



**ASSOCIATED  
BRITISH PORTS  
HEAD OFFICE**

150 HOLBORN  
LONDON EC1N 2LR

TELEPHONE +44 (0) 20 7430 1177  
FACSIMILE +44 (0)20 7430 1384

e-mail: pbarham@abports.co.uk  
www.abports.co.uk

emailed to: Marinebillteam@defra.gsi.gov.uk

Our Ref: PJB/AJC

23 June 2008

Marine Bill Team  
Department for Environment, Food & Rural Affairs  
Area 2C, Nobel House  
17 Smith Square  
London  
SW1P 3JR

Dear Sir/Madam

**CONSULTATION RESPONSE: DRAFT MARINE BILL**

The Seabed User & Developer Group (SUDG) is an informal grouping of industry sectors whose participants have a common interest in sustainable development within the UK's marine environment. SUDG comprises the following organisations: Associated British Ports; British Ports Association; British Marine Aggregate Producers Association; British Marine Federation; British Wind Energy Association; Oil & Gas UK; Renewable Energy Association; The Crown Estate; United Kingdom Cable Protection Committee.

The SUDG's response to the consultation on the draft Marine Bill is enclosed.

Yours sincerely

**PETER BARHAM**  
Chair, SUDG

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## Marine Planning

1. The draft Bill sets out a broad framework for marine planning. While information on the nature and form of this framework is helpful, the detail of the Government's objectives for the marine area is also very important both in terms of setting expectations and increasing certainty for future development. Such detail is important to industry and until such time as it is available, it is difficult to provide firm support for marine planning. The objectives set for marine planning must be aimed at achieving sustainable development and carried out against a framework of expert knowledge about coastal and marine activities and impacts. There also needs to be sufficient flexibility within the planning system for it to operate effectively. We support the reference to sustainable development in clause 40(1) but consider that this might be strengthened by underpinning marine planning with a clear statutory purpose to achieve sustainable development in the marine area.
2. There is an additional concern that sustainable development, whilst mentioned several times in the draft Bill and a prime objective, is not actually defined. This concern is increased because the accepted scope of sustainable development (see for example in the Shared UK Principles) is not adhered to in the draft Bill. There is mention of including "economic, social, cultural and environmental priorities". Nowhere in the normally accepted definitions and scope of sustainable development is there reference to "cultural" issues. The wide-ranging suites of Indicators (20 Framework and 68 National) in the government's sustainable development strategy, do not appear to have a "cultural" content. This newly proposed definition of sustainable development has not been tested at a national or international scale, nor are there any metrics for it. Hence this issue raises a very substantial area of uncertainty at the core of the draft Marine Bill proposals.
3. Clause 44 establishes marine planning regions. The planning boundaries are purely administrative and do not take account of biogeographic or operational factors. We are concerned that a region such as the Irish Sea will not be managed as a single area but will potentially be fragmented into at least 4 different plan areas reflecting devolved administration competencies. Such an approach has the potential to seriously undermine the benefits that integrated marine planning might deliver and will significantly complicate the planning of developments and activities crossing these artificial boundaries. Such a fragmented approach will also hinder the UK's response to its international obligations to assess and report on the state of its seas.
4. We support the proposal to establish advisory and consultative groups to support the development of and consultation on marine plans (Schedule 5, section 5). We would expect that industry was appropriately represented on such groups.
5. We support the proposal to require sustainability appraisal of marine plans (Schedule 5, section 7).
6. We note that it is unlikely that any marine plans will be in place until at least 2012. We are concerned that major decisions governing allocation of sea space (such as the designation of MCZ.) will have already been taken by this time. There is a risk that marine planning will simply be faced with a fait accompli by those interests that have already laid claim to sea space. The transitional arrangements to be put in place before marine plans are prepared and adopted will need to address these risks. Where decisions are being taken concerning the allocation of sea space in advance of formal marine plans, those decisions should properly take account of potentially competing interests and apply the same standards of openness and engagement with other interests that will be required under a system of marine planning.

## Marine Licensing

7. We support the proposed merger of CPA and Part 2 of FEPA to form a new marine licensing regime. We note that the regime is being extended to cover all forms of dredging. Clause 65 provides for an extension of regulatory control to include aspects of operation and decommissioning of structures and not just their initial construction.

8. Clause 74 provides for the MMO to issue a single marine licence which also takes into account issues of flood risk, subject to the agreement of the EA. We support this clause as it will reduce unnecessary duplication in the licensing system for projects spanning the land/sea interface.
9. Clause 81 provides for the enforcement authority to issue remediation notices if an activity has or is likely to cause serious harm to the environment, human health or serious interference with other legitimate uses of the sea. Such notices can specify the steps to be taken by the operator and require the operator to reimburse the enforcement authorities costs. These provisions represent new regulation over and above that contained in the current FEPA Part 2 and CPA regimes, although the cost impact of such provisions has not been identified in the Impact Assessment. Subject to clarification of the interpretation of 'serious harm' and 'serious interference' we would generally support the introduction of remediation provisions.
10. Clause 96 introduces a system of 'Stop' notices where licensed activities are or might give rise to serious harm to the environment, human health or serious interference with other legitimate uses of the sea. We note that the cost implications of Stop Orders has not been identified in the Impact Assessment. While we support the general intention of the clause we would make the following observations:
  - Serious harm and serious interference do not appear to be defined in the draft Bill, in contrast to proposed definitions for 'environmental damage' in the draft regulations transposing the Environmental Liability Directive (ELD)
  - Again, in contrast to the draft regulations implementing ELD, there are no checks and balances applied to the Stop Order provisions, for example, what right of appeal exists if an operator disagrees that an activity is likely to cause serious harm or cessation of the activity might pose unacceptable health and safety risks?

### **Marine Conservation Zones**

11. Clause 105 provides for the designation of MCZ, including the making of Urgent Orders for such designation. We note that the latter provision provides strong powers to over-ride a range of historic public rights without any requirement for consultation with affected interests (Clause 107(1)).
12. Clause 106 sets out the grounds for designating MCZ. We do not support the proposed grounds – " if it is desirable to do so". It is essential that proposals for designation are based on robust scientific evidence and clear site selection criteria. We note the recent guidance on site selection issued in draft by Defra<sup>1</sup>. The status of such guidance remains unclear. We are currently unaware of any provisions in the draft Bill that provide for the issue of such guidance. In our opinion, the high level requirements for site selection and designation should be set out in the draft Bill. The Bill should also provide for the Secretary of State to issue statutory guidance containing further details of the designation requirements following enactment of the Bill.
13. Clause 106(5) states that the appropriate authority "may have regard to" any economic or social consequences of MCZ designation. Some further expansion of Defra's interpretation of this clause is provided in their draft guidance note No. 1 (see footnote). The integration of environmental, economic and social aspects of designation is fundamental to the achievement of sustainable development. We therefore think it is important that much clearer statements of the duty on appropriate authorities is included on the face of the Bill and not in separate non-statutory guidance.
14. We strongly support the policy intention that designations are to be made by Ministers. We do not consider it appropriate for such decisions to be taken by the nature conservation bodies. We recognise that the nature conservation bodies are best placed to provide advice on the scientific aspects of designation. It remains unclear how economic and social factors will be fed in to the site selection and objective setting process. While guidance note No. 1 sets out a possible process by which this may be achieved, it is important that relevant government departments and the MMO have a clear role in providing economic and social advice and that there are transparent mechanisms by which such advice is taken into account. In consulting on proposed Orders, we suggest that the

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<sup>1</sup> Defra, 2008(a) Draft Guidance on selection and designation of Marine Conservation Zones (Note 1). May 2008 Draft Version 1.1.

appropriate authority should also be required to consult with other Government Departments and that this requirement should be identified within cl 107(4).

15. Clause 109 sets out the general duties on public authorities in relation to MCZs. Defra's interpretation of these requirements has recently been provided in the form of draft guidance<sup>2</sup>. The status of such guidance remains unclear. We are currently unaware of any provisions in the draft Bill that provide for the issue of such guidance. We support the proposed approach which recognises that it would be inappropriate to require public authorities to act in a way that was not consistent with the proper exercise of its functions.
16. Clause 110 sets out duties on public authorities in relation to certain decisions. In particular, the clause includes a process for determining development applications that may affect MCZs. The proposed process has some parallels with the provisions of Article 6(4) of the Habitats Directive. Clause 110(4)(a) deals with the consideration of alternatives. Where a proposed development would significantly affect an MCZ, the development would only be allowed to proceed if it was "impossible or impracticable" to proceed with the act at a location, or in a manner, which would not hinder the achievement of MCZ conservation objectives. We do not consider that the use of the term "impossible" is helpful in this context. It is unclear how the term "impracticable" should be interpreted compared to the Habitats Directive text "in the absence of alternative solutions". It is unclear whether the scope of alternatives consideration should be limited to alternatives available to the project promoter or should consider a wider range of alternatives that would meet the public interest. Experiences with implementation of the Habitats Directive highlight the importance of clarity in such matters. We therefore do not support the proposed text at this stage.
17. Clauses 113 and 115 provide for the making of Conservation Orders and Urgent Conservation Orders to protect MCZ features where needed. Defra has recently issued draft guidance on the making of such Orders<sup>3</sup>. We note that the research into the need for such Orders<sup>4</sup> did not identify many specific circumstances where such Orders might be justified. In most instances where conflicts arose, it was recognised that existing by-law powers or voluntary approaches could be successful.
18. We note that the draft clauses provide strong powers to over-ride historic public rights (for example, navigation, fishing, public access). It is debatable whether such strong powers are appropriate in these circumstances.
19. We are concerned that the timing of decisions on the designation of MCZ may precede the development of regional marine plans. This creates a significant risk that decisions on the allocation of very large areas of sea space will be taken without due regard to sustainable development. In effect the approach to MCZ designation creates two separate planning processes for the marine area – one for nature conservation and another for human activities. If MCZ designation is to be undertaken in advance of formal marine plans, it must at least be undertaken in a manner consistent with the process to be applied to marine planning and to the same standards in terms of scientific evidence and public and stakeholder engagement.
20. We note the Impact Assessment suggests that the monetary benefits associated with MCZ significantly outweighs the potential costs. We do not consider that the benefits values are credible or realistic. A considerable investment has been made through the Collaborative Research Programme to seek to develop appropriate methodologies for assessing benefits under the Water Framework Directive. This research has highlighted the difficulties in generating robust estimates, particularly for the marine environment. We would expect that the impact assessments that will be required to support proposals for site designation will adopt much more robust evaluation methodologies.

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<sup>2</sup> Defra 2008(b). Draft guidance on the duties on public authorities in relation to MCZ (Note 2) May 2008 Draft Version 1.1.

<sup>3</sup> Defra, 2008( c). Draft guidance on conservation orders for MCZ (Note 3). May 2008, Draft Version 1.1

<sup>4</sup> Boyes, S., Burdon, D. & Elliott, M., 2006. Unlicensed Activities. A review to consider the threats to marine Biodiversity.

## **Marine Management Organisation**

21. While the establishment of an MMO for England and UK offshore waters provides some potential for achieving a more integrated approach to marine management, we are concerned that issues of devolution may result in an overly complex and bureaucratic system of management particularly for areas such as the Irish Sea.
22. The MMO will be expected to take on a wide range of new functions. It is essential that it is adequately funded to deliver these tasks. Given the range of functions to be delivered we are concerned by the suggestion that only an additional 40 staff might be needed – we think this is an underestimate of what is required to service the additional functions.

## **Coastal Access**

23. We support the proposals to improve public access. In particular, we welcome the recognition that it will not be appropriate for the coastal route to pass through areas of industrial activity on account of safety and security issues. It will also be important that proposals for the coastal route and margin take account of future development plans, and does not sterilise development activities dependent upon coastal locations or transiting the coast.