Marine and Coastal Developers* – by Frontline Consultants²⁷⁸.
- *Marine and Coastal Access Bill*²⁷⁹, *Explanatory Notes*²⁸⁰, and revised *Impact Assessment*²⁸¹ – as introduced to the House of Lords.
- Transcript of Lords Second Reading Debate.²⁸²

2009

- *A Strategy for Promoting an Integrated Approach to the Management of Coastal Areas in England*.²⁸³
- Transcript of Lords Committee Day 1-11.²⁸⁴
- Transcript of Lords Report Day 1-4.²⁸⁵
- *Marine and Coastal Access Bill*²⁸⁶, *Explanatory Notes*²⁸⁷, and revised *Impact Assessment*²⁸⁸ – as introduced to the House of Commons.
- *Marine and Coastal Access Bill Policy Paper*²⁸⁹ – updated June 2009.

²⁷⁷ UK Government, [Taking forward the Marine Bill: The Government response to pre-legislative scrutiny and public consultation](#), September 2008

²⁷⁸ Frontline Consultants, [Survey to Assess the Impact of Marine Bill Proposals on Marine and Coastal Developers](#). Report for Defra, 2008

²⁷⁹ Defra, [Marine and Coastal Access Bill](#) [HL] 1 2008-09

²⁸⁰ Defra, [Marine and Coastal Access Bill](#) [HL] 1 2008-09, [Explanatory Notes](#)

²⁸¹ Defra, [Marine and Coastal Access Bill Impact Assessment](#), December 2008

²⁸² Defra, Marine and Fisheries, [Key Documents](#), webpage [on 19 June 2008]

²⁸³ Defra, [A strategy for promoting an integrated approach to the management of coastal areas in England](#), 2009

²⁸⁴ Defra, Marine and Fisheries, [Key Documents](#), webpage [on 19 June 2008]

²⁸⁵ *ibid*

²⁸⁶ Defra, [Marine and Coastal Access Bill](#) [HL] 108 2008-09

²⁸⁷ Defra, [Marine and Coastal Access Bill](#) [HL] 1 2008-09, [Explanatory Notes](#)

²⁸⁸ Defra, [Marine and Coastal Access Bill Impact Assessment](#), June 2009

²⁸⁹ Defra, [Marine and Coastal Access Bill Policy Document](#), June 2009

Annex B Existing Welsh Competence

In Welsh territorial waters, i.e. between coastal baselines and either 12 nm or the boundary between national jurisdictions²⁹⁰, the Welsh Government currently has responsibility for²⁹¹:

- Fisheries management under the EC *Common Fisheries Policy*;
- Environmental conservation and protection, including nature conservation and biodiversity;
- Sustainable development;
- Spatial planning (currently only on land, down to the low water mark);
- Offshore aggregates;
- Licensing activities under the *Food and Environmental Protection Act* (1985).

On 1 April 2008, the Welsh Government assumed direct control of the fisheries management and enforcement capability, within the territorial sea out to 12 nm; previously this was the responsibility of Defra²⁹².

²⁹⁰ In the Bristol Channel and the Dee Estuary this boundary is a line midway between the Welsh and English coasts.

²⁹¹ Members' Research Service, Research Paper 08/041, [Draft Marine Bill](#), July 2008, p 33

²⁹² RoP, p49 (or p46-51/63), 22 April 2008, Fisheries Debate

Annex C Existing Welsh strategies

The following Welsh strategies are relevant to the *Marine and Coastal Access Bill*:

- The *Environment Strategy for Wales*²⁹³
- The *Wales Spatial Plan*²⁹⁴ and *People, Places, Futures: The Wales Spatial Plan 2008 Update*²⁹⁵
- The *Integrated Coastal Zone Management Strategy for Wales*²⁹⁶
- The *Strategy for Recreational Fisheries*²⁹⁷
- *Wales Fisheries Strategy*²⁹⁸
- *Securing the Benefits*²⁹⁹, published jointly by the UK and devolved governments in 2005, is the UK strategy for achieving sustainable fisheries
- The *Energy Wales Route Map*³⁰⁰ – the consultation document for a Welsh energy strategy which includes targets to produce 4 Terawatt hours per annum of renewable energy by 2010 and 7 Terawatt hours by 2020.
- *Renewable Energy Route Map for Wales*³⁰¹ - consultation on way forward to a leaner, greener and cleaner Wales. The potential for marine based energy capture is highlighted in this document.
- *Severn Tidal Power*³⁰² – joint consultation by the UK and Welsh Governments on the feasibility of tidal power development in the Severn Estuary.
- *One Wales: One Planet, a new Sustainable Development Scheme for Wales*³⁰³ – sets out a new vision of a sustainable Wales and the priority attached to sustainable development. It is a response to economic and environmental challenges.
- *High Level Marine Objectives*³⁰⁴ – sets out the objectives of the UK and devolved governments for clean, healthy, safe, productive and biologically diverse oceans and seas. The objectives are the first step towards integrated management of the marine environment and will support the joint Marine Policy Statement.

²⁹³ Welsh Assembly Government, [Environment Strategy for Wales](#), May 2006, webpage [on 19 June 2009]

²⁹⁴ Welsh Assembly Government, [People, Places, Futures – The Wales Spatial Plan](#), November 2004, webpage [on 19 June 2009]

²⁹⁵ Welsh Assembly Government, [People, Places, Futures: The Wales Spatial Plan 2008 Update Consultation](#), July 2008

²⁹⁶ Welsh Assembly Government, [A Welsh Integrated Coastal Zone Management Strategy for Wales](#), 2007

²⁹⁷ Welsh Assembly Government, [A Strategy for Recreational Fishing in Wales](#), November 2003

²⁹⁸ Welsh Assembly Government, [Welsh Fisheries Strategy](#), webpage [on 19 June 2009]

²⁹⁹ Defra, [Securing the Benefits: The Joint UK response to the Primer Minister's Strategy Unit Net Benefits report on the future of the fishing industry in the UK](#), 2005

³⁰⁰ Welsh Assembly Government, [Energy Wales: Route map to a clean, low-carbon and more competitive energy future for Wales](#), webpage [on 24 June 2009]

³⁰¹ Welsh Assembly Government, [Renewable Energy Route Map for Wales: consultation on way forward to a leaner, greener and cleaner Wales](#), 2008

³⁰² Welsh Assembly Government, [Severn Tidal Power Feasibility: Public Consultation](#), webpage [on 24 June 2009]

³⁰³ Welsh Assembly Government, [One Wales: One Planet, a new Sustainable Development Scheme for Wales](#), May 2009 webpage [on 19 June 2009]

³⁰⁴ Welsh Assembly Government, [High Level Marine Objectives](#), 20 April 2009, webpage [on 24 June 2009]

Annex D EU and International Policy and Obligations

The vision for an *Integrated Maritime Policy*³⁰⁵ for the European Union was launched on 10 October 2007. The objectives are to coordinate policy decisions to take in to account all sectors and to build a programme of work where sectors will cooperate to face the challenges of globalisation, climate change, security (including energy security) and sustainability. Two of the Second Assembly's Committees sent responses to the preceding consultation and the European Council has invited the European Commission to report on the progress of the Action Plan at the end of 2009.

The UK has numerous existing obligations for the marine environment under EC directives, policies and strategies including the following:

- The *Marine Strategy Directive*³⁰⁶ requires Member States to achieve “good environmental status” in the marine area by 2021. Member States need to coordinate activities in marine regions which are shared with other countries, for example, the Irish Sea. The *Marine Strategy Directive* is seen by the European Commission as the environmental pillar of their *Integrated Maritime Policy*.
- The *European Biodiversity Strategy*³⁰⁷ was adopted in 1998 and the EU has set itself the objective of halting biodiversity loss in its own territory by 2010³⁰⁸, although this is unlikely to be achieved³⁰⁹.
- Under the *Habitats*³¹⁰ and *Birds Directives*³¹¹, the UK is required to select and protect Special Areas of Conservation and Special Protected Areas within waters for which it is responsible.
- The 2000 *Water Framework Directive*³¹² requires Member States to achieve good ecological and chemical status in coastal and transitional waters out to 1 nm by 2015.
- The *Common Fisheries Policy*³¹³ is the main instrument for fisheries and aquaculture management in Europe. Reformed in 2002, the policy now aims to progressively implement an ecosystem approach to fisheries management to improve sustainability.
- The *Renewables Directive*³¹⁴ sets binding targets for each Member State for 20% of electricity to be produced by renewable sources by 2020. Much of the UK's renewable energy could come from installations in the sea, harnessing wave, wind and tide power.
- The *Shellfish Waters Directive* is in place to protect the “aquatic habitat of bivalve and gastropod molluscs including oysters, mussels and cockles”. The Welsh Government is responsible for designating Shellfish waters in Wales.³¹⁵
- The *Urban Waste Water Treatment Directive*³¹⁶ aims to protect the environment from the adverse effects of urban and certain industrial waste water discharges.
- The *Bathing Waters Directive*³¹⁷ sets binding standards for bathing waters throughout the European Union.

³⁰⁵ Commission of the European Communities, [An Integrated Maritime Policy for the European Union](#), 10 October 2007

³⁰⁶ Commission of the European Communities, [A Marine Strategy Directive to save Europe's seas and oceans](#), webpage [on 24 June 2009]

³⁰⁷ Commission of the European Communities, [EU Biodiversity Policy Development](#), webpage [on 24 June 2009]

³⁰⁸ Commission of the European Communities, [Communication from the Commission, Halting the Loss of Biodiversity by 2010 – And Beyond](#), 2006, webpage [on 24 June 2009]

³⁰⁹ Verboom J. et al., 2007. *Combining Biodiversity Modelling with Political and Economic Development Scenarios for 25 EU Countries*, *Ecological Economics*, 62 (2), p 267-276.

³¹⁰ Commission of the European Communities, [The Habitats Directive](#), webpage [on 24 June 2009]

³¹¹ Commission of the European Communities, [The Birds Directive](#), webpage [on 24 June 2009]

³¹² Commission of the European Communities, [The EU Water Framework Directive – integrated river basin management for Europe](#), webpage [on 24 June 2009]

³¹³ Commission of the European Communities, [About the Common Fishery Policy](#), webpage [on 24 June 2009]

³¹⁴ Commission of the European Communities, Renewable Energy, [What do we want to achieve?](#) webpage [on 24 June 2009]

³¹⁵ Welsh Assembly Government, [Shellfish Waters Directive](#), webpage [on 24 June 2009]

³¹⁶ Commission of the European Communities, [Urban Waste Water Directive Overview](#), webpage [on 24 June 2009]

³¹⁷ Commission of the European Communities, [Bathing Water Quality](#), webpage [on 24 June 2009]

- The *Environment Impact Assessment Directive* and *Strategic Environmental Assessment Directive*³¹⁸ make it a requirement that the environmental consequences of individual projects and of wider plans and policies are considered before decisions are made.
- The *Marine Fuel Sulphur Directive*³¹⁹ lays down the maximum permitted sulphur content of marine fuels.

International policies and organisations include:

- The *Oslo-Paris Convention for Protection of the Marine Environment of the North East Atlantic (OSPAR)*³²⁰ commits the UK to prevent and eliminate pollution in the North East Atlantic and to establish a network of marine protected areas by 2010.
- *United Nations Convention on Law of the Sea (UNCLOS)*³²¹ sets out the legal framework for all ocean activities.
- The *International Maritime Organisation (IMO)*³²² is an agency of the UN which regulates all aspects of shipping activity.
- The *North Atlantic Salmon Conservation Organisation (NASCO)*³²³ promotes international cooperation in conservation and management of salmon stocks in the North Atlantic.
- The *International Council for the Exploration of the Seas (ICES)*³²⁴ coordinates and promotes marine research in the North Atlantic, Baltic and North Seas.
- The *International Whaling Commission*³²⁵ supports the current moratorium on commercial whaling.
- The *World Summit on Sustainable Development*³²⁶ and the *Convention on Biological Diversity*³²⁷ include commitments to significantly reduce the current rate of biodiversity loss by 2010, encourage an ecosystem approach to marine policy, create a network of marine protected areas by 2012 and, where possible, restore depleted fish stocks by 2015.

³¹⁸ Commission of the European Communities, [Environmental Assessment](#), webpage [on 24 June 2009]

³¹⁹ Commission of the European Communities, [Sulphur content of certain liquid fuels](#), webpage [on 24 June 2009]

³²⁰ OSPAR Commission, [Welcome to the OSPAR Commission, protecting and conserving the North-East Atlantic and its resources](#), webpage [on 24 June 2009]

³²¹ United Nations, [United Nations Convention on the Law of the Sea of 10 December 1982](#), webpage [on 24 June 2009]

³²² United Nations, [International Maritime Organization](#), webpage [on 24 June 2009]

³²³ [North Atlantic Salmon Conservation Organization](#), webpage [on 24 June 2009]

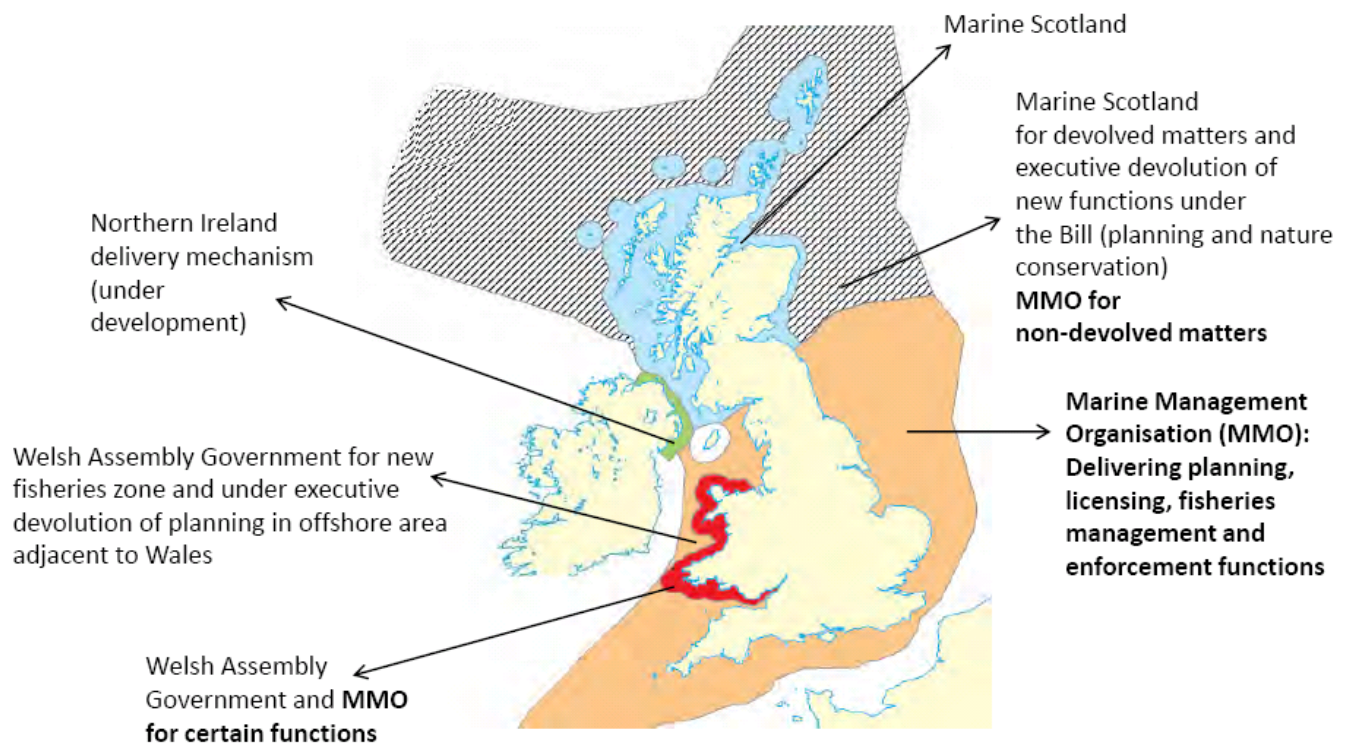
³²⁴ [International Council for the Exploration of the Seas](#), webpage [on 24 June 2009]

³²⁵ [International Whaling Commission](#), webpage [on 24 June 2009]

³²⁶ United Nations, [World Summit on Sustainable Development](#), webpage [on 24 June 2009]

³²⁷ United Nations, [Convention on Biological Diversity](#), webpage [on 24 June 2009]

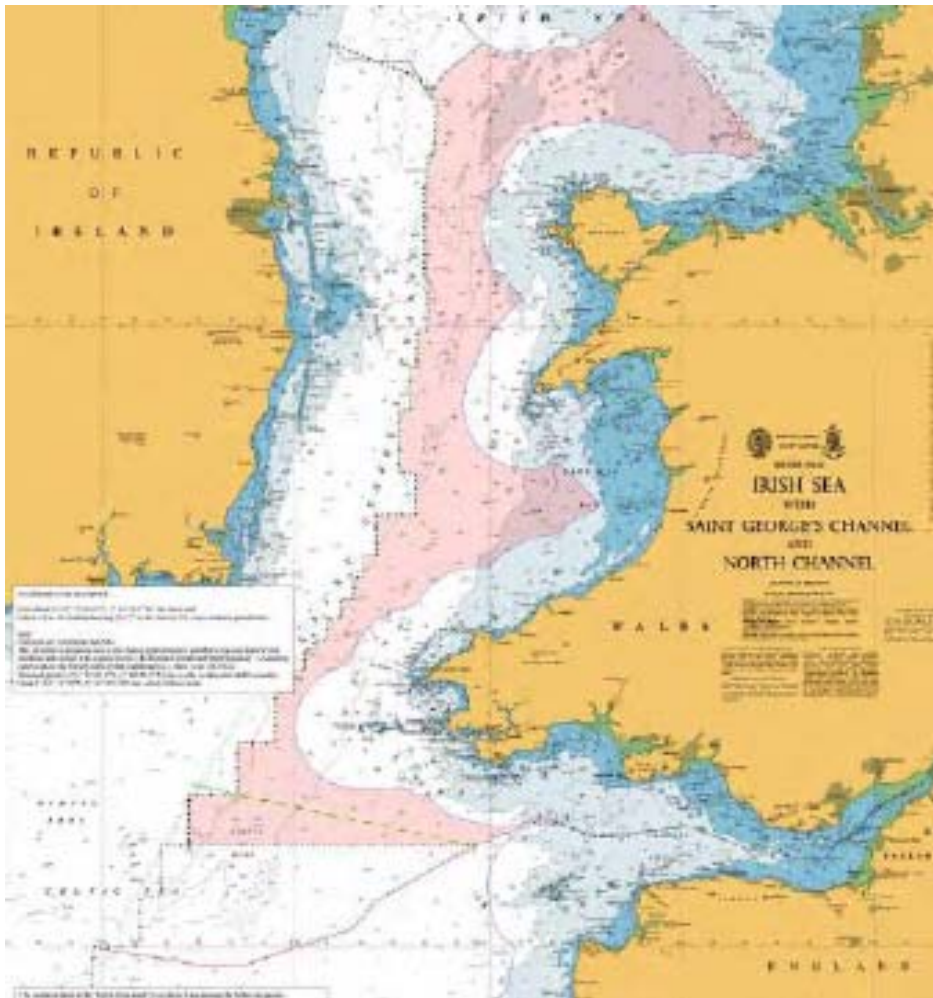
Annex E UK Marine Management³²⁸



Note: map not to scale

³²⁸ Defra, [Marine and Coastal Access Bill – Indicative Maps](#), February 2009

Annex F Indicative Area for Welsh Zone³²⁹

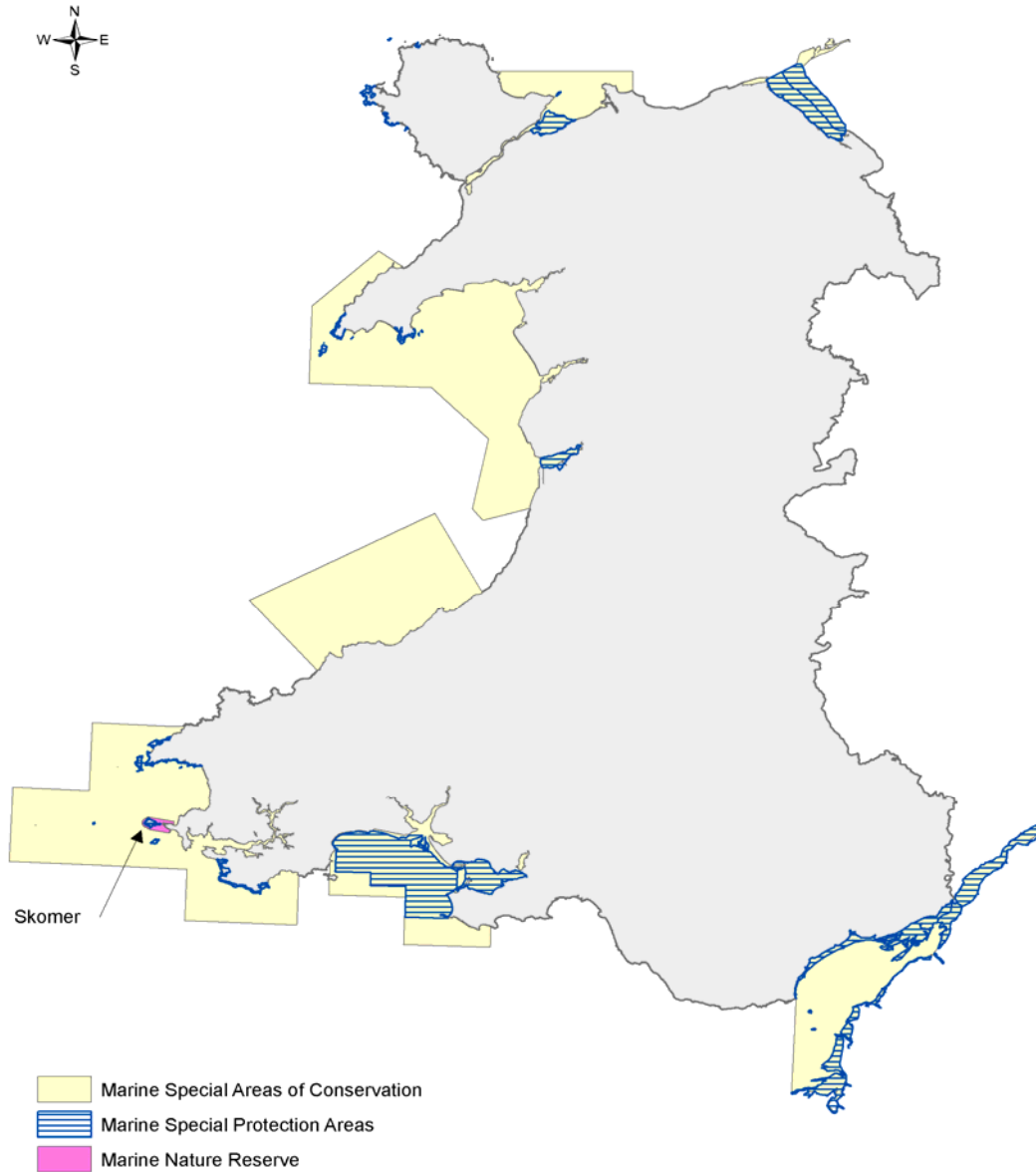


Note: The area for which the Welsh Government has control over fisheries (the Welsh Zone) will be extended to the area highlighted in pink.

³²⁹ Defra, [Marine and Coastal Access Bill – Indicative Maps](#), February 2009

Annex G Current Protected Marine Areas in the Welsh Inshore Region³³⁰

Marine Special Areas of Protection - Wales



Members' Research Service

0 12.5 25 Miles

© Crown Copyright. All Rights Reserved.
The National Assembly for Wales Parliamentary Service. Licence 100047295. 2008

³³⁰ Members' Research Service, Research Paper 08/041, [Draft Marine Bill](#), July 2008, p40

Annex H Acronyms

| | |
|-------|--|
| BSFO | British Sea Fisheries Officer |
| CCW | Countryside Council for Wales |
| CEC | Crown Estate Commissioners |
| CPA | Coast Protection Act 1949 |
| CROW | Countryside and Rights of Way Act 2000 |
| Defra | Department for Environment Food and Rural Affairs |
| DECC | Department of Energy and Climate Change |
| EA | Environment Agency |
| EAW | Environment Agency Wales |
| EFRA | Environment, Food and Rural Affairs Select Committee |
| EU | European Union |
| FAP | Fixed Administrative Penalties |
| FEPA | Food and Environment Protection Act 1985 |
| IFAW | International Fund for Animal Welfare |
| IFC | Inshore Fisheries and Conservation |
| IFCA | Inshore Fisheries and Conservation Authority |
| IPC | Infrastructure Planning Commission |
| MCA | Maritime and Coastguard Agency |
| MCU | Marine Consents Unit |
| MCZ | Marine Conservation Zone |
| MEO | Marine Enforcement Officers |
| MFA | Marine and Fisheries Agency |
| MMO | Marine Management Organisation |
| MPA | Marine Protected Area |
| MPS | Marine Policy Statement |
| MW | Mega-watt |
| NDPB | Non-Departmental Public Body |
| nm | Nautical Miles |
| NNR | National Nature Reserve |
| NPS | National Policy Statement |
| RSPB | Royal Society for the Protection of Birds |
| SFC | Sea Fisheries Committees |
| SNCB | Statutory Nature Conservation Body |
| SSSI | Site of Special Scientific Interest |
| SPP | Statement of Public Participation |
| UK | United Kingdom |
| WAG | Welsh Assembly Government |
| WCAIP | Wales Coastal Access Improvement Programme |

