



**GREENPEACE**



*October 2009*

## **Parliamentary Briefing**

# **Marine and Coastal Access Bill Amendment**

### **The general offence and sea fishing defence (Clause 141(4))**

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 Force<sup>1</sup>, which has been campaigning for several years for the legislative tools to deliver improvements in marine conservation and management.

#### **Introduction**

Wildlife and Countryside Link (Link) welcomes the inclusion in the Bill 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, we are still extremely concerned by the proposed statutory defence at clause 141 (4). We welcome the debate that took place on this issue during Committee Stage in the House of Commons and the level of cross-party support for addressing our concern. We also welcome the commitment made by the Minister to come back at Report Stage with a way forward.

#### **Background**

The statutory defence at clause 141 (4) specifies that a person cannot be guilty of the general offence if the act involved was done whilst fishing, and if the effect of that act on the protected feature could not reasonably have been avoided. In many instances it is fishing that has created the parlous situation that needs rectifying by this Bill. Moreover, it is very easy, in waters where the sea bed cannot be seen, to claim that damage caused by nets, lines, trawls or dredges could not reasonably have been avoided.

It has been suggested that this clause is necessary in Common Fisheries Policy (CFP) waters. However, by the same argument, there is no need for this blanket defence in waters where non-UK vessels have no fishing rights (i.e. in the 0-6nm zone and in those parts of the 6-12nm zone where there are no historic European fishing rights). Given the importance of fishing as a damaging activity, Link believes

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<sup>1</sup> 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.

that it is entirely counterproductive for this defence to exist in waters fished only by UK vessels.

### **Proposed way forward**

One way to resolve this issue would be to remove 141(4) altogether. However, we recognise the difficulties with this and would not want to encourage any inconsistency in how UK vessels are treated in comparison with other European vessels in CFP waters. As such, our amendment below simply amends 141(4) so as to specify that the defence only applies where it is relevant, and that within the 0-6nm zone, and the 6-12nm zone where no historic European fishing rights apply, the general offence can apply to damage caused as a result or consequence of sea fishing activity by UK vessels.

We recognise that sites within 6nm can be protected from any damaging or potentially damaging fishing activity using IFCA byelaws (and out to 12nm by MCZ byelaws enacted by the MMO). We would welcome assurances from Government that these byelaws can and should be made proactively on a precautionary basis, to prevent damaging activities from impacting sites. However, we still feel that there would be added value in the application of the general offence to intentional or reckless damage caused by fishing activities in waters fished only by UK vessels. For example, this would cater for situations in which no byelaw was in place to protect a site from a specific fishing activity that was not routinely carried out there and where damage was not foreseen before it occurred. We do not want fishermen to be penalised unnecessarily, and the general offence would only apply if fishing activities had caused damage, intentionally or recklessly. The application of the general offence to fishing activities should therefore encourage fishermen to be more aware of the consequences of their actions and to take a more precautionary approach to fishing within designated sites.

We look forward to hearing more about Government's thinking on this issue as the Bill passes through the Commons, and urge Government to reconsider the wording of the clause. We feel that applying this blanket defence for sea fishing activities in waters fished only by UK vessels creates an unnecessary loophole that we would like to see removed.

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## Annex – Amendment

### Marine & Coastal Access Bill

House of Commons Report Stage, October 2009

Clause	Clause 141 Exceptions to offences under section 139 or 140
<b>Amendment</b>	Page 96, line 10. Insert new sub-clause as follows: “b) the act occurred on the seaward side of the 0-6 nautical mile fisheries zone in a location where foreign vessels have fishing rights, and At end, insert: ‘In this section - “foreign vessel” means any vessel other than a relevant British vessel, Scottish fishing boat or a Northern Ireland fishing boat’.