

Environment, Food and Rural Affairs Committee Inquiry: Marine Environment

Supplementary written evidence from Wildlife and Countryside Link

1. Comprehensive Marine Legislation

Wildlife & Countryside Link (Link) is calling for comprehensive legislation to achieve better protection for marine wildlife and effective management of our seas. Link members have worked jointly to research the loopholes, gaps, inadequacies and inefficiencies of existing legislation affecting the marine environment and its wildlife. A number of areas where new legislation, or reform to existing legislation, is needed have been identified, and these are summarised below. Such are the threats to the marine environment that Link does not wish to see these changes delivered selectively or individually, but rather as part of a comprehensive package of reforms to deliver integrated marine management and conservation.

Where indicated, further information can be readily provided through briefing papers, available at www.wcl.org.uk. If Committee members wish to receive further information on any of the issues below, they are invited to contact Annie Smith at Link (annie.smith@wcl.org.uk/ 020 7820 8600).

Areas where new or reformed legislation is needed

1.1 Governance

Currently, management of different sectors affecting the marine environment is divided between a number of authorities, which do not work to an overarching policy for marine management. Only a holistic, overarching framework will allow the Government to keep track of the cumulative impacts of the vast range of activities taking place at sea, and to deliver its commitment to adopt an ecosystem-based approach to marine management. For further information, please see Link's briefing '*The right governance of our seas*', enclosed with this evidence.

1.2 Protection of nationally important marine areas to 200 nautical miles

Over 50 per cent of the UK's biodiversity is found in the marine environment, but only three marine nature reserves (MNRs) have been designated, and government has concluded that MNRs are not working. Making sensible decisions about the development and management of the seas depends on knowing what is important and where it is. As the majority of the UK's nationally important marine wildlife areas will not be protected through the designation of marine Special Areas of Conservation (SACs) and Special Protection Areas (SPAs), there is an urgent need for government to fulfil its international commitments and designate a network of nationally important marine protected areas. For more information, see Link's briefing '*Protecting our nationally important marine wildlife sites*'.

Appendix 1 provides a brief comparison of the current levels of terrestrial and marine site protection.

1.3 Species Protection

Existing wildlife law is difficult to implement at sea and is failing to protect marine species - such as cetaceans, fish, shellfish and corals - and their habitats. Existing laws must be made more relevant to marine species, and new laws are needed to protect marine wildlife from specific

threats such as the growing problem of noise pollution. Current laws also only apply out to 12 nautical miles. Nationally important marine species should be protected over the UK continental shelf and in waters out to a limit of 200 nautical miles. For more information, see Link's briefing '*Better protection for marine wildlife*'.

1.4 Marine Spatial Planning

The present sectoral approach to planning and managing activities at sea results in conflict between sea users and leaves us unable to assess how the activities combine to impact upon our declining marine biodiversity and cultural heritage. Marine Spatial Planning would facilitate forward planning and integrated management at the ecosystem level. New legislation will be needed to provide a statutory framework to deliver marine spatial planning, just as the 1991 Planning and Compensation Act provided for a plan-led approach on land. For more information please see Link's briefing '*A planning system for our seas*', as well as Link members' original written evidence.

1.5 Marine consents and development control

At present, procedures to gain consents can be tortuous for developers, regulators and conservationists alike, due to out-dated, non-integrated legislation and the absence of a marine spatial planning system. Link members await the outcomes of the Government's inter-departmental regulatory review of developments in coastal and marine waters. We hope to see recommendations for a more coordinated approach to marine consents and development control in the context of comprehensive marine legislation, including marine spatial planning. Link wrote to Ministers to this effect in March.

1.6 Inshore Fisheries

Fisheries and nature conservation are both suffering due to weaknesses, gaps and inadequacies in the current legislation governing inshore fisheries. Policy and organisational changes will need to accompany legislative reform.

1.7 Shipping

Shipping is a major source of pollution entering our seas and atmosphere. Designating Marine Environment High Risk Areas (MEHRAs) and giving a legal basis to Associated Protective Measures are among steps the Government should take to address this matter.

1.8 Pollution

The sea suffers from pollution from both land-based and marine sources. The impacts of land-based point source and diffuse pollution on the marine environment can be tackled in part through the transposition of the Water Framework Directive into UK law. Link is looking into what further measures, including legislation, are necessary to tackle this problem.

1.9 Monitoring and data collection

Action to protect the marine environment needs to be undertaken immediately, based on the information available to us and the precautionary principle. However, there is a need for a marine data management framework, to achieve greater access to data and improve efficiency, transparency and accuracy, presenting cost savings in the long term. Link is considering whether and how new legislation could help achieve this.

1.10 Emergency powers

Any new marine wildlife conservation law will need to include appropriate penalties, to be applied when offences are committed. Circumstances where it is appropriate for someone to be able to rely on a defence or reasonable excuse must be defined.

1.11 Enforcement

To make new or reformed legislation effective, the difficulty in enforcing wildlife law at sea must be addressed. In England and Wales, the Countryside and Rights of Way Act (2000) has produced great advances in tackling terrestrial wildlife crime, but at sea, the necessary systems are simply not in place. Extension of wildlife law enforcement powers to those agencies which operate in the marine environment, such as the Maritime and Coastguard Agency, the development of a centrally coordinated national system for recording wildlife crime incidents at sea, and the establishment of a national registration scheme for all boat owners will be important tools.

1.12 Statutory purpose for marine conservation legislation, and a duty of care for competent authorities

Government should define a vision for marine conservation laws, to allow the necessary building blocks to be identified. This vision, which should reflect society's aspirations for marine conservation laws, should be encapsulated as a statutory purpose for the legislation. The way competent authorities should respond to marine conservation law should also be defined, through a statutory duty of care. For more information, see Link's briefing '*What future do we want for our marine environment?*'

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2. 'Red, Amber, Green' assessment of marine issues

In response to the Committee's request, we list below a number of specific examples of threats to the marine environment and its wildlife. We have not been able to identify areas where no action is currently needed, but have classified as 'Amber' and 'Green' issues where significant and welcome progress has been made.

While all of the problems outlined below need to be addressed, many through legislative change, there will be little overall benefit if they are dealt with in a piecemeal fashion. Comprehensive measures must be taken to address specific deficiencies in the current laws and provide a framework for holistic, integrated marine regulation and management.

2.1 Site protection

2.1.1 RED: Failure to designate marine protected areas (MPAs)

Marine habitats and species, both inshore and offshore, are threatened by the delay in designating protected areas such as Special Areas of Conservation (SACs) and Special Protection Areas (SPAs). Link members welcomed the recent consultation on the draft Offshore Habitats Regulations and we urge Defra to designate and protect marine SACs and SPAs as soon as possible. To ensure that our nationally important species and habitats are protected, and to meet global and regional commitments, the Government must also introduce the necessary legislation to designate nationally important marine protected areas.

Example: Shell Flat

The UK Government has failed to fulfil its obligations under the EU Birds Directive, by failing to designate Shell Flat (and other locations within Liverpool Bay) as a SPA for the conservation of regularly occurring migratory species, in particular overwintering and (summer) moulting common scoter (*Melanitta nigra*), a species of seaduck. The internationally important population of common scoter at this site is now threatened by an application, currently under consideration by the UK Government, to construct an offshore wind farm covering 44 square kilometres. This has resulted in the RSPB registering a complaint with the European Commission against the UK Government.

2.1.2 RED: Failure to manage and protect marine protected areas

Example: Strangford Lough

Strangford Lough has been described as the 'jewel in the crown' of conservation areas in Northern Ireland, and enjoys virtually every available conservation designation - Marine Nature Reserve, SPA and SAC. The Northern Ireland Government has sought to manage the Lough by consensus. However, the once vast horse mussel colonies on the seabed, which formed a vital habitat for a wide diversity of species, have been almost irreparably damaged by commercial trawling for queen scallops.

2.1.3 AMBER: Protection of the Darwin Mounds

Link members have been campaigning for the protection of the Darwin Mounds for a number of years and were delighted this year that the Government finally secured emergency measures to ban bottom trawling in the area. We hope that the EC will swiftly put in place a permanent regulation to ban this damaging activity. We have welcomed the Government's consultation on the Offshore Marine Conservation (Natural Habitats, &c.) Regulations 2003, and on the designation of the Darwin Mounds as a candidate SAC, and have urged the Government to ensure the area is fully protected as required by the Habitats Directive immediately. We hope that similar measures will be pursued to manage damaging activities in other marine protected sites as they are designated.

2.1.4 AMBER: Establishment of the Lundy Fisheries 'No Take Zone'

The designation of the Lundy No Take Zone (NTZ), in the Bristol Channel, earlier this year was very welcome. However, the size of the NTZ - 3.3km² - compares unfavourably with NTZs in other parts of the world which have proved tremendously effective in restoring local wildlife (including commercial fish) populations and habitats. Examples include:

- Georges Bank off the East Coast of the USA - in 1994 three zones were closed to fishing, covering a total area of 17,000 km². Adult and young fish and shellfish are now "spilling over" from the closed areas to the neighbouring fishing grounds;
- Australia's Great Barrier Reef has NTZs of 16,000 km². The Australian Environment Minister recently proposed that the NTZs in the Great Barrier Marine Park be increased to 111,700 km², nearly half of the total area of the national park.

We hope that the UK Government and the devolved administrations will harness the cooperation of fishermen to identify further, and much larger, NTZs throughout UK waters, and that Ministers will start to champion these measures, as has happened in other countries.

2.1.5 GREEN: Overseas evidence of the effectiveness of Marine Protected Areas

A review of 80 Marine Protected Areas found that on average reserves doubled abundance, tripled biomass and increased both biodiversity and size of fish by a third within five years of protection. Typical MPAs where this has occurred include the Mombassa Marine Park and St Lucia in the Caribbean (For more information, see WWF's report: '*Buying Time - A user's Manual for building resistance and resilience to climate change in natural systems*').

2.2 Declining marine species and habitats

Some advances were made in the protection of several marine species through the Countryside and Rights of Way Act (2000), which amended the Wildlife and Countryside Act (1981). However, the Wildlife and Countryside Act, being based on terrestrial principles, is difficult to apply in the marine environment, and there are still major deficiencies in the laws which need urgently to be addressed to adequately protect marine wildlife, including:

- No legal protection for nationally important species beyond 12 nautical miles;
- Defences which excuse the killing of protected species provided it is not done intentionally or occurs as an incidental result of a lawful operation;
- Lack of mechanisms to protect marine wildlife from the increasing problem of noise pollution;
- No systems to allow proper enforcement of wildlife law at sea.

Examples

2.2.1 **RED: Threatened cetaceans (whales, dolphins and porpoises)**

As well as being listed as nationally important species, all cetaceans occurring in UK waters are listed by the Habitats Directive.

- The UK has two resident populations of the bottlenose dolphin – one in the Moray Firth and the other in Cardigan Bay in Wales. In addition there is a group commonly seen around the south-west coast of England. Data indicates that the Moray Firth population is in critical decline and anecdotal evidence suggests that the South West population is also declining. The situation of the Cardigan Bay dolphins is unknown. Link is concerned for the security of the Moray Firth population in coming years, due to the potential development of large offshore wind farms in the outer Moray Firth, and a very significant oil and gas find in the area.
- The incidence of disease in harbour porpoises has been correlated with pollution levels. Reproduction and cognitive functions are also likely to be adversely affected.
- Despite being required by the Habitats Directive there are currently no plans to designate SACs for harbour porpoises in UK waters.
- We are aware that cetacean bycatch is currently being considered by an EFRA sub-committee so we will not provide detail on this issue here. However, real action to address this matter of major conservation concern has still not been taken. We therefore expect that this winter, as last, hundreds of dead dolphins and porpoises will be washed up on the coasts of south-west England.

2.2.2 **RED: Destruction of seabed habitats**

Prior to the advent of rockhopper trawls, reef areas on the seabed provided a haven for fish from mobile fishing gear and a unique habitat for rare species such as the pink seafan and the sunset coral. These reefs are now severely damaged by trawling, to the detriment of the seafan, which is listed under the UK's Biodiversity Action Plan.

Marine aggregate dredging is also destroying some seabed habitats. The ODPM is presently considering licence applications to dredge 8.5 million tonnes of sand and gravel in the Eastern English Channel. The six companies involved have produced a joint Regional Environmental Assessment, which states that "the benthic communities of the east English Channel are considered to be climax communities – dominated by slow growing, long-lived species, ... characterised by a high species diversity and evenness... the effects of any significant disturbance will persist." (Eastern Channel Association, Eastern Channel Region Regional Environmental Assessment, 2003)

2.2.3 **AMBER: Protection of the basking shark**

The protection of the basking shark from intentional killing, capture and disturbance, through addition to Schedule 5 of the Wildlife & Countryside Act 1981 in 1998 represented a significant step forward in the conservation of this species. However, basking sharks are still threatened by accidental entanglement in fishing gear and human disturbance from recreational boating activities. Research in Devon and Cornwall has identified two sites which may be of vital importance for breeding sharks, and UK-wide surveys have identified a number of 'hotspots' where the species congregates. Link believes that the protection of specific sites such as these may be necessary to safeguard this threatened species. The threats to the basking shark and other protected species are not restricted to the UK's inshore zone, though the current protective

measures are. Link is calling for the UK's wildlife protection legislation to be extended to cover the continental shelf and waters to a distance of 200 nautical miles.

2.2.4 GREEN: Monk Seal Protection in the Mediterranean, Turkey

In Foça in the Aegean Sea, environmental groups, working together with the town's fishermen, convinced the Turkish government to ban a large-scale fishery in 1992. In 2001 a beach-seine fishery along Turkey's Aegean and Mediterranean coasts was also banned. A no-fishing zone was established on the Karaburun Peninsular, and illegal fishing activities were successfully stopped. As a result, sightings of the endangered monk seal in the area have increased five-fold, pups have been born in areas where there had been no births for many years, and today, monk seals are even sleeping on open beaches. The fishermen remain active guardians of the seals, reporting activities such as illegal construction and pollution that threaten the coastal environment.

2.3 Lack of integration in marine management

2.3.1 RED: Lack of designated sites impeding environmental assessment of proposals

- Applications are presently being made for the second round of offshore wind farms and the UK's marine SACs and SPAs have still not been identified. The example of Shell Flat, above, is therefore unlikely to remain an isolated incident. Currently, developers cannot know whether a possible development site is likely to be environmentally contentious until they have invested heavily in it. Conflict can lead to project delays, increased costs and, in extreme cases, refusal of the consent - which all cost money. It could also impact on the UK's ability to reach the 2010 Renewables Obligation target and/or result in damage to important marine wildlife sites.
- As stated above, Defra is presently considering licence applications by ten companies to dredge eight million tonnes a year of marine aggregate, despite not knowing whether biogenic reefs – a habitat listed under the Habitats Directive and for which SACs should be designated – occur in the areas affected.
- The delay in designating marine protected areas (including those of national as well as European importance) is the principal barrier to full Strategic Environmental Assessment analysis of potential impacts from developments in the marine environment. Within the framework of marine spatial planning, the identification of marine protected areas would provide a clear indication of where conflicts might arise between development, sea users and wildlife conservation.

2.3.2 GREEN: Overseas example of marine governance and integrated management

Australia's National Oceans Policy

Australia launched its Oceans Policy in 1998, as a major initiative aimed at developing an integrated and ecosystem based approach to planning and management for all ocean uses in areas under Australia's jurisdiction. In 1999, the National Oceans Office was formed to implement the Policy through a process of Regional Marine Planning, involving a major consultative process with marine stakeholders.

Appendix I: Brief comparison of terrestrial and marine site protection

- Of the 6,500 Sites of Special Scientific Interest (SSSIs) in the UK, only 5% (by area) are estuarine and virtually none extend below low water.
- There are only three marine nature reserves (MNRs), Lundy, Skomer and Strangford Lough – only Lundy is directly under Defra's jurisdiction. At the end of March 2001 there were 207 terrestrial National Nature Reserves in England covering 83,703 hectares.
- There are now over sixty SACs designated in the UK that cover marine features, of a total of 601 SACs in the UK (data accurate on 30th October, obtained from www.jncc.gov.uk). The SACs covering marine features are all in coastal waters and are multi-use areas rather than nature reserves. Many are still being degraded, their conservation status adversely affected by a range of activities - for example, the queen scallop fishery in Strangford Loch SAC, port developments in the Solent, Plymouth (MoD) and Thames SACs; the largest oil and gas find in 21 years just outwith the Moray Firth SAC; proposed offshore wind farm proposal in Liverpool Bay SPA.