

# The Marine Act

Quick Guide

July 2014

## Introduction

The *Marine and Coastal Access Act 2009*<sup>1</sup> (referred to as the Marine Act) is **the first piece of UK legislation to consider the marine environment as a whole** and outlines provisions for better management of the seas. It aims to ensure **clean, healthy, safe, productive and biologically diverse oceans and seas**, by putting in place systems for delivering sustainable development of the marine and coastal environment<sup>2</sup>. The Act makes provision for UK offshore (12-200 nautical miles) and English and Welsh inshore (0-12 nautical miles) waters.

**The Marine Act particularly covers marine planning and marine nature conservation**, but also made statutory provisions for the creation of a Marine Management Organisation (MMO), created a new regulatory regime for marine licensing, revised management and enforcement of fisheries, and created new powers with regards to coastal access<sup>3</sup>.

The Marine Act contains an amendment to the *Government of Wales Act 2006*<sup>4</sup> to create the Welsh Zone, which is defined as the sea adjacent to Wales that goes as far out as the British fishery limit in the Irish Sea – the median line between Wales and Ireland. Welsh Ministers were given a range of new powers for the management of this Welsh Zone meaning that the Act devolves significant responsibility to Wales for the management of its seas.

## Marine Planning

Part 3 of the Marine Act creates a statutory system for marine planning to govern and guide a wide variety of marine activities and uses of the sea. This was previously managed and regulated on a sector-by-sector basis. **The Act designated a number of Marine Planning Regions** and Marine Planning Authorities responsible for developing a Marine Plan for the whole or any part of their Marine Planning Regions<sup>5</sup>. The Welsh Government was designated as the planning authority for the Welsh inshore area (0-12 nautical miles) and Welsh offshore regions (12 nautical miles to the median line with Ireland).

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<sup>1</sup> *The Marine and Coastal Access Act 2009* [accessed 8 July 2014]

<sup>2</sup> *ibid*

<sup>3</sup> Joint Nature Conservation Committee (JNCC), *Marine and Coastal Access Act 2009*, (website) [accessed 7 July 2014]

<sup>4</sup> *The Government of Wales Act 2006* [accessed 8 July 2014]

<sup>5</sup> *The Marine and Coastal Access Act 2009* (chapter 23)



## Marine Plans

The long term **strategy for managing sustainable development in the UK marine area was set out in a Marine Policy Statement (MPS)**<sup>6</sup> in March 2011. The MPS states that it sets out a shared vision for all of the UK administrations in having “clean, healthy, safe, productive and biologically diverse oceans and seas”. The MPS aims to facilitate and support the development of Marine Plans, ensuring that they meet high level marine objectives and use marine resources in a sustainable manner.

Marine Plans are intended to create **a coherent, proactive spatial planning approach to the way in which the marine area is managed**<sup>7</sup>. Marine Plans will set out how the MPS will be implemented in each Marine Planning Region, providing detailed policy guidance and provide specific objectives for each Region. Using the priorities set out in the MPS, Marine Plans offer policy certainties that will guide developers about where they are able to carry out activities, or where conditions or restrictions may be placed on what they can do<sup>8</sup>. Consistency in the decision making process will result from all operators and regulators in a given area being steered by the same plan.

## Marine Planning Wales

By adopting the MPS, the Welsh Government committed to the requirement to introduce Marine Plans for Wales.

On 16 February 2011 the Welsh Government launched a consultation<sup>9</sup> seeking views on how marine planning should be developed in Wales in line with responsibilities under the Marine Act. **The consultation set out the Welsh Government’s intention to have a National Marine Plan for Wales (NMPW) in place by 2012/13.** The consultation was closed on 11 May 2011 having received a total of 47 responses<sup>10</sup>. The Welsh Government stated that “none of the respondents indicated disagreement with the approach suggested to marine planning in Wales”

**The Welsh Government has stated that it now aims to have a NMPW put in place by 2015**<sup>11</sup>. The Welsh Government recently closed a consultation on the Welsh Government Statement of Public Participation (SPP) for the Welsh National Marine Plan<sup>12</sup>, which sought to obtain views on how and when the Welsh Government would engage with the public and stakeholders during the process of producing a Marine Plan for Wales. The consultation was launched on 3 February 2014 and closed on 28 March 2014, receiving a total of 56 respondents. The SPP is a legal requirement under the Marine Act and must be published prior to the start of marine planning.

According to the Welsh Government, **89% of responses agreed with their approach to public engagement**<sup>13</sup>. However, suggestions were made to improve the way in which the Welsh Government might communicate the

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<sup>6</sup>HM Government, Northern Ireland Executive, Scottish Government, Welsh Assembly Government, *UK Marine Policy Statement*, March 2011 [accessed 7 July 2014]

<sup>7</sup> *ibid*

<sup>8</sup> *ibid*

<sup>9</sup> Welsh Government, *Sustainable development for Welsh seas: Our approach to marine planning in Wales*, 16 February 2011 [accessed 7 July 2014]

<sup>10</sup> Welsh Government, *A Summary of Consultation Responses: Sustainable development for Welsh seas: Our approach to marine planning in Wales*, 2012 [accessed 7 July 2014]

<sup>11</sup> Welsh Government, *The Statement of Public Participation for the Welsh National Marine Plan*, 3 February 2014 [accessed 7 July 2014]

<sup>12</sup> *ibid*

<sup>13</sup> Welsh Government, *Summary of responses to the consultation on a draft Statement of Public Participation (SPP) for the Welsh National Marine Plan (WNMP)*, 2014 [accessed 7 July 2014]



positives of engagement to stakeholders. 5% of respondents were said to disagree with the Welsh Government's proposals, with the principle reason for this being a perceived lack of engagement with the fishing industry.

Prior to adoption, both the national offshore and inshore plans in respect of retained areas must be agreed by the UK Government. Every six years the Welsh Government will be required to lay reports on the implementation of the Welsh Marine Plans before the Assembly<sup>14</sup>. All authorisation and enforcement decisions that affect or might affect the marine area must be in accordance with the Marine Plans or, where a Marine Plan is not yet adopted, the MPS<sup>15</sup>.

## Marine Nature Conservation

Part 5 of the Marine Act concerns the conservation of the marine environment, empowering UK administrations to designate Marine Conservation Zones (MCZs). **The purpose of these conservation measures is to halt the deterioration of the UK's marine biodiversity, recover damaged habitats, and promote healthy ecosystem functioning.**

The MPS states that the 'UK administrations are committed to completing an ecologically coherent network of Marine Protected Areas (MPAs) by 2012'. This network will comprise existing MPAs, as well as newly designated MPAs and MCZs and other international sites of conservation importance, such as Special Areas of Conservation (SACs) designated under the Habitats Directive<sup>16</sup> and Special Protection Areas (SPAs) classified under the Wild Birds Directive<sup>17</sup>. This system of protected areas will contribute to the UK administrations delivering on their European and international marine conservation commitments; the EC Marine Strategy Framework Directive<sup>18</sup> requires Member States to achieve "good environmental status" in the marine area by 2021.

## Marine Conservation in Wales

The Welsh Government has the powers to introduce new MCZs in the Welsh inshore area. **The Welsh Government established the Marine Conservation Zones Project Wales to identify potential new MCZs in Welsh waters and a consultation<sup>19</sup> on proposals for ten potential MCZ locations was opened between 19 April and 31 July 2012.** It was proposed that if any of the sites were designated as a MCZ they would receive the highest level of protection whereby all habitats and species within the zones would be protected from all extractive, depositional, damaging or disturbing activities<sup>20</sup>. The consultation received 6,712 responses, which contained 'highly divergent and strongly held views'<sup>21</sup>, with the most contentious issue being the high level of protection being offered the sites.

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<sup>14</sup> Welsh Government, *Sustainable development for Welsh seas: Our approach to marine planning in Wales*, 16 February 2011 [accessed 7 July 2014]

<sup>15</sup> *ibid*

<sup>16</sup> *OJ L 206, 22.7.92*

<sup>17</sup> *OJ L 20/7, 26.1.10*

<sup>18</sup> 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.

<sup>19</sup> Welsh Government, *Marine Conservation Zones (MCZs) - Potential site options for Welsh waters*, 19 April 2012 [accessed 8 July 2014]

<sup>20</sup> Welsh Government, *Marine Conservation Zones (MCZs) - Potential site options for Welsh waters*, 19 April 2012 [accessed 8 July 2014]

<sup>21</sup> Welsh Government, *Report of the Task and Finish Team on MCZs in Wales*, April 2013 [accessed 8 July 2014]

Following the consultation, a multi-disciplinary Task and Finish Team, supported by a Stakeholder Group, was established to take forward the work on MCZs in Wales and to report with recommendations in April 2013, taking into consideration the consultations findings<sup>22</sup>. On the consultation, the Task and Finish Team reported that, whilst many respondents supported the principles of MCZs, questions were raised regarding the evidence for the need for such sites and their benefit to the marine environment<sup>23</sup>.

Additionally, some respondents felt there would be unacceptable socio-economic impacts from the site options presented<sup>24</sup>. **The Task and Finish Team subsequently recommended that the Welsh Government withdraw all potential sites from the 2012 consultation** and instead conduct a thorough review of the evidence base and adopt a strategy whereby gaps in the existing MPA network are identified as potential new MCZs sites; **currently over 36 % of Welsh territorial seas are designated MPAs including 11 SACs, ten SPAs and a Marine Nature Reserve (Skomer Island)**. Furthermore, if the highest level of protection would be beneficial to MCZ sites, the Welsh Government was recommended to engage transparently with local communities to demonstrate how novel solutions could reduce the impact on users while still meeting conservation needs<sup>25</sup>.

The Welsh Government has not yet enacted the provisions of Part 5 of the Marine Act which require it to develop a coherent network of MPAs and to report on progress towards its delivery. No date has yet been given as to when these provisions are likely to be enacted.

On 18 July 2013, the Minister for Natural Resources and Food, Alun Davies, announced that “to avoid any continuing uncertainty over the options presented in the 2012 consultation” **the Welsh Government would withdraw all of the proposed MCZ sites** and that he had instead commissioned an assessment of existing MPAs to identify gaps in the protected area network and make improvements<sup>26</sup>. He also announced that he would be in a position to reach a decision on what further action needs to be taken by early 2014<sup>27</sup>.

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<sup>22</sup> *ibid*

<sup>23</sup> *ibid*

<sup>24</sup> Welsh Government, *Report of the Task and Finish Team on MCZs in Wales*, April 2013 [accessed 8 July 2014]

<sup>25</sup> *ibid*

<sup>26</sup> Welsh Government, Alun Davies (Minister of Natural Resources and Food), *Marine Conservation Zones and Marine Protected Areas in Wales*, Cabinet Written Statement, 18 July 2013 [accessed 8 July 2014]

<sup>27</sup> *ibid*



## Additional provisions of the Act

### Marine Management Organisation (MMO)

Part 1 and 2 of the Marine Act details the creation and remit of a Marine Management Organisation (MMO). This executive Non-Departmental Public Body (NDPB) is charged with **exercising marine functions for waters around England and the UK offshore area**. It will also deliver some non-devolved functions in Welsh inshore regions. The MMO will formally report to the UK Parliament through the Secretary of State.

### Marine licensing

Part 4 of the Marine Act brings together environmental, human health and navigational safety factors into a single licensing decision. The new regulations remove overlap from existing legislation, namely Part 2 of the *Food and Environment Protection Act 1985*<sup>28</sup> and Part 2 of the *Coast Protection Act 1949*<sup>29</sup>. The Act requires a marine licence to be obtained before carrying out a 'licensable marine activity' in Welsh waters, which includes construction works on the sea bed, depositing of any subject, dredging and aggregate extraction. 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 indictment. However, some activities are exempt from a licence, for instance dredging activities undertaken on behalf of a harbour authority.

The Welsh Government is the licensing authority for the Welsh inshore region and **the Marine Licensing Team (MLT) in Natural Resources Wales (NRW) administers marine licenses on behalf of the Welsh Government**. However, licensing for the oil and gas industry and defence will be the responsibility of the Secretary of State while the MMO will be responsible for licensing in offshore regions throughout the UK.

### Fisheries

The Welsh Government was previously responsible for fisheries management and enforcement out to just 12 nautical miles from the Welsh coast; however, with the creation of the Welsh Zone **in Part 2 of the Marine Act, control for these functions was extended to the British fishery limits**. The Welsh Government now has full responsibility for the management and enforcement of sea fisheries in Wales, taking over the work of the South Wales Sea Fisheries Committee and the Welsh part of the North-Western Waters Regional Advisory Council. Parts 6 and 7 of the Marine Act make provisions for fisheries management, amending a number of Acts and **widening the powers of Welsh Government to provide full responsibility to regulate and enforce fishery activity**.

Part 6 aims to modernise inshore fisheries and environmental management arrangements in England and Wales such that the exploitation of marine resources is managed in a manner 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 fisheries. Part 7 makes a number of amendments to previous legislation, including the *Sea Fisheries (Conservation) Act 1967*<sup>30</sup>, *Sea Fisheries (Shellfish) Act 1967*<sup>31</sup> and the *Water Resources Act 1991*<sup>32</sup>.

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<sup>28</sup> *Food and Environment Protection Act 1985* [accessed 9 July 2014]

<sup>29</sup> *Coast Protection Act 1949* [accessed 9 July 2014]

<sup>30</sup> *Sea Fisheries (Conservation) Act 1967* [accessed 9 July 2014]

<sup>31</sup> *Sea Fisheries (Shellfish) Act 1967* [accessed 9 July 2014]

<sup>32</sup> *Water Resources Act 1991* [accessed 9 July 2014]

## Enforcement

Part 8 of the Marine Act aims to streamline and modernise marine enforcement powers. The MMO and the Welsh Government are able to appoint enforcement officers to enforce marine licensing, conservation and fisheries legislation. Welsh Government Marine Enforcement Officers investigate and take enforcement action when breaches of the regulations are identified<sup>33</sup>.

## Coastal Access

Part 9 of the Marine Act gave Welsh Ministers powers to introduce coastal access in Wales on a statutory basis should they so wish. However, following the referendum in 2011 these powers become redundant as the Assembly now has the power to introduce a Bill on coastal access should it wish to do so. It is important to note that to date the coastal path in Wales has been developed on the basis of a largely voluntary approach.

## Further information

For further information on the/about **The Marine Act**, please contact **Nia Seaton (Nia.Seaton@Wales.gov.uk)**, Research Service.

### See also:

- Research Service Marine Policy Statement **quick guide**
- Research Service Marine Spatial Planning **research note**
- Research Service Marine Strategy Framework Director **research paper**

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**Enquiry no: 14/1895**

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<sup>33</sup> Welsh Government, *Fisheries monitoring and enforcement*, (website) [accessed 9 July 2014]

