



June 2009

Parliamentary Briefing

Marine and Coastal Access Bill Amendment

Including disturbance within the scope of the general offence (Clause 140)

The organisations listed above have been closely engaged in the Marine & Coastal Access Bill process from the outset. We are also members of Wildlife and Countryside Link's Marine Task Force¹, which has been campaigning for several years for the legislative tools to deliver improvements in marine conservation and management.

Background

Wildlife and Countryside Link (Link) welcomes the idea of a "general offence" of damaging the protected features of a Marine Conservation Zone (MCZ). We were pleased to see the scope of the general offence expanded by amendments accepted during the Report stage in the House of Lords to cover reckless as well as deliberate damage. However, as currently drafted the general offence still does not cover disturbance to the features of an MCZ. Disturbance can be very damaging but on a case by case basis proving the existence of damage resulting from disturbance is much harder than proving that disturbance has occurred. Link therefore believes that reference should also be made in clause 140 to disturbance of any animal in an MCZ which is a protected feature of that MCZ. This would also have the benefit of bringing the legislation into line with that established for Sites of Special Scientific Interest (SSSIs) under the Wildlife and Countryside Act (as amended).

Broadly, we are concerned about situations occurring whereby marine animals which are identified as the protected features of an MCZ (for example cetaceans, such as dolphins and porpoises, or seabirds and seaducks) can be disturbed, either causing them to move away from the source of the disturbance and consequently suffer e.g. from reduced feeding ability; or increasing stress if they cannot move away. These effects in turn can have lasting negative impacts on the animals' ability to grow, reproduce and survive.

Disturbance can be caused by a wide variety of different marine activities, such as fishing, dredging, marine construction, oil and gas exploration and production and in some cases even recreational activities such as swimming, diving or boating (e.g. boats going too close to cetaceans). For seabirds, disturbance can be particularly damaging at certain sensitive times - for example, when birds are feeding, roosting, breeding or moulting they will be more sensitive to disturbance effects.

¹ Wildlife and Countryside Link is a coalition of the UK's major environmental organisations working together for the conservation and protection of wildlife, the countryside and the marine environment.

It is important to note that adding disturbance to 140 (2) does not turn all activities that could result in any disturbance into an offence. If the disturbance only affects animals that are not named features of the MCZ, or if the disturbance will not significantly hinder, the achievement of the MCZs conservation objectives then no offence will have been committed.

We welcome the fact that byelaws under the Marine and Coastal Access Bill (clause 129) can be used to prohibit disturbance to animals or plants of any description in an MCZ. This is an improvement on previous nature conservation byelaw powers, and broader than inclusion of disturbance in the general offence would be, as it refers to any animals or plants and does not rely on the subject of the disturbance being a named feature of the MCZ. However, we believe that this ability to control disturbance in MCZs with byelaws, while very useful, is not sufficient. In particular, byelaw provisions under the Marine and Coastal Access Bill extend only to 12nm. Without byelaw-making powers in offshore waters there is still a need for protection from activities causing disturbance that risks the MCZ objectives, and clearly therefore this system needs to be complemented with the general offence in waters beyond 12nm.

Including disturbance in the general offence would also reduce the number and scope of the initial set of byelaws that would need to be put in place for MCZs as they are established. It is not a trivial process to put a byelaw in place, and it would be far more efficient for disturbance to MCZ features to be made part of the general offence, thus rendering it automatically an offence once the site has been designated as an MCZ. Relying on the byelaw -making power alone to cover disturbance would require the MMO to foresee and put in place byelaws to prevent every possible kind of disturbance effect for all named features of all MCZs.

There is some concern that it is hard to prove that disturbance has occurred, and that it will be hard to enforce, particularly beyond 12nm. However, it will be equally hard to prove that disturbance has occurred in contravention to a specific byelaw, unless the byelaw is a blanket ban on a particular activity thought to be capable of causing disturbance. In many cases it would be disproportionate to completely ban an activity on the grounds that, if done recklessly or irresponsibly, it could cause disturbance. Enforcement in the marine area, particularly in offshore waters, is clearly going to be challenging - but this is a universal problem for all activities offshore, and Link does not believe that this should be used as an excuse to avoid regulation in the marine environment.

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Annex – Amendments

Marine & Coastal Access Bill

House of Commons Committee Stage, June 2009

Clause	Clause 140 Offence of damaging etc protected features of MCZs
Amendment	Page 95, line 8: Leave out 'kills or injures' and insert 'kills, injures or disturbs'