



Taking forward the Marine Bill:
The Government response
to pre-legislative scrutiny
and public consultation

September 2008

*Presented to Parliament by the Secretary of State for Environment, Food and Rural Affairs
by Command of Her Majesty
September 2008*



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This document sets out the Government response to the public consultation on the draft Marine Bill and to the reports of the following Parliamentary Committees:

- The Ad Hoc Joint Committee on the Marine Bill.
- The Report of the Environment, Food and Rural Affairs Committee on the Draft Marine Bill: Coastal Access Provisions.

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Ministerial Foreword

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.

This is why we published the draft Bill in April this year. This pioneering piece of draft legislation sets out the provisions we need to manage our marine resources now and for future generations.

The draft Bill was published for Parliamentary scrutiny and for public consultation to ensure that the provisions are clear before the draft Bill is introduced to Parliament. It is vital that we get this important piece of legislation right to set a clear direction for managing our seas for the future.

We are very grateful to both Parliamentary Committees for their careful examination of the draft Bill. Lord Greenway and his Committee faced a challenging task over the summer and we are most grateful for the constructive report his Committee has produced. The EFRA Select Committee has also done a thorough job of considering the coastal access provisions. Both these reports support the measures in the draft Bill and set out helpfully those areas we need to consider in order to ensure the legislation is as good as possible for introduction.

The public consultation exercise has shown us once again the significant support there is for the draft Bill across a wide section of our stakeholders. Around 3,500 members of the Royal Society for the Protection of Birds, International Fund for Animal Welfare and Friends of the Earth supported the introduction of the draft Bill and some 11,000 Ramblers' Association members lodged specific support for the coastal access provisions. The remaining 399 responses were from across the whole spectrum of marine industries and users and were generally supportive and helpful in content.

The recommendations from the Parliamentary Committees and the views received during the public consultation will help significantly to improve and refine the draft Bill as we prepare it for introduction to Parliament. This report sets out our response to those recommendations and views. We are very grateful to all the individuals and organisations who have contributed to the development of this legislation and look forward to their continued support throughout the passage of the legislation.



Hilary Benn



Jonathan Shaw

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Executive Summary

Overview

In April of this year, the UK Government published a draft Bill for pre-legislative scrutiny and public consultation. This document sets out how the Government intends to take forward the measures set out in that draft Bill, in light of the issues raised in the public consultation and the recommendations that emerged from pre-legislative scrutiny. It includes our response to the issues raised on the impact assessment published with the draft Bill and the Government's response to each of the recommendations made by the Committees conducting pre-legislative scrutiny.

Context

The draft Bill set out in legislation the proposals which were widely supported in the Marine Bill White Paper – 'A Sea Change'. These included a new marine planning system and licensing rules, a new organisation to ensure better marine management, new powers to enable the creation of a network of marine conservation zones and improvements to the management of marine and freshwater fisheries. The draft Bill also includes measures for providing greater access to the English coast.

Pre-legislative scrutiny and the public consultation

Pre-legislative scrutiny was completed by a Joint Committee of the House of Lords and House of Commons, and the Environment, Food and Rural Affairs (EFRA) Select Committee. Between them they received evidence from over 100 different witnesses (either in writing or orally) and made 119 specific recommendations to the Government in their two separate reports.

Alongside this, Defra conducted a public consultation on the draft Bill via its website. This generated 399 'non-campaign' responses, and around 3,500 responses affiliated to specific campaigns organised by the Royal Society for the Protection of Birds, International Fund for Animal Welfare and Friends of the Earth, and a further 11,000 responses from the Ramblers' Association, in support of coastal access.

Overall, around 459 organisations and individuals offered their views on our proposals in the draft Bill. We believe the nature of the responses and Committee reports indicate ongoing broad stakeholder support for our overarching proposals.

On the detail of our proposals, the process has generated useful feedback which has informed the way forward set out in this document. We have set out the Government's response to each of the Committees' recommendations in a schedule within this report. However, we have not responded to each individual point made via the public consultation. We have instead identified recurring themes and responded to them, particularly where the Committees considered the same or similar points. A separate

analytical summary of the responses made to the public consultation is available on the Defra website at:

[http://www.defra.gov.uk/corporate/consult/marinedraft Bill/summary-responses.pdf](http://www.defra.gov.uk/corporate/consult/marinedraft%20Bill/summary-responses.pdf)

Moving forward

In light of the pre-legislative scrutiny and the results of the public consultation, the Government intends to further develop the draft Bill and our planned implementation of it in the following ways, subject to Parliamentary time. We will:

- establish a new organisation, called the Marine Management Organisation (MMO) to deliver marine functions in the waters around England and in the UK offshore area (for matters that are not devolved) which we will ensure is properly resourced and has a clear and unambiguous purpose (see section 3.1);
- take forward the proposed new marine planning system including through amending the draft Bill to introduce a requirement on policy authorities to periodically review the Marine Policy Statement (MPS); make the MPS subject to a similar Parliamentary process as National Policy Statements; and ensure marine plan authorities are under an obligation to do what they can to ensure compatibility with terrestrial plans (see section 3.2);
- improve the provisions on licensing by requiring each appropriate licensing authority to establish an appeals mechanism and setting out detailed transitional arrangements (see section 3.3);
- amend the draft Bill provisions relating to nature conservation in various ways to provide greater clarity and certainty, including through conferring a statutory duty on Ministers to designate Marine Conservation Zones and setting out other functions and responsibilities on the face of the draft Bill (see section 3.4);
- continue with our plans to strengthen the management of marine fisheries, including by replacing Sea Fisheries Committees with newly created Inshore Fisheries and Conservation Authorities (see section 3.5) and to modernise powers for the licensing and management of migratory and freshwater fisheries (see section 3.6);
- streamline and modernise enforcement powers ensuring enforcement officers are appropriately trained; provide a power to establish an appeals process for statutory notices under the licensing provisions; and provide guidance that the maximum level of fixed monetary penalty will be capped at £5,000 (see section 3.7);
- place a duty on the Secretary of State and Natural England to secure a long distance route and land available for open-air recreation, including through amending the draft Bill to require Natural England to conduct a review of early implementation, and to report to Parliament after 10 years (see section 3.8).

Next steps

The Government published a Green Paper on 14 May 2008 which detailed the draft legislative programme for the next session, 2008-09. The Marine Bill was included in this draft legislative programme. The introduction of the draft Bill remains, however, subject to the availability of Parliamentary time.

1 Introduction

1.1 Background

The Government has committed to introduce a new framework for the seas, based on marine spatial planning, that balances conservation, energy and resource needs; to maintain and protect marine ecosystems so the best value from different uses of marine resources can be obtained; and to improve access to coastal areas. The draft Bill was developed to deliver these commitments.

The policy paper preface to the draft Bill describes the draft Bill's evolution and the main measures it contains:

- creation of the **Marine Management Organisation** (MMO) to deliver marine functions in the waters around England and in the UK offshore area (for matters that are not devolved);
- a new UK-wide system of **marine planning**, to enable more strategic and effective management of our seas;
- a streamlined, transparent and consistent system for **licensing** marine developments;
- a flexible mechanism to protect the **natural environment**, including marine conservation zones with clear objectives;
- improvements to the management of **marine fisheries** in relation to England and Wales, particularly in relation to inshore fisheries management in England;
- modernised tools for the Environment Agency to manage **migratory and freshwater fisheries** in England and Wales;
- streamlined and modernised **enforcement** through common powers and the introduction of a **civil sanctions** scheme for marine licensing and nature conservation;
- provisions to improve access on foot to the English coast – **coastal access**.

These measures are designed to improve our ability to make long term strategic decisions about what we want in our marine environment, to simplify the systems we use to manage marine resources and to improve access to the English coast.

1.2 Pre-legislative scrutiny

1.2.1 Joint Committee

The two Houses of Parliament established a Joint Committee of 21 members and peers on the draft Bill on 13 May 2008, chaired by Lord Greenway. The remit of the Committee was to consider the draft Bill, and report on it to both Houses by 22 July 2008.

The Joint Committee held eight public evidence sessions, hearing from 22 sets of witnesses representing 38 organisations. The Secretary of State for Environment, Food and Rural Affairs and the Minister for Marine, Landscape and Rural Affairs gave

evidence on 26 June. The Committee also heard evidence from Ministers from the Department for Business, Enterprise and Regulatory Reform (BERR), as well as officials from the Ministry of Defence (MoD) and the European Commission. It received over 100 written memoranda. It was assisted by its Specialist Advisers, Dr Susan Gubbay, Professor Laurence Mee and Captain Dennis Barber. The Committee published its report with 96 recommendations on 30 July 2008.

The Government is grateful to the Joint Committee, its members and those who provided evidence for their efforts and contribution to the draft Bill. Our response to each of the recommendations is set out in Part 4 of this report. We are pleased the Committee was supportive in principle of the draft Bill.

1.2.2 The Environment, Food and Rural Affairs Select Committee (EFRA)

The EFRA Committee has 14 Members and is chaired by the Rt Hon Michael Jack MP. It is appointed by the House of Commons to examine the expenditure, administration and policy of the Department for Environment, Food and Rural Affairs (Defra) and its associated public bodies including the Environment Agency, Natural England and the Commission for Rural Communities.

When the Joint Committee was set up to review the draft Bill, EFRA decided to examine coastal access provisions only, a discrete part of the draft Bill not included in the Marine White Paper consulted on in 2007, but covered by a separate public consultation in the same year. Although the Joint Committee took some evidence on these provisions, EFRA concentrated exclusively on the coastal access proposals.

It received 74 written responses, and took oral evidence from the Minister for Marine, Landscape and Rural Affairs, and from Natural England, and a number of organisations with an interest in the draft Bill or experience of the coastal access issues involved. It also undertook a visit to the north Essex coast near Walton-on-the-Naze in order to see at first hand specific examples of some of the detailed issues raised by the Government's proposals.

The Committee reported on 22 July with 23 recommendations. Our response to each of the recommendations is set out in Part 5 of this report. The Government is grateful to the Committee and its members and to those who gave evidence.

1.3 Public Consultation

The consultation on the draft Bill was conducted via the Defra website. It commenced on 3 April and ended on 26 June 2008. In total, 3,899 responses were received. The large majority of these were campaign responses (of which 3,500 were received). These campaigns were directed by: the Royal Society for the Protection of Birds (with

2,202 respondents); the International Fund for Animal Welfare (with 1,257 respondents); and Friends of the Earth (with approximately 41 responses¹).

The remaining 399 responses were non-campaign. These responses were drawn from the following sectors: academic/research, energy supply industry, environment, fishing, heritage, individual, local government, other non-governmental organisations, ports and shipping, public bodies and recreation.

In addition to these, around 11,000 postcards were received from members of the Ramblers' Association supporting the coastal access proposals.

Individual responses to the public consultation will be available in the Defra library.

The responses were generally positive to the proposals outlined in the draft Bill. Respondents did, however, identify where they would like to see the proposed legislation on the respective policy areas clarified or changed in some way.

We have examined the responses received and they have helped to inform our proposals moving forward. In addition, we sent an initial summary of responses to the Joint Committee to inform its deliberations. Due to the number of responses and the level of detail contained in them, we have not responded to each and every issue in this report. Instead we have singled out key themes raised by multiple respondents and our response, under each major policy theme in the draft Bill.

We are very grateful to all the organisations, sectors and individuals who took time to submit responses to the consultation. A high level analytical summary of responses will be available on the Defra website from the publication date of this report:

www.defra.gov.uk/corporate/consult/marinebill/summary-responses.pdf

¹ This campaign took the form of postcards sent to local MPs. 41 submissions were received from MPs. Of these, seven noted that multiple postcards had been received, but did not include the total number of postcards received.

2 Issues cutting across the Bill

Many issues raised by the Joint and EFRA Committees and through the public consultation refer to single policy areas in the draft Bill. The Government's response to these is set out in section 3 of this report. However, a number of recommendations and responses are relevant across the draft Bill. Below, we set out our responses to these recommendations and highlight where further detail in relation to particular policy areas can be found in section 3. This section therefore covers specific recommendations related to the process of pre-legislative scrutiny and the draft Bill's impact assessment. It also discusses general issues on structure and level of detail in the draft Bill, plus how the Government is continuing to work with the Devolved Administrations.

Process: scrutiny and structure of the Bill

2.1 The Joint Committee made several recommendations which broadly relate to the process of developing and scrutinising the draft Bill (and subsequent Act). In particular the Committee recommended that the Government commits to providing at least 12 weeks for pre-legislative scrutiny. The Government recognises the importance of allowing adequate time for scrutiny and is committed to the principle of allowing at least three months. This is not always possible but the Government is grateful to both Committees for completing their scrutiny before the summer. (Recommendation 1)

2.2 In addition, the EFRA Committee commented that it is for the House to determine how pre-legislative scrutiny should be conducted, not the Government. The Government indicated in its response to the Commons Liaison Select Committee's annual report for 2007² that it recognises long-standing concerns about the best approach to deciding on the vehicle for scrutiny of draft Bills. Consultation with all interested parties is important and, ultimately, no Joint Committee can be established without the agreement of both Houses. In practice, most draft Bills are considered by the Commons departmental select committees which have a standing responsibility for examining the work and output of the relevant department. But there will be cases in which it will be appropriate for both Houses to be involved and for the expertise of the House of Lords also to be brought to bear. Following the establishment of the Joint Committees on draft Bills in the current session, the Government has indicated to the Liaison Committee new arrangements to improve the consultations with the departmental committees which will take place ahead of any proposals for a Joint Committee being put to Parliament.

2.3 The Joint Committee also recommended that the Government considers moving material from guidance into the draft Bill itself. We accept and agree with the need for the draft Bill to be transparent and will review the material currently in, and planned for, guidance. However, as the draft Bill is a framework Bill, adding additional details would risk changing the nature of the draft Bill and lengthening it considerably. We are clear that the appropriate level of detail needs to be available to all interested parties as the draft Bill progresses through Parliament, but remain convinced that the balance of this detail should be held in guidance or in secondary legislation rather than in the draft Bill

² *Second Special Report from the Liaison Committee of session 2007-08, HC 595, page 2*

itself. Subsequent sections of this report describe the further guidance and information we will be producing to ensure our intentions are clear. (Recommendation 3)

2.4 Both the Joint Committee and the public consultation raised particular concerns about clarity on the face of the draft Bill on the relationship between the Marine and Planning Bills. This has arisen because the Planning Bill is still going through the Houses of Parliament, and it was not therefore possible to make direct references to provisions in that Bill in the draft Bill. Government Departments continue to work closely as the draft Bills progress to ensure that the Government's policy commitments are delivered through both pieces of legislation and will ensure that the final draft Bill is clear on the relationship between the Marine Bill's provisions and those in the Planning Bill. Further detail in response to specific recommendations can be found in section 3 of this report, under the Marine Management Organisation (MMO), planning and licensing sub-sections.

2.5 A further cross-cutting issue raised by the Joint Committee concerned the number of statutory duties the draft Bill places on the Secretary of State or other bodies. Responses to recommendations on particular duties are discussed in more detail in section 3, but as a general principle, the Government accepts the need for the draft Bill to impose appropriate duties and will ensure that the additional ones committed to in this report are included in the draft Bill for introduction.

2.6 In relation to implementation, the Joint Committee affirmed the importance of having all Government Departments 'on board' with the draft Bill's proposals, which the Government agrees is vital, and will remain so as the draft Bill goes through Parliament and the Act's provisions are implemented. The Government also welcomes the support of the Joint Committee for post-legislative scrutiny on the draft Bill. The Committee stated that it would be helpful to see which policy objectives the Government considers to be most useful in measuring the success of the legislation. In the White Paper introducing the new system³, the Government indicated that the Impact Assessment, Explanatory Notes and other statements made during the passage of a Bill should, when taken together, provide sufficient indication of the objectives of a Bill to allow an effective assessment to be made during post-legislative review of how an Act is working out in practice. This will apply to the Marine Bill and will thus inform the memorandum which Defra will publish within three to five years of Royal Assent, setting out a preliminary review of the operation of the Act. (Recommendations 2 and 7)

Impact Assessment and funding

2.7 In its report, the Joint Committee raised concerns about the degree of uncertainty in the Impact Assessment and the need for Parliament to be able to scrutinise costs and benefits alongside the draft Bill.

2.8 It is worth reiterating that the proposals in the draft Bill are for a flexible marine management framework. This framework will be implemented over time through secondary legislation and guidance which will set out the detail of how the various

³ Cm 7320, March 2008

elements are intended to operate. In light of the framework nature of the draft Bill, the Impact Assessment has been based on a range of assumptions and implementation scenarios in order to construct a reasonable and quantified view of the costs and benefits of the draft Bill. We are confident that the resulting analysis, which benefits from several specially commissioned research reports, provides a meaningful economic evidence base suitable for Parliamentary scrutiny. (Recommendation 6)

2.9 There were also 26 consultation responses commenting on the Impact Assessment. Almost all these responses commented on the underlying policies rather than the analysis and approach used - most commonly that various policy proposals were underfunded. We are taking their views into account when producing the updated Impact Assessment that will accompany the draft Bill on introduction to Parliament. Comments received included queries on the licensing enforcement figures and a request for greater clarity so that for each cost or benefit calculated it was readily apparent which, if any, of the Devolved Administrations were included in the calculations.

2.10 The Joint Committee and public consultation responses raised concerns that adequate funding should be allocated to allow successful implementation of the MMO, marine planning, Inshore Fisheries and Conservation Authorities (IFCAs) and the coastal path. The Government recognises the importance of ensuring its policy proposals are properly costed, receive the funding to make them effective and are affordable within existing spending review settlements. We will ensure that this is the case for all measures in the draft Bill. Revised cost estimates will be included in the updated Impact Assessment to be published alongside the draft Bill, and we will also consider as part of our response to Recommendation 3, what further information on funding provisions needs to be published beyond that which is already available in Departmental Annual Reports, Resource Accounts and Performance reports. (Recommendation 5)

Devolution

2.11 Those who commented on devolution issues emphasised the need for strong co-operation between the relevant administrative bodies across the UK. Some called for formalised working arrangements with the Devolved Administrations and any bodies set up by them to ensure cohesion and avoid duplication and divergence. All were keen that the measures put in place across the UK were compatible and delivered the same outcomes.

2.12 They highlighted the risks in not being able to ensure a fully joined up and cohesive UK-wide system, and called on the different administrations to work together to make their respective legislation compatible and to implement it in such a way as to ensure UK seas are managed in a coordinated manner.

2.13 We fully recognise the issues highlighted by both the Joint Committee and consultation respondents in relation to providing a joined up approach throughout the UK's waters. Over the summer the Joint Ministerial Committee involving Ministers from across the United Kingdom met and discussed the draft Bill. Importantly all four

administrations agreed with the objectives of the draft Bill to protect and manage better the seas round the United Kingdom, and that it was desirable to work closely together in developing and operating measures for that purpose. They also agreed that in principle UK-wide or compatible measures were desirable in order to reduce burdens on stakeholders. We will continue to work closely with the Devolved Administrations to try to agree practical solutions whilst respecting the different arrangements in place as a result of the devolution settlement. In addition the Scottish Executive published a consultation on a Marine Bill for Scotland in July which shows that most of their intentions closely mirror those in the UK draft Bill.

2.14 The Welsh Assembly Government, Northern Ireland Executive and Scottish Executive (SE) are considering arrangements for delivery of devolved marine functions and how these will work best for them.

3 Plans for taking forward measures in the draft Bill in light of pre-legislative scrutiny and response to the public consultation

This section sets out the main changes we intend to make to the draft Bill before its introduction. It is organised to match the numbered Parts of the draft Bill, addressing the issues which came out most strongly from the Parliamentary Committees' recommendations and in responses to the public consultation. It also summarises key issues emerging in the pre-legislative scrutiny and public consultations that we do not intend to address through making changes to the face of the draft Bill, and a few issues where valid points have been raised by the Committees or in responses to the consultation but where further consideration is required before changes to the draft Bill can be accepted.

Since the publication of the draft Bill, we have continued to work with the Devolved Administrations to clarify how the draft Bill will operate, given the complex interplay of devolved and non-devolved responsibilities in this area. Working with the Devolved Administrations, we believe the draft Bill will provide a clear UK-wide framework for protecting the marine area.

Where recommendation numbers are given, they refer to the recommendations of the Joint Parliamentary Committee, except in the section on access to the coast, where the numbers refer to the recommendations of the EFRA Committee.

3.1 Marine Management Organisation (Part 1 of the draft Bill)

The draft Bill provides for the creation of a Marine Management Organisation (MMO) to deliver marine functions in the waters around England and in the UK offshore area (for matters that are not devolved). The MMO will be an independent Non-Departmental Public Body, and will deliver marine functions for the UK Government as a whole.

3.1.1 The Joint Committee made 26 recommendations relating to the proposed measures for the MMO (some of which also relate to other measures in the draft Bill, such as planning or Marine Conservation Zones).

3.1.2 The Joint Committee, as well as a number of respondents to the public consultation, sought further detail and clarification on the responsibilities of the MMO and the functions that it will carry out. Clarification of the relationship between the MMO and other public bodies such as the Infrastructure Planning Commission (IPC), the Environment Agency and Natural England was specifically requested, as well as further detail on how the MMO will work with relevant local authorities and coastal partnerships.

3.1.3 The majority of respondents to the public consultation supported the establishment of a MMO as the UK Government's strategic delivery body in the marine area and as a 'one-stop shop' single licensing authority. However, many expressed the view that the MMO would have insufficient resources, both in terms of funding and suitably qualified staff/expertise, to undertake its extensive remit successfully. Others

were concerned about a perceived lack of transparency around the workings of the MMO and its accountability to Government and stakeholders.

3.1.4 A number of environmental organisations wished to see the MMO renamed the Marine Management and Conservation Organisation, and given a clear conservation duty. Other organisations (from the fishing, energy, shipping, navigational safety and dredging sectors, as well as the Crown Estate) suggested that the MMO might be too environmentally focused and that it needed to ensure an even balance between environmental, social and economic interests. Some suggested the MMO be given a general duty to promote economic development.

3.1.5 There was concern, particularly among those organisations based in Wales, Scotland and Northern Ireland, about complications arising from the devolution settlement and how the MMO will work with the structures to be set up in due course by the Devolved Administrations.

General objective of the MMO

3.1.6 A number of consultation respondents (notably environmental organisations) and the Joint Committee considered that the MMO's objective (Clause 2(1)) to carry out its functions 'with the objective of making a contribution to the achievement of sustainable development' should be amended to read 'with the objective of *furthering* (or *promoting*) sustainable development'. The Committee, and some of the environmental organisations, wanted the MMO's role in sustainable development to be based on the ecosystem approach to managing the environment. (Recommendation 12)

3.1.7 In addition, some consultation respondents wanted sustainable development to be defined on the face of the draft Bill; this was also a recommendation of the Joint Committee (Recommendation 13). Others concerned with marine cultural heritage issues wished to see the historic environment reflected in the definition of sustainable development and/or in the definition of 'marine environment'.

3.1.8 The Environment Agency wished to see the MMO's duty, as a public body, to have regard to (marine) biodiversity strengthened to 'further conservation', so that public bodies operating in the coastal zone would have the same, or similar biodiversity requirements. Some commercially focused organisations thought the MMO should have a duty to 'further economic development'.

3.1.9 We are currently considering whether and, if so, what changes could be made to meet Joint Committee and public consultation requests to clarify the MMO's purpose and its general objective. We do not intend to change the objective of (or duties on) the MMO to emphasise either environmental or economic aspects; as it currently stands, the MMO is already required to have regard to all aspects of sustainable development in discharging its functions.

3.1.10 We do not consider it would be helpful to attempt to define sustainable development on the face of the Bill as the meaning of sustainable development needs to be able to evolve over time. The Government's Sustainable Development Strategy⁴ published in 2005 sets out the five guiding principles underpinning sustainable development.

Resources

3.1.11 A large number of respondents representing both environmental and commercial sectors, as well as the Joint Committee (Recommendation 18) considered the MMO would lack the necessary resources (in terms of both funding and expertise) to fulfil its objectives. Various organisations emphasised the need for the MMO to have scientific and legal expertise, as well as skills in planning, marine research, data management and communication. Some expressed concern that if research and data management was not built into the draft Bill provisions, the necessary financial support may not be available.

3.1.12 The number of new staff cited in the Impact Assessment represented our best estimate at the time of publication of the draft Bill and was in addition to existing posts transferring from core Departments. It is worth noting that including posts transferring from core Departments the Impact Assessment was based on the MMO having nearer 50, rather than 40 staff, beyond those currently employed by the Marine and Fisheries Agency. We have noted the concerns of respondents to the public consultation and the Joint Committee and agree that we should revisit our analysis of the expected number of additional staff the MMO will require further to a more detailed understanding of the MMO's proposed functions and staff required to deliver them. This was our intention as we expect the MMO to evolve. As and when it takes on more functions we will review the funding and staff resources needed to deliver them. This will include ensuring that the staff have the requisite skills and expertise needed to deliver the MMO's functions. Further clarity on functions will be provided to support introduction of the draft Bill to Parliament (see para 3.1.15).

Responsibilities / functions of the MMO

3.1.13 A number of consultation respondents echoed the concern expressed by the Joint Committee that the functions to be carried out by the MMO were not sufficiently clear on the face of the draft Bill (Recommendation 17). Further clarification of the MMO's functions was sought – either in the draft Bill itself, or in some form of policy statement.

3.1.14 Respondents also queried the wide discretion given to the Secretary of State in clause 14 to delegate functions to the MMO, and the corresponding power of the MMO in clause 15 to authorise other bodies (as listed in clause 16) to carry out functions on its behalf. Some considered that this was confusing as it was difficult to understand

⁴ http://www.sustainable-development.gov.uk/publications/pdf/strategy/SecFut_complete.pdf

who would be doing what. Others (including the Joint Committee, Recommendation 16) wanted to see a clear and full justification for the Secretary of State's powers to delegate functions to the MMO.

3.1.15 We will consider how best to clarify the functions we expect the MMO to fulfil. Some of the functions the Marine and Fisheries Agency (MFA) currently undertakes (which will transfer to the MMO in due course) are set out in secondary legislation or are derived from EU Regulations that are directly applicable in EU Member States. Whilst it is not possible to include these particular functions in primary legislation, we will consider what other means we can employ to make clear to all stakeholders what the MMO will be tasked to carry out.

3.1.16 We agree with the Joint Committee's recommendation that we should set out a clear and full justification for the powers by which the MMO will exercise functions and how we envisage secondary legislation being used to augment its powers. This, together with examples of expected uses, will be included in an updated Delegated Powers Memorandum to accompany the draft Bill on introduction to Parliament.

MMO's role in relation to marine science

3.1.17 Academic institutions and those concerned with scientific research considered that the MMO's role in this regard should be clarified. The Joint Committee considered that scientific input is of sufficient importance to be reflected explicitly in the draft Bill and that the MMO should establish a scientific advisory panel. (Recommendation 22)

3.1.18 Clause 23 of the draft Bill requires the MMO to keep abreast of all matters relating to its general objective and gives it the ability to undertake or commission research. Whilst we agree that it would be beneficial for the MMO to establish a scientific advisory panel, this will be a decision for the MMO's Board in due course.

Establishment of MMO – clarification of timeframe and process

3.1.19 Clarification was sought by some respondents on the timeframe and process for establishing the MMO. Their concerns were largely about the impact of possible delays in implementation on for example the development of a network of Marine Conservation Zones or the impact of transitional arrangements on ongoing development applications. The Joint Committee regarded it as vital that the new organisation is able to 'get up and running quickly', noting that a shadow body could be helpful. The Committee also invited the Government to set out a timetable for the handover of specific functions in the transition to the MMO to ensure there is minimal disruption to developments. (Recommendation 14)

3.1.20 A number of respondents commented that there should be greater transparency on the process for appointing the Chair of the MMO Board and its members, some indicating that this should be clarified in the draft Bill. A number of organisations (over 25 in total) considered that either they, or their sector, should be represented on the

MMO Board. The Joint Committee recommended that the requirement for the Secretary of State to 'have regard to the desirability' of ensuring a variety of skills and expertise on the Board (Schedule 1, para 5) be strengthened to reflect the necessity of including skills and expertise from the 'three pillars' of sustainable development. (Recommendation 15)

3.1.21 We agree with the Joint Committee's view that the MMO must be established speedily and are continuing to plan a 'managed transition' approach to its establishment with the aim of minimising - or eliminating - risks to implementation. The existing MFA, which already performs a significant number of marine functions, will form the basis of the new MMO to ease the transition. It is also our intention to establish a skeleton MMO in advance of MMO vesting. A dedicated team has recently been set up to take forward all aspects of the implementation of the MMO and further information on planned progress will be made available to support the draft Bill.

3.1.22 As stated in the draft Bill, the Board will comprise up to eight members, selected for their expertise and experience relevant to the MMO's functions. There will, however, be no specific sectoral representation or nomination rights to the Board and the Joint Committee recognised the need for the Board to be kept small. It would clearly not be possible to include all those who wish to be represented. Expanding the membership to accommodate all requests for representation is not sensible, either on grounds of efficiency or value for money.

3.1.23 The Chair and Board members will be appointed by the Secretary of State (the members after consultation with the Chair). In making appointments, the Secretary of State must have regard to the desirability of appointing individuals with experience relevant to the MMO's functions, which include furthering sustainable development, and ensuring a diverse range of skills. This will necessarily cover all the different aspects of sustainable development without the need for specific references. The appointments will be made in line with the Code of Practice of the Office of the Commissioner for Public Appointments, ensuring a fair, open and transparent process that commands stakeholder confidence in the outcome.

Duty to consult other bodies

3.1.24 Some consultation respondents, including the Environment Agency, Natural England and a number of environmental non-governmental organisations, considered that the MMO should have a duty to consult other public bodies, such as the Statutory Nature Conservation Bodies (SNCBs). Others emphasised that regulatory bodies should have regard to each other's advice and establish joint working arrangements. The Joint Committee recommended that the Government creates statutory consultees where appropriate for decisions to be made by the MMO. (Recommendation 21)

3.1.25 We see no need to designate statutory consultees in the draft Bill; the bodies to be consulted will change over time and amending primary legislation is not straightforward. Furthermore, having a list of statutory consultees gives the impression that the views of those on the list may be more important or influential than others who may have an interest, and we want to avoid this. As drafted, and in accordance with the

Government's better regulation principles, the draft Bill gives the MMO the flexibility to determine the appropriate level of consultation and whom to consult, as and when necessary. We will publish guidance in due course on who we would normally expect the MMO to consult, and under what circumstances.

Relationship with other bodies

3.1.26 A number of organisations called for the relationship/interface between the IPC and the MMO on their respective responsibilities for major planning projects to be clarified on the face of the draft Bill. An alternative approach suggested was that the IPC should be under a duty to obtain and act in accordance with advice from the MMO (and Welsh Ministers). Some respondents felt that the relationship between the MMO and other regulators needed to be clearer and that there should be consistency of boundaries between different regulatory instruments affecting the marine environment (and the relevant competent authorities) to reduce the risk of overlap and/or gaps in regulatory control. Respondents representing local authorities and coastal partnerships largely emphasised the need for the MMO to co-operate effectively with relevant local bodies and queried the mechanism for doing so. Some questioned (as did the fishing sector) whether clause 20(4) precluded the MMO from delegating functions to committees of more than one local authority.

3.1.27 We intend Memoranda of Understanding to be drawn up between the MMO and other key regulators and public bodies with which it will need to work closely. These will clarify respective roles and responsibilities and govern joint working arrangements with the aim of ensuring the effective two-way co-operation that will be required. They will build on existing working relationships with the MFA. The respective responsibilities of the IPC and MMO are set out in paras 3.2.6 and 3.2.7 below.

3.1.28 We will reconsider the wording of clause 20 (and other relevant clauses) to ensure that our intentions are clear.

Devolution

3.1.29 Those who commented on devolution issues emphasised the need for strong integration between the MMO and the relevant administrative bodies in Wales, Northern Ireland and Scotland. Some proposed that the MMO be designed to facilitate formalised working arrangements with the Devolved Administrations and any bodies set up by them to ensure cohesion and avoid duplication and divergence. Others called for a provision in the Bill to enable the MMO to develop formal working arrangements with any future equivalent bodies established by the Devolved Administrations.

3.1.30 Many respondents considered there was a lack of clarity on the structures for delivering marine functions in Scotland, Wales and Northern Ireland. They highlighted risks in not being able to ensure a fully joined up and cohesive UK-wide system, and called on the different administrations to work together to make their respective

legislation compatible and to implement it in such a way as to ensure UK seas are managed in a coordinated manner.

3.1.31 Some respondents in Wales pointed out that the policy statement accompanying the draft Bill does not recognise the fact that the MMO will still have some functions in Wales and that the Welsh Assembly Government forms one of the key regulatory bodies alongside the MMO (and potentially the Infrastructure Planning Commission). Others requested that marine issues that cross UK borders such as in the Severn Estuary and the Solway Firth should be specifically recognised in the draft Bill.

3.1.32 We fully recognise the issues highlighted by both the Joint Committee and consultation respondents in relation to providing a more joined up approach throughout the UK's waters and we will continue to work closely with the different arrangements in place as a result of the devolution settlement. The MMO will be given responsibilities for delivering certain existing and proposed marine functions of the UK Government wherever they apply. The Welsh Assembly Government, Northern Ireland Executive and Scottish Executive (SE) are considering what arrangements for delivery of devolved marine functions will work best for them. These administrations will benefit from interacting with a joined-up MMO acting for the UK Government and it may be that in due course the MMO will be able to deliver certain functions on their behalf if so requested. We will consider (with those administrations which have indicated they are currently considering this as a possibility) whether provision is required in the draft Bill, as well as in their own legislative framework, to enable this to happen.

Data

3.1.33 Both the Joint Committee and respondents to the public consultation raised issues related to the provision and availability of marine data. In particular, respondents to the consultation highlighted the need for more marine data and information to ensure effective implementation of the draft Bill and greater co-ordination regarding acquisition and storage. The Joint Committee also recommended the draft Bill contain a duty to promote the publicly-funded production of marine data, to collect and make available such data; and that charges for access to the MMO's data should only be made to cover the marginal costs in retrieving and reproducing the information. (Recommendations 23 and 24)

3.1.34 The Government accepts that the robustness of marine plans and effective licensing of marine activities is very dependent on the quality and sufficiency of relevant marine data. To date there has been a somewhat piecemeal approach to collecting and storing such information, but as we move forward we will dedicate resource to identifying and acquiring the necessary marine data sets that will ensure the MMO is able to deliver the provisions set out in the draft Bill.

3.1.35 However, although data can always be improved and there are clearly a number of data gaps which need to be filled, we believe there is sufficient data available to inform licensing and marine management decisions and to develop initial marine plans.

3.1.36 We accept that achieving the necessary degree of collaboration needed between the relevant organisations which have a stake in data collection and information, and achieving a common approach on the acquisition and storage of data will take time. The Government is already closely involved in a number of initiatives to achieve this, including the Marine Environment Data Information Partnership (MEDIN) and the UK Marine Monitoring and Assessment Strategy (UKMMAS). We believe that adding a duty on the MMO to promote and collect marine data would not add value and would be confusing. Both MEDIN and UKMMAS will help ensure that the most up-to-date information is available to the MMO to inform its decisions. Furthermore, the Government has recently set up the Marine Science Coordination Committee (MSCC) – on which the MMO will have a seat – which will provide a framework to enable the co-ordination of marine science to better serve the needs of decision-makers.

3.1.37 The Government intends to ensure sufficient funds are available for data acquisition to enable efficient implementation of the Bill and to enable the MMO to carry out its obligations effectively. The existing mechanisms already provide the core information required for licensing activities and the improved arrangements for making data available referred to above will facilitate access and help to speed up decision-making. The adequacy of funds will be reviewed on a regular basis, but, as with all Government funding, will be subject to national priorities agreed in future spending rounds.

3.1.38 Access to data collected on behalf of Government Departments is subject to Treasury rules which allow Government Departments to recover a ‘reasonable cost’ for providing data upon request⁵. Once data has had value added to it, that is by combining with other datasets, through interpretation of raw data, or producing products such as geographic information systems (GIS) data layers, a charge may be levied by whomever owns the ‘value added product’. It is these ‘value added products’ that are often associated with licence charges. It is unreasonable to expect such products to be made freely available and it is the production of these third party products which help maintain the commercial value of data collection activities.

3.1.39 We do however recognise the value in making as much information as possible freely available in order to ensure transparency in decision making, and Government Departments will continue to work closely together to meet this challenge.

Links with European Directives – role of MMO

3.1.40 The Joint Committee thought there was potential for overlap and lack of clarity in respect of duties under the Water Framework and Marine Strategy Framework Directives. The Committee recommended that the draft Bill make explicit that the Environment Agency remains the competent authority for the implementation of the Water Framework Directive (WFD) (Recommendation 9). The Environment Agency noted that as competent authority for the WFD it would be relying on the MMO to help deliver WFD requirements in transitional and coastal waters and therefore believed the MMO should have a duty to secure compliance with WFD requirements and objectives

⁵ A ‘reasonable cost’ is considered to be the administrative costs of providing that data to a third party.

(over and above its duty, as a public authority, to have regard to River Basin Management Plans).

3.1.41 Some respondents to the public consultation considered that the draft Bill should provide a framework to enable the Government to meet its obligations under the Marine Strategy Framework Directive (MSFD). The Joint Nature Conservation Committee (JNCC) suggested that the functions of the MMO in relation to the MSFD should be clarified. Other respondents from environmental organisations also pointed out links (and potential need for amendment) to the Habitats Regulations, Offshore Marine Regulations and other relevant legislation.

3.1.42 We recognise the strong links between the WFD and MSFD and agree that the relationship between these two Directives, and the duties flowing from them, will need to be clearly defined and set out in guidance and Memoranda of Understanding where appropriate in due course. We do not consider that the Marine Bill needs to confirm the competent authority for the WFD.

3.1.43 At this stage it is too early to say exactly how the requirements of the MSFD will be delivered or which organisations will be responsible for each element, but the MMO is likely to play a key role. The details of MSFD implementation, including the relationship between the MSFD and WFD will be considered over the next 18 months as part of the consultation on the transposition of the MSFD. Normal practice in the UK is to use Regulations under s.2.2 of the European Communities Act 1972 to transpose EU requirements rather than primary legislation, as secondary legislation can be amended more quickly to take account of changing EU requirements.

3.1.44 The references to potential amendments to other legislation are helpful and we will take these into consideration in due course as we continue to work through all the consequential amendments that will be required.

3.2 Marine planning (Part 2 of the draft Bill)

Measures to deliver a new marine planning system. This includes explaining how we will set out our long term objectives for the marine area around the UK in a policy statement. We will then be able to create marine plans to set more detailed and spatial policy at a more local level, based on information about specific areas and uses of the sea.

The Joint Committee made 16 recommendations relating to the proposed measures for marine planning (some of which also relate to other measures in the draft Bill, such as the MMO). In particular the Joint Committee was keen to see Parliamentary scrutiny of the Marine Policy Statement (MPS), greater compatibility between marine plans and other plans, including terrestrial plans, and clear guidelines produced for all relevant bodies from now until the planning system is introduced in order to ensure the integrity of the process and outcomes.

From the consultation, 166 respondents commented on marine planning. The central topics covered were: the Marine Policy Statement (in terms of content and timing), relationships between planning mechanisms (specifically across the land/sea divide and in coastal areas) as well as with external stakeholders. Respondents also suggested the inclusion of a duty to establish marine plans within a defined timescale.

Devolution

3.2.1 The Joint Committee and many respondents expressed anxiety about the fragmentary effect of having different marine plan authorities around the UK, particularly in the Irish Sea. Some were also concerned that enabling the Devolved Administrations to articulate their own policies on devolved matters within marine plans would lead to inconsistencies, which could confuse and potentially complicate the roles of regulators operating in more than one administration.

3.2.2 We have worked very closely with the Devolved Administrations throughout the process of developing our policies for the planning system set out in the draft Bill and we aim to continue this close cooperation as our proposals are put into operation. We believe that it will be possible to achieve an effective approach to marine management throughout the UK's waters. The relationship between the MMO and delivery arrangements in the Devolved Administrations are discussed further in paras 2.12 – 2.15.

Strengthening the commitment to achieve Sustainable Development, and the content of the MPS and plans

3.2.3 A number of respondents to the public consultation suggested that the wording relating to the 'purpose' of the MPS and plans should be strengthened to refer to 'furthering' sustainable development. Some also expressed concern that social, environmental and economic concerns should be appropriately 'balanced'. In addition,

the Joint Committee which scrutinised the draft Bill recommended that further detail about the structure and content of the MPS be included in the legislation.

3.2.4 The draft Bill requires that the MPS and plans contain policies 'for contributing to the achievement of sustainable development'. We are considering how the purpose of the MPS in the draft Bill might be clarified. However we don't believe that we should include further detail about the content of the MPS in the draft Bill. Over time the marine environment and its uses will change, and we will want to develop policies that address the situation at any given time, in consultation with our stakeholders, and not restrict our flexibility to do this by prescribing the content of the MPS within the draft Bill.

3.2.5 We have already begun our consideration of the possible content of the MPS through our current consultation on high level marine objectives, which was published on 30 June 2008. We intend to publish further detail about the anticipated content of the MPS when we have reflected on the outcome of this consultation.

Relationship between MPS and National Policy Statements (NPSs)

3.2.6 One of the key concerns raised by respondents was a lack of information about the relative influence of the Marine and National Policy Statements on decisions by the MMO and the IPC, and how we would ensure compatibility and integration of the two kinds of statement.

3.2.7 We are committed to ensuring consistency between the MPS and NPSs, and to ensuring that the MMO and IPC can work effectively alongside each other and have done much thinking already to ensure that we are confident about how this will work. However because the Planning Bill has not yet completed its transition through Parliament, we will need to keep these issues under review (see paras 2.4 and 3.3.14).

Transitional arrangements and timetable for implementation

3.2.8 Some respondents expressed concern that major decisions about the management of the marine area, for example in relation to designation of Marine Conservation Zones or for Round 3 Offshore Wind, are being planned and taken now before marine planning is implemented. In contrast, other respondents thought that taking these decisions now would aid planning later on and create certainty earlier. Some respondents raised the concern that with no timetable included in the draft Bill for development of plans for particular areas, plans may never be produced, or there will be uncertainty for developers who may rush to 'secure' areas of sea before plans are created.

3.2.9 We are committed to ensuring a smooth implementation of the marine planning provisions, and intend that the system should evolve gradually. We have stated our intention to produce a MPS within two years of the draft Bill receiving Royal Assent. We will produce guidance for marine users and decision-makers in due course about the transitional arrangements whilst marine plans are being prepared.

Parliamentary scrutiny of the MPS

3.2.10 A small number of respondents recommended that the MPS should undergo the same Parliamentary scrutiny process as the National Policy Statements proposed under the Planning Bill. The Joint Committee went further than this and recommended that the MPS be subject to formal scrutiny and approval by Parliament.

3.2.11 We propose to amend the draft Bill to make the MPS subject to a similar Parliamentary process as the National Policy Statements, which involves laying the draft MPS before both Houses in the UK Parliament in draft form. In addition, because this is a joint statement with the Devolved Administrations, we also propose to ensure that it is similarly laid before the devolved legislatures. We will then commit to responding to any recommendations that the Houses or devolved legislatures decide to make. We will consider how far we might need to extend the timetable for preparing the MPS to allow for appropriate scrutiny to take place.

3.2.12 Currently both Houses are free to decide whether and how to scrutinise Government proposals, and we do not want to use the Bill to pre-empt or restrict any decision they may make about this. We do not agree that the statement should be subject to affirmative procedure. The fact that this is a joint statement between UK Government and the Devolved Administrations brings added complications. If adoption of the statement were subject to approval by the UK Parliament as well as the devolved legislatures, then resistance by any of them could result in significant delays to the process of developing the MPS, or the risk that it might not be adopted at all.

Review of Marine Policy Statement

3.2.13 Some respondents expressed concern that there was no formal requirement on the policy authorities to keep an adopted MPS under review.

3.2.14 We will amend the draft Bill to include a new requirement on the policy authorities periodically to review the MPS to consider whether the policies it contains are contributing to the sustainable development of the UK marine area, at which point they can determine if changes are needed.

Duties and timetables for preparation of MPS and plans

3.2.15 A large number of respondents felt that the draft Bill should impose duties to create an MPS (jointly adopted by all UK administrations) and marine plans, within a defined timetable. The Joint Committee which scrutinised the draft Bill also recommended that the UK Government commits to producing an MPS within two years of the draft Bill receiving Royal Assent, although it did not recommend that this deadline be set out on the face of the draft Bill.

3.2.16 It remains our clear intention to create an MPS within two years of Royal Assent, followed by a series of marine plans, however we do not propose to create duties or place timetables on the face of the draft Bill. Marine planning is a new system, and we think that it is more important we take the time to get early plans right, rather than rushing them to meet a deadline. We will also want to learn from our experiences, and those of other countries which have implemented similar marine planning systems. All the evidence is that effective planning takes time and needs to be flexible to take account of unforeseen issues. Furthermore, it must be for the different marine plan authorities around the UK to set their own timetables for preparation of marine plans in their region.

Sustainability appraisal

3.2.17 Several respondents expressed support for our intentions in relation to the appraisal of the sustainability of plans, but were concerned that the drafting of Schedule 5 paragraph 7 would not give effect to our policy because of the implication that plan authorities might balance the appraisal of economic, social and environmental impacts in a way that would not fulfil the obligations we have on strategic environmental assessment.

3.2.18 We will therefore amend this paragraph to clarify and avoid any confusion. We will produce guidance for the MMO on carrying out these appraisals to ensure that they meet the requirements of European legislation concerning strategic environmental assessment. Where a plan may affect an area designated under the Birds or Habitats Directives, an ‘appropriate assessment’ must also be carried out (separately and in addition to any provision in the draft Bill) which we will clarify in guidance.

3.2.19 A small number of respondents requested that an appraisal of the sustainability of the MPS be carried out, as is required for marine plans, or alternatively some suggested that a strategic environmental assessment of the MPS also be carried out.

3.2.20 We believe that we would not be required to carry out a strategic environmental assessment of the MPS under the terms of the Directive concerning SEA⁶. However the MPS is concerned with policies which ‘contribute to the achievement of sustainable development’ and we want to make sure we do this effectively. We are therefore considering mechanisms that might be suitable for assessing the policies in the statement.

Public involvement and consultation

3.2.21 Most respondents welcomed the proposed Statement of Public Participation (in relation to the MPS) and Statements of Public Involvement (in relation to marine plans). Some however expressed concern that there was no provision for people to challenge

⁶ Directive 2001/42/EC of the European Parliament and of the Council of 27 June 2001 on the assessment of the effects of certain plans and programmes on the environment

the SPP or SPI if they felt that it was in any way unfair. We are considering whether we could make changes to clarify the draft Bill in this respect.

3.2.22 A number of respondents suggested that we supplement the provisions on public participation, involvement and consultation with a list of statutory consultees. Many of these respondents also sought inclusion on that list. The Joint Committee also recommended that the draft Bill include a list of statutory consultees for the MPS.

3.2.23 We do not believe there is a need to designate statutory consultees in the draft Bill. The draft Bill already requires that any person likely to be interested in, or affected by the proposals should be consulted during the development of the MPS or marine plans and we are committed to this very inclusive approach. Furthermore the draft Bill enables a policy or plan authority to seek specific expert advice at any stage of the development of the MPS or plan proposals. A list of specified statutory consultees may easily become out of date, or may give the impression that the views of those on the list may be more important or influential than others who may have an interest, and we want to avoid this.

Independent investigation

3.2.24 A number of respondents felt that it should be mandatory to hold an independent investigation into each marine plan. We are considering how to strengthen this clause, and whether an independent investigation should be mandatory in all circumstances.

Compatibility between different plans in coastal areas and across-borders, and joint planning

3.2.25 This was one of the most common issues raised by respondents to the consultation on the draft Bill. It was felt that the planning provisions in general, and particularly the provision requiring marine plan authorities to 'take all reasonable steps to secure compatibility' between marine plans either side of a border, were not strong enough. In particular, this provision would fail to require compatibility between marine plans prepared by the same authority, or between marine and terrestrial plans. Many respondents also expressed concern that the draft Bill made no provision for marine plan authorities to work together to prepare joint plans across the borders of marine planning regions. The Joint Committee also recommended that the draft Bill be strengthened and improved in this regard.

3.2.26 We propose to amend the draft Bill to ensure that marine plan authorities are under an obligation to do what they can to ensure compatibility with terrestrial plans, as well as marine plans prepared by an adjacent marine plan authority. We also intend to provide further policy information and guidance in this area. We believe it is self-evident that a marine plan authority should ensure that its own plans are consistent, and believe there is no need to amend the draft Bill in this regard. We are also considering whether the wording 'take all

reasonable steps to secure compatibility’ can be strengthened to emphasise our commitment to coherent, joined-up planning.

3.2.27 Although the draft Bill does not require adjacent marine plan authorities to work jointly to prepare plans in cross-border areas such as the Severn or the Irish Sea, it does not prevent them from working together should they so wish. The complexity of the devolution settlement would make any further legislative solution extremely complex, partly because the legislation would have to define the areas where joint planning was to take place, and also because of the need to avoid creating legal powers for the administrations on matters outside their competence.

Coastal integration and democratic accountability

3.2.28 A number of responses (predominantly from local authorities) considered that the current marine planning proposals lacked democratic legitimacy, and that local authorities should be given a formal role in marine planning for estuaries and inshore areas, either directly by the draft Bill or by delegation of the Secretary of State’s or MMO’s powers. A large number of responses also sought further information on how the marine planning provisions would help to achieve integration at the coast.

3.2.29 We agree that local authority support for, and involvement in, planning will be crucial. However, given the extensive obligations to involve and consult the local community throughout the preparation of a marine plan, we do not agree that the proposals lack democratic legitimacy, but rather that they will increase the ability of organisations and individuals to shape the direction of management of the marine environment. We intend to produce detailed guidance for the MMO on expected standards of stakeholder engagement, including the involvement of local authorities and other non-statutory bodies such as coastal partnerships and forums, and will publish this guidance in draft form for consultation. We would also like the MMO to learn from, and utilise, arrangements for engaging and consulting the local community which have already been established by local authorities and regional planning bodies.

3.2.30 We have worked closely with experts on terrestrial planning throughout the development of the marine planning system, to ensure that our proposals will work effectively with existing processes, including terrestrial planning. We will produce guidance for the MMO on carrying out its planning functions in a way that secures and supports integration with terrestrial plans and planning processes. We are also contributing to the ongoing work on the Sub-National Review introducing new ‘integrated regional strategies’ to ensure that marine plans are properly reflected in any changes to the terrestrial planning process.

Quality of early plans and effect on decisions

3.2.31 A small number of respondents (largely from commercial or industrial sectors) suggested that early marine plans should be non-binding or intended only to 'guide' decision-makers, partly because of the anticipated lack, or poor quality, of data in the early stages.

3.2.32 We are not minded to adopt the suggestion of non-binding plans. The marine planners in the MMO will have access to a great deal of marine expertise and also have a power to seek additional expert advice and assistance should they need it. Furthermore, they have a requirement to have regard to any expert advice received under this power. All plans will have been subject to extensive consultation with stakeholders to ensure that they are of high enough quality to direct decision-makers in accordance with clause 53. Where data is uncertain or lacking, we anticipate that plans could be less prescriptive, rather than compromising their effects on decisions.

Compliance monitoring

3.2.33 A number of respondents questioned why the provisions for monitoring the effectiveness of plans (clause 54) did not include a requirement to monitor compliance with the plan (whether decisions were being taken in accordance with the plan, and the reasons given for any decisions departing from the plan). We are therefore exploring what amendments could be made to ensure that authorities making authorisation decisions give their reasons when they depart from the plan on the grounds of 'relevant considerations' (this was inadvertently omitted from the draft Bill), and we will also make amendments to require monitoring of compliance with the plan.

Challenges to marine plans

3.2.34 A number of respondents expressed concern that the provisions enabling challenges to be brought against marine plans are too restrictive. In particular, two respondents suggested longer time limits within which challenges may be brought. We are not minded to change the period during which challenges may be brought. The current draft reflects the current situation in relation to terrestrial development plans; marine plans will have been subject to extensive stakeholder involvement and consultation, and potentially contentious elements of plans will most likely have been considered during an independent investigation. In addition, before adopting a plan, the Secretary of State must consider the consultation responses and the report and recommendations of the independent investigator.

3.3 Better licensing decisions (Part 3 of the draft Bill)

The proposals in the draft Bill will change the system for licensing activities in the seas from a slow and complex one to a simplified system, where, as far as possible, a one-stop shop is provided for each project. This will let us look at applications in the round, to consider all the costs and benefits at the same time, and therefore make better decisions.

The Joint Committee made three recommendations relating directly to the proposed measures for better licensing provisions, and several more with significant implications for our measures. The Committee's concerns focused on the need to set up a fair licensing process, including consultation and providing for appeals against licensing decisions, ensuring the smooth transition from the existing licensing system to the new one and the interaction of the new licensing system with that being set up for nationally significant infrastructure projects under the Planning Bill.

The public consultation generated 145 respondents. At the forefront of issues raised were: the scope of the provisions (specifically the proposed exclusion of oil and gas licensing), consultation (on licensing decisions), as well as the relationship with other licensing regimes (particularly with terrestrial licensing).

Appeals mechanism on the face of the draft Bill

3.3.1 The Joint Committee wanted a clear mechanism for appealing against licensing decisions of the appropriate authority on the face of the draft Bill. Some respondents to the public consultation also requested more detail on the envisaged appeals mechanism. A further particular concern raised in the consultation was the absence of any mention of a mechanism for appealing against the decisions of Welsh Ministers. (Recommendation 20)

3.3.2 We will introduce a new provision to the draft Bill that will require each appropriate licensing authority to establish through regulations a mechanism for applicants to appeal against decisions to award, or not, marine licences. The drafting will make it clear that any such regulations must set out the procedure to be followed in an appeal.

Harbour dredging exemption

3.3.3 A number of respondents to the public consultation were unclear as to the extent of the exemption described in clause 68, and in particular whether the deposit of all dredged materials was covered.

3.3.4 We are considering how to revise the wording used in clause 68(2) that describes the exemption for dredging and the disposal of dredging where it is already authorised under a local Act or Harbour Order to make our policy intent clearer. The policy remains unchanged in that only where a local Act or Harbour Order specifically

authorises the depositing of dredged materials will that depositing fall within the definition of dredging and hence the exemption. In all other circumstances it will need a marine licence.

Transitional arrangements

3.3.5 A number of respondents to the public consultation sought clarification on the details and timescales for interim arrangements that would operate before the new marine licensing procedures were established. The Joint Committee also made reference to transitional arrangements generally, and the need for guidance in recommendations 26 and 27 of its report.

3.3.6 The Government is concerned not to stifle legitimate business as we move from one licensing system to another and that stakeholders should be involved in ensuring a smooth transition. **When introduced to Parliament the Bill will contain detailed transitional provisions setting out how we will move from the old licensing system to the new and how we will treat existing licences under the new regime.**

Licensing laying of submarine cables

3.3.7 Industry was concerned that some of the rights afforded to cable laying under the Electronic Communications Code and the United Nations Convention on the Law of the Sea (UNCLOS) were being eroded by the need for a marine licence.

3.3.8 To ensure the protection of these rights, the laying of submarine cables that do not relate to mineral exploration and exploitation will only be subject to marine licensing in sea bed areas up to 200 nautical miles, and not in more distant continental shelf areas. We are also extending the legal defence provisions in clause 77 to cable-laying operations that are subject to the Electronic Communications Code (Schedule 2 of the Telecommunications Act 1984) and that fall within the definition of 'emergency' as laid down by that Code.

Definition of 'marine structure' to include pipelines

3.3.9 One respondent to the consultation thought the definition of marine structure should be expanded to accommodate pipelines associated with that structure. This is something the Government was already considering as part of the continuing policy development around the draft Bill.

3.3.10 We are therefore considering including certain types of pipeline in the definition of marine structure. This would enable a single marine licence to cover both the marine structure and those pipelines that are considered integral to the functioning of that structure.

Exemptions

3.3.11 A number of respondents to the public consultation from across the spectrum of stakeholders commented on various aspects of the proposed power to exempt activities, including what to exempt and how best to do so to ensure environmental safeguards.

3.3.12 We will be consulting extensively on our approach to exemptions and plan to start work with stakeholders this autumn to help develop the secondary legislation. We will work with stakeholders across the spectrum to determine which activities could, or should be, subject to an exemption; what the most appropriate criteria for exempting each type of activity should be; and also whether it is appropriate to require details of exempt activities to be included in the register under clause 95 – a specific request made by a number of respondents to the consultation. See the response to Recommendation 29 of the Joint Committee Report for exemptions relating to maintenance dredging.

Removing the dual-body regulatory structure – IPC & MMO

3.3.13 The Joint Committee recommended the Government revisit the dual-body regulatory structure for offshore energy installations. It was clear from the draft Bill consultation that when it comes to the role of the IPC in the marine environment, opinions are polarised between industry and environmental groups and public bodies, with the former wanting the IPC to license all offshore energy installations and the latter two groups wanting the MMO to do so. (Recommendation 38)

3.3.14 Through the Planning Bill, the Government proposes to establish an IPC to take decisions on nationally significant infrastructure projects, including certain offshore projects such as major wind farms. We maintain the view that decisions on projects which are not nationally significant, and therefore not subject to many of the challenges faced by nationally significant infrastructure, should be determined by the appropriate local system. For marine based projects this will be marine licensing as proposed under the draft Bill. This will complement the position on land where local authorities will continue to determine non-nationally significant projects. We also expect the proposed MMO to be a statutory consultee for offshore Nationally Significant Infrastructure Projects. The Department for Communities and Local Government will be consulting on this matter as part of the package of secondary legislation that will follow the transition of the Planning Bill through Parliament. See the Government response to Recommendation 38 of the Joint Committee Report.

Exclusion of oil & gas

3.3.15 Twelve respondents to the public consultation expressed concern over the omission of oil and gas from the scope of the licensing part of the draft Bill.

3.3.16 The Government has excluded oil and gas from marine licensing because the industry is already highly regulated by a specialised regulatory framework that works and is compatible with the stringent international obligations on the industry.

Statutory time-limits

3.3.17 The Joint Committee recommended that statutory time-limits should be put on the face of the draft Bill. A number of respondents to the public consultation made the same point. (Recommendations 20 and 29)

3.3.18 We do not believe a one size fits all timescale on the face of the draft Bill would be appropriate or particularly useful. However, we do intend to consult stakeholders on the entire decision-making process when producing regulations under either clause 63(6) or, in the case of delegation of licensing functions, clause 93(1). This would specifically include whether and what timescales would be appropriate and at which parts of the process they would produce the greatest benefits. We believe extensive stakeholder input is key to obtaining the most effective decision-making process and that specific consultation through regulations is the best way of achieving this. We are planning the first consultation for the end of the year. See the response to Recommendation 20 for further explanation.

Statutory consultees

3.3.19 The Joint Committee recommended statutory consultees, where appropriate, for MMO decisions. Some respondents to the consultation placed great emphasis on the need for effective consultation procedures when determining licence applications. Sixteen specifically called for statutory consultees in the licensing process. (Recommendation 21)

3.3.20 We see no need to create statutory consultees for licensing decisions on the face of the draft Bill. To do so would require each of these bodies to be consulted, as a matter of course, on each and every application regardless of its size and nature. Our particular concern relates to how this affects applications for smaller developments. As outlined earlier in this Report, consultation is a potentially lengthy and expensive process - for the consultees, licensing authority and ultimately applicants onto whom these costs will be passed. While consulting the appropriate bodies is essential to effective decision-making, forcing the licensing authority to consult every statutory consultee, regardless of whether it thinks the application has any impact on its functions will, in our view, unnecessarily increase the time and associated cost of making small applications. This is counter to the Government's better regulation principles. As drafted, the Bill gives the licensing authority the flexibility to determine what level of consultation, and with whom, it feels is appropriate in each circumstance. See also the response to Recommendation 21 of the Joint Committee Report.

3.4 Nature conservation (Parts 4 & 5 of the draft Bill)

The draft Bill provides for the designation of Marine Conservation Zones, both for the protection of individual habitats and species, and also for the creation of a network of sites representing marine ecosystems around the UK. Designation will take account of environmental, social and economic criteria. The draft Bill also provides for measures to prevent activities from damaging sites once designated.

We welcome the widespread and cross-sector support which has been expressed for our proposals to create a new type of area-based conservation tool.

The Joint Committee made 21 recommendations relating to the proposed measures for nature conservation. The public consultation prompted 217 respondents, the largest number of comments on any part of the draft Bill.

The issues raised by stakeholders and the Joint Committee have focused mainly on improving the clarity and effectiveness of our proposals for Marine Conservation Zones (MCZs), and on ensuring the appropriate and timely implementation of the legislation. During the pre-legislative process we set out how we anticipate using the framework provisions of the draft Bill in a series of draft guidance notes. The approach set out in that guidance was broadly welcomed by stakeholders, but we note the recommendations of the Joint Committee, and calls from industry and environmental organisations, for greater clarity and certainty on the face of the draft Bill.

In light of the Committee's recommendations and issues raised during the public consultation, we intend to amend the draft Bill in various ways to provide greater clarity and certainty. This means that many of the changes will have the effect of putting our original policy intentions and implementation plans on a more formal and statutory footing. For example, we propose to confer a statutory duty on Ministers to designate MCZs, coupled with a reference to a network of sites which will include highly protected sites. After further reflection, we consider it appropriate to set out certain other functions and responsibilities on the face of the draft Bill, particularly in relation to the monitoring arrangements, and reporting to Parliament (and in Wales, the National Assembly). We are also looking to make changes to the proposed mechanism for controlling unregulated activities, and are considering new provisions to ensure better co-ordination of MCZ-related enforcement measures. We are also proposing to bring forward a general offence of causing deliberate damage to a site.

Requirement to designate an ecologically coherent network of sites by 2012

3.4.1 We are committed to establishing a well-managed and ecologically coherent network of Marine Protected Areas (MPAs). The draft Bill will have an important role to play in delivering this commitment by making provisions for the designation and protection of MCZs. These sites, together with European marine sites established under the EU Habitats and Birds Directives, will make up the network within English, Welsh and UK offshore waters. The Joint Committee recommended that this policy intention should be made explicit in the draft Bill by including a duty on the

Secretary of State, or Welsh Ministers in Wales, to designate MCZs within the context of a network, including some Highly Protected Marine Reserves. **We therefore propose to confer a duty on the Secretary of State and Welsh Ministers to designate MCZs in order to contribute to an ecologically coherent network of sites which will include highly protected sites.**

3.4.2 A requirement to designate a network was also supported by many environmental organisations in response to the public consultation, some of which thought that such a duty should go further and specify a minimum proportion of UK seas to be designated. Although various possible figures have been suggested by different organisations (based on a range of assumptions and criteria), we consider it is too early to predict the size or shape of the MPA network which will be needed, and therefore do not propose to include a prescribed figure on the face of the draft Bill. We will only know what proportion of the seas require designation as MCZs, and with what levels of protection, after further detailed work is undertaken, with the full involvement of stakeholders.

Selection and designation of MCZs

3.4.3 Responses to the public consultation highlighted the importance and advantages of stakeholder involvement at every stage in the identification and selection of MCZs. Making full and effective use of stakeholders' experience and knowledge, and understanding their needs and aspirations, lies at the very heart of the approach we are intending to follow. **We are therefore working with the Statutory Nature Conservation Bodies (SNCBs) to establish five regional partnership projects, tasked with identifying and recommending potential networks of sites to the Secretary of State. Similarly, the Welsh Assembly Government is working with the Countryside Council for Wales to establish a project for the identification of potential sites within Welsh territorial seas.**

3.4.4 Although these projects will operate on a non-statutory basis, they will have a key role to play in helping to:

- ensure that stakeholders (whether at the local, regional, national or international levels) have a genuine and effective opportunity to engage in the shaping of the MPA network;
- identify, understand and take account of all the relevant factors and available data, including information relating to the ecological requirements, the impact on businesses and sea users, the needs of society as a whole and international obligations;
- minimise conflict and maximise potential synergies between ecological and socio-economic considerations; and
- build consensus as far as reasonably possible on the most suitable configuration of sites to recommend for designation as MCZs.

3.4.5 We believe that sufficient scientific data already exists to inform the identification, selection and designation of MCZs as part of an MPA network. The regional projects will be asked to consider potential sites on the basis of best available evidence, and where there are found to be gaps in scientific knowledge or data, we would expect the regional projects to make recommendations for completion of the network using a proportionate application of the precautionary principle. This will be particularly important where there are threats of serious or irreversible damage to a rare or threatened feature, in accordance with the guidelines issued by the Interdepartmental Liaison Group on Risk Assessment (ILGRA).

3.4.6 Defra is currently working with the Devolved Administrations and the SNCBs to develop a more detailed understanding of what will constitute an ecologically coherent network and how the precautionary principle should be applied to decisions on MCZ designation. The outcome of this work will be used to guide the work of the regional projects.

3.4.7 The public consultation revealed significant interest in whether, and if so how, socio-economic factors should be integrated into the MCZ selection process. Our aim is to conserve ecosystems and biodiversity by establishing a network of MPAs, and to do so in a way which minimises economic and social impacts whilst maximising potential synergies. The existence of socio-economic interests will not automatically preclude consideration of an area for designation as an MCZ. Instead a decision will need to be reached on the weight given to socio-economic interests. This will depend on a number of factors, which will need to be carefully assessed by the regional projects. Where an area contains features which are rare, threatened or declining, or form a biodiversity hotspot, greater weight is likely to be attached to ecological considerations. Where there is a choice of alternative areas which are equally suitable on ecological grounds, socio-economic factors should carry more weight in deciding which area to designate as an MCZ.

3.4.8 There was Joint Committee and wider cross-sector support for inclusion of a timetable relating to the designation of MCZs on the face of the draft Bill. Such a timetable would ensure delivery of the network in good time, provide greater certainty for stakeholders, reduce the risk of planning blight, and enable progress in designating sites to be measured. We believe that a time-based reporting duty would most effectively meet these aims and ensure that the Secretary of State is held accountable to Parliament (and the public) for progress in developing a network of MPAs, without the risk that a sub-optimal network could result from having a legal duty to establish the network by a fixed date. There would be a similar provision on the Welsh Ministers to report to the National Assembly for Wales. We therefore propose to place a duty on Ministers to submit a report to Parliament or the National Assembly for Wales as appropriate, on progress made in developing the network of MPAs, and on progress towards achieving the conservation objectives of MCZs which have been designated as part of the network, in 2012 and at least every six years thereafter.

3.4.9 Concern was raised by some respondents to the consultation over the proposed power for Ministers to designate MCZs without carrying out prior consultation where there is an urgent need to protect an area, although others regarded the ability to act quickly in this as a sensible precaution. We therefore propose to qualify this power,

perhaps by requiring the designation to lapse after a period of time unless it is subsequently confirmed by Ministers.

Duties on public authorities

3.4.10 A number of those responding to the public consultation expressed concerns about the phrasing of the duties on public authorities under clause 110 (duty of public authorities in relation to certain decisions), and the meaning of certain terms and concepts used.⁷ For example, it was felt by some that it could be difficult for an applicant to convince a regulator that it was impossible or impracticable to proceed with an act in an alternative location, or in a manner, which would not impact on the MCZ.

3.4.11 We therefore propose to revise clause 110 in order to provide greater clarity as to its meaning and effect, especially in relation to the conditions which have to be met before a potentially harmful act can be authorised.

Monitoring the condition of MCZs and the effectiveness of the MPA network

3.4.12 It has always been our intention that SNCBs would be tasked with monitoring and reporting on the state of MCZs, so that this information can inform future decision-making by Ministers and other public authorities. Whilst there is no need to legislate for monitoring and reporting to take place, we note the high priority attached to these activities by the Joint Committee and level of consensus expressed by environmental organisations and business interests, who are keen to see greater clarity and certainty on this matter. We therefore propose to place the SNCBs under a duty to monitor the condition of MCZs, and to assess the effectiveness of the MPA network as a whole. This will be linked to the new duty (paragraph 3.4.8) on Ministers to report to Parliament or the National Assembly for Wales, on progress towards creation of a network and on achieving the conservation objectives of MCZs which have been designated as part of the network, in 2012 and at least every six years thereafter.

3.4.13 It is our intention that the timetable for reporting to Parliament under the provisions of the draft Bill will be synchronised with existing reporting procedures for European sites, thereby achieving efficiency benefits and ensuring a more integrated approach.

⁷ Several respondents were confused over the definition and scope of the term 'public authority' used in clauses 109 and 110. This regrettably arose from an error in explanatory notes 266 and 270, which should both have referred to the definition contained in clause 298 (not clause 132).

Duty to notify SNCBs of activities likely to damage an MCZ

3.4.14 A number of public consultation responses suggested that the protection of MCZs would be enhanced by placing a duty on public authorities to notify the SNCB before authorising an act which might hinder the achievement of the conservation objectives for an MCZ. We propose to include a duty on public authorities to notify the relevant SNCB before approving an act which the authority considers poses a significant risk of hindering the achievement of the conservation objectives for an MCZ.

3.4.15 We will need to give further consideration as to how this duty should be framed, including the length of any notification period and how the duty might be reconciled with the need for authorities to authorise emergency or urgent acts where a delay could prove problematic.

Conservation orders (to be renamed byelaws in England)

3.4.16 There was wide support, in principle, for including a power in the draft Bill to make conservation orders to protect MCZs from potentially harmful and otherwise unregulated activities, although concerns were raised over some of the detailed aspects.

3.4.17 Conservation orders are intended to be a proportionate regulatory response to the risks posed to MCZs from unregulated activities. They will be a local-scale tool to be used in a focused manner to deal with specific threats to an MCZ. This will remain the intention, and to make this clearer we propose to rename conservation orders as byelaws in England (Welsh Ministers will retain the power to make orders). We also intend to revise the relevant clauses to clarify how they will be used and to place the offence of breaching a byelaw on the face of the draft Bill. Byelaws will continue to be subject to the same limitations and exceptions as previously proposed for conservation orders.

3.4.18 A number of consultation respondents suggested that the draft Bill should apply the conservation order provisions (and related urgent and interim orders) to European marine sites, in place of the outdated byelaw provisions under the Wildlife and Countryside Act 1981. We are considering applying the byelaw provisions (and equivalent orders in Wales) to European marine sites, so that all sites within the MPA network can benefit from a single set of byelaw provisions.

Management measures

3.4.19 The Joint Committee recommended that specific mention be made in the draft Bill of the fact that the management measures within MCZs will be capable of allowing multiple-uses to take place in some sites, whilst imposing more stringent levels of protection in other (highly protected) sites. We will consider whether this can be made clearer on the face of the draft Bill, perhaps in relation to the new designation duty.

General offence of damaging an MCZ

3.4.20 The Joint Committee recommended that the draft Bill include a general offence (similar to that originally envisaged in the White Paper), of damaging or destroying a feature for which an MCZ has been designated. This reflected widespread concern amongst environmental organisations over how well MCZs could be protected through reliance solely on the licensing regimes and conservation orders. This was felt to create a serious potential loophole.

3.4.21 We want to maintain our approach of encouraging regulators to work with stakeholders in proactively identifying and suitably managing potential threats to the achievement of the conservation objectives set for MCZs. We believe that this represents a more focused approach which will deliver better protection and be easier for sea-users to understand than relying solely on the existence of a general offence. However, we recognise concerns that have been expressed about the loophole which the lack of a general offence could create, particularly in relation to deliberate acts of environmental vandalism (which would be difficult to anticipate and control through the making of byelaws because they will often be unforeseen and unpredictable). **We therefore propose to include a general offence in the draft Bill, to prevent deliberate acts of damage to the designated features of an MCZ.**

3.4.22 We will also need to consider the geographical scope of the offence (for example whether it can be extended beyond 12 nautical miles), and how best to avoid criminalising desirable or legitimate activities which may need to take place.

Recording of offences

3.4.23 The Joint Committee, and some respondents to the public consultation, considered that there was a need for the draft Bill to identify a lead agency to undertake or co-ordinate enforcement of protection measures within MCZs. We consider that public authorities should retain responsibility for enforcing their own regulations, licensing conditions, byelaws and other measures, but that a single body could perform a useful function in collating and recording information on instances where a public authority considers that an offence (or perhaps another specified type of incident) has occurred which could hinder the achievement of the conservation objectives for an MCZ. This central source of information would then be available to all public authorities and will help to inform future decision-making, assessments of site condition, and any subsequent reviews of the effectiveness of enforcement and management measures.

3.4.24 We are therefore considering placing a duty on public authorities to submit information to the SNCBs in circumstances where the authority is responsible for enforcement action and considers that an offence (or perhaps another specified type of incident) has occurred which could hinder the achievement of the conservation objectives for an MCZ. This information would then be available to all public authorities and will help to inform future decision-making, assessments of site condition, and any subsequent reviews of the effectiveness of enforcement and management measures.

Consultee lists in Part 4 of the draft Bill

3.4.25 A number of respondents suggested additions to the list of persons to be consulted before an MCZ is designated or in respect of the making of conservation orders. Effective consultation and notification arrangements are important and we consider that related duties should remain on the face of the draft Bill. However, after further consideration we have decided to remove the detailed statutory lists contained in clauses 107, 114, 117 and 121 of the draft Bill. Lists of specified statutory consultees might 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. Removing the detailed statutory lists will ensure consistency with other parts of the draft Bill without compromising the quality or scope of consultations and notifications.

Other issues

3.4.26 The Joint Committee recommended that an Environmental Impact Assessment (EIA) should be undertaken of planned and existing activities within proposed MCZs. We do not consider it is necessary or appropriate to require a formal EIA before designating an MCZ because these activities, as well as the other social, economic and environmental consequences of designation, will be identified and taken into account during the process of selecting and designating MCZs, and in setting their conservation objectives. (Recommendation 55)

3.4.27 The Joint Committee recommended that a duty should be conferred on any Welsh inshore fisheries body to protect MCZs. This is not considered appropriate because in Wales, Welsh Ministers are to be the primary guardian of marine conservation issues. The intention is that any orders necessary for the protection of an MCZ in Wales will be made by Welsh Ministers, using powers already available to them in the draft Bill. (Recommendation 70)

3.4.28 The Joint Committee recommended that the proposed general offence should be mirrored by a statutory duty on the SNCBs to explain to the public what is not permissible and where any new prohibitions apply in relation to MCZs. We do not propose to include such a specific duty on the face of the draft Bill because it would be difficult to establish how such a duty could be discharged in particular circumstances, and could give rise to frequent legal challenge. Furthermore the SNCBs do not need a new duty in order to be able to carry out a public education role. (Recommendation 79)

3.4.29 The Joint Committee recommended that conservation orders should be made by means of statutory instruments, with an appeals mechanism included on the face of the draft Bill. Our aim is to create a regulatory mechanism akin to local byelaws and we are making changes to the relevant provisions to make clear that byelaws (and orders in Wales) are intended to cover localised geographical areas and to control small scale unregulated activities which would usually be regarded as relatively low impact. We do not therefore consider it appropriate for such regulatory measures to be introduced by means of statutory instruments, nor do we believe it necessary for a formal appeals mechanism to be included on the face of the draft Bill (particularly in view of the

opportunity which affected persons will have to make representations to the Secretary of State). (Recommendations 78 and 80)

3.4.30 We do not propose to make specific provision for management schemes on the face of the draft Bill, as suggested by some environmental organisations. This is because public authorities are being given the statutory duties and powers necessary to ensure that MCZs are protected and managed. These authorities will be free to co-operate and prepare management schemes if they consider it would help them to better perform these functions.

3.4.31 A number of organisations involved with maritime transport and recreation suggested that the draft Bill should make provision for the marking and identification of site boundaries. We do not consider it necessary to make such provision within the draft Bill because the relevant bodies (such as Harbour Authorities) already have the ability to introduce measures to aid navigation where they consider it necessary.

3.5 Managing Marine Fisheries (Parts 6 & 7 of the draft Bill)

The draft Bill introduces a number of measures to strengthen the management of marine fisheries. It includes measures to reform inshore fisheries management, replacing Sea Fisheries Committees with newly created Inshore Fisheries and Conservation Authorities (IFCAs), as well as enhancements to legislation underpinning sea fisheries conservation and shellfish management. There are also measures to increase the flexibility in the Government's existing power to charge for commercial fishing licences. In line with better regulation principles, the draft Bill repeals some out-of-date fisheries legislation.

The Joint Committee made 14 recommendations relating to the proposed measures for managing marine fisheries, of which 13 related to inshore fisheries management.

There were 127 respondents to the public consultation who commented on managing marine fisheries, with the majority of these commenting on the proposals for inshore fisheries management. In relation to IFCAs responses centred upon issues concerning: guiding principles (particularly the role in contributing to sustainable development), structure (specifically the number and range of IFCAs, as well as the personnel employed); and jurisdiction (both geographically as well as in relation to other bodies such as the MMO and Environment Agency).

The Joint Committee and the majority of respondents welcomed the creation of IFCAs and supported their increased responsibility to protect and conserve the marine environment. Thirty-four per cent of respondents felt that this commitment should be strengthened, particularly the environment sector, where the majority of respondents called for newly created IFCAs to take on a 'comprehensive marine stewardship role.'

Twenty-seven per cent of respondents sought clarification of the new membership structure and appointment process of IFCAs, emphasising the importance of transparency when engaging in this process. While stakeholders were generally supportive of the new and varied functions available to IFCAs, 22 per cent of respondents called for further clarification on their remit, particularly in relation to overlapping jurisdiction and how the relationships between the various organisations will be developed.

The Joint Committee felt that the Environment Agency should be the primary manager of fisheries in estuaries. While the public generally supported IFCAs as the primary manager of estuaries, several respondents questioned whether IFCAs will be sufficiently equipped to effectively manage these sensitive areas. They stressed the need for flexible boundaries in estuaries to ensure management is effective.

The Joint Committee expressed concern that the proposed funding provision for IFCAs is inadequate to cover their new responsibilities. Several respondents expressed similar concern and additionally stressed the importance of ensuring that enforcement officers are fully funded to effectively carry out their responsibilities.

The Joint Committee and several respondents felt that a duty should be placed on the Welsh Assembly Government to protect MCZs in order to ensure a consistent MCZ system throughout English and Welsh waters.

Inshore Fisheries and Conservation Authorities

3.5.1 The Joint Committee Report raised concerns over the use of the negative resolution procedure for the order-making powers relating to IFCA membership and enforcement. We are considering whether it would be appropriate to change these order-making powers so that they are subject to affirmative resolution procedure.

3.5.2 The Joint Committee recommended that IFCAs should be given the power to limit the number of permits issued for a specific fishery. A number of respondents to the Bill consultation also raised this point. We agree and it was our intention that the draft Bill included this power. We are considering how we might clarify this further to put the matter beyond doubt. (Recommendation 68)

3.5.3 Respondents noted that the draft Bill makes no proposals for the regulation of private fisheries for conservation purposes. We are considering providing IFCAs with byelaw-making powers to reduce the risk of such fisheries having an adverse impact on the marine environment.

3.5.4 The Joint Committee asked for greater clarity between the obligations of the MMO, the Environment Agency and IFCAs to the Water Framework and Marine Strategy Framework Directive (MSFD) and asked that the draft Bill make explicit reference to the Environment Agency remaining the competent body for the implementation of the WFD. IFCAs will be required to comply with obligations arising from a range of EU measures, all of which are binding on the UK without the need for further primary legislation. We do not propose to place specific duties on IFCAs in respect of the WFD or MSFD but will address the Committee's point by setting out IFCA's obligations to relevant EU legislation in the appropriate implementing legislation and in guidance. (Recommendation 9)

3.5.5 The Joint Committee welcomed the creation of IFCAs but asked that the draft Bill contain an open and transparent process for the appointment of members to the Committees. Similarly, many respondents emphasised the importance of having a transparent appointment process and asked that the proposed membership structure and appointment process for IFCAs be set out on the face of the draft Bill. Several respondents further felt that there should be greater clarity in respect of the rules connected with the membership of IFCAs, including the ability to remove members. We agree that there should be an open and transparent mechanism by which the MMO will appoint IFCA members. The detail of IFCA membership (including provisions regarding the number of members on each IFCA, their qualifications and how they may be disqualified from membership) will be established in secondary legislation and in guidance. We will consult stakeholders on proposals for secondary legislation and guidance later this year and next. (Recommendation 60)

3.5.6 The Joint Committee recommended that the draft Bill place a duty on the MMO to require IFCA to take a strategic approach to inshore fisheries to ensure they work collaboratively to an agreed set of minimum standards, to monitor their performance and to take steps to improve it where necessary. Many respondents suggested that a similar provision be provided to ensure effective coordination between IFCA. We agree that IFCA need a strategic approach to inshore fisheries management but we want to ensure that this approach takes account of the key principle of IFCA being locally accountable. We believe that a strategic approach can be best achieved by providing a clear purpose of IFCA; providing guidance on the performance of their duties; placing a duty on IFCA to co-operate with neighbouring IFCA and other regulatory authorities; and providing seats on each IFCA for the MMO, the Environment Agency and Natural England. (Recommendation 61)

3.5.7 In addition, to strengthen accountability and performance management, we have made provision in the draft Bill for IFCA to establish a body to co-ordinate their activities. Performance of IFCA will be monitored through the requirement for annual plans and reports. The Secretary of State will also undertake a review every four years on the conduct and operation of each IFCA.

3.5.8 The Joint Committee felt that the draft Bill should provide a clearer commitment by IFCA to the achievement of sustainable development with a duty to further the conservation of coastal and marine fauna and flora. We believe that this will be achieved through the main duty on IFCA to manage the exploitation of sea fisheries resources in order to realise the economic and social benefits of the resource in a way that is sustainable. This will involve balancing social, economic and environmental considerations. (Recommendation 62)

3.5.9 The Joint Committee would like to see the Environment Agency as the primary manager of fisheries in estuaries and would support the establishment of working boundaries between the Environment Agency and IFCA on a case by case basis. Some respondents additionally questioned whether IFCA will have a sufficient conservation focus to effectively manage sensitive estuarine areas. Flexibility in respect of IFCA jurisdiction in estuaries was stressed as important in ensuring effective management of these areas. We agree that there needs to be coherent and effective fisheries management in estuaries, a clear division of responsibility between IFCA and the Environment Agency and a streamlined interface between stakeholders and these organisations. We believe the draft Bill provides for this: the Environment Agency will lead on freshwater and migratory species management, using strengthened powers through the Marine Bill. IFCA will lead on marine species management. This arrangement will provide clarity no matter where the different species occur. In terms of jurisdictions, IFCA districts may extend upstream as far as the tide flows and out to 6 nautical miles (nm) from the coast. There is provision however, to limit the upstream extent of an IFCA district so that it would not extend to the far tidal reaches of a river. The exact boundaries of each IFCA district would be set out in the Statutory Instrument establishing that district, which would be subject to full consultation. (Recommendation 63)

3.5.10 The Joint Committee recommended that secondary legislation should require that IFCA and Environment Agency byelaws be subject to the approval of each body. Procedures for making and confirming IFCA byelaws will be set out in secondary

legislation and in guidance issued by the Secretary of State. As part of this legislation we propose to require IFCA and the Environment Agency to consult each other on any proposed byelaw and for each organisation to take into account any representations made by the other. We believe that this will help to promote the collaborative approach we are seeking in the draft Bill and reflect the respective roles and responsibilities of IFCA and the Environment Agency. (Recommendation 64 (Part II))

3.5.11 The Joint Committee recommended that all existing exemptions in the form of 'grandfather rights' be removed from Sea Fisheries Committees byelaws and that the MMO should be given the power to revoke any exemptions made to future byelaws by IFCA to ensure that nature conservation measures are universally applied. We believe that this is a role for IFCA which will have the full range of powers needed to remove any grandfather rights where justified, but need to look at the local justification and impacts of removing such rights. As noted in our response to Recommendation 61, we do not propose to provide the MMO with powers over IFCA, such as a power to revoke IFCA byelaws, as this would undermine IFCA local accountability and draw the MMO into local fisheries issues best dealt with by IFCA. (Recommendation 65)

3.5.12 The Joint Committee has expressed the wish for an Environmental Impact Assessment (EIA) to be performed when any new fishing activity (where there has not previously been a large scale commercial operation) is undertaken. Some stakeholders felt that IFCA should additionally be required to perform a Strategic Environmental Assessment (SEA) where any new fishing activity takes place within a District. The draft Bill provides a requirement for IFCA to undertake assessments of the impact of fishing activity occurring in their districts. This will include the impact of any new fisheries for species not previously subject to large scale commercial exploitation. Where unacceptable impacts are identified IFCA will have a duty to introduce relevant byelaws to restrict or prohibit fishing activity. (Recommendation 67)

3.5.13 Some respondents expressed views that all IFC Districts should extend out to 12nm rather than 6nm and that the continental shelf, including seabed and subsoil, should be included in the area covered by IFC Districts so as not to limit the extent of their new enforcement powers. The draft Bill provides for the seaward limit of each IFC District to be set out in secondary legislation establishing that district, out to a maximum of 12nm from the coast. Sea Fisheries Committees currently operate out to 6nm and we propose to set the same seaward geographical jurisdiction for IFCA. However, there will be full consultation on the secondary legislation establishing each IFCA, including the seaward jurisdiction.

Removal of historic fishing rights

3.5.14 The Joint Committee is asking for the removal of historic fishing rights in UK waters with EU Member States to ensure that enforcement of nature conservation regulations is universally applied to UK national and other Member State fishing vessels in the 6-12nm zone. Fishing rights within the 200-mile Community fishing zone, including the rights of foreign vessels to operate in the UK 6-12nm belt, are an integral part of the Common Fisheries Policy (CFP). The legislative framework for the CFP is due to be reviewed in 2012 and by the end of 2011 the Commission is required to

present to the Council and Parliament a report on access arrangements, after which the Council will decide what provisions will thereafter apply. This will provide an opportunity to consider further the Committee's recommendation. We will engage fully in this process to ensure that UK rights are not jeopardised and that effective conservation measures may be applied where needed. In advance of this review, where we wish to protect an MCZ in an area where foreign vessels have access, we will look to do so through the CFP to ensure the equal application of measures to all vessels. (Recommendation 10)

The Sea Fish (Conservation) Act 1967

3.5.15 The Joint Committee considered that the draft Bill should be used to ensure that commercial fishing vessel licences could be varied for marine environmental purposes. This point was also made by a respondent to the consultation. While there are order-making powers in the Sea Fish (Conservation) Act 1967 which can be exercised to restrict fishing activities for marine environmental purposes, the ability to vary licences to apply marine environmental conditions we agree would provide more flexibility to respond to environmental problems, particularly in emergency situations. We are therefore proposing to ensure that section 4 of the Sea Fish (Conservation) Act 1967 can be used for this purpose. (Recommendation 68 - part)

3.5.16 Under section 11 of the Sea Fish (Conservation) Act 1967, there are currently different levels of penalties applicable where a person is found guilty of an offence, varying from a maximum fine of £5,000 to £50,000 on summary conviction dependent on the offence (in all cases there is an unlimited fine on conviction on indictment). We propose to amend section 11 so as to provide the same level of penalty for offences under the Act. This will ensure consistency at a national level with what is proposed under the draft Bill for similar offences under the IFCA management regime. It will also ensure that the maximum level of penalty is commensurate with the potential conservation impact of an offence.

3.5.17 Some respondents to the consultation raised concerns about the way in which the order-making powers being sought in the draft Bill to regulate recreational and unlicensed fishing activities might be used in practice. The order-making powers are intended for the purpose of conservation and are consistent with the existing powers we have to regulate commercial fishing vessels. We believe that limiting these powers or attempting to apply conditions to their use in the draft Bill could affect our ability to respond effectively to future conservation challenges, particularly in a dynamic marine environment. Rather we think respondents' concerns would be best addressed on a case by case basis when secondary legislation is developed, where the justification for any measures would be set out in detail and be subject to consultation.

The Sea Fisheries (Shellfish) Act 1967

3.5.18 This Act currently requires the consent of the Crown Estate Commissioners to Several and Regulating Orders which lie wholly or partly on Crown Estate land. Of

concern to some respondents were the delays currently being experienced in progressing applications for Several and Regulating Orders as a result of problems in some cases of obtaining the unconditional consent of the Crown Estate Commissioners. Requests have been made by respondents to the consultation that the draft Bill should be used to resolve this issue or delayed until a solution can be found. Although the issue is currently the subject of court proceedings, we are exploring possible solutions to the problem, with the Crown Estate Commissioners.

3.5.19 Respondents to the consultation raised a number of issues which they wished to be included in the draft Bill, such as the maximum size of a Several Order, a reduction in the tenure period for Orders, provisions to terminate Orders where they are detrimental to the marine environment and the application of tolls under Regulating Orders for marine environmental purposes. These are issues which are already provided for under the Act and fall to be dealt with through guidance or where the problem described can be addressed under other legislation. We are therefore not proposing any amendments in relation to these issues.

Fisheries Act 1981, section 30(1)

3.5.20 Current breaches of European Community restrictions relating to sea fishing within British fishery limits are offences automatically by virtue of section 30(1) of the Fisheries Act 1981. However, this section currently applies only in relation to fishing boats. Any person, whether recreational or commercial, operating from the shore would not be captured automatically and in order to impose the Community restriction, we would currently need to use the order-making powers under section 30(2). The European Commission has recently proposed a new suite of technical fisheries conservation measures which would apply to both commercial and recreational fishermen. Consequently there may be a call for the use of section 30(1) in the future so we consider we should 'future proof' the legislation to provide for this eventuality. We propose therefore to use the draft Bill to amend the Act to allow the use of section 30(1) in relation to persons operating from the shore.

3.6 Reform of migratory and freshwater fisheries (Part 7 of the draft Bill)

The proposals in the draft Bill modernise powers for the licensing and management of fisheries and allow for the introduction of a new scheme to manage live fish movements.

The Joint Committee made six recommendations and 33 respondents to the public consultation commented on the proposed measures for reforming the management and regulation of migratory and freshwater fisheries.

The responses received from both the Joint Committee and the public consultation were broadly supportive of our proposals and of their inclusion in the draft Bill.

A large number of the various comments made by stakeholders in response to the public consultation and by the Joint Committee focused on the introduction of enabling powers to make a scheme for the control of keeping, introduction and removal of live fish. Many respondents welcomed the introduction of this scheme, with others highlighting areas for further consideration. We welcome these views and will take them into account in drawing up the scheme.

In light of the views and points raised by the Joint Committee and public consultation, further amendments will be made to the draft Bill. The key points raised and the possible way forward is outlined below.

Payment of compensation

3.6.1 Both respondents to the public consultation and the Joint Committee called for the repeal of current legislation, which provides for compensation to be paid to fishery owners when their interests have been adversely affected by the introduction of a byelaw. We share their concerns that the current obligation to pay compensation has, at times, discouraged the Environment Agency from proposing byelaws necessary for the conservation of fish stocks. Indeed, we consider that compensation should not be paid when increases in stocks will ultimately benefit fishery owners. Therefore, we will provide the Environment Agency with a discretionary power to pay compensation, rather than an obligation to do so. (Recommendation 84)

Effort Limitation

3.6.2 There was broad agreement with the proposal to extend to all migratory species the Environment Agency's power to restrict effort through Net Limitation Orders (NLOs). Some respondents considered that the Environment Agency should also be able to introduce such Orders for 'nature conservation' purposes. We think that there is merit in this suggestion; whilst in many cases byelaws will be sufficient to provide the necessary protection from significant harm for the marine or aquatic environments, it is possible that in some circumstances limitation of effort in a fishery might be the only viable

option. We will therefore amend the draft Bill to make provision that NLOs may be made for the purpose of protecting the wider aquatic or marine environments.

Live fish movement scheme

3.6.3. A large majority of the respondents provided comments on the introduction of enabling powers to make a scheme to control the keeping, introduction and removal of live fish. Many welcomed the introduction of the scheme and the underlying proposals, recognising the potentially detrimental effect of fish movements on both local and national biodiversity, and supporting the new powers to regulate the movement of both native and non-native species. Some respondents, together with the Joint Committee expressed concern that the scheme could potentially be disproportionate to the risks, imposing both financial and administrative burdens. (Recommendation 81)

3.6.4 We will carefully consider these views when drafting the secondary legislation, and associated guidance, and envisage that many of the comments will be addressed prior to publication of the consultation document. We look forward to working with key stakeholders when developing the consultation document.

Inclusion of shad

3.6.5 We will consider calls to include shad in Clause 193 of the draft Bill, however such an amendment would introduce a licensing system that duplicates the controls set out in the Wildlife and Countryside Act 1981. Nevertheless, we will make sure that shad is protected from practices that are prohibited when fishing for other species. This includes banning the use of roe and the use of certain instruments that have the potential to harm fish such that they are unlikely to survive, even if returned to the water. (Recommendation 85)

Environment Agency's fisheries duty

3.6.6 Both the Joint Committee and respondents to the public consultation emphasised that the Environment Agency's fisheries duty should reflect the wording set out in the Salmon and Freshwater Fisheries Review. The Government agreed at that time that the Environment Agency should direct its efforts in this way, and appropriate wording has therefore been included within the statutory guidance issued to the Environment Agency under Section 4 of the Environment Act 1995. We will consider whether to include appropriate provision in the draft Bill. (Recommendation 86)

Prohibition of any fishing device, other than rod and line, unless authorised by the Environment Agency

3.6.7 A prohibition on the use of any fishing device for the taking of any fish in freshwater unless its use had been authorised by the Environment Agency, as suggested by the Joint Committee, has the appeal of simplicity. However, we believe that legislatively this would result in there being only one offence as regards unlicensed fishing, that is fishing without a licence. We believe that this could be a real disadvantage and that fishing with a prohibited instrument is potentially a more serious offence than fishing without a licence. We have therefore retained the list of prohibited instruments (together with a power to amend the list by means of secondary legislation) and with it the offence of fishing with such prohibited instruments without the authorisation of the Environment Agency. We propose, however, that licences will only be available for fishing with rod and line and for certain other fisheries. The fishing methods for these fisheries will be specified by Ministers, who will be able to add or remove methods from the list. These methods will, in general, be less intensive methods of fishing. Those wishing to use methods of fishing which are more intensive, or which may pose a higher risk to either fish stocks or the aquatic environment, will need to seek authorisation from the Environment Agency before doing so. (Recommendation 83)

Use of Byelaws in Marine Conservation Zones

3.6.8 Some respondents to the public consultation considered that the extension of the Environment Agency's powers to use byelaws to protect MCZs in English waters from fishing activities which are potentially harmful to MCZs, should also be extended to Welsh waters. We do not propose to follow this approach, since the Welsh Assembly Government (the appropriate authority for the designation of Welsh MCZs) intends that the responsibility to protect MPAs should rest with the Welsh Assembly.

3.7 Enforcement (Part 8 of the draft Bill)

The draft Bill streamlines and modernises enforcement powers. It introduces a common set of powers so that officers enforcing fisheries, nature conservation and licensing legislation will have access to a core set of enforcement powers for the purposes of inspection and investigation. This will clarify enforcement powers for those being inspected.

The Joint Committee made 10 recommendations relating to the proposed measures for streamlining and modernising enforcement, including five specifically on nature conservation and one on licensing.

There were 44 respondents to the public consultation who commented on the proposed enforcement measures. The main issues covered were: resources (both for the MMO and wider enforcement mechanisms), 'responsibilities between enforcement bodies; and the appointment and expertise of enforcement officers', and civil sanctions.

There will be a number of enforcement bodies working in the marine area alongside the new MMO. Both the Joint Committee and respondents to the consultation on the draft Bill voiced concern that there could be overlap and lack of clarity where different pieces of legislation were implemented by different bodies, particularly in estuarine and coastal areas. There were also concerns raised about the training and qualifications of enforcement officers.

Use of non-legally qualified prosecutors

3.7.1 Provisions in the draft Bill allow certain people authorised by the MMO to be involved in some trials and recover civil penalties awarded for licensing and nature conservation breaches. The Joint Committee felt that there should be some restriction on the type of cases non-legally qualified staff will be able to prosecute on the MMO's behalf.

3.7.2 We agree that there should be some restrictions on the types of cases people authorised by the MMO who are not legally qualified will be able to prosecute. We therefore intend to amend clause 28 in relation to criminal matters so that appropriately trained but non-legally qualified staff will be able to be involved only in summary only trials matters that proceed in the Magistrates Court or where a defendant pleads guilty (and therefore avoids a trial). Such a person will be 'authorised' by the MMO to undertake prosecutions as set out in clause 28. This closely follows the model set out in the Prosecution of Offences Act 1985 (as amended by the Criminal Justice and Immigration Act 2008). See also the Government's response to Recommendation 74.

'Serious harm' test for remediation notices

3.7.3 Under the licensing provisions in the draft Bill, an enforcement authority will be able to issue a remediation notice where an operator is carrying on a licensable activity which is causing, or is likely to cause, serious harm to the environment or human health, or serious interference with legitimate uses of the sea. A number of responses to the consultation on the draft Bill commented that the threshold of 'serious' for the remediation notice was too high.

3.7.4 We have therefore decided to amend the test of the severity of harm or interference for the remediation notice (clause 81), which enables a licensing authority to order operators who have caused harm to remediate that damage. We will change the threshold simply to 'harm' to the environment, human health and to 'interference' to other uses of the sea. We believe that harm caused by the commission of an offence should not have to be 'serious' before the person who caused that harm should have to make amends. This is consistent with the 'polluter pays principle'. See also the response to Recommendation 77.

Appeals mechanism for statutory notices

3.7.5 There are new enforcement tools in the draft Bill which will allow an enforcement authority to issue a range of notices in response to licensing breaches. These are designed to bring an operator back into compliance, immediately stop an activity or compel an operator to remediate harm it has caused.

3.7.6 In examining these provisions, the Joint Committee had some concerns that there was no mechanism in the draft Bill which would enable a person to challenge the issue of a statutory notice by an enforcement authority. Respondents to the consultation on the draft Bill also wanted an assurance that there would be sufficient protection for the public built into the new enforcement provisions. **We agree that an appeals mechanism for statutory notices should be included in the Bill and will consider how best to provide for this.** See also the response to Recommendation 75.

Regulation of non-legally qualified staff

3.7.7 Further to concerns voiced by the Joint Committee on the ability of non-legally qualified staff to take prosecutions, we are considering whether a person authorised by the MMO should be subject to external regulation. A person authorised by the MMO to institute criminal proceedings would be able to draw upon legal advice if necessary and they would have had some appropriate training before they were appointed to the role. However, we agree that a person authorised to take prosecutions on the MMO's behalf should be subject to independent scrutiny to safeguard proper standards of practice. We are currently considering whether to follow the same process as agreed for the Criminal Justice and Immigration Act 2008 where such people are admitted to the Institute of Legal Executives and are then governed by its professional codes. See also the response to Recommendation 74.

Limit of £5,000 for fixed monetary penalties

3.7.8 The new civil sanctions scheme outlined in the draft Bill will allow an enforcement authority to impose fixed monetary penalties for licensing and nature conservation offences. The Joint Committee questioned whether it was necessary for fixed monetary penalties to go up to £50,000.

3.7.9 We agree that a £50,000 limit for a fixed monetary penalty would be too high. We intend that our guidance for the medium-term will provide that the maximum level of fixed monetary penalty will be capped at £5,000. See also the response to Recommendation 75.

Inclusion of criteria for training and qualification of enforcement officers

3.7.10 Under draft Bill powers, the MMO and Welsh Ministers will be able to appoint any appropriately qualified person as an enforcement officer (see clauses 203 and 207). The Joint Committee voiced some concerns on the training and regulation of those empowered to make judgements and issue penalties. Furthermore, it commented that the draft Bill should require transparent criteria on the training and regulation of enforcement officers to be set out in secondary legislation or guidance.

3.7.11 A number of respondents to the consultation on the draft Bill also commented on the need for enforcement officers (including Inshore Fisheries and Conservation Officers) to be properly trained and/or appropriately qualified.

3.7.12 The Government considers that the training and regulation of Marine Enforcement Officers (MEOs) should be clear and transparent – particularly for those being regulated and where new enforcement tools like civil sanctions are proposed.

3.7.13 Once powers have been delegated by the Secretary of State, the MMO will appoint those who have the right skills and expertise to be MEOs. In practice, this means MEOs will need to have been appropriately trained and to have met competency standards before being able to use the enforcement powers provided in Part 8 of the draft Bill. It will be in the interests of the MMO to ensure that MEOs are well trained to ensure successful delivery of an enforcement strategy, for health and safety reasons, its reputation and to protect against litigation. We do not think it is necessary to include further detail on training requirements in the draft Bill itself.

3.7.14 There is a general requirement on an enforcement authority to consult and publish guidance on its use of civil sanctions in the draft Bill (Schedules 6 and 7). We believe the most appropriate place to include any further detail on the way in which MEOs will be regulated and trained on their use of civil sanctions is in this wider enforcement guidance. The Secretary of State will also be able to issue guidance on training under his general power to give guidance in clause 36. See also the response to Recommendation 72.

Review enforcement role of the Maritime and Coastguard Agency

3.7.15 Both the Joint Committee and respondents to the consultation sought further clarity on the role of the Maritime and Coastguard Agency (MCA) in enforcing draft Bill legislation. Whilst the Joint Committee recognised that enforcement provisions in the draft Bill are not yet finalised, it recommended that the Government should review the role of the MCA, reflecting it explicitly in the draft Bill if appropriate.

3.7.16 We expect the MMO to work closely with the MCA as well as a range of other enforcement bodies such as IFCA, the Environment Agency and Harbour Authorities. This was discussed earlier in this report at paragraphs 3.1.26 – 3.1.28.

3.7.17 Careful consideration has been given to the relationship between the MMO and the MCA in preparing the draft Bill. **We recognise that it is important to ensure close co-operation between the two organisations as there will be considerable overlap between the geographic areas of their operation, particularly with regard to enforcement arrangements.**

3.7.18 Although the MCA and the MMO have discrete and very different functions, we are actively considering how the MCA might assist the MMO with some tasks, including enforcement. Any final decisions will be taken on the basis of how much value any such assistance would add (bearing in mind the principles of better regulation) and we will reflect this in the Bill, if appropriate. See also the response to Recommendation 73.

Jurisdictions and relationships between enforcement bodies

3.7.19 There will be a number of enforcement bodies working in the marine area alongside the new MMO. Both the Joint Committee and respondents to the consultation on the draft Bill voiced concern that there could be overlap and lack of clarity where different pieces of legislation were implemented by different bodies, particularly in estuarine and coastal areas. There were calls from consultees for greater clarity (whether in the draft Bill itself or more generally) on how enforcement authorities operating in the same area would work together and how these roles would be further determined.

3.7.20 Good collaborative working arrangements and close co-operation between bodies enforcing in the same parts of the marine area are essential. There will be some overlap in some areas and we would expect close working between these organisations to allow efficient use of expensive resources and make the best use of local knowledge. Where more than one organisation will have responsibilities for enforcement, the lead organisation in each area has been identified.

Changes to statutory notice provisions

3.7.21 With the change in the test for the remediation notice to ‘harm’ (see para 3.7.3 – 3.7.4), we are reviewing the suite of statutory notices for licensing to ensure that together they provide the appropriate suite of enforcement sanctions.

Resources for enforcement

3.7.22 In responding to the public consultation, a number of stakeholders observed that adequate staffing and resourcing would be essential to ensuring effective enforcement of the draft Bill’s provisions. Several respondents suggested that more could be made of existing coastal partnerships as ‘eyes and ears’ on the ground. The resourcing of the MMO and IFCA was an issue explored at length by the Joint Committee.

3.7.23 Effective enforcement should be proportionate and risk-based and we are confident that the extra resources outlined in the draft Bill match the additional functions which will be carried out by enforcement officers. Estimates in the Impact Assessment published alongside the draft Bill are based on information from bodies carrying out enforcement, who we believe are best placed to know how much extra resource is needed to deliver the additional functions in the draft Bill. We will however review the Impact Assessment as part of the draft Bill package to be introduced to Parliament.

Definition of ‘serious harm’, ‘serious interference’, and ‘legitimate uses of the sea’

3.7.24 In its examination of the new civil sanctions schemes, the Joint Committee voiced concern that the lack of definition of specific terms used in the draft Bill such as ‘serious harm’, ‘serious interference’, and ‘legitimate uses of the sea’ could invite legal challenge and is not clear to those being regulated. The Committee felt these terms should be defined within the draft Bill. A number of responses to the consultation made similar comments on these terms and some others that are not defined in the draft Bill.

3.7.25 We are mindful of preparing for a changing future, especially in the context of emerging knowledge about critical issues facing the environment. If we were to define ‘serious’ or ‘significant’ on the face of the draft Bill, we believe we would risk excluding activities which we may in future consider to pose a serious risk of causing harm. Similarly, we have decided not to define ‘legitimate uses of the sea’. The term is used in existing marine legislation which the draft Bill consolidates and modernises and has been applied for over 20 years thus far.

3.7.26 The tests of ‘serious’ and ‘significant’ relate to the suite of tools for licensing enforcement. It remains the case that breaching the requirement for a licence given in clause 76, or a condition of a licence, will be an offence – if someone carries on a licensable activity without a licence, they will have committed an offence. See also the Government’s response to Recommendation 77.

Detail on appeals mechanism for civil sanctions

3.7.27 The new civil sanctions scheme outlined in the draft Bill allows an enforcement authority to impose fixed monetary penalties for licensing and nature conservation offences and variable monetary penalties for licensing offences. The Joint Committee in its examination of these provisions wished to see more detail in the draft Bill on how the appeals mechanism for civil sanctions would work and for guidance to be published on the scheme.

3.7.28 The process of civil sanctions and the associated appeals mechanism in the draft Bill has been adapted from that set out in the Regulatory Enforcement and Sanctions Act, 2008 (RES Act). The RES Act, arising from the Government's implementation of the Hampton⁸ and Macrory⁹ Reviews, establishes a framework of civil sanctions allowing regulators to tackle non-compliance in a transparent, proportionate and flexible way. The RES Act has been subject to rigorous scrutiny by both Houses and we believe this, together with the Tribunals, Courts and Enforcement Act 2007, has resulted in a clear and transparent framework.

3.7.29 Schedules 6 and 7 of the draft Bill provide further detail on how the appeals mechanism for civil sanctions will work. There is also a general requirement on an enforcement authority to consult and publish guidance on its use of civil sanctions. See also the response to Recommendation 75.

Ability for civil sanctions to revert to the courts

3.7.30 Most respondents to the consultation welcomed the civil sanctions as a proportionate way of addressing offences. However, two responses were concerned that civil sanctions would not revert to the courts and were keen for a greater level of protection for the public.

3.7.31 Powers to establish a civil sanctions regime to address licensing and nature conservation offences are proposed in the draft Bill to provide more flexible and proportionate enforcement options and are in line with better regulation and recommendations of the Hampton and Macrory reviews. A criminal standard of proof is required for the issue of a monetary penalty.

3.7.32 A notice of intent will be issued before a monetary penalty is imposed, so the person will be able to bring any relevant information to the attention of the enforcement authority at an early stage. If the penalty is imposed and the person is still unhappy with that decision, they will have the ability to appeal to an independent tribunal. We believe these mechanisms provide adequate safeguards to ensure the process is fair and transparent.

⁸ Philip Hampton: Reducing administrative burdens: effective inspection and enforcement; 2005

⁹ Richard Macrory: Regulatory Justice: Making sanctions effective; 2006

3.8 Improvement of access to the coast (Part 9 of the draft Bill)

The draft Bill places a duty on the Secretary of State and Natural England to secure a long distance route ('the English coastal route') and land available for open-air recreation ('spreading room') accessible to the public around the coast of England. It amends existing legislation to provide a coastal margin, within which people will be able to walk along a long-distance route for the length of the English coast (with certain exceptions, including, for example, developed land, Ministry of Defence land, land used as a park or garden, railways and quarries). In addition, people will have access to coastal land such as beaches, cliffs, rocks and dunes, for the purposes of open air-recreation on foot.

These aims were supported by the scrutiny process.

The Joint Committee made six recommendations relating to the proposed measures for coastal access. The main issues raised were the independent appeals process, compensation, parks and gardens, and costs. It welcomed the principle of increased access to the coast and that of 'spreading room' for outdoor, coastal recreation. It believed that the aim of a continuous coastal route around the length of the English coast is laudable, and it supported the intention of Natural England and the Government to ensure so far as is possible the continuity of the path.

The EFRA Committee made 23 recommendations. The main issues covered were discretion given to Natural England, including on estuaries, Parliamentary scrutiny of the Scheme, an independent appeal process, compensation, parks and gardens, cost and long-term maintenance. It stated that there are likely to be economic, health and social benefits from more people visiting, and enjoying, the coast. It saw the benefits of the proposed legislation in producing quicker, and more consistent, access creation than existing mechanisms, but proposed amendments to the draft legislation to make it sensible and fair.

The public consultation generated 191 responses. Where respondents expressed a clear view, there was broad support for the provisions in the draft Bill, with 96 respondents welcoming the coastal access provisions and 44 respondents who did not welcome the proposals. Responses primarily addressed: local consultation, resources (specifically for long-term maintenance of coastal paths), excepted land (particularly on parks and gardens) as well as appeals mechanisms and compensation for coastal stakeholders. Over 11,000 members of the Ramblers' Association sent post cards with personal comments in support of the coastal access provisions in the draft Bill.

We welcome the broad support given to the principle of providing for improved access to the English coast through new legislation.

Discretion given to Natural England and Parliamentary scrutiny

3.8.1 The EFRA Committee asked for further information to be included in the scheme that is being drawn up by Natural England, for instance clear explanations and diagrams about how it intends to align the route and determine the extent of spreading room. It

felt that the draft Bill should require Natural England to carry out a review of the lessons it has learned from early implementation of the route and spreading room. It proposed that after 10 years Natural England should report to Parliament on progress with implementation. The draft Bill should provide that the Secretary of State can only approve the Scheme after Parliament has given its approval via the affirmative resolution procedure.

3.8.2 We welcome the EFRA Committee's views on how Natural England's outline scheme could be improved. It is Natural England's intention to prepare a more detailed draft at the time the draft Bill is published and this will include more details on the particular areas identified by the Committee. **We will include a provision in the draft Bill requiring Natural England to conduct a review of early implementation and will give further detailed consideration to the scope of the review. We agree that after 10 years Natural England should report on progress to Parliament.** We do not agree with the Committee's view that that the draft Bill should be amended so that the Secretary of State can only approve the Scheme after Parliament has given its approval via the affirmative resolution procedure as this will remove the flexibility for Natural England to amend the Scheme in a timely manner in the light of lessons learned from implementation.

Estuaries

3.8.3 The EFRA Committee felt that the provisions about estuaries in the draft Bill are very vague and leave excessive authority to Natural England. The draft Bill should include a clear specification about where the trail should cross estuaries. Twenty respondents to the public consultation asked that the management of access to estuaries be further clarified.

3.8.4 Estuaries range in size from for example the Severn, the Humber and the Thames down to small tidal rivers of only a few metres' width which indent the English coast. We recognise that estuaries throw up particular challenges, which include the importance of wildlife habitats and nature conservation. For this reason we do not feel that estuaries should automatically be included in coastal access, and the default position is that the cut-off point is 'the seaward limit of a river's estuarial waters' (which generally means the mouth of the river). However, we do feel that many estuaries are suitable for inclusion in coastal access for at least part of their extent. The draft Bill therefore allows Natural England the discretion to propose to extend the coastal route and margin to the first bridge or tunnel, or ferry if appropriate.

3.8.5 Having further considered the situation of estuaries and the comments made in pre-legislative scrutiny and public consultation, we believe that, in order to be able to deal appropriately with individual estuaries, but to ensure the decision is based on clear and transparent criteria, Natural England should be able to stop the route at any point between the mouth of the estuary and the first bridge or tunnel, but that we should set out on the face of the draft Bill the considerations which Natural England must have regard to in proposing this.

Appeals mechanism

3.8.6 The EFRA Committee said that the lack of a formal appeal process is a fundamental weakness of the draft Bill. It considered the right of landowners and occupiers to have an independent, third party appeal process to be an important element of the fair balance between public and private interests that the Government is aiming to achieve. It felt that the draft Bill should provide for such a process. Should an appeal process be allowed, it felt that the Government should ensure the costs involved with using it are minimised. The Joint Committee recommended that the designation of the route and spreading room, and decisions on exclusions and restrictions, be subject to an independent appeals mechanism. Nineteen respondents to the public consultation called for the provision of a mechanism for appeals to an independent body whereas two specifically said that there should be no provision.

3.8.7 The draft Bill requires Natural England to consult affected landowners before preparing its coastal access report which it has to submit to the Secretary of State and which will include details of the route, of associated spreading room and of any proposals for exclusions and restrictions on access. In addition the landowner is given an opportunity to make representations about matters in the coastal access reports. Those representations must be considered by Natural England and passed by Natural England to the Secretary of State who must also consider them before making a determination as to the position of the route. The report which Natural England draws up does not constitute a decision or a series of individual decisions, which can be appealed against, but rather a recommendation to the Secretary of State. The recommendation does not relate solely to the land of an individual landowner, but to an area of the coast where there are a variety of interests. Any proposal relating to the land of one landowner has implications for other interests and the report seeks to strike a fair balance between the different interests. It is for the Secretary of State to make a decision on whether the report strikes the correct balance. This decision is a general approval of the proposals as a whole. For these reasons we do not feel that an appeals process would be appropriate.

3.8.8 In carrying out these processes both Natural England and the Secretary of State are required to aim to strike a fair balance between the interests of the public in having rights of access over land and the interests of any person with a relevant interest in the land. There are also certain safeguards written into the Countryside and Rights of Way Act 2000 which are relevant to this balance. In particular there are safeguards for privacy, as the right of access does not apply to certain categories of 'excepted land' including land used as a park or garden, and land covered by buildings or the curtilage of such land. There is also provision for exclusions and restrictions on the right of access, when necessary, for example for land management (which includes managing land for commercial purposes). We believe that these safeguards are adequate and appropriate.

Compensation

3.8.9 The EFRA Committee said that the draft Bill should give Natural England the power to offer compensation to owners and occupiers who can demonstrate financial

loss as a result of the coastal access provisions where such compensation is necessary to achieve the fair balance between public and private interests that the draft Bill requires. The Joint Committee said that if the Government intends to make payments of any kind for those suffering loss from the designation of the coastal route, there must be an open and transparent process. Forty-four respondents to the public consultation proposed that procedures be established for compensating property owners or businesses where a significant loss could be proven.

3.8.10 The draft Bill does not include any provision to enable Natural England to offer compensation. Our view is that the framework of the draft Bill provides sufficient flexibility in the alignment process to avoid situations where the coastal access rights will cause significant financial loss. The legislation gives Natural England the discretion it needs to position the route, in consultation and discussion with landowners, with this consideration clearly in mind.

3.8.11 The flexible nature of the legislation alongside the duty on the Secretary of State and Natural England to strike a fair balance between those with an interest in the land and the interest of the public in having access, as well as the provisions to exclude excepted land, particularly sensitive land such as parks and gardens and the curtilage of dwellings, will allow Natural England to avoid creating situations where compensation would be required. Natural England will also be under a duty to consult with landowners in deciding on any necessary conditions on access or areas where access should be excluded for example for land management purposes. Experience of using the exclusions and restrictions system under the Countryside and Rights of Way Act 2000 shows that it can be used in a wide range of situations to avoid financial loss for owners. The establishment of the new right will not affect the right of landowners to use, develop or sell their land as before.

3.8.12 Natural England will also be able to revisit decisions about alignment, and about the need for exclusions or restrictions, in the light of experience of actual impacts from access, and of any evidence that emerges of actual financial loss arising.

Parks and gardens

3.8.13 The EFRA Committee agreed with the Government that parks and gardens should be excepted land under the coastal access proposals. Nevertheless, it suggested that Natural England may attempt to negotiate voluntary access agreements with landowners of parks and gardens if this produces the most appropriate alignment. The Joint Committee supported the need to ensure that individuals' property rights and privacy are protected. The majority felt that the Government should give careful thought to what is included in the 'parks and gardens' exemption, but this was not the view of all; some welcomed the exemption as it stands. The Joint Committee said that this is clearly an issue to which Parliament will wish to return when the Bill is introduced. But in any event it encouraged the Government and Natural England to co-operate with owners and occupiers in voluntary agreements outwith the legislation. Fifteen respondents to the public consultation agreed with the approach in the draft Bill. The large majority of these respondents focused on private gardens only. Five respondents considered that a blanket exclusion might not be appropriate in all circumstances and that it would be

reasonable to provide for a route through in exceptional circumstances. They argued that without such provision the Government's vision of a continuous coastal route would be compromised. They noted that more precise, clearly defined terms would help the decision-making process.

3.8.14 We have previously indicated the main measures that we intend an Order under section 3A to contain, including proposals on any changes to the existing categories of 'excepted land' which are contained within Schedule 1 to the Countryside and Rights of Way Act 2000 for the purposes of section 2(1) of that Act. We have set out our intention to retain the category of 'Land used as a park or garden' in Schedule 1 as it affects land that will become coastal margin. Following Royal Assent, the details of the draft Order will be subject to a consultation process. The Order will then be subject to affirmative resolution by both Houses, as required under clause 278(7) of the draft Bill.

3.8.15 We note the Joint Committee's view that the Government should give careful thought to what is included in the 'parks and gardens' exemption, and that this is an issue to which Parliament will wish to return when the draft Bill is introduced. In the meanwhile, we will give further detailed consideration to what is included in parks and gardens.

3.8.16 We agree with the Joint Committee that owners of parks and gardens who are prepared to allow the coastal strip to pass through their land will be free to dedicate the necessary strip of land under section 16 of the Countryside and Rights of Way Act 2000.

Local consultation

3.8.17 There was widespread welcome among respondents to the public consultation for the proposals for local consultation. However, some felt that the provisions did not provide certainty that consideration would be given to the views of wider stakeholders.

3.8.18 We note concerns expressed in the public consultation about consideration of the views of wider stakeholders. We believe that the procedures in the draft Bill allow for appropriate consideration of the views of wider stakeholders. We will however amend the draft Bill to include access authorities in the list of those who may make representations on Natural England's report which will be copied in full to the Secretary of State. In addition, the draft Bill gives the Secretary of State power to specify in regulations persons to whom Natural England must give notice of the publication of coastal access reports. We will consult on any regulations in due course.

Funding and long-term maintenance

3.8.19 The EFRA Committee said that the Government should re-evaluate Natural England's assumption regarding the cost of developing the pathway. Once the exercise is completed a detailed schedule of the proposal's cost should be published. It also said that the Government should clarify responsibility for, and the estimated costs

involved in providing, long-term maintenance before the draft Bill is introduced. The Joint Committee recommended that the Government produce a detailed estimate of the costs of both establishing and maintaining the coastal path, and subject this analysis to consultation with concerned parties. Fifty respondents to the public consultation sought clarification on the provision of funding for long-term maintenance of the coastal route. Twenty-one respondents were concerned that Natural England's estimated expenditure of £50m over 10 years would not prove adequate to deliver the improvements required.

3.8.20 We will review any specific comments on the estimate of costs which have been submitted as part of the Government's public consultation on the draft Bill, and will ensure that all appropriate areas of cost have been taken into account in arriving at the figure. Natural England will continue to refine the costs estimate as implementation plans are further developed and in the light of experience as implementation commences. Building on the data gathered to date, Natural England is currently working with all access authorities around the English coast and undertaking a detailed audit of existing access provision to inform and refine its operational assumptions for the project. We will make available further information on the costs following the completion of Natural England's work with access authorities and subsequently as implementation proceeds.

3.8.21 We agree that it is important to clarify responsibility for, and the estimated costs of, the long-term maintenance of the coastal access route. We have previously indicated in our evidence to the Committee that Natural England will fund implementation and maintenance of the new parts of the trail during the ten-year implementation phase. The intention is that after the ten-year implementation phase, Natural England should contribute to the maintenance of the trail to an extent consistent with the findings of its current National Trails Review, which are expected later this year. Natural England will also aim to develop national-local funding partnerships, as has been the case for all of its and its predecessor bodies' other major initiatives to improve access to the countryside. Where the trail follows existing public rights of way, highway authorities will remain legally responsible for their maintenance.

4 Joint Committee – Recommendations/Responses.

1. **Serious and productive pre-legislative scrutiny ideally requires at least 12 sitting weeks, and more if possible, and we recommend that the Government commit itself to providing this in future when publishing draft Bills and establishing ad-hoc Joint Committees. (Paragraph 4)**

The Government recognises the importance of publishing draft bills in time to allow for proper pre-legislative scrutiny and remains committed to the principle set out in the Cabinet Office Guide to Legislative Procedure that there should ideally be at least three months available to a Parliamentary Committee to conduct pre-legislative scrutiny. However, this timeframe is not always possible due to slippage in publication timings and, where a Joint Committee is being established, there can sometimes be additional delays in obtaining the necessary agreement of both Houses to the appointment of the Committee. The draft Marine Bill was published over three months before the summer recess, but the Government recognises that the time available to the Joint Committee itself for examining the draft Bill was tight. The Government is most grateful to the Joint Committee, and to those providing evidence, for completing its scrutiny before the summer.

2. **We note and agree with the Minister for Energy's comments that implementing a Marine Act will take significant effort from across Whitehall. It is vital that Defra gets other departments 'on board' with its proposals. (Paragraph 16)**

The Government recognises that implementing a Marine Act will take significant effort from across Whitehall. The progress made to date, including in publishing a draft Bill for public consultation and pre-legislative scrutiny, provides testimony of the effective joint working arrangements already in place and that will continue as we move forward our policies in this area. All policy decisions on the Marine Bill are subject to the normal Cabinet clearance processes - the Cabinet Committee structure and principle of collective responsibility provide a framework for collective consideration of, and decisions on, major policy issues and questions of significant public interest.

3. **We recommend that the Government re-examine the amount of detail contained in guidance in advance of publication and consider moving material currently contained in or planned for guidance into the Bill itself on the grounds of transparency and simplicity. (Paragraph 17)**

The Government is confident that the balance of detail contained in the draft Bill and planned for associated guidance is appropriate to the nature of the Marine Bill as a framework Bill. Adding greater detail on the face of the Bill risks changing the nature of the Bill itself. The Government accepts the need for its proposals to be transparent and will therefore re-examine in light of the Joint Committee's recommendations what information and guidance needs to be published as the Bill progresses through Parliament.

- 4. We are concerned that the Bill places very few statutory duties on the Secretary of State or other bodies. We recommend that the Government makes more explicit which organisations it expects to implement the Bill, and that the Bill should impose appropriate duties. (Paragraph 18)**

We accept the need to be clear on which organisations will be involved in implementing the Bill. We will set out before introduction the main organisations, and as far as possible the roles and responsibilities envisaged as implied by the draft Bill. These may be subject to change as policy and the Bill develops.

We also accept in principle the need for the Bill to impose appropriate duties and will ensure that the additional ones committed to in this report are included in the Bill for introduction.

- 5. We are concerned that proposed funding provision for the Marine Management Organisation (MMO), the development of marine plans, the operation of Inshore Fisheries Conservation Authorities and the development of the coastal path appears inadequate. Defra must ensure it is able to allocate funding to these initiatives and tasks on a scale that will enable them to be realised successfully. A detailed analysis of the requirements and arrangements for the proposals contained in the Bill should be published alongside the Bill. (Paragraph 19)**

The Government recognises the importance of ensuring its policy proposals are properly costed, that they receive the funding required to make them effective and are affordable within existing spending review settlements. As we take the Bill forward, we will ensure this is the case across all of the measures it contains, including those of greatest concern to the Joint Committee. Revised estimates of costs will be made available in the updated Impact Assessment to be published alongside the Bill and we will consider, as part of our response to Recommendation 3, what further information on funding provisions needs to be published beyond that which is already regularly made available in Departmental Annual Reports, Resource Accounts and Performance reports.

- 6. There is, by the Government's own admission, a great degree of uncertainty in the Regulatory Impact Assessment. We welcome the commitment to publish a revised RIA when the Bill is introduced, but are concerned that the true costs and benefits may not be available for Parliament to scrutinise at the same time as the Bill itself. (Paragraph 20)**

We understand the Joint Committee's concern to ensure that the costs and benefits of the Bill proposals can be scrutinised at the same time as the Bill itself. The proposals in the draft Bill are for a flexible marine management framework. This framework will be implemented over time through secondary legislation and guidance which will set out the detail of how the various elements are intended to operate. In light of the framework nature of the draft Bill, the Impact Assessment has been based on a range of assumptions and implementation scenarios in order to construct a reasonable and quantified view of the costs and benefits of the draft Bill. We are confident that the

resulting analysis, which benefits from several specially commissioned research reports, provides a meaningful economic evidence base suitable for Parliamentary scrutiny.

It is important to note that we have committed to provide further Impact Assessments prior to the introduction of the more detailed secondary legislation and other measures following on from the draft Bill proposals. This will include Impact Assessments in relation to the designation of Marine Conservation Zones (MCZs) and the making of byelaws to protect them, secondary legislation establishing Inshore Fisheries and Conservation Authorities' (IFCAs) boundaries, membership and byelaw-making powers and on secondary legislation related to the licensing provisions of the Bill.

We appreciate the Joint Committee commissioning a detailed analysis of our Impact Assessment. We will publish an updated Impact Assessment to support the draft Bill on introduction to Parliament and the material from this analysis, included at Annex 3 of the Joint Committee's report, will inform our work.

7. **We welcome the prospect of post-legislative scrutiny on the Bill. Given the issues we have identified, including the lack of statutory duties in the Bill and the incomplete nature of the draft Regulatory Impact Assessment, it will be helpful to see which policy objectives the Government considers to be most useful in measuring the success of the legislation, and it is a good opportunity for further Parliamentary scrutiny once the content of the Bill is clearer. (Paragraph 22)**

The Government is pleased that the recent commitment to a new system for promoting more systematic post-legislative scrutiny of legislation is welcomed by the Joint Committee. In its White Paper introducing the new system (Cm 7320, March 2008), the Government indicated that the Impact Assessment, Explanatory Notes and other statements made during the passage of a Bill should, when taken together, provide sufficient indication of the objectives of a Bill to allow an effective assessment to be made during post-legislative review of how an Act is working in practice. This will apply to the Bill and will thus inform the memorandum to be published by the Department under the new system within three to five years of Royal Assent, setting out a preliminary review of the operation of the Act.

8. **We received no evidence that the draft Bill itself contains any provisions which would make it more difficult to implement international obligations to which the UK is subject, but we share the concerns expressed to us that without a strong commitment to cooperation and consultation, which will take time and resources, there is a danger of the introduction of new and overlapping requirements at local, regional, national and international levels. We draw attention to some of these in our discussion of the marine planning system, but we ask the Government to set out in guidance how responsibilities under the Marine Strategy Framework Directive will be allocated if the Bill is enacted. (Paragraph 27)**

We agree with the need to avoid introducing unnecessary overlapping requirements at local, regional, national and international levels. We have carefully followed and indeed have contributed to the shaping of Europe's maritime policy, and have developed policies within the draft Bill which we believe complement the European proposals. The Directive sets the overarching goal of achieving Good Environmental Status in EU marine waters by 2020, but leaves individual Member States to decide on the detailed measures which are necessary to achieve it. We do not propose to set out further detail in the Bill about how the Directive will be implemented – this will be done as part of a separate transposition process for the Directive.

Until the detail of how the Directive is to be implemented in the UK has been agreed it is too early to determine precisely what contributory role the measures proposed in the Bill will play. We do however think that the marine planning system will enable us to set out our obligations under the Marine Strategy Framework Directive (MSFD) alongside our other obligations and policy priorities, and therefore to provide a consistent steer for all public authorities and marine users.

We will be consulting stakeholders on the implementation of the Directive during the course of 2009/10 and will ensure that appropriate links are made to future legislation and guidance produced as a result of the Bill. We will review at various points the need to produce guidance to explain how the marine planning system could support the implementation of the Directive.

9. **We think that there is potential for overlap and lack of clarity in respect of the duties under the Water Framework and Marine Strategy Framework Directives. These should be clearly allocated between the MMO, Environment Agency and Inshore Fisheries and Conservation Authorities (IFCAs) to ensure implementation of the relevant UK obligations under these Directives and the agreed guidance on Integrated Coastal Zone Management. Although clause 160 places a statutory duty on IFCAs to co-operate with the Agency, we recommend that the Bill makes it explicit that the Environment Agency remains the competent body for the implementation of the Water Framework Directive (WFD), and we agree with those who argued that IFCAs should be given an additional duty to directly contribute to the attainment of the WFD. (Paragraph 31)**

We recognise the strong links between the Water Framework Directive (WFD) and the Marine Strategy Framework Directive (MSFD) and agree that the relationship between these two Directives, and the duties flowing from them, needs to be clearly defined. However, at this stage it is too early to be able to say exactly how the requirements of the MSFD will be delivered, or which organisations will be responsible for each element. This will be considered over the next 18 months as part of the consultation on the transposition of the Directive – the relationship with the WFD will be a key part of these considerations.

In the case of IFCAs, they will be required to comply with obligations arising from a range of EU measures including those under the Habitats Directive, Birds Directive as well as the WFD, all of which are binding on the UK without

the need for further primary legislation. The Government believes that implementation of these EU requirements will be better set out in secondary legislation which can be amended more quickly than primary powers to take account of changing EU requirements. We will address the Committee's point by setting out the active role IFCA's will be required to perform in the appropriate implementing legislation and in the associated guidance from the Secretary of State.

10. **We believe the Government should negotiate the removal of historic fishing rights in UK waters with EU Member States to ensure that enforcement of nature conservation regulations is universally applied to UK national and other Member State fishing vessels in the 6-12 nautical mile zone. (Paragraph 35)**

Fishing rights within the 200-mile Community fishing zone, including the rights of foreign vessels to operate in the UK 6-12nm belt, are an integral part of the Common Fisheries Policy. The legislative framework for the Common Fisheries Policy is due to be reviewed in 2012 and by the end of 2011 the Commission is required to present a report on access arrangements to the Council and Parliament, after which the Council will decide what provisions will thereafter apply. This provides an opportunity to consider further the Committee's recommendation. We will engage fully in this review process to ensure that UK rights are not jeopardised and that effective conservation measures may be applied where needed. In advance of the review, where we wish to protect an MCZ in an area where foreign vessels have access we would seek to do so through the Common Fisheries Policy. This would ensure protection from vessels of all nationalities and would avoid unfairly discriminating against UK vessels.

11. **We have no doubt, from the weight of the evidence received, that the statement of purpose of the MMO is ambiguous both in terms of the draft Bill and in the policy framework which the Government envisages. We would like to assist in the resolution of that ambiguity. In our view the MMO should be, and be seen to be from the outset, the owner of the public interest in the UK marine environment. (Paragraph 39)**

We acknowledge the need to provide greater clarity as to the MMO's purpose and are currently considering how best to achieve this.

We do not agree that there is ambiguity in the MMO's purpose in terms of the Government's planned policy framework. We are clear that the MMO will be the Government's strategic delivery body in the marine area and that it must undertake its role in a manner that contributes to the achievement of sustainable development.

The MMO will make an important contribution to protecting the wider public interest in the marine environment through the delivery of its functions. However, we do not agree that the MMO should be seen as the owner of the public interest; Ministers will continue to hold this role.

12. **Beyond this high-level objective, we also consider that clear duties should be set out on the face of the Bill to ensure that the new organisation works to meet the aspirations which Parliament has set for**

it. We recommend that these include a duty to further sustainable development and we suggest that this be based on the ecosystem approach to managing the marine environment. (Paragraph 40)

- 13. A definition of ‘sustainable development’ should be included on the face of the Bill. Defra should also set out, in policy documents and guidance, associated sustainable development metrics against which progress in managing the marine environment might be judged. (Paragraph 43)**

In response to Recommendations 12 and 13 we agree that the MMO should have a duty in relation to sustainable development and that this duty goes to the heart of the way the organisation operates. We feel that the language in clause 2 of the draft Bill is right. We have used the word ‘contribution’ because the MMO, on its own, will not be able to achieve the sustainable development of the marine area as this will depend on the actions of others including the Secretary of State, other delivery bodies and users of the sea and its resources. We do not want the MMO to be a campaigning body and the term ‘further’ might be interpreted as requiring the MMO to have a campaigning role.

We do not think it would be helpful to attempt to define sustainable development on the face of the Bill. The meaning of sustainable development evolves over time to reflect advances in scientific and economic understanding, and we want the meaning of the relevant provision in the Bill to be sufficiently flexible to reflect an evolving evidence base. Further, Government has already set out the widely recognised five guiding principles of sustainable development in its 2005 Sustainable Development Strategy.

The Secretary of State must set out in guidance to the MMO exactly what contribution Government expects the MMO to make to sustainable development and how it is to make it. We agree that this guidance on sustainable development should fully integrate the ecosystems approach. The MMO will also be operating within the context of the Marine Policy Statement (MPS). The MPS will set out a framework of high level objectives for the marine environment and how it should be managed, in order to enable sustainable development to progress, within environmental limits. The MPS itself will include objectives and targets against which progress in managing the marine environment in accordance with the Government’s sustainable development policies may be judged.

We agree that the MMO should be under a clear legal duty to ensure that it behaves and delivers in a manner fitting with Parliament’s aspirations. Already on the face of the draft Bill, the MMO is subject to a number of duties. These include the duty in relation to sustainable development and also a requirement to do its best to meet the objectives and performance indicators set by the Secretary of State, new duties for public authorities introduced by the draft Bill in relation to the exercise of their functions and the impact these could have on MCZs, a duty to promote race equality and a duty to meet the requirements of the Freedom of Information Act 2000. We also plan to include an additional duty on the MMO, to have regard to the five principles of good regulation. By virtue of being a public body the MMO will come under a wide array of duties as to how it carries out its work, for example duties to have regard to conserving biodiversity and to have regard to River Basin Management Plans under the WFD.

- 14. We did not examine this issue in any detail, but we regard it as vital that the new organisation is able to get up and running quickly (a shadow body such as that established for the Committee on Climate Change could be helpful) and that it is able to attract and retain the quality of staff it needs to perform its functions effectively. Relevant analogies appear to us to be the Food Standards Agency and the Environment Agency, and we encourage the Government to consider whether there are lessons to be drawn from the constitution of those organisations which might inform the establishment of the MMO. (Paragraph 45)**

We agree the MMO needs to be established effectively and have been considering lessons from the establishment of other executive Non-Departmental Public Bodies (NDPBs) such as Natural England. We have indicated our intention to establish a skeleton MMO in advance of formal vesting of the body, and we are effectively using the Marine and Fisheries Agency as a shadow MMO, having already transferred some functions to it. We drew on the legislation establishing the Environment Agency when considering legislative provisions. At the Committee's suggestion we will consider whether there are lessons to be drawn from the Food Standards Agency, whilst noting that it is a Non-Ministerial Department, not an executive NDPB.

- 15. We recommend that the requirement for the Secretary of State to 'have regard to the desirability' of ensuring a variety of skills and expertise on the MMO board be strengthened to reflect the necessity of including skills and expertise from the 'three pillars' of sustainable development. (Paragraph 47)**

Schedule 1 paragraph 5 and in particular the phrase to 'have regard to the desirability of' is in line with legislation that set up the Food Standards Agency, the Environment Agency and Natural England. We feel this language is right in that it provides sufficient flexibility to ensure that the most suitable candidates are appointed to the Board.

As explained in the response to Recommendation 13 we do not feel it would be desirable to define sustainable development on the face of the Bill and by extension we do not see merit in an explicit reference to the 'three pillars' of sustainable development on the face of the Bill.

- 16. Defra should provide, in a policy document, a clear and full justification for both the Secretary of State's powers to add 'designated bodies' to the list in the draft Bill and the powers of the MMO under Clause 15, including examples of the expected use of these powers. (Paragraph 53)**

We provided the Joint Committee with an initial Delegated Powers Memorandum explaining the purpose of, and justification for, the powers conferred by clauses 15 and 16 of the draft Bill. However, we agree with the Committee that a fuller justification for these powers together with examples of expected uses would be useful to accompany the Bill on introduction to Parliament. We will include such material in an updated Delegated Powers Memorandum.

17. **Without designation of specific regulatory functions on the face of the Bill proper scrutiny of the ability of the MMO to meet its responsibilities will not be possible, either by Parliament when the Bill is introduced, or by the public. We think this will undermine the Government's intention that the MMO should be an open and transparent organisation which commands public confidence. The Government should reflect on its approach further, with a view to providing greater clarity in the Bill of the intended functions of the MMO. (Paragraph 54)**

We acknowledge that there are a number of regulatory functions currently carried out by the MFA which will transfer to the MMO (in particular relating to the EU Common Fisheries Policy) which do not appear on the face of the draft Bill. These functions largely derive from EU Regulations which are directly applicable in Member States and thus do not require UK legislation. As recommended by the Joint Committee, we will consider how best to provide greater clarity on these and any other intended functions of the MMO.

18. **We are not convinced that a net addition of 40 staff to those allocated to the MFA will be sufficient to enable the MMO to deliver even the duties set out in the Bill, in particular the requirement to implement an entirely new system of marine planning, let alone to meet the aspirations which we and the Government share to create a strong advocate for the UK's marine area. The Government should revisit its staff planning for the MMO and we recommend that, before the Bill is introduced, it should subject its analysis of the number of extra staff required to independent audit and make the findings public to inform the scrutiny of the Bill as it passes through Parliament. (Paragraph 55)**

Based on current calculations, we expect the MMO to have nearer 50 staff in addition to those currently employed by the MFA. This number will include a few posts transferring from central Government departments. So in total the MMO will have about 240 posts on set-up. These figures were based on a careful analysis of the additional functions the MMO will be required to undertake beyond those the MFA currently delivers, and likely staff requirements.

However, we note the Joint Committee's concern and agree that we should revisit our analysis of the expected number of additional staff the MMO will require in light of more detailed understanding of the MMO's proposed functions and staff required to deliver them. In particular, in response to the Committee's comments we need to ensure there will be sufficient scientific expertise within the MMO.

In any event, we intend the MMO to evolve, growing into its role – and have provided flexible provisions in the draft Bill to enable this. As and when it takes on more functions we will review the resources needed to deliver them.

We included our thinking on likely MMO staffing needs in our public consultation package for the draft Bill. We found the responses from public consultation on these figures helpful. We note the Committee's recommendation and will consider the best timing and mechanism for audit of any revised figures on MMO staffing needs.

- 19. We draw the Government's attention to the potential for conflict between the MMO's policy and decision-making roles, but note that it is difficult properly to scrutinise the interaction of those roles due to the lack of clarity in the draft Bill as to what those roles will be in practice. (Paragraph 56)**

The MMO will be the Government's strategic delivery body in the marine area. It will not be a policy making body and so the conflict the Joint Committee is concerned about will not arise. Defra has a Delivery Strategy which clearly separates the role of the core Department, policy, from delivery which is the role of delivery bodies such as the MMO. The MMO will not be setting marine policy but interpreting how policy objectives are applied to the local marine environment.

For example in the preparation of marine plans, policy will reside with the Secretary of State. Only the practical aspects of preparing and consulting on marine plans will be delegated to the MMO and must be carried out in accordance with the Government's Marine Policy Statement. Secretaries of State across Government, not the MMO, will be responsible for the final adoption of any marine plan.

Through its work the MMO will become a major source of information, expertise and advice on marine matters. As a delivery body within the Defra Delivery Network, the MMO would be expected to work closely with policy officials and share this understanding of the marine environment for Defra to use in evaluating and developing marine policy.

- 20. We recommend that the Bill provide a clear mechanism for appealing licensing decisions of the appropriate licensing authority, whether to the Secretary of State or the MMO, and that a timeframe for decision-making is set out in the Bill. (Paragraph 57)**

As currently drafted the Bill allows provision for an appeals mechanism to be made in secondary legislation under clause 93(1) or under clause 63(6). The trigger for producing an order under clause 93(1) is the delegation of marine licensing functions to another body, envisaged to be the MMO where the Secretary of State is the licensing authority. An appeals mechanism for marine licensing decisions can be made under clause 63(6) regardless of whether those licensing functions have been delegated.

However, we accept that this lacks clarity. We will introduce a new provision to the Bill that will require each appropriate licensing authority to establish through regulations a mechanism for applicants to appeal decisions to award, or not, marine licences. The clause will make it clear that any such regulations must set out the procedure to be followed in an appeal.

We do not want to prescribe such procedural detail on the face of the Bill itself as we consider the appeals mechanism to be an integral part of the marine licensing decision-making process, which is itself to be prescribed by regulations. We want to consult stakeholders and the public on the whole of that process including what they consider appropriate procedures, timescales and grounds for appeal. The appellant body may also be different in each devolved territory to that used for MMO marine licensing decisions. Enabling

such detailed provision to be made in the subsequent regulations enables each administration to tailor the process to best complement and reflect their decision-making processes.

We do not want to prescribe timeframes on the face of the Bill. The power to set timeframes for decision-making exists under the order-making powers in clauses 63(6) and 93(1). Marine licences will cover projects of varying sizes from the smallest marinas to projects right up to the threshold of being nationally significant. Additionally, varying degrees of preparatory work will be undertaken before licence applications are submitted. We therefore do not believe a one size fits all timescale on the face of the Bill would be appropriate or particularly useful. Instead we intend to consult stakeholders on the entire decision-making process when producing regulations under either clause 63(6) or, in the case of delegation of licensing functions, clause 93(1). This would specifically include whether and what timescales would be appropriate and at which parts of the process they would produce the greatest benefits. We believe extensive stakeholder input is key to obtaining the most effective decision-making process and that specific consultation through regulations is the best way of achieving this. We are planning the first consultation for the end of this year.

21. **We recommend that the Government create statutory consultees where appropriate for decisions to be made by the MMO. We believe that this would assist effective cooperation with the many bodies with which the MMO will need to work, and streamline potentially difficult decision-making processes. (Paragraph 59)**

We agree that effective cooperation between the MMO and other bodies is vital but does not agree that this is best achieved through the creation of lists of statutory consultees. Such lists risk becoming outdated quickly and will not be simple to update if in the Bill. They also mean that a consultation cannot be tailored to the specific needs of the community in which it is taking place or to the specific issues raised by a particular proposal. For example, licensing applications are relatively few and extremely varied. A list of consultees could require consultation of bodies with no interest. Additionally, some projects are so small that they need no consultation at all. We do not want to force people to consult when it is not necessary. Those incorrectly omitted from consultation will have recourse to judicial review. Creation of lists of statutory consultees also risks the perception that the views of those on the lists are more important than the views of other consultees. (For additional information on the role of statutory consultees in relation to marine planning, please see the response to Recommendation 34).

22. **We consider that scientific input is of sufficient importance to be reflected explicitly in the Bill. The MMO should establish a scientific advisory panel to examine the quality of science used by the MMO and to ensure that it is making best use of available information and technology. The panel should report to the MMO board. The MMO should also have a statutory duty to play a strategic role in defining marine science through mechanisms such as the Marine Science Coordinating Committee. (Paragraph 64)**

We agree that scientific input will be vital to the efficient operation of the MMO. Clause 23 of the draft Bill requires the MMO to keep abreast of all matters relating to its general objective and gives it the ability to undertake or commission research. It will also be important that within the MMO there is the requisite expertise to act as an 'intelligent customer' to scientific advice it receives and any research it commissions.

Schedule 1 to the draft Bill enables the MMO to set up committees and sub-committees. We expect the MMO to establish a Stakeholder Advisory Committee so the Board can benefit from the advice and experience of representatives from the full range of marine industries, sectors and interests. We agree that it would be beneficial for the MMO to establish a scientific advisory panel, reporting to the Board, to examine the quality of science used by the MMO and to ensure that it is making best use of available information and technology. The clauses as drafted would permit the formation of such a panel. However, as an independent NDPB it will be up to the MMO's Board to decide how best to discharge its functions.

We do not agree that the MMO should have a duty to play an overarching strategic or coordinating role in relation to marine science. A Marine Science Co-ordination Committee (MSCC) has recently been established which will have two primary responsibilities: developing and implementing the UK Marine Science Strategy which will help deliver the evidence needed to fulfil the UK's Marine Objectives and other policy drivers, and improving UK marine science co-ordination. The MMO will have a keen interest in and be a customer of UK marine science and so it is right that the MMO, once formed, will have a seat on the MSCC.

- 23. The MMO should have a duty under the Bill to promote the publicly-funded production of marine data, to collect such data and to make them publicly available. In order to do this it will need to have the right levels of scientific expertise to be able both to commission research from other organisations and to be an intelligent interpreter of scientific evidence. (Paragraph 65)**

We agree that these roles are important, but they will be held by the UK Marine Monitoring and Assessment Strategy and the new Marine Science Co-Ordination Committee rather than the MMO. Whilst the MMO will need to use data, introducing a duty for it to promote and collect such data would confuse the situation. As explained in our response to Recommendation 22, the draft Bill gives the MMO the ability to undertake or commission research and it follows that the MMO must have the requisite expertise to act as an 'intelligent customer' to any research it commissions and also any scientific advice it receives.

- 24. The MMO will need to be funded adequately to enable it to access privately owned and public data alike, on the current public funding models. Alternatively, and for us preferably, the MMO should be empowered to collect data on a cost-free basis from any public body. The Bill also empowers (but does not require) the MMO to charge for sharing the results of research it undertakes or commissions itself. It follows that we think it inappropriate for any recharges to be made by**

the MMO for such research other than for the marginal costs involved in retrieving and reproducing the information. (Paragraph 66)

We agree that the MMO will need to be adequately funded to enable access to data.

We are not able to accept the alternative – being empowered to collect data free from other bodies – as it is incompatible with existing trading fund arrangements. Access to data collected on behalf of Government Departments is subject to Treasury rules which allow Government Departments to recover a ‘reasonable cost’ for providing data upon request⁹. Once data has had value added to it, that is by combining with other datasets, through interpretation of raw data, or producing products such as Geographic Information System (GIS) data layers, a charge may be levied by whomever owns the ‘value added product’. It is these ‘value added products’ that are often associated with licence charges.

- 25. In order to integrate the MMO into the wider international network of marine policy, we recommend that an MMO representative be included on the UK delegation to the Intergovernmental Oceanographic Commission. (Paragraph 67)**

We agree that it may be useful for an MMO representative to attend the IOC when relevant issues are to be discussed. However this does not require legislative provision in the Bill.

- 26. For commercial interests it is particularly important to establish predictability and stability. We therefore invite the Government to set out its timetable for the handover of specific functions in the transition to the MMO, to ensure that there is minimal disruption to developments, either existing or about to enter the licensing system. (Paragraph 69)**

We recognise the importance of predictability and stability, particularly for commercial interests including concerns about a possible hiatus in the licensing system. We also recognise the need to allow other stakeholders to plan ahead. The Bill will include transitional provisions to make the journey from the current licensing regime to the post-Act regime. We intend to discuss transitional aspects with stakeholders as we develop secondary legislation.

- 27. We believe it is critical that the Government put in place guidelines for all relevant departments and licensing bodies as soon as possible, from now until the functioning of the new planning and licensing systems, in order to ensure the integrity of the process and outcomes. (Paragraph 70)**

We are confident that there will be a smooth transition from now until the new processes of marine planning and licensing are in place. The version of the Bill that is introduced to Parliament will contain detailed transitional provisions

⁹ A ‘reasonable cost’ is considered to be the administrative costs of providing that data to a third party.

setting out how we will move from the old licensing system to the new one, and how we will treat existing licences under the new regime. We will publish further information explaining the transitional arrangements as we move to a new planning system, to guide regulators and developers.

The new licensing system is built on the existing system, but offers a more streamlined approach. We will continue to make sound licensing decisions in the interim period, bearing in mind established Government policies on sustainable development and information that arises from environmental assessments of proposed developments. There is no need for licensing processes to slow down in the interim period, and we are developing the new processes with full involvement of both regulators and developers to ensure they deliver improvements.

Similarly our marine planning system will draw on our existing international obligations and domestic priorities, as well as emerging policy within, for example, the National Policy Statements being prepared as a result of the Planning Bill. The system will develop gradually, with both public authorities and other stakeholders able to get involved over a period of time in the development of a strategic Marine Policy Statement, guidance about how marine planning will work and draft marine plans, before final marine plans are published. Our intention is that once they are in place, the plans should help developers by providing them with guidance and certainty, rather than constraining them inappropriately.

We will continue to work closely with Government Departments, licensing bodies, industry and other stakeholders as the Bill progresses to ensure that they feel reassured about the way things are changing, and during that time we will continually evaluate what guidance might be needed to address problems that might arise.

For further information on implementation of licensing provisions, see the response to Recommendation 26.

- 28. In cases where the Bill creates open-ended powers by which the MMO may come to exercise functions (in particular clauses 14 and 35(2)) Defra should set out a clear and full justification for such powers, including examples of their expected use. The Government should also explain how it envisages secondary legislation being used to augment the powers of the MMO. (Paragraph 71)**

We agree that Defra should set out justification for such powers. In line with our response to Recommendation 16, we will include a fuller justification for these powers together with examples of expected uses in an updated Delegated Powers Memorandum to accompany the Bill on introduction to Parliament.

At the same time we will also provide further information on how we envisage secondary legislation being used to augment the powers of the MMO.

- 29. Dredging is an unglamorous but very necessary activity and we recommend that the concern of the industry is given due consideration by the Government. It may be that timescales for licensing decision-making should be built into the Bill to ensure industry is not**

disadvantaged by the increased administrative burden of applying for licences for previously unlicensed activity, and subsequently then applying for exemptions. (Paragraph 72)

We agree with the Joint Committee that dredging is a very necessary and economically important activity. We are also committed to better regulation and to minimising unnecessary administrative burdens and have given and will continue to give due consideration to the concerns of the dredging industry.

We are proposing, as part of the transitional arrangements, to introduce a one year grace period, starting from the commencement of the Bill's licensing provisions, in which operators undertaking currently unlicensed maintenance dredging will be able to apply for a licence before they become legally obliged to do so. This phased approach should go some way to avoiding the overwhelming influx that concerns industry. However, we do acknowledge that this alone will not suffice and recognise that the MMO needs to be adequately resourced to deal with the increased number of licence applications during this time.

We will be consulting extensively on our approach to exemptions and plan to start work with stakeholders this autumn. While requiring applications for exemptions is clearly an option it is not the predominant method used in FEPA (Food and Environment Protection Act 1985), which for most exempted activities just removes the requirement for a licence. There are also in-between options such as a simple registration scheme. Our work with stakeholders, including the industry, will help determine the most appropriate method of exempting each type of activity.

We do not feel timeframes on the face of the Bill are appropriate for the reasons given in our response to Recommendation 20 but we are committed to exploring whether to include them in secondary legislation.

30. We recommend that the Government formalise in the Bill the consultation requirements between the Maritime and Coastguard Agency (MCA) and the MMO. (Paragraph 73)

We have given considerable thought to the relationship between the MMO and the MCA in preparing the draft Bill, as there will be significant overlap between the geographic areas of operation of the two organisations. Despite their discrete functions, the Government recognises that it will be important to ensure close co-operation between the MMO and the MCA including regular exchanges of expert advice between the two organisations.

We are considering whether the working relationship between the MMO and the MCA needs to be formalised in the Bill. We do, in any event, expect a Memorandum of Understanding to be drawn up between the MMO and the MCA. See also the response to Recommendation 73.

31. Given the clear desirability both of subjecting the Marine Policy Statement (MPS) to Parliamentary scrutiny, and that this scrutiny be as high level as possible, we recommend that the MPS be subject to the same Parliamentary scrutiny as will apply to National Policy Statements

made under the Planning Bill. We note however that scrutiny does not require approval by both Houses and so we would go further. We recommend that the MPS be laid before both Houses in draft form, be subject to affirmative procedure, and be subject to scrutiny by the appropriate select committees. (Paragraph 77)

We welcome the Joint Committee's suggestion that the MPS should be subject to Parliamentary scrutiny in a similar way as the National Policy Statements will be. We will clarify in the Bill that the MPS should be laid before both Houses in the UK Parliament in draft form. In addition, because this is a joint statement with Devolved Administrations, we believe the statement should therefore be similarly laid before the devolved legislatures. We will be committed to responding to any recommendations that the Houses or devolved legislatures decide to make.

Currently both Houses are free to decide whether and how to scrutinise Government proposals, and we do not want to use the Bill to pre-empt or restrict any decision they may make about this. We do not agree that the statement be subject to affirmative procedure. The fact that this is a joint statement between UK Government and Devolved Administrations brings added complications. If adoption of the statement were subject to approval by either UK Parliament or any of the legislatures, then resistance by any of the UK Parliaments could result in significant delays to the process of developing the MPS, or it not being adopted at all.

- 32. We recommend that the Bill contain a greater level of detail about the proposed structure and content of the MPS, in order to clarify exactly how the Government intends it to achieve its objective and balance its priorities. At the very least we would expect the Bill to set out criteria analogous to those contained in the Planning Bill for National Policy Statements. (Paragraph 81)**

We will consider together with the Devolved Administrations whether the purpose of the MPS can be clarified. However we firmly believe that we should not include detailed drafting within the Bill about the content of the statement, or how we intend to balance priorities.

The Bill establishes a planning framework that will enable an MPS to exist for many years to come, and over that time the marine environment and its uses will change. We cannot therefore be completely sure what we will want the MPS to contain. The MPS will be agreed by Ministers and any detailed criteria in the Bill would restrict the ability that Ministers currently have to create policies as they see fit in response to the situation at any given time.

The policies in the statement will need to be developed with wide, extensive consultation with Government Departments, Devolved Administrations and stakeholders and we will be involving those with an interest right throughout the development of the statement. We do not want to pre-empt the views that may be raised about how priorities and policies should be integrated and balanced by setting out within the Bill how this should be undertaken.

We recognise that the Planning Bill sets out criteria for National Policy Statements (NPSs), addressing issues such as the suitability of locations for

particular types of development. These criteria are suitable for the NPSs which are each intended to address a single sector and to guide the development of infrastructure, but are less relevant to the MPS, which is intended to provide a wider, more holistic policy steer for the marine area.

We have begun our consideration of the possible content of the MPS through our current consultation on high level Marine Objectives, which was published on 30 June 2008. We will publish further detail about the anticipated content of the MPS when we have reflected on the outcome of this consultation.

- 33. Although we do not consider there is a need to put a deadline for the publication of the MPS on the face of the Bill, it is clear to us that it should be produced as soon as possible, and certainly within two years of Royal Assent. (Paragraph 84)**

We support the Joint Committee's recommendation and reiterate our intention to produce the first MPS within two years of Royal Assent. Work has already begun on setting our high level Marine Objectives that will provide the basis for the MPS.

- 34. The Government should give thought to designating certain key bodies as statutory consultees in respect of the preparation or revision of the MPS, in order to strengthen the consultation and make it more transparent. (Paragraph 86)**

We agree with the Joint Committee's assertion that the consultation process on the MPS should be strong and transparent, but do not believe that it would be sensible to designate statutory consultees in the Bill, either for the MPS or for marine plans.

The draft Bill requires that any person likely to be interested in, or affected by the proposals should be consulted during the development of the MPS or marine plans and we are committed to this very inclusive approach. Furthermore the draft Bill enables a policy or plan authority to seek specific expert advice at any stage of the development of the MPS or plan proposals. A list of specified statutory consultees may easily become out of date, or may give the impression that the views of those on the list may be more important or influential than others who may have an interest, and we want to avoid this.

The draft Bill requires policy authorities to produce a Statement of Public Participation (SPP) at the beginning of the process of developing the MPS, within which they should set out how they intend to develop the statement and involve people in the process to enable people to plan ahead for their involvement. We are also considering amending the draft Bill to clarify that people should be able to challenge the SPP if they feel that it is unfair or incomplete in any way. This should ensure that the approach taken by the policy authorities is as transparent and open as it could be.

- 35. We recommend that the provision in clause 41, which enables the Secretary of State to adopt the MPS without full agreement from the other policy authorities, be made conditional upon specified measures designed to facilitate agreement between policy authorities failing to produce an initial agreed statement. (Paragraph 89)**

- 36. We believe it is essential that an MPS has the active support and approval of all the Devolved Administrations, just as it is equally important that the UK Government participates in the Scottish proposals. We regard the production of an agreed MPS that has consensus across the Devolved Administrations, including Scotland, as an imperative, and consider that the designation of machinery to achieve this if at all possible should be placed on the face of the Bill. (Paragraph 91)**

In response to Recommendations 35 and 36, we re-affirm our strong commitment to preparing an MPS jointly. The ability for UK Government to prepare the Statement alone is there only as a last resort to enable flexibility for the future.

We are working closely with Scottish Ministers and officials to ensure that the proposals in the UK Bill and any Scottish legislation work as effectively together as possible.

It is extremely difficult to create measures within legislation that would enable Ministers to reach agreement on policy, however we will consider if there are any amendments that could be made to the draft Bill to emphasise our commitment to working jointly and to discourage any authority from withdrawing from the process. We already have a number of shared policies across the UK in relation to sustainable development, and a number of common international obligations, so there is already a degree of policy agreement that can provide a firm basis of agreement.

- 37. We invite the Government to strengthen the duty on marine plan authorities to ensure that marine plans are compatible with other plans, both marine and terrestrial. (Paragraph 95)**

The need to ensure compatibility between marine plans and other coastal processes was one of the most significant issues to emerge from the public consultation on the draft Bill. We are content therefore to examine how the draft Bill can be strengthened in this area, and also intend to provide further policy information and guidance. We are working closely with local government and other coastal interests to determine the best practices to adopt.

- 38. We recommend that the Government revisits the dual-body regulatory structure for offshore energy installations. The current situation is very unsatisfactory. Were the dual-body structure to be maintained, we recommend that the rationale for the division of responsibilities be better defined on the face of the Bill and that where an application to the IPC concerns the marine area the MMO be given a statutory advisory role. Further, we recommend that in all applications relating to the marine area, the IPC have a duty to act in accordance with relevant marine plans. (Paragraph 101)**

Through the Planning Bill, the Government proposes to establish an Infrastructure Planning Commission (IPC) to take decisions on nationally significant infrastructure projects, including certain offshore projects such as major windfarms. The Government maintains the view that decisions on

projects which are not nationally significant and therefore not subject to many of the challenges faced by nationally significant infrastructure, should be determined by the appropriate local system. For marine projects this will be marine licensing as proposed under the draft Bill. This will complement the position on land where local authorities will in most cases continue to determine non-nationally significant projects.

We believe that the face of the Bill is not an appropriate place to put the rationale for its decisions. Such rationale should be set out separately from the Bill and we are committing to doing so.

The working relationship between the IPC and other bodies will be covered in guidance and regulations accompanying the establishment of the IPC. The Government intends a formalised relationship between the MMO and IPC that will be set out in a Memorandum of Understanding. However, we would expect the proposed MMO to be a statutory consultee for offshore Nationally Significant Infrastructure Projects. The Department for Communities and Local Government will be consulting on this matter as part of the package of secondary legislation that will follow the Planning Bill.

The IPC will make all of its decisions in accordance with the proposed National Policy Statements (NPSs). However when operating in the marine area it must also, like all other public authorities, have regard to the MPS and plans, and ensure that its decisions are consistent with the statements and plans in the way set out in clause 53 of the draft Bill. For this reason we are very much aware of the need to ensure consistency between the NPSs and the MPSs and plans, and Government Departments are already working closely together to achieve this. Over time when further changes are made to either an NPS or an MPS, this will give us cause to assess the need to change either document so that we can continue to ensure as much consistency as possible.

39. We recommend that the MMO should have a defined role on the face of the Bill as a statutory consultee within coastal planning processes, including changes to national coastal planning guidance, relevant regional spatial strategies, local development documents, and shoreline management plans. (Paragraph 104)

We support the recommendation that the MMO should be involved in coastal planning processes and we have been working closely with the relevant coastal managers, such as the Environment Agency and Local Authorities, to determine how this might work. It is the Government's intention that the existing regional governance arrangements in England will be streamlined through the forthcoming Community Empowerment, Housing and Economic Regeneration Bill, and we are ensuring that these changes are as aligned as possible with the proposals we take forward in the Bill, and that the new regional planning process that is introduced will work effectively alongside marine planning.

We cannot however use the Bill to specify the role that the MMO will play in those other coastal planning processes; rather we must address it in the context of those separate processes.

40. **We think it is essential that the Government explains in detail how it envisages that integrated coastal management will be taken forward through the provisions in the Bill. We welcome the provisions in the Bill for simplified licensing of some of the activities being undertaken by these sectors such as harbour dredging and the laying of submarine cables but believe that promoting integrated coastal management would improve the situation for many more sectors. As the Bill enables the creation of ‘nested plans’, we recommend that priority is given to producing plans for an inshore/coastal zone. The Bill should impose a duty on plan producers to have regard to each others’ plans. (Paragraph 105)**

We will publish further information about how integrated coastal management will be taken forward through the provisions in the draft Bill, and also intend to address this within formal guidance we will produce at a later stage; we will consult on a draft version with stakeholders. Ensuring effective integration in coastal areas, and particularly between marine planning and other coastal management processes has been a priority for us throughout policy development.

We have not yet determined which areas should be planned for early on, however we anticipate that inshore areas may well be a priority because of the high levels of use of those areas and the importance for coastal stakeholders.

The draft Bill places a duty on plan authorities to have regard to each others’ plans in border areas and to take all reasonable steps to ensure compatibility between those plans, however we will look at how this might be strengthened, in order to encourage greater integration at the coast.

41. **We are disappointed by the lack of mention of coastal and estuary partnerships and the role they can play in helping to support marine planning at local level. (Paragraph 106)**
42. **The MMO should be given a duty to work with coastal partnerships and estuary forums where they exist and to promote new coastal and estuary forums where they do not. Such forums must be adequately resourced and should be given a specific role in the marine planning process—including objective setting, consultation, reporting and review. (Paragraph 106)**

In response to Recommendations 41 and 42, we recognise that there are a number of local partnership initiatives around the coast that play a valuable role in bringing together different stakeholders and facilitating the sharing of ideas and expertise. Where possible we are keen that the MMO should work with and draw on existing initiatives and mechanisms like these, and we will consider how to address this point as we develop further guidance. Where it is beneficial for coastal partnerships to be involved in marine planning we are conscious that they will need adequate resourcing to be able to do so.

We do not however think that this sort of duty would be appropriate. There are many kinds of coastal forums, groups and partnerships around the coast that are all operating in different ways with different levels of experience and

carrying out different types of activities to reflect the varying circumstances in different areas. There is therefore no single concept or definition of what constitutes a ‘partnership’ so it would be difficult to clarify to whom such a duty would relate. We understand from research and views of our stakeholders that the neutral and independent position of partnerships is valued and would be hesitant therefore about prescribing in legislation the activities they should be involved in. We also want to ensure that the MMO has the flexibility to determine what it thinks are the best arrangements for developing and consulting on plans in any given area and time.

43. We welcome the establishment of Marine Conservation Zones (MCZs) and recognise they are needed to make an essential contribution to the UK commitment to sustainable development, as well as fulfilling specific international commitments on Marine Protected Areas. (Paragraph 110)

We welcome the Joint Committee’s support for our proposal to legislate for, and then designate, MCZs, and recognition of the role which these sites will play in achieving our sustainable development and conservation objectives for the marine environment.

44. It is essential that MCZs are developed as a network rather than as isolated areas; this should be explicit in the Bill. (Paragraph 111)

We agree that it is important for MCZs to be identified, designated and managed within the context of a wider network of ecologically-coherent Marine Protected Areas (MPAs) rather than as stand-alone sites. This has always been our intention. The concept of an MPA network, to include European marine sites alongside MCZs, has many advantages, and in particular will enable choices to be made between different options and network configurations during the MCZ selection process. Following designation it will also help to ensure that conservation measures are integrated, monitored and co-ordinated to best effect across the network. We therefore accept the Committee’s recommendation and will make explicit reference on the face of the Bill to the role of MCZs within a wider network of MPAs.

45. We agree that it is vital for the designation of MCZs to be underpinned by scientific criteria. (Paragraph 113)

The designation of MCZs should be based on best available science and a clear understanding of the contribution which individual areas will make to an ecologically-coherent network, in order to ensure that MCZs are fit for their intended conservation purpose. However, as the Joint Committee recognises, there are choices to be made between potential sites and socio-economic considerations should be taken into account in decisions on designation. We feel that these considerations are best addressed within the context of an ecologically-coherent network, and through guidance being developed, with the Devolved Administrations and SNCBs. Given the conservation purpose of MCZs, it is appropriate that the SNCBs take a lead role in developing this guidance, and give scientific considerations appropriate weight alongside other relevant factors, but we want to avoid selecting MCZs solely on the basis of strict site scientific criteria, which exclude socio-economic

considerations. The guidance will be subject to public consultation, and will be used to help the work of the stakeholder-based regional projects being established by Natural England and the JNCC. The projects will be tasked with recommending proposed sites and network options to the Secretary of State. The guidance will enable the regional projects to proceed in situations of scientific uncertainty and take appropriate account of social and economic factors.

- 46. We recommend that the scoping of potential locations for MCZs should be based on the best scientific evidence, taking into account their representative nature, uniqueness, threat and sensitivity. We also emphasise the need to pay regard to existing international obligations (not least in respect of the International Right of Passage), the socioeconomic costs and benefits of MCZs, and the ability of zones to accommodate other forms of use without harming their integrity, once the potential sites have been identified. (Paragraph 115)**

We agree that the designation of MCZs should be based on the best scientific evidence, and this should take account of factors such as representivity, uniqueness, vulnerability and sensitivity, but we need to avoid having a strict set of criteria which requires Ministers to designate MCZs purely on the basis of scientific considerations. In addition there should be an opportunity for stakeholders to suggest areas that are of particular importance to them.

We expect the regional projects to take account of the socio-economic value of different areas and potential synergies between environmental protection and economic activities to ensure that the MPA network achieves its ecological goals in a way that minimises socio-economic costs and maximises the benefits. For representative habitats and species we expect there to be scope to make choices between equally suitable potential sites. This means that social and economic considerations may have an important role to play in helping the regional projects, and ultimately Ministers, to make the best choices for society at large. For areas containing particularly rare, threatened or otherwise important species or habitats, we would expect ecological considerations to carry greater weight.

We agree that the implementation of MCZs must have regard to existing international obligations, such as those under UNCLOS and the Common Fisheries Policy. We have had regard to these obligations in preparing the draft Bill, and will ensure that the Bill when introduced is fully compatible. Likewise, our approach to the protection of MCZs through the placing of duties on public authorities will ensure that activities can continue, or may be authorised, within sites provided they do not threaten the conservation objectives which have been set.

- 47. We recommend that clear, comprehensive objectives for MCZs should be included in the Bill and that it should also include specific mention of the need for MCZs to contribute to an ecologically coherent representative network of Marine Protected Areas, with one objective being recovery and restoration. (Paragraph 117)**

We accept that the role of MCZs together with that of other marine protected areas (European marine sites) in forming an ecologically-coherent network should be made clear on the face of the Bill. We will make explicit reference on the face of the Bill to the role of MCZs within a wider network of MPAs. Clause 106 in the draft Bill provides for recovery and restoration as grounds for designation.

- 48. We believe that the provisions in the Bill regarding MCZs should be strengthened and recommend a duty on the Secretary of State to designate a network of MCZs including some Highly Protected Marine Reserves. (Paragraph 120)**

We will include a reference to highly protected sites within the wording of the designation duty.

- 49. We recommend that the Bill should include a timetable for designation of the MCZ network. (Paragraph 122)**

We accept the need for the Bill to provide greater certainty in terms of the timetable for delivery of the MPA network, in particular for stakeholders. We therefore propose to include a time-based reporting duty on the face of the Bill, which will require Ministers to submit a report to Parliament or the National Assembly for Wales as appropriate, on progress being made in developing the network of MPAs in 2012 (and at least every six years thereafter). Such a duty will allow for more effective and informed public scrutiny of the progress being made, whilst avoiding the negative effects which could arise from having a fixed timetable for designation (which could result in priority going to the delivery of the network against a fixed timetable instead of delivery of the network which best meets our conservation goals).

- 50. We support the opportunity for at least some MCZs, particularly where they are highly protected, to be designated as areas to improve our scientific understanding of the marine environment and of the effects of human activities on marine biodiversity. (Paragraph 123)**

We welcome the Joint Committee's support for having the option to designate MCZs in order to improve our scientific understanding of the marine environment and of the effects of human activities on marine biodiversity. We consider that clause 106 in the draft Bill provides for this possibility.

- 51. We recommend that the Bill should include a requirement to monitor and assess MCZs and that responsibility for this should lie with Natural England, the Countryside Council for Wales and the Joint Nature Conservation Committee. Their reports should be submitted to the Secretary of State and laid before Parliament as well as being reported to the Welsh Assembly Government. (Paragraph 124)**

We accept the Joint Committee's recommendation that the Bill should provide greater clarity and certainty in terms of monitoring, assessment and reporting arrangements and responsibilities. We therefore propose to place the SNCBs under a duty to monitor the condition of MCZs, and to assess the effectiveness of the MPA network as a whole. This will be linked to a new duty

on Ministers to report to Parliament or the National Assembly for Wales, on progress towards creation of a network and on achieving the conservation objectives of MCZs which have been designated as part of the network, in 2012 and at least every six years thereafter.

Connected to this, we believe that a single body could perform a useful function by collating and recording information on any incidents which could hinder the achievement of the conservation objectives for an MCZ. We therefore propose to include a new duty on public authorities to report to the SNCB where it considers that an incident has occurred which could hinder the achievement of the conservation objectives of an MCZ. This is in addition to the duty on public authorities to inform the SNCB if it feels that the exercise of any of its own functions might significantly hinder the achievement of the objectives for an MCZ already in the draft Bill (clause 109). This information would then be available to all public authorities, and will help to inform future decision-making, assessments of site condition, and any subsequent reviews of the effectiveness of enforcement and management measures.

Further detail on duty to enforce MCZs is set out in the response under recommendation 57.

52. We recommend that where there is limited knowledge some locations may need to be designated on a precautionary basis, for example to avoid the potential for environmental damage or to support an effective MPA network under a scenario of climate change. (Paragraph 126)

We welcome the Joint Committee's acknowledgment that it may be appropriate to designate MCZs on a precautionary basis in circumstances where there is limited knowledge. Whilst we believe that in most cases sufficient scientific data exists to inform the identification, selection and designations of MCZs, there will inevitably be some gaps in scientific understanding or data, which it would not be practicable or cost-effective to address within the programme timetable. We would therefore expect the regional projects to make recommendations for completion of the network using a proportionate application of the precautionary principle.

53. We recommend specific mention in the Bill that the management measures within MCZs will range from multiple-use through to highly protected. (Paragraph 127)

We intend that MCZs should be capable of requiring public authorities to put in place a range of management measures reflecting different levels of protection, from multiple-use through to highly protected. This will ensure that the MCZ mechanism is used in a focused and flexible way, so that they deliver their conservation objectives without imposing unnecessary restrictions on benign activities or inappropriate burdens on sea-users. We will consider whether this approach can be made more explicit on the face of the Bill, perhaps in relation to the wording of the new designation duty.

54. We do not think it is appropriate to place any set percentage for highly protected areas on the face of the Bill. However, we recommend that the Bill sets out the need to establish Highly Protected Marine Reserves,

and that their contribution to the overall Marine Protected Areas network and UK biodiversity targets should be reviewed after a stated period of time. (Paragraph 130)

We agree that a percentage target for highly protected MCZs would not be appropriate. We will consider including a reference to more highly protected sites on the face of the Bill, in the wording of the new designation duty. However, we do not consider it would be appropriate for the Bill to identify a specific need for highly protected sites since this could prejudice the work of the regional projects and discussions with stakeholders. The need for every such site needs to be considered in the light of the available evidence.

We propose to place a duty on Ministers to report to Parliament or the National Assembly for Wales, as appropriate, on progress made in developing the network of MPAs, and on progress towards achieving the conservation objectives of MCZs, which will help to assess progress in achieving UK biodiversity targets. We consider that reporting should not be restricted to highly protected sites, because all sites - whatever the level of protection they are given - will have an integral role to play in creating an ecologically-coherent network. We propose that the first report should be submitted in 2012 with further reports submitted at least every six years thereafter.

55. An Environmental Impact Assessment of planned and existing activities within proposed MCZs should be undertaken and this should form the basis of decisions on activities that might be restricted in MCZs. (Paragraph 131)

We do not consider that it is appropriate to require a formal Environmental Impact Assessment (EIA) of planned and existing activities within proposed MCZs, although the intention is that such activities will be identified and taken into account during the process of selecting and designating MCZs, and in setting conservation objectives for sites. It is likely that EIAs will already have been carried out for some activities when authorisation was given, and these EIAs should have considered the impact on habitats or species even in the absence of a formal MCZ designation. Following designation the SNCBs will carry out an assessment of potentially damaging activities within all MCZs and will work with stakeholders and public authorities to ensure that ongoing and future activities are properly managed. This will include an evaluation of fishing activities.

56. We recommend a clear statement in the Bill to the effect that the assessments within MCZs must include fishing activity. (Paragraph 132)

We will want to see MCZs protected from fishing activities where these are likely to hinder the achievement of the conservation objectives for a site. SNCBs will assess the impact of fishing when giving guidance on activities capable of damaging or otherwise affecting a site. Not only will IFCA, along with other public authorities, be under a duty to have regard to such guidance in carrying out their duties and granting authorisations (under clauses 109 and 110 in the draft Bill), but IFCA will also be placed under a specific duty to put measures in place to control fisheries related activities within their areas,

when necessary, to ensure that the conservation objectives for MCZs are furthered (under clause 143 in the draft Bill).

- 57. We recommend the Bill confer a duty on a lead agency to enforce MCZs and that the Government should set out, in the Bill or in guidance, what arrangements will be necessary for the lead body to work cooperatively with others. (Paragraph 133)**

We consider that public authorities should retain responsibility for enforcing their own regulations, licensing conditions, byelaws and other measures.

It is important that all public bodies play a role in meeting the MCZ conservation objectives. The SNCBs will play a key coordination role in providing an overview on offences and other types of incidents. To strengthen this role, we have proposed a new duty on public authorities to report to the SNCB where they consider that an incident has occurred which could hinder the achievement of the conservation objectives of an MCZ (further detail is included in our response to Recommendation 51). The SNCBs will provide advice to ensure that public bodies work effectively and cooperatively. This central source of information will be available to all public authorities and will help to inform future decision-making, assessments of site condition, and any subsequent reviews of the effectiveness of enforcement and management measures.

- 58. We consider the role of statutory consultee in the designation of MCZs to be the most appropriate for the MMO. (Paragraph 134)**

We agree that the most appropriate role for the MMO in the designation of MCZs is that of consultee and stakeholder, although we are proposing to remove the list of statutory consultees in clause 107 of the draft Bill. This is because lists of specified statutory consultees might easily become out of date, or give the impression that the views of those on the list are more important than others who may have an interest. Removing the lists will not compromise the quality or scope of consultation.

- 59. We do not think that the designation of MCZs should be delayed, but we recommend that the coordination of the planning system be given more thought, and provision be made to accommodate the fact that the MMO and indeed the MPS may not exist in time for the first designations. (Paragraph 135)**

We welcome the Joint Committee's acknowledgment that it is likely to be necessary to designate some MCZs in advance of MPS and marine plans. This is unavoidable if we are to establish a network of MPAs by 2012. Organisations involved in the MCZ designation process are working closely with those developing the planning system, and early work carried out on the identification and selection of areas suitable for designation as MCZs will be fed into the start of the process to develop the MPS, so the two processes will be closely linked.

- 60. We welcome the creation of the IFCAs and acknowledge the benefits of local level management such as local decision-making and participative**

management by people with detailed knowledge and experience. However, the Bill should contain an open and transparent mechanism by which the MMO will appoint the IFCA members and the qualifications required to be an IFCA member. (Paragraph 141)

We welcome the Joint Committee's support for IFCAs.

We agree that there should be an open and transparent mechanism by which the MMO will appoint IFCA members and the qualifications required. As the Committee recognises, the membership of IFCAs has been the focus of much debate with different stakeholder groups requesting representation. It is for this reason that we have set out in the draft Bill the outline membership of each IFCA, with the detail to be established in secondary legislation and in guidance which can be amended in light of experience of the operation of IFCAs. We will consult stakeholders on proposals for secondary legislation and guidance later this year and next including the procedure for appointing members in accordance with the Code of Practice of the Office of the Commissioner for Public Appointments.

- 61. We recommend that the Bill give the MMO a duty to ensure a strategic approach to inshore fisheries, and powers to require the IFCAs to work collaboratively to an agreed set of minimum standards, to monitor their performance and take steps to improve it where necessary. (Paragraph 143)**

We agree with the Joint Committee that IFCAs need a strategic approach to inshore fisheries management and that they must work effectively and collaboratively. We intend to achieve this in a way that reflects the key principle of the IFCA model which is based on local accountability. We believe therefore that a strategic approach can be best achieved by setting out in the Bill a clear purpose for IFCAs and for the Secretary of State to have the ability to offer guidance to IFCAs on the performance of their duties. There will also be a duty on IFCAs to co-operate with neighbouring IFCAs and other regulatory authorities including the MMO. Seats on each IFCA for the MMO and for the Environment Agency and Natural England will further ensure close working between these organisations.

We have also made provision in the draft Bill for IFCAs to establish a body to co-ordinate their activities. This is something the existing Sea Fisheries Committees (SFCs) have pressed for in recognition of the importance of working collaboratively and sharing best practice.

Performance of IFCAs will be monitored through the requirement for annual plans and reports. The Secretary of State will undertake a review every four years of the conduct and operation of each IFCA.

- 62. The Bill should be amended to give IFCAs a clearer commitment to the achievement of sustainable development and a duty to further the conservation of coastal and marine fauna and flora. (Paragraph 144)**

We believe that this will be achieved through the main duty of IFCAs as set out at clause 142 of the draft Bill to manage the exploitation of sea fisheries resources in order to realise the economic and social benefits of the resource

in a way that is sustainable. This will involve balancing social, economic and environmental considerations. Where an MCZ occurs in an IFC district the IFCA must ensure that the conservation objectives of the MCZ are furthered in accordance with clause 143. Depending on the objectives for the site, this is likely to require IFCA to further the conservation of marine fauna and flora.

- 63. We believe there is a strong case for the Environment Agency to manage the majority of fisheries in estuaries but we would, in addition, support the establishment of working boundaries between the Environment Agency and IFCA on a case by case basis in consultation with the relevant estuary or coastal partnership where they exist. In general these boundaries should be based on the upstream limit of commercial fishing interest, with the Environment Agency managing all fisheries upstream of this boundary (set out in secondary legislation) and migratory fisheries interest below out to six nautical miles. However, the Bill should allow the Environment Agency to retain management of the whole of estuaries where they are already acting as the Sea Fisheries Committee (under cross-warranting procedures) if this is the optimal local arrangement. (Paragraph 147)**

We agree that there needs to be coherent and effective fisheries management in estuaries, a clear division of responsibility between IFCA and the Environment Agency and a streamlined interface between stakeholders and these organisations. We believe the draft Bill provides for this: the Environment Agency will lead on freshwater and migratory species management, using strengthened powers through the Bill. IFCA will lead on marine species management. This arrangement will provide clarity no matter where the different species occur.

IFC districts may extend upstream as far as the tide flows and out to 6nm from the coast. There is provision, however, to limit the upstream extent of an IFC district so that it would not extend to the far tidal reaches of a river. This might be appropriate in circumstances where there were no sea fisheries prosecuted above a point well short of the upper limit of tidal flow. The exact boundaries of each IFC district would be set out in the Statutory Instrument establishing that district and will be subject to consultation.

- 64. Clause 157 of the Bill should be amended to give IFC officers the power to enforce salmon and freshwater fisheries legislation and Environment Agency byelaws relating to fisheries. Secondary legislation should require that IFCA byelaws be subject to approval by the Environment Agency, and equally that statutory approval for Environment Agency byelaws be subjected to approval by the relevant IFCA. (Paragraph 148)**

We agree with the Joint Committee that IFC officers should be able to enforce salmon and freshwater fisheries legislation and Environment Agency byelaws relating to fisheries. This is currently possible under cross warranting arrangements between SFCs and the Environment Agency and we have made provision in the draft Bill so that similar arrangements may continue with IFCA.

Procedures for making and confirming IFCA byelaws will be set in secondary legislation and in guidance issued by the Secretary of State. The secondary legislation and the guidance will require IFCA and the Environment Agency to consult each other on any proposed byelaw and each organisation will be required to take into account any representations made by the other. Where such representations have not been taken into account an explanation must be provided at the time the byelaw is sent to the Secretary of State for confirmation. The Secretary of State will decide whether or not to confirm the byelaw in light of any such representations.

In practice we believe that the Environment Agency and IFCA will work closely together, building on the effective working relationship between SFCs and Environment Agency. This is underpinned in the draft Bill through a duty to co-operate and secondary legislation will provide a seat for the Environment Agency on each IFCA.

We believe that this will help to promote the collaborative approach we are seeking in the draft Bill and reflect the respective roles and responsibilities of IFCA and the Environment Agency.

- 65. We recommend that Clause 149 should explicitly remove all existing exemptions in the form of ‘grandfather rights’ from Sea Fisheries Committees byelaws to ensure that all fisheries management measures are universally applied. The MMO should be given the power to revoke any exemptions made to future byelaws by IFCA to ensure that nature conservation measures are universally applied. (Paragraph 150)**

We propose to transfer existing SFC byelaws to IFCA. IFCA will need to review these to ensure they are consistent with their main duties and will need to revoke or introduce new byelaws where gaps are identified. Any ‘grandfather rights’ would require local consultation including active consideration of the justification and impacts of removing such rights. This is a role for IFCA which will have the full range of powers needed to remove any grandfather rights where justified.

We believe that providing the MMO with powers over IFCA, such as a power to revoke IFCA byelaws, would undermine IFCA’s local accountability and authority and could draw the MMO into local fisheries issues best dealt with by IFCA.

- 66. Additional central funding to IFCA should be ring-fenced. These funds should be used to meet measurable operational targets set by the MMO, with appropriate benchmarking to raise standards and consistency. (Paragraph 153)**

The Government has moved away from ring-fenced funding and associated monitoring regimes which often required complex and time-consuming reporting and data provision. In the 2007 Budget the then Chancellor announced that ‘the Government agrees that with more freedom in the allocation of their budgets, local councils can play a much fuller role in building strong communities.’ The 2007 Comprehensive Spending Review saw a significant reduction in the number of specific grants and a reduction in the level of ring-fenced funding. Ring-fencing is only therefore considered in

exceptional circumstances. Even in such circumstances, the ring-fencing and the funding route would be expected to be time-limited with a view to delivering future funding through either Revenue Support Grant or Area Based Grant (ABG). Against this background it is proposed to deliver the additional central funding for IFCA's by ABG. Performance of IFCA's will be monitored through the requirement for annual plans and reports. The Secretary of State will undertake a review every four years on the conduct and operation of each IFCA.

67. A duty should be placed on IFCA's to ensure that an Environmental Impact Assessment is undertaken of any new fishing activity exploiting marine species for which there has not previously been a large scale commercial market or regulatory quotas, and a requirement for appropriate regulation thereafter. (Paragraph 156)

In order to successfully perform their duties set out at clauses 142 and 143, IFCA's will need to undertake assessments of the impact of fishing activity occurring in their districts on fish stocks and on the wider marine environment. This will include the impact of any new fisheries for species not previously subject to large scale commercial exploitation. Where unacceptable impacts are identified, IFCA's will have a duty to introduce relevant byelaws to restrict or prohibit fishing activity.

Furthermore, under the requirements of the Habitats Directive, IFCA's will have to use their powers to prohibit any fishing activity that is likely to have a significant adverse impact on the objectives of any Special Areas of Conservation occurring in their district. A fishery must not be reopened unless it can be demonstrated by an appropriate assessment that the fishing activity does not have a significant adverse impact. The same position will apply in respect of Special Protection Areas under the Birds Directive.

We believe these requirements will ensure proper consideration of the impacts of any new fisheries and of the need to put in place byelaws.

68. Controlling inshore fishing effort will be critical to maintaining sustainable fisheries and will become an essential tool in areas where fishers are excluded under IFCA byelaws from MCZs or in areas in which wind-farms are to be placed. We recommend that IFCA's should be given the power to limit the number of permits issued for a specific fishery. In addition, we consider that the Bill should give the Government the ability to vary commercial fishing licence conditions for marine environmental purposes, devolving this to IFCA's if necessary, to allow further control over the amount of fishing effort exerted in order to reduce environmental impacts. (Paragraph 157)

We agree with the Joint Committee that IFCA's should have powers to restrict fishing effort and be able to limit the number of permits issued as a way of achieving this. We believe such provision exists in the draft Bill but we will consider whether further clarification is needed to put the matter beyond doubt.

We also agree that the Secretary of State's powers to attach conditions to commercial fishing licences should be extended in order to reduce the wider

environmental impacts of fishing activity and we will pursue such provision in the Bill.

- 69. In the absence of detailed proposals on the structure and function of inshore fisheries management in Wales, the Bill should give the duties and powers of the IFCAs to the relevant management body in Wales to avoid a legislative vacuum following the repeal of the Sea Fisheries Regulation Act. (Paragraph 158)**

Welsh Rural Affairs Minister Elin Jones announced on 12 September that the Welsh Assembly Government (WAG) will assume full responsibility for the management and enforcement of sea fisheries in Wales. We are working closely with WAG so that WAG can pick up the responsibility for sea fisheries management in Wales when the Sea Fisheries Regulation Act 1966 is repealed by the Marine Bill.

- 70. A duty to protect MCZs should be conferred on any Welsh Assembly Government inshore fisheries body, to ensure a consistently regulated MCZ system throughout English and Welsh waters. (Paragraph 159)**

The Joint Committee supports a duty to be conferred on any Welsh Assembly Government inshore fisheries body, to protect MCZs. This would mirror the duty placed on IFCAs in England where each IFCA must exercise its power to ensure that the conservation objectives of any MCZ in the district are furthered.

In Welsh waters, Welsh Ministers are to be the primary guardian of marine conservation issues and Welsh fisheries matters. The intention is that any orders necessary for the protection of an MCZ in Welsh waters will be made by Welsh Ministers, using powers already available to them in the Bill. Therefore, it is not proposed to confer a duty on any Welsh inshore fisheries body.

- 71. In principle, provisions creating criminal offences should be contained in primary legislation or subject to close definition by primary legislation. This principle is brought into question in the draft Bill and we recommend that when the substantive legislation is introduced, it provides much greater clarity and effective Parliamentary control of the offences which it is intended to create. (Paragraph 162)**

In reference to the draft Bill's provision for conservation offences to protect MCZs, we accept that the Joint Committee is correct in saying that the provisions creating criminal offences ought to be contained in primary legislation or at least be subject to close definition by primary legislation. We therefore propose that the offence of breaching a byelaw and order made under Part 4 of the draft Bill is set out on the face of the Bill itself. Orders made by the MMO in England will instead be called byelaws (although Welsh Ministers will retain the power to make orders) so as to more clearly indicate their intended status and function. In addition we propose to make further changes to clarify how the delegated powers relating to byelaws (and equivalent powers in Wales) will be used.

72. We recommend that the Bill require transparent criteria on the training and regulation of Marine Enforcement Officers to be set out in secondary legislation or guidance, having due regard to the wide-ranging and significant powers of the role. (Paragraph 164)

We agree that the training and regulation of Marine Enforcement Officers (MEOs) appointed by the MMO should be clear and transparent – particularly for those being regulated and where new enforcement tools like civil sanctions are proposed. A number of responses to the consultation on the draft Bill raised similar issues with regard to the training and qualification of MEOs and broadly supported the Joint Committee’s view that further clarity is needed.

Once powers have been delegated from the Secretary of State, the MMO will be able to appoint those who have the right skills and expertise to be MEOs. In practice, this means people appointed as MEOs would need to have been appropriately trained and have met competency standards before being able to use the enforcement powers provided in Part 8 of the draft Bill. It will be in the interests of the MMO to ensure that MEOs are well trained in the comprehensive inspection and investigation powers provided by the draft Bill for health and safety reasons, reputational reasons and to protect against litigation. We do not think it is necessary to include further detail on training requirements in the Bill itself.

It is important to note that although MEOs’ powers to inspect and examine will be wide-ranging, these powers are mostly not new. The bulk of the powers set out in Chapter 2 of Part 8 (the common powers) have been taken from existing legislation and the language updated. There is a number of new powers that are fisheries-specific (Chapter 3) and two others that replicate existing provisions (Chapter 4).

We expect existing British Sea Fisheries Officers (BSFOs) who transfer to the MMO will be appointed as MEOs in the first instance, since they will already have most of the appropriate skills. This will also ensure a smooth transition when the new legislation comes into force. BSFOs will receive training to enable them to carry out Bill functions effectively. We also intend that best practice be shared, for example, we expect the MMO to provide training for Inshore Fisheries and Conservation Officers.

We believe that the general requirement on an enforcement authority to consult and publish guidance on its use of civil sanctions (Schedules 6 and 7) is adequately expressed in the draft Bill. The MMO will also follow better regulation principles in providing this guidance and have regard to the Regulators’ Compliance Code. We therefore believe the most appropriate place to include any further detail on the way in which MEOs will be regulated and trained on their use of civil sanctions is in this wider enforcement guidance rather than in the Bill itself.

The Joint Committee should also bear in mind that if necessary, the Secretary of State could issue guidance on training under his or her general power to give guidance in clause 36. We do not therefore propose to include a specific requirement in the Bill for criteria on training and regulation of MEOs.

- 73. Whilst we recognise that enforcement provisions are not finalised, and will in any event require coordination between bodies in practice, we recommend that the Government reviews the role of the MCA before the Bill is published and reflects its role explicitly in the Bill if appropriate. (Paragraph 165)**

We expect the MMO to work closely with the MCA as well as a range of other enforcement bodies such as IFCA's, the Environment Agency and Harbour Authorities.

Careful consideration has been given to the relationship between the MMO and the MCA in preparing the draft Bill. The Government recognises that it is important to ensure close co-operation between the two organisations as there will be considerable overlap between the geographic areas of their operation, particularly with regard to enforcement arrangements.

Although the MCA and the MMO have discrete and very different functions, we are actively considering how the MCA might assist the MMO with some tasks, including enforcement. Any final decisions will be taken on the basis of how much value any such assistance would add (bearing in mind the principles of better regulation) and can be reflected in the Bill, if appropriate.

- 74. We would like the Government to provide further detail on the policy behind clause 28 and the consideration given to the use of non-legally qualified prosecutors and their regulation. (Paragraph 168)**

For more straightforward cases, we believe that it should be possible for certain people authorised by the MMO to be involved in some trials and recover civil penalties. As the Committee notes, similar provisions to those outlined in clause 28 are already used by other enforcement authorities like the Environment Agency and we believe the MMO would benefit from having this ability. We are keen that the MMO should take prompt and cost-effective action by using trained (although not legally qualified) personnel to prosecute cases when appropriate.

However, we agree with the Joint Committee's view that there should be restrictions on the types of cases non-legally qualified staff are able to prosecute on the MMO's behalf. We agree that the restrictions set out in the Prosecution of Offences Act 1985 (as amended by the Criminal Justice and Immigration Act 2008) are sensible and we are considering whether to follow the same process. We therefore intend to amend clause 28 so that in relation to criminal matters, appropriately trained staff will only be able to be involved in summary only trials that proceed in the Magistrates Court or where a defendant pleads guilty (and therefore avoids a trial). Such a person will be 'authorised' by the MMO to undertake prosecutions as set out in clause 28.

We have decided against applying the exclusion in the Criminal Justice and Immigration Act 2008 preventing authorised people who are not legally qualified to prosecute a trial if the defendant is under 21 years of age. We want to retain this power in order to allow an authorised person to prosecute in simple cases.

A person authorised by the MMO to institute criminal proceedings would be able to draw upon legal advice if necessary and they will have had some legal

training before they are appointed to the role. However, we agree that a person authorised to take prosecutions on the MMO's behalf should be subject to independent scrutiny to safeguard proper standards of practice. We are considering whether to follow the same process as agreed for the Criminal Justice and Immigration Act 2008 where such people are admitted to the Institute of Legal Executives and are then governed by its professional codes.

We also note that the words 'although not of counsel or a solicitor' will be removed from section 54 of the Environment Act 1995 by the Legal Service Act 2007 when it is in force. Since omission of these words from clause 28 of the draft Bill would still allow a person, whether legally trained or not, to be involved in a relevant case or appear in civil proceedings, we agree that these words are unnecessary and we intend to remove them from clause 28.

75. The process of administrative penalties and the appeals mechanism is not sufficiently transparent—a clear appeals mechanism should be spelt out in the Bill and there must be published guidance on the proposed scheme as well as on the qualifications of those who will be empowered to make the relevant judgment and issue penalty notices. We question the need for fixed penalty notices to go up to £50,000. (Paragraph 172)

The process of civil sanctions and the associated appeals mechanism in the draft Bill has been adapted from that set out in the Regulatory Enforcement and Sanctions Act 2008 (RES Act). The RES Act, arising from the Government's implementation of the Hampton Review¹⁰ and Macrory Review¹¹, establishes a framework of civil sanctions allowing regulators to tackle non-compliance in a transparent, proportionate and flexible way.

The draft Bill has been developed with the RES Act provisions in mind, for civil sanctions for nature conservation and licensing, adapting provisions to the specific needs of these two regimes where appropriate.

Schedules 6 and 7 of the draft Bill provide a mechanism of appeal against the imposition of licensing and nature conservation civil sanctions to the First Tier Tribunal, created by the Tribunals, Courts and Enforcement Act 2007 or 'other tribunal created under an enactment'. This follows the RES Act model. The RES Act has been subject to rigorous scrutiny by both Houses and we believe this, together with the 2007 Act, has resulted in a clear and transparent framework.

There are a number of safeguards built into the civil sanctions process to ensure it is fair and transparent: secondary legislation and guidance will provide further detailed provision which will be subject to consultation; a person receiving a notice of intent can make representations both against a proposed monetary penalty and appeal the decision to impose it. We believe these steps provide adequate protection for those being regulated and

¹⁰ Philip Hampton: Reducing administrative burdens: effective inspection and enforcement; 2005

¹¹ Richard Macrory: Regulatory justice: making sanctions effective; 2006

address concerns raised in a couple of responses to the public consultation on the need for protection to be built into the civil sanctions process.

Where a power is conferred on an enforcement authority to use civil sanctions, the draft Bill requires the enforcement authority to consult and publish guidance on its use of those sanctions. Such an approach will provide flexibility to respond to changing circumstances and will allow the Devolved Administrations to devise their own schemes where they choose to take these powers. Transparency will be assured as stakeholders will be consulted and Parliament will approve any civil sanctions before they can be used.

We agree with the Joint Committee's view that an upper limit of £50,000 for a fixed monetary penalty would be too high. We intend that our guidance for the medium term will provide that the maximum level of the penalty will be capped at £5,000.

We also agree that those empowered to make relevant judgements to award monetary penalties should be appropriately trained and that any decisions made should be transparent. For the same reasons outlined in the Government's response to Recommendation 72, we believe general guidance on enforcement to be the most appropriate place to detail provisions on training and regulation.

76. We recommend that the powers to enable enforcement authorities to issue fixed monetary penalties and accept undertakings regarding MCZ prohibitions and obligations be subject to the same draft affirmative procedure as the equivalent provisions relating to marine activities. (Paragraph 173)

We accept that the powers to enable fixed monetary penalties and accept undertakings in respect of a breach of a conservation order byelaw should be subject to an affirmative resolution procedure.

77. We support the principle of compliance, remediation and stop notices as measures designed to deal expeditiously with marine licensing breaches. However, we recommend that the Bill define 'serious harm', 'serious interference' and 'legitimate uses of the sea' and that an appeal mechanism is included. (Paragraph 175)

We have reflected further on statutory notice provisions in the draft Bill in light of the Joint Committee's recommendation and responses to the consultation. We therefore propose to amend the remediation notice provisions in the draft Bill.

We have decided to amend the test of the severity of harm for the remediation notice (clause 81), which enables a licensing authority to order operators who have caused harm to remediate that damage. We will change the threshold simply to 'harm' to the environment, human health and to 'interference' to other uses of the sea. We believe that harm caused by the commission of an offence should not have to be 'serious' before the person who caused the harm should have to make amends. This is consistent with the polluter pays principle.

As a result of our decision to change the test for the remediation notice to 'harm', we are also reviewing the suite of statutory notices for licensing to ensure that together they provide the appropriate suite of enforcement sanctions.

We do not intend to narrow the interpretation of 'serious harm' or 'serious interference' by defining them too closely within the Bill. The tests of serious and significant relate to the suite of tools for licensing enforcement. This should not detract from the offence of breaching the requirement for a licence given in clause 76 – if someone carries on a licensable activity without a licence, they will have committed an offence.

We are mindful of preparing for a changing future, especially in the context of emerging knowledge about critical issues facing the environment. If we were to define 'serious' or 'significant' on the face of the Bill, we believe we would risk excluding activities which may in future pose a risk of causing serious harm. For example, 25 years ago the release of carbon dioxide would not generally have been regarded as a significant threat whereas now it is accepted that this contributes to global warming; CFCs were originally thought to be a harmless propellant but we now know they contribute to the depletion of the ozone layer.

Similarly, we have decided not to define 'legitimate uses of the sea'. The term is used (undefined) in the Food and Environment Protection Act 1985 (FEPA), the existing marine legislation which the draft Bill consolidates and modernises. It has been applied for over 20 years thus far, and we see no reason to define the term more closely in the Bill.

Although we acknowledge there can be difficulty in judging cases without readily defined terms, we believe regulators and the courts are already experienced in deciding what these kinds of tests mean and how they should be applied in terms of enforcement. For example, the word 'serious' is used in health and safety legislation ('serious personal injury') and is a threshold for prohibition notices made under Section 22 of the Health and Safety at Work etc. Act 1974. Enforcement bodies and the courts are used to considering environmental offences on a case-by-case basis and we expect case law to be established in time. A number of ways to determine harm are already used by enforcement bodies – the Environment Agency uses a set of categories to assess harm to the environment and decide what enforcement action is required.

We agree with the Joint Committee's recommendation that an appeals mechanism for statutory notices issued for marine licensing offences is needed in the Bill and are considering how best to provide for this.

- 78. We welcome urgent and interim conservation orders as useful measures for protecting the marine environment. We understand the need for some subjectivity— if all criteria were completely 'objective' it would allow for argument and challenge on the grounds of insufficient evidence and thus undermine the potential for urgent action. However, where there is provision for bypassing consultation and publication requirements, in particular where an offence is thereby created without fulfilling such requirements (and without Parliamentary scrutiny in the**

case of conservation orders as they currently stand), criteria for making the orders must be clearly set out in the Bill or secondary legislation. An appeals mechanism should also be set out on the face of the Bill. (Paragraph 178)

We note the concerns expressed by the Joint Committee, which we believe are largely addressed by our responses to Recommendations 71 and 80. In addition, we do not consider that the Bill should include a statutory appeals mechanism against the making of byelaws or orders, because the proposed provisions already provide sufficient safeguards. For example, in England, the draft Bill sets out statutory functions for the Secretary of State to confirm and revoke byelaws, and the opportunities are enshrined in the draft Bill for interested persons to make representations. This means that the MMO's power to make byelaws is subject to public scrutiny and Ministerial oversight.

- 79. We recommend that the Government insert the general offence referred to in the Marine Bill White Paper of damaging or destroying any species or habitat or other feature, for which a site has been designated an MCZ. This must be mirrored by a duty on the agencies involved to explain clearly to the public what is not permissible and where any new prohibitions apply. (Paragraph 179)**

We note the Joint Committee's concerns and will give further consideration to reinstatement of a general offence within the Bill, to prevent deliberate acts of damage to the designated features of an MCZ. We will also consider extending the geographical scope of the offence beyond 12 nautical miles. However, care will need to be taken in drafting any provisions in order to avoid criminalising desirable and legitimate activities which may need to take place.

We note the Joint Committee's comment that any general offence ought to be mirrored by a duty on the SNCBs to explain clearly to the public what is not permissible and where any new prohibitions apply. There will clearly be an important role for SNCBs to play in explaining the conservation value and vulnerabilities of MCZs to sea-users and the public. However, we do not propose to place a statutory duty on the SNCBs because it would be difficult to establish how the duty could be discharged in particular circumstances, and therefore could give rise to frequent legal challenge.

- 80. Marine Conservation Orders and urgent and interim orders should be statutory instruments. (Paragraph 180)**

We do not believe that conservation orders should be statutory instruments as these measures are intended to apply to a localised geographical area and to control small scale activities which are otherwise unregulated because they are generally perceived as low impact. In view of this, and taking account of the consultation and notification requirements which apply to the making of byelaws/orders, we consider that this regulatory mechanism is more akin to the fisheries byelaws proposed under clauses 144 and 194 of the draft Bill (and byelaw-making powers more generally under other legislation) meaning that further Parliamentary scrutiny of individual byelaws should not be necessary. To make this clearer, we propose to rename conservation orders

as byelaws in England (they will remain conservation orders in Wales). Byelaws will be subject to the same limitations and exceptions as previously proposed for conservation orders. As recommended by the Joint Committee, the offence of breaching a byelaw/order will be included on the face of the Bill.

- 81. Defra should give careful consideration to the practicalities of the offences involving the introduction and removal of fish, and the parties who would be liable. The Bill should ensure that any secondary legislation under the Bill will be proportionate to the risks—it should not be within the discretion of the Environment Agency (or any other body) to enforce regulations unreasonably or unfairly against individuals. Further, Defra must bear in mind that regulation of fisheries must not be so burdensome as to encourage non-compliance. (Paragraph 185)**

We welcome the views of the Joint Committee on the introduction of enabling powers to make a scheme for the control of keeping, introduction and removal of live fish. We will carefully consider this recommendation, and views received through the public consultation, when drafting the secondary legislation and associated guidance. We envisage that this scheme will have two overarching benefits; improve the traceability of all movements of fish to prevent illegal introductions and simplify the present scheme, which is both bureaucratic and ineffective.

The principal reason for seeking these enabling powers is so that we can afford better protection to native fish from the undesirable consequences of release of non-native fish. We fully intend that those persons whose activities pose least threat to fish and fisheries will find it easier than they presently do, to comply with the regulations set out in law. Conversely, those that pose the greatest risk will suffer the greatest burden, and thereby be encouraged to act in a more responsible way. We and the Environment Agency both recognise the need to ensure that implementation and enforcement are proportionate and reasonable.

- 82. We welcome the long overdue changes to the regulation of freshwater and migratory fisheries contained in the Bill. (Paragraph 187)**

We welcome the Joint Committee's support for the inclusion in the draft Bill of measures to improve the conservation and management of migratory and freshwater fisheries.

- 83. Clause 185 of the Bill should be simplified in line with the original Salmon and Freshwater Fisheries Review recommendation. (Paragraph 188)**

We note that the Salmon and Freshwater Fisheries Review concluded that:

'New fisheries legislation should prohibit the use of any instrument or device other than rod and line for the taking of any fish in freshwater unless its use is authorised by the Environment Agency.'

This recommendation was accepted by both the UK and Welsh Assembly Governments and early drafts of provisions for the implementation of the Review Group's recommendations followed that approach. After much consideration, however, it became apparent that this approach would result in

there being only one offence as regards unlicensed fishing, that is fishing without a licence. We believe that this is a major disadvantage and that fishing with a prohibited instrument is potentially a more serious offence than fishing without a licence. We therefore consider that a list of prohibited instruments should be retained (albeit with a power to amend the list by means of secondary legislation) and with it the offence of fishing with such prohibited instruments without the authorisation of the Environment Agency. Clause 185 of the draft Bill accordingly follows that approach.

84. The Bill should amend section 212 of the Water Resources Act to provide that no compensation should be paid to fisheries owners if a byelaw is implemented for conservation reasons. (Paragraph 190)

We agree with this recommendation. We believe that there might possibly be circumstances in which compensation of fishery owners for the effects of a byelaw might be justifiable, but the power to pay such compensation should be discretionary. There should be a presumption (not explicitly stated on the face of the draft Bill) that compensation would not be payable in circumstances where the byelaw in question was made for the express purpose of conserving fish stocks.

85. The definitions in Clause 193 should include allis and twaite shad to ensure there is no split in the regulation of migratory species. (Paragraph 191)

We were minded to follow this approach and may still do so. However, it must be recognised that the addition of shad to clause 193 would not, of itself, remove the legal requirement on those proposing to take or kill allis shad to obtain a licence from the authorities responsible for the administration of the Wildlife and Countryside Act 1981. Some in the statutory conservation agencies believe that the inclusion of shad within the Environment Agency's licensing system would encourage the development of fisheries for shad. We are not convinced that this is so and would point out that shad fisheries already exist, despite the provisions of the Wildlife and Countryside Act and that licensing under the latter provision appears to be a less than effective control mechanism. If we amend clause 193 as suggested by the Joint Committee, the effect will be to impose a duplicate system of control, at least until such time as the need for inclusion of fish species within Schedule 5 to the Wildlife and Countryside Act can be reviewed.

86. Clause 198 on the fisheries duties of the Environment Agency should amend section 6(6) of the Environment Act 1995 using the wording set out in the recommendation made by the Salmon and Freshwater Fisheries Review, previously accepted by the Government. (Paragraph 193)

The detailed duty on the Environment Agency as regards salmon and freshwater fisheries as proposed by the Review Group is contained within statutory guidance issued to the Agency under Section 4 of the Environment Act 1995. We accept that incorporating this duty within Section 6 of that Act would have some presentational value and we will aim to include an appropriate provision in the Bill.

- 87. We recommend that the Government carry out a review of the practical implications of the proposed arrangements under the draft Bill in respect to the devolved governments and we urge Scottish Ministers to participate fully in marine planning for the offshore zones. (Paragraph 197)**

We are continually reviewing the practical implications of all of our proposals to ensure that they will deliver the intended effect, and work closely with the Devolved Administrations in taking these policies forward. We continue to cooperate with Scottish Ministers and officials to try to ensure that the proposals in our draft Bill will work effectively with their proposed activities and with their existing responsibilities in the offshore area. We will always welcome the involvement of Scotland in any processes we take forward, including in the offshore zone.

- 88. We suggest that the Government consider cooperative approaches towards the Irish Sea, similar to those of existing regional seas commissions, involving the UK and relevant Devolved Administrations (and the governments of Ireland and the Isle of Man), to work together collectively to produce agreement on the coordination of spatial planning, fisheries and nature protection issues in the Irish Sea, the Solway Firth and Bristol Channel. (Paragraph 201)**

- 89. More specifically, we see merit in establishing a regional sea commission for the Irish Sea with authority to coordinate spatial planning, fisheries and nature protection issues. Smaller scale commissions could also be established for the Bristol Channel and the Solway Firth. (Paragraph 202)**

In response to Recommendations 88 and 89: we have worked very closely with the Devolved Administrations throughout the process of developing the policies within the draft Bill, and will continue this close cooperation as our proposals are put into operation. We also address marine and coastal issues within the forum of the British Irish Council, which brings together UK Government, the Devolved Administrations, the Republic of Ireland, the Isle of Man and the Channel Islands. This is an effective mechanism for considering how we might coordinate activities within the Irish Sea, and how we might address common obligations, such as the need to implement the MSFD. We do not therefore see the need to establish a new commission.

- 90. It is imperative that Marine Plans are compatible in cross-border areas and the Bill must be strengthened to reflect this. The relationships between the MMO, the Welsh Assembly Government and the equivalent Scottish body should be formalised in the Bill. (Paragraph 203)**

We welcome the Joint Committee's recommendation in relation to cross-border areas. The draft Bill already requires plan authorities to take all reasonable steps to ensure compatibility between plans on either side of an administrative border, however we will try to strengthen these requirements. The draft Bill does not in fact prevent different plan authorities from planning jointly in cross-border areas.

The draft Bill sets out clearly who the planning authorities are within different parts of the UK's waters, and enables them to delegate those responsibilities to whichever organisation they see fit. We do not think it is necessary to include any further detail on this within the Bill. Scottish Ministers are not referred to within the draft Bill and no separate marine planning body yet exists in Scotland, so it would not be possible to include references to it.

91. We welcome the principle of increased access to the coast and that of the 'spreading room' for outdoor, coastal recreation. (Paragraph 206)

We welcome the Joint Committee's support for the Government's overall aim to provide greater coastal access which we believe will bring economic, health and social benefits.

92. We think the aim of a continuous coastal route around the length of the English coast is laudable. We support the intention of Natural England and Defra to ensure so far as is possible the continuity of the path. (Paragraph 208)

We welcome the Joint Committee's support for the Government's overall aim to provide a coastal route along the length of the English coast.

93. We support the need to ensure that individuals' property rights and privacy are protected. The majority of us felt that the Government should give careful thought to what is included in the 'parks and gardens' exemption, but this was not the view of all; some welcomed the exemption as it stands. This is clearly an issue to which Parliament will wish to return when the Bill is introduced. But in any event we encourage the Government and Natural England to co-operate with owners and occupiers in voluntary agreements outwith the legislation. (Paragraph 211)

We have indicated the main measures that we intend an Order under Section 3A to contain, including proposals on any changes to the existing categories of 'excepted land' which are contained within Schedule 1 to the Countryside and Rights of Way Act 2000 for the purposes of section 2(1) of that Act. We have set out our intention to retain the category of 'Land used as a park or garden' in Schedule 1 as it affects land that will become coastal margin. Following Royal Assent, the details of the draft Order will be subject to a consultation process. The Order will then be subject to affirmative resolution by both Houses, as required under clause 278(7) of the draft Bill.

We note the Joint Committee's view that the issue of parks and gardens is one to which Parliament will wish to return when the Bill is introduced. In the meantime we will give further detailed consideration to what is included in parks and gardens. Owners of parks or gardens who are prepared to allow the coastal route to pass through their land will be free to dedicate the necessary strip of land under section 16 of the Countryside and Rights of Way Act 2000.

94. We recommend that the designation of the route and spreading room, and decisions on exclusions and restrictions, be subject to an independent appeals mechanism. (Paragraph 213)

We do not share the Joint Committee's view that the designation of the route and spreading room, and decisions on exclusions and restrictions, should be subject to an independent appeals mechanism. We have taken on board the lessons learned from the mapping of open country and registered common land under Part 1 of the Countryside and Rights of Way Act 2000 in terms of the cost incurred by the Government, the former Countryside Agency and land owners and managers in connection with over 3,000 appeals against the showing of land on the provisional maps. The determination of those appeals resulted in less than three per cent of land being taken off the provisional maps. Our conclusion from this was that the appeals process for the mapping of open country and registered common land was disproportionately lengthy and expensive.

The current provisions in the draft Bill avoid the complexity of the previous mapping system but provide for Natural England to consult affected landowners before preparing its coastal access report which it has to submit to the Secretary of State. In addition, under section 55C (2)(c), the landowner is to be given an opportunity to make representations about the line of the route. Those representations must be considered by Natural England and passed by Natural England to the Secretary of State who must also consider them before making a determination as to the position of the route.

The report which Natural England draws up does not constitute a decision or a series of individual decisions, which can be appealed against, but rather a recommendation to the Secretary of State. Moreover, the recommendation does not relate solely to the land of an individual landowner, but to an area of the coast where there is a variety of interests. Any proposal relating to the land of one landowner has implications for other interests and the report seeks to strike a fair balance between the different interests. It is then for the Secretary of State to make a decision on whether the report strikes the correct balance. This decision is a general approval of the proposals as a whole. So the resolution of issues arising from the particular concerns of individual landowners needs to be completed before the Secretary of State gives approval in relation to the proposals as a whole.

In carrying out these processes both Natural England and the Secretary of State are required to aim to strike a fair balance between the interests of the public in having rights of access over land and the interests of any person with a relevant interest in the land. There are also certain safeguards written into the Countryside and Rights of Way Act 2000 which are relevant to this balance. In particular there are safeguards for privacy, as the right of access does not apply to certain categories of 'excepted land' including land used as a park or garden, and land covered by buildings or the curtilage of such land. There is also provision for exclusions and restrictions on the right of access, when necessary for example for land management (which includes managing land for commercial purposes). We believe that these safeguards are adequate and appropriate.

- 95. If the Government intends to make payments of any kind for those suffering loss from the designation of the coastal route, there must be an open and transparent process. (Paragraph 214)**

The draft Bill does not include any provision to enable Natural England to offer compensation. Our view remains that the framework of the Bill provides sufficient flexibility in the alignment process to avoid situations where the coastal access rights will cause significant financial loss. The legislation gives Natural England the discretion it needs to position the route, in consultation and discussion with landowners, with this consideration clearly in mind.

The flexible nature of the legislation alongside the duty on the Secretary of State and Natural England to strike a fair balance between those with an interest in the land and those of the public and the provisions to exclude excepted land, particularly sensitive land such as parks and gardens and the curtilage of dwellings, will allow Natural England to avoid creating situations where compensation would be required. Natural England will also be under a duty to consult with landowners in deciding on any necessary conditions on access or areas where access should be excluded for example for land management purposes. Experience of using the exclusions and restrictions system under the Countryside and Rights of Way Act 2000 shows that it can be used in a wide range of situations to avoid financial loss for owners. The establishment of the new right will not affect the right of landowners to use, develop or sell their land as before.

Natural England will also be able to revisit decisions about alignment, and about the need for exclusions or restrictions, in the light of experience of actual impacts from access, and of any evidence that emerges of actual financial loss arising.

- 96. We note the widespread concern that the estimated funding of £50 million over 10 years for the coastal path is inadequate and that local authorities may be left with the significant maintenance costs. We recommend that the Government produce a detailed estimate of the costs of both establishing and maintaining the coastal path, and subject this analysis to concerned parties for consultation. (Paragraph 216)**

We are satisfied that as a high-level estimate, Natural England's figure of £50m over a 10-year implementation period as the cost of implementing the coastal access provisions is robust and comprehensive. We have provided the Joint Committee with a breakdown of the main elements of Natural England's projected expenditure along with the assumptions used in the calculations and estimated total expenditure.

We will review any specific comments on the estimate of costs which have been submitted as part of our public consultation on the draft Bill, and will ensure that all appropriate areas of cost have been taken into account in arriving at the figure. Natural England will continue to refine the costs estimate as implementation plans are further developed and in the light of experience as implementation commences. Building on the data gathered to date, Natural England is currently working with all access authorities around the English coast and undertaking a detailed audit of existing access provision to inform and refine its operational assumptions for the project. We will make available further information on the costs following the completion of Natural England's work with access authorities and subsequently as implementation proceeds.

5 EFRA Committee – Recommendations/Responses.

- 1. Introduction - It is for the House to decide how it conducts pre-legislative scrutiny, not for the Government to determine. When the Government is preparing draft Bills in the future, it should inform the Liaison Committee which should recommend, in consultation with the relevant departmental select committee, how pre-legislative scrutiny should be conducted. (Paragraph 4)**

The Government indicated in its response to the Commons Liaison Select Committee's annual report for 2007 (Second Special Report from the Liaison Committee of session 2007-08, HC 595, page 2), that it recognises the long-standing concerns about the best approach to deciding on the vehicle for scrutiny of draft bills. Consultation with all interested parties is important and, ultimately, no Joint Committee can be established without the agreement of both Houses. In practice, most draft bills are considered by the Commons departmental select committees which, as the EFRA Committee notes, have a standing responsibility for examining the work and output of the relevant department. But there will be cases in which it will be appropriate for both Houses to be involved and for the expertise of the House of Lords also to be brought to bear. Following the establishment of the joint committees on draft bills in the current session, the Government has indicated to the Liaison Committee new arrangements to improve the consultations with the departmental committees which will take place ahead of any proposals for a joint committee being put to Parliament.

- 2. Is new legislation the most appropriate method by which to create coastal access? - The draft legislation requires amendment and modification before we can be satisfied it is sensible and fair. (Paragraph 22)**

We welcome the EFRA Committee's overall conclusion that greater coastal access is likely to bring economic, health and social benefits, and that the new legislation proposed could be a quicker and more consistent way to create coastal access than existing mechanisms. We have considered the recommendations made in the EFRA Committee's report alongside the recommendations of the Joint Committee on the draft Bill and responses made to our public consultation. Our responses to each recommendation are given below.

- 3. Discretion given to Natural England - We are uneasy that the Bill places so much emphasis on simply trusting Natural England to 'get it right'. We believe landowners and occupiers, in particular, are entitled to more concrete safeguards—especially as the Government intends to strike a 'fair balance' between public and private interests. We believe that adoption of the recommendations we make later in this Report would provide some safeguards. (Paragraph 30)**

The draft Bill includes a requirement on Natural England and the Secretary of State to aim to strike a fair balance between the interests of the public in

having rights of access over land and the interests of any person with a relevant interest in the land. It has been drawn up so that implementation of the new right will take account of the interests of landowners and minimise any impact on businesses. We consider that the mechanisms set out in the draft Bill will ensure that the interests of the public and those of landowners are both fully considered. This is reinforced by the provision for the Secretary of State to approve the proposals, and before doing so to consider any representations made to Natural England by landowners.

We recognise that appropriate account must be taken of individuals' rights of privacy and that the right of access needs to be excluded in relation to certain categories of 'excepted land' (land to which the right of access does not apply) as specified in Schedule 1 to the Countryside and Rights of Way Act 2000. Among the categories which we consider should continue to be excepted land for the purposes of the new right are land used as a park or garden, and land covered by buildings or the curtilage of such land.

4. **Discretion given to Natural England - Natural England's Scheme should include clear explanations and diagrams about how it intends to align the route, and determine the extent of spreading room, for each 'common' coastal scenario—such as coastal landowner, arable land, Site of Special Scientific Interest, and so on. Some complex examples should be included as well. Natural England should also produce a detailed draft of its Scheme before the final version of the Bill is published, taking into account some of these scenarios. This scheme should also specify the size of each stretch of the coast on which Natural England will be reporting, and provide further detail about what approach Natural England will take when it intends to change the alignment of an existing coastal path. (Paragraph 33)**

We welcome the EFRA Committee's views on how Natural England's outline Scheme could be improved. Natural England intends to prepare a more detailed draft Scheme at the time the Bill is published and this will include more details on the particular areas identified by the Committee including the likely approach to changing the alignment of an existing coastal path. The draft Scheme will also give more details on the approach Natural England intends to take towards estuaries, spreading room and dog management which are the subject of the EFRA Committee's Recommendations 5, 18 and 20 respectively. Further examples and diagrams will be included in the draft Scheme to help illustrate how Natural England intends to approach alignment in the common coastal scenarios envisaged by the Scheme. Following Royal Assent, Natural England will, in accordance with clause 274(5) of the draft Bill, consult before preparing a final draft of the Scheme.

Natural England intends to publish criteria as to how it will determine the sections of coast to be included in the coastal access reports submitted to the Secretary of State. These criteria will be published alongside the detailed draft scheme when the Bill is introduced into Parliament.

- 5. Discretion given to Natural England - The provisions about estuaries are very vague and leave excessive authority to Natural England. The Bill should include a clear specification about where the trail should cross estuaries. (Paragraph 34)**

Estuaries range in size from, for example, the Severn, the Humber and the Thames down to small tidal rivers of only a few metres' width which indent the English coast. We recognise that estuaries throw up particular challenges, which include the importance of wildlife habitats and nature conservation. For this reason we do not feel that estuaries should automatically be included in coastal access, and the default position is that the cut-off point is 'the seaward limit of a river's estuarial waters' (which generally means the mouth of the river). However, we do feel that many estuaries are suitable for inclusion in coastal access for at least part of their extent. The draft Bill therefore allows Natural England the discretion to propose to extend the coastal route and margin to the first bridge or tunnel, or ferry if appropriate.

Having further considered the situation of estuaries and the comments made in pre-legislative scrutiny and public consultation, we believe that, in order to be able to deal appropriately with individual estuaries, but to ensure the decision is based on clear and transparent criteria, Natural England should be able to stop the route at any point between the mouth of the estuary and the first bridge or tunnel, but that we should set out on the face of the Bill the considerations to which Natural England must have regard in proposing this.

- 6. Discretion given to Natural England - Natural England should have a statutory requirement written into the Bill to conduct a review of the lessons it has learned from early implementation of the route and spreading room. We recommend this review take place one year after establishment works have started on the ground. (Paragraph 35)**

We agree with the EFRA Committee's recommendation that there should be a review of the lessons learned from early implementation of the route and spreading room. Such a review is a principle of sound management within Government and Natural England. We will include a provision in the Bill requiring Natural England to conduct a review. We will give further detailed consideration to the scope of the review.

- 7. Discretion given to Natural England - After 10 years, Natural England, or its successor, should report to Parliament about the progress it has made with the implementation of the proposals and when it expects work will be completed. (Paragraph 36)**

We agree with the EFRA Committee's recommendation.

- 8. Parliamentary scrutiny - The proposed level of Parliamentary scrutiny of the real detail of these proposals is poor, especially when compared to the powers given to the Secretary of State. We are not convinced by the argument that the generality of Natural England's final Scheme precludes it from being subject to Parliamentary scrutiny. This will be an**

important document and Members of Parliament should be allowed to give their views about it in debate. The Bill should provide that the Secretary of State can only approve the Scheme after Parliament has given its approval via the affirmative resolution procedure. (Paragraph 38)

We do not agree with the EFRA Committee's view that the draft Bill should be amended so that the Secretary of State can only approve the Scheme after Parliament has given its approval via the affirmative resolution procedure. As we have noted in our response to the Committee's recommendation on the Scheme (recommendation 4), Natural England will prepare a more detailed draft Scheme which will be published when the Bill is introduced into Parliament and will continue to develop the Scheme as the Bill progresses through Parliament. Following Royal Assent and the commencement of Part 9, Natural England will provide an opportunity for further discussion and revision of the content of the Scheme before the final version is sent to the Secretary of State for approval under clause 274(1)(b).

As we indicated in the Government's written evidence to the EFRA Committee we decided that it was appropriate that the Scheme should be subject to the approval of the Secretary of State but that it should not be subject to Parliamentary approval. Our view remains that we want Natural England to be able to make improvements or additions to the Scheme in the light of experience on the ground in a manner which is flexible and procedurally 'light touch'. We therefore think it is appropriate that the Scheme should be capable of revision under clause 274(4) (subject to consultation and to approval and publication of the revised Scheme under clause 274(4) – (6)). A similar system has worked successfully for the relevant authority guidance on restrictions and exclusions of access to open country and registered common land issued under section 33 of the Countryside and Rights of Way Act 2000.

- 9. Appeal process - The lack of a formal appeal process is a fundamental weakness of the Bill. We consider the right of landowners and occupiers to have an independent, third-party appeal process to be an important element of the fair balance between public and private interests that the Government is aiming to achieve. The Bill should provide for such a process. (Paragraph 45)**

We do not share the EFRA Committee's view that the lack of a formal appeal process is a fundamental weakness of the draft Bill. We have taken on board the lessons learned from the mapping of open country and registered common land under Part 1 of the Countryside and Rights of Way Act 2000 in terms of the cost incurred by the Government, the former Countryside Agency and land owners and managers in connection with over 3,000 appeals against the showing of land on the provisional maps. The determination of these appeals resulted in less than three per cent of land being taken off the provisional maps. Our conclusion from this was that the appeals process for the mapping of open country and registered common land was disproportionately lengthy and expensive.

The current provisions in the draft Bill avoid the complexity of the previous mapping system but provide for Natural England to consult affected landowners before preparing its coastal access report which it has to submit to the Secretary of State. In addition, under section 55C (2)(c), the landowner is to be given an opportunity to make representations about the line of the route. Those representations must be considered by Natural England and passed by Natural England to the Secretary of State who must also consider them before making a determination as to the position of the route.

The report which Natural England draws up does not constitute a decision or a series of individual decisions, which can be appealed against, but rather a recommendation to the Secretary of State. Moreover, the recommendation does not relate solely to the land of an individual landowner, but to an area of the coast where there is a variety of interests. Any proposal relating to the land of one landowner has implications for other interests and the report seeks to strike a fair balance between the different interests. It is then for the Secretary of State to make a decision on whether the report strikes the correct balance. This decision is a general approval of the proposals as a whole. So the resolution of issues arising from the particular concerns of individual landowners needs to be completed before the Secretary of State gives approval in relation to the proposals as a whole.

In carrying out these processes both Natural England and the Secretary of State are required to aim to strike a fair balance between the interests of the public in having rights of access over land and the interests of any person with a relevant interest in the land. There are also certain safeguards written into the Countryside and Rights of Way Act 2000 which are relevant

10. Appeal process - Should an appeal process be allowed, the Government should ensure the costs involved with using it are minimised. (Paragraph 46)

As we have noted in our response to the EFRA Committee's previous recommendation we do not share the Committee's view as to the need for an appeals process.

11. Compensation - The Bill should give Natural England the power to offer compensation to owners and occupiers who can demonstrate financial loss as a result of the coastal access provisions where such compensation is necessary to achieve the fair balance between public and private interests that the Bill requires. (Paragraph 53)

We do not share the EFRA Committee's view that the draft Bill should be amended to include a provision to enable Natural England to offer compensation. As indicated in our evidence to the EFRA Committee our view remains that the framework of the draft Bill provides sufficient flexibility in the alignment process to avoid situations where the coastal access rights will cause significant financial loss. The legislation gives Natural England the discretion it needs to position the route, in consultation and discussion with landowners, with this consideration clearly in mind.

The flexible nature of the legislation alongside the duty on the Secretary of State and Natural England to strike a fair balance between those with an interest in the land and those of the public and the provisions to exclude excepted land, particularly sensitive land such as parks and gardens and the curtilage of dwellings, will allow Natural England to avoid creating situations where compensation would be required. Natural England will also be under a duty to consult with landowners in deciding on any necessary conditions on access or areas where access should be excluded, for example for land management purposes. Experience of using the exclusions and restrictions system under the Countryside and Rights of Way Act 2000 shows that this can be used in a wide range of situations to avoid financial loss for owners. The establishment of the new right will not affect the right of landowners to use, develop or sell their land as before.

Natural England will also be able to revisit decisions about alignment, and about the need for exclusions or restrictions, in the light of experience of actual impacts from access, and of any evidence that emerges of actual financial loss arising.

- 12. Parks and gardens - We agree with the Government that parks and gardens should be excepted land under the coastal access proposals. Nevertheless, Natural England may attempt to negotiate voluntary access agreements with landowners of parks and gardens if this produces the most appropriate alignment. (Paragraph 63)**

We welcome the EFRA Committee's support for our proposal that parks and gardens should remain excepted land under the new section 3A order. We have indicated the main measures that we intend an order under section 3A to contain, including proposals on any changes to the existing categories of 'excepted land' which are contained within Schedule 1 to the Countryside and Rights of Way Act 2000 for the purposes of section 2(1) of that Act. We have set out our intention to retain the category of 'Land used as a park or garden' in Schedule 1 as it affects land that will become coastal margin. Following Royal Assent, the details of the draft order will be subject to a consultation process. The order will then be subject to affirmative resolution by both Houses, as required under clause 278(7) of the draft Bill.

However we also note the Joint Committee's view that the issue of parks and gardens is one to which Parliament will wish to return when the Bill is introduced. In the meantime, as recommended by the Joint Committee, we will give further detailed consideration to what is included in parks and gardens.

Owners of parks or gardens who are prepared to allow the coastal route to pass through their land will be free to dedicate the necessary strip of land under section 16 of the Countryside and Rights of Way Act 2000.

- 13. Cost - The development of the coastal pathway requires sound establishment in the first instance. We are not convinced that £50**

million over 10 years is the correct sum for the job. Whilst the Bill is amended in the light of the consultation exercise, Defra should re-evaluate Natural England's assumption regarding the cost of developing the pathway. Once the exercise is completed a detailed schedule of the proposal's cost should be published. (Paragraph 68)

We have provided the EFRA Committee with a breakdown of the main elements of Natural England's projected expenditure along with the assumptions used in the calculations and estimated total expenditure. We are satisfied that as a high-level estimate Natural England's figure of £50m over a 10-year implementation period as the cost of implementing the coastal access provisions is robust and comprehensive. Natural England's estimates are based on its, and its predecessors', experience with the development and funding of a number of long-distance and National Trails, combined with specific research commissioned in relation to the coastal access project together with information taken from an independent research report (the Asken report) which was commissioned by the Government as part of the partial Regulatory Impact Assessment of the proposals.

We will review any specific comments on the estimate of costs which have been submitted as part of Defra's public consultation on the draft Bill, and will ensure that all appropriate areas of cost have been taken into account in arriving at the figure. Natural England will continue to refine the costs estimate as implementation plans are further developed and in the light of experience as implementation commences. Building on the data gathered to date, Natural England is currently working with all access authorities around the English coast and undertaking a detailed audit of existing access provision to inform and refine its operational assumptions for the project. We will make available further information on the costs following the completion of Natural England's work with access authorities and subsequently as implementation proceeds.

- 14. Long-term maintenance - The Government should clarify responsibility for, and the estimated costs involved in providing, long-term maintenance before the Bill is introduced. If assurances on this cannot be given ahead of the introduction of the Bill then the Government should not proceed with the measure until this is clarified. (Paragraph 72)**

We agree with the EFRA Committee that it is important to clarify responsibility for, and the estimated costs of, the long-term maintenance of the coastal access route. We have indicated in our evidence to the Committee that Natural England will fund implementation and maintenance of the new parts of the trail during the 10-year implementation phase. The intention is that after the 10-year implementation phase, Natural England should contribute to the maintenance of the trail to an extent consistent with the findings of its current National Trails Review, which are expected later this year. Natural England will also aim to develop national-local funding partnerships, as has been the case for all of its and its predecessor bodies' other major initiatives to improve access to the countryside.

Where the trail follows existing public rights of way, highway authorities will remain legally responsible for its maintenance.

- 15. Liability - We support the Bill's proposals to extend the reduction of occupier's liability to include man-made as well as natural features. However, in its Response, the Government should clarify the liability position of landowners on their private, non access land, who may now experience a higher number of trespassers because of the opening-up of nearby access land. (Paragraph 76)**

We welcome the EFRA Committee's support for the Government's proposal to extend the Countryside and Rights of Way Act 2000 reduction of occupiers' liability to include man-made as well as natural features on coastal land. The liability for owners of any land that is adjacent to land which is coastal margin land will not be affected. We do not think it is appropriate to offer this benefit to landowners whose land is not subject to this new right of access. The reduction of occupiers' liability will benefit landowners where there is already access and will minimise any additional costs to landowners where there is currently no right of access.

Natural England and access authorities will be able to offer help and advice to owners and occupiers, for example on the appropriate use of signs and notices if this would help clarify the position on the ground as regards access and non-access land and so avoid unwitting trespass by members of the public.

- 16. Liability - The Bill should state that Natural England has an obligation to ensure landowners and walkers have a clear understanding about the extent of spreading room. Landowners and occupiers should be able to make representations (in the same way that they can about the alignment of the route and spreading room) if they believe this is not clear, and formally to request the production of a local map. (Paragraph 80)**

We share the EFRA Committee's view that it will be important for both walkers' and landowners and occupiers to have a clear understanding of the coastal access route and any associated spreading room but do not consider it necessary to include such a provision in the Bill although regulations may provide that clarity of the spreading room is one of the issues on which representations can be made. The current provisions in the draft Bill require Natural England to produce a map as part of its coastal access report to be submitted to the Secretary of State showing the line of the coastal access route. The report will also indicate the extent of spreading room which in many cases will be simply the land between that line and the sea. We are confident that the description of the coastal access margin, which will have been the subject of a dialogue with land owners and other relevant stakeholders at the beginning of Natural England's process of alignment of the route, will provide the necessary certainty as to the route and the extent of the associated spreading room. We do not consider that there will generally be a need to provide a map to the owner or occupier.

Natural England intends to trial the use of descriptive approaches for example in relation to eroding coastline or encroachment by the sea, and the potential relevance of any mapping, in a number of study areas. It intends to issue more detailed information when the Bill is introduced into Parliament about the approach it will take in this respect.

- 17. Liability - The Government should also hold discussions with Ordnance Survey and Natural England to establish how the former intends to deal with the creation of the coastal pathway. If Ordnance Survey does create maps of the access routes, it must be clearly established what status in law these will have in the event of any legal action resulting from the public's use of the access facilities. (Paragraph 81)**

We agree with the EFRA Committee's recommendation. We have already held some initial discussions with Ordnance Survey about the possibility of the line of the coastal access route appearing on its maps. Further more detailed discussions will be held with Ordnance Survey and Natural England.

- 18. Spreading room - Natural England should hold discussions with farmers and coastal businesses about the practicalities of spreading room and produce further advice to Government about the implications of spreading room, for example for livestock farmers and coastal businesses. (Paragraph 82)**

Natural England has already held extensive discussions with individual farmers and coastal businesses and their respective representative organisations such as the National Farmers Union and the Country Land and Business Association about the implications of the new access arrangements, and is continuing to have such discussions. As we have noted in our response to Recommendation 4, Natural England will prepare a more detailed draft Scheme which will be published when the Bill is introduced into Parliament. The draft Scheme will include more details on the approach Natural England intends to take in the light of further discussions with farmers, coastal businesses and their respective representative organisations.

Natural England also intends to develop and issue further detailed guidance in 2009 on the criteria for possible exclusions and restrictions of access on coastal land, building upon the current Relevant Authority Guidance for open country and registered common land which has been issued under section 33 of the Countryside and Rights of Way Act 2000. The revised guidance will include information on the criteria for exclusions and restrictions of access which may relate specifically to coastal land rather than to open country and registered common land.

- 19. Animals - As this is still only a draft Bill, we recommend the scope of the Bill be widened to include amendment of the Animals Act 1971 along the lines of the Animals Act 1971 (Amendment) Bill of Session 2006–07. (Paragraph 85)**

We share the EFRA Committee's view that Section 2 of the Animals Act should be clarified. We were, therefore, disappointed that the Private Member's Bill (Animals Act 1971 (Amendment) Bill), which had been introduced by Mr Stephen Crabb MP, was not able to progress to the statute book as we had invested a lot of time, effort and resources into supporting the Bill.

We have considered whether the scope of the Bill should be widened to include an amendment of section 2 of the Animals Act 1971. On reflection we have decided that it would not be appropriate to do so but propose instead to amend the Animals Act 1971 in the same way as the proposal in the Private Member's Bill via a Legislative Reform Order made under the Legislative and Regulatory Reform Act 2006.

We intend to issue a consultation paper on the proposed Legislative Reform Order in the autumn and, subject to due Parliamentary process, are aiming for the Order to come into force in July 2009.

- 20. Dog management - We agree that the nature of the coastal trail and spreading room suggests that the general rule should be the same as that which already applies on public rights of way, although in the vicinity of livestock and certain wildlife—and some crops—the requirement should be for them to be on short leads as it is under CROW. However the precise meaning of 'close control' is not obvious or well defined, so we urge access authorities to do more to clarify the term by providing dog owners with specific examples of what it means in practice. (Paragraph 90)**

We welcome the EFRA Committee's support for the Government's overall proposal for the management of dogs on coastal land. We and Natural England have held some initial discussions with the Kennel Club and accept that further discussions with relevant bodies such as the Kennel Club should be held to improve public understanding of appropriate kinds of behaviour that fall within the description of 'close control'.

As noted in our response to Recommendation 18, Natural England intends to adapt its existing Relevant Authority Guidance as necessary for the purposes of coastal access, and will consider the issue of effective dog management in that context.

- 21. Dog management - In its final Scheme, Natural England must demonstrate that when setting the line of the route it will keep dogs off land used for vegetable and salad crops where the farmer's contracts stipulates that dogs must be excluded from the cropped area. (Paragraph 91)**

We accept the EFRA Committee's recommendation. Natural England's outline Scheme, which it published when the draft Bill was issued in April 2008, set out its initial approach that dogs may need to be restricted to leads in the vicinity of fields when crops are grown.

22. **'Higher rights' - Defra and Natural England's approach to 'higher rights' is a sensible one. The focus of the proposal is for access on foot. It would not be practical or affordable to make the whole of the coastal path usable by horses and bicycles. But we agree that where local geography and environmental circumstances allow, the opportunity should be taken to improve access for such users. We do not believe that such an approach needs to be specified as a duty in the legislation. If access for other users is granted it should not be implemented until decisions on future maintenance of the pathway are agreed with the access authority. (Paragraph 97)**

We welcome the EFRA Committee's support of our approach to higher rights.

23. **'Higher rights' - Natural England and access authorities must ensure as far as possible that four wheeled vehicles, including quad bikes, are physically denied access to the coastal route or spreading room. (Paragraph 98)**

We fully understand the thinking behind the EFRA Committee's recommendation and will discuss with Natural England and access authorities the approach they will take at the local level to managing access along the coastal access route and over spreading room. In deciding what measures may be needed to deter unlawful vehicular use, it will be important to avoid imposing new impediments to access by owners or occupiers or by those with limited mobility.

6 Glossary of terms

Acronym	Definition
ABG	Area Based Grant
BERR	Department for Business, Enterprise and Regulatory Reform
BSFO	British Sea Fisheries Officer
CCW	Countryside Council for Wales
CFP	Common Fisheries Policy
CLG	Department for Communities and Local Government
EFRA	Environment, Food and Rural Affairs
EIA	Environmental Impact Assessment
EMS	European Marine Sites
FEPA	Food and Environment Protection Act (1985)
GIS	Geographic Information System
IA	Impact Assessment
IFCA	Inshore Fisheries and Conservation Authority
ILGRA	Interdepartmental Liaison Group on Risk Assessment
IOC	Intergovernmental Oceanographic Commission
IPC	Infrastructure Planning Commission
JNCC	Joint Nature Conservation Committee
MCA	Maritime and Coastguard Agency
MCZ	Marine Conservation Zone
MEDIN	Marine Environment Data Information Partnership
MEO	Marine Enforcement Officer
MFA	Marine and Fisheries Agency
MMO	Marine Management Organisation
MNR	Marine Nature Reserve (to be replaced by Marine Conservation Zones)
MoD	Ministry of Defence
MPA	Marine Protected Area (meaning a European Marine Site and/or a Marine Conservation Zone)
MPS	Marine Policy Statement
MSCC	Marine Science Coordination Committee
MSFD	Marine Strategy Framework Directive
NDPB	Non-Departmental Public Body
NE	Natural England
NLO	Net Limitation Order
nm	Nautical miles

NPS	National Policy Statement
RES (Act)	Regulatory Enforcement and Sanctions Act (2008)
SE	Scottish Executive
SEA	Strategic Environmental Assessment
SNCB	Statutory Nature Conservation Body (the Countryside Council for Wales (CCW), Natural England, Scottish Natural Heritage (SNH) and, for Northern Ireland, the Council for Nature Conservation and the Countryside (CNCC))
SPI	Statement of Public Involvement
SPP	Statement of Public Participation
SSSI	Site of Special Scientific Interest
UKMMAS	UK Marine Monitoring and Assessment Strategy
UNCLOS	United Nations Convention on the Law of the Sea
WAG	Welsh Assembly Government
WFD	Water Framework Directive

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