



February 2009

Parliamentary Briefing

Marine and Coastal Access Bill Amendment

Byelaws for protection of MCZs in England and Orders for the protection of MCZs in Wales: Permit provision (Clauses 125 & 130)

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

Background

Under the byelaw/conservation order provisions, the MMO and Welsh Ministers can issue permits, to authorise activities that, without such a permit, would be unlawful under the byelaw or order. We believe it should be expressly stated that the number of permits may be limited. It should not be assumed that the use of the term 'permit' in a statute implies that permits may be limited in number.

The key to any effective permitting system must be the ability to cap the number of permits, where this is necessary to prevent over-exploitation. In relation to unregulated activities in MCZs, this could be necessary for example for vessels that run wildlife watching trips. A limited-entry permit system will engage European Convention on Human Rights (ECHR) rights when the number of permits available is less than the number of people who would like a permit, or when conditions attached to permits bite on individual livelihoods. This does not mean that it is not permissible or possible to devise a challenge-proof system, because when the public interest in conservation is at issue it is clear that the courts – both domestic and the ECJ – will uphold appropriate infringements on individual rights, provided that the necessary procedural safeguards are in place. A good starting point in the avoidance of challenge is complete clarity in the empowering statute. Such provision has been included in relation to IFCA byelaws in Part 6 of the Bill. Comparable wording is suggested here, both for the MMO byelaw power and the Welsh Ministers' conservation order power.

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.

We have also suggested a minor amendment to subsection (3) – which stands for both byelaws in England and conservation orders in Wales through clause 130 – to remove the specification that it is only ‘recreational’ vessels or vehicles whose entry or movements can be restricted. This is to bring this sub-clause into line with the other subclauses that relate to ‘any vessel’, and also to remove any potential uncertainty about how to define a ‘recreational vessel’; for example, vessels running wildlife watching trips could be viewed as commercial, rather than recreational, and regulating such vessels (e.g. limiting their numbers or imposing certain conditions through permits) could be an important aspect of management in some MCZs.

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Annex – Amendments

Marine & Coastal Access Bill House of Lords Committee Stage, February 2009

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| Clause | Clause 125 Byelaws for protection of MCZs in England |
| Amendment | Page 76, line 13: Leave out 'recreational'. Page 76, line 29: Insert at end 'and shall make provision enabling the MMO to limit the number of permits issued by it.' |
| Clause | Clause 130 Orders for protection of MCZs in Wales |
| Amendment | Page 80, line 10: Insert at end 'and shall make provision enabling the number of permits issued to be limited.' |