

Wildlife and  
Countryside



## CONSULTATION ON THE MARINE BILL WHITE PAPER

# A SEA CHANGE

Wildlife and Countryside Link Response

June 2007



## Consultation on the Marine Bill White Paper: A Sea Change

### Wildlife and Countryside Link Response

Wildlife and Countryside Link (Link) is a coalition of the UK’s major voluntary organisations concerned with the conservation and protection of wildlife, the countryside and the marine environment. Taken together, our members have the support of over 8 million people in the UK.

This response is supported by the following Link members:

- Buglife – the Invertebrate Conservation Trust
- Council for British Archaeology
- The Herpetological Conservation Trust
- IFAW – International Fund for Animal Welfare
- Marine Connection
- Marine Conservation Society
- Royal Society for the Protection of Birds
- Shark Trust
- Whale and Dolphin Conservation Society
- Wildfowl & Wetlands Trust
- The Wildlife Trusts
- WWF-UK
- Zoological Society of London.

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## Consultation on the Marine Bill White Paper: A Sea Change

### Wildlife and Countryside Link Response

#### OVERVIEW

##### 1. Introduction

Wildlife and Countryside Link (Link) has been campaigning for many years for comprehensive legislation to achieve better protection for marine wildlife and effective management of our seas. The UK's marine environment is extraordinarily rich in wildlife, but it is poorly protected compared to terrestrial wildlife, and under increasing pressure as offshore activities proliferate and climate change disturbs the marine ecosystem. The Marine Bill is a long overdue opportunity to bridge the gap between the protection of wildlife on land and at sea, and to bring greater coherence to the planning of the many activities which take place in the marine environment.

We have warmly welcomed the publication of 'A Sea Change', the Marine Bill White Paper, as an important step on the way to such legislation. We are encouraged that the White Paper outlines proposals for a wide-ranging Marine Bill, that will address nature conservation as well as the management of human activities. We now call on the Government to ensure that the Marine Bill comes before Parliament during the next (2007-8) Session, in order to secure delivery of its commitment to a Marine Act during this Parliament. We recognise that discussion and deliberation by stakeholders on such a wide-ranging piece of legislation is important, but the process of consultation on the various elements of what is needed from marine legislation has been taking place for many years, and we hope that following consultation on the White Paper the Government will be ready to act. The UK's seas need better protection and management, now.

Link wishes to commend the Government, and Defra in particular, for the extensive consultation that has been carried out, and the vast amount of work that has gone into developing the White Paper. While we are broadly supportive of the proposals outlined, it is inevitable that those points about which we have concerns receive more attention in this response than do areas of agreement. We hope that our response will serve as constructive input to the final deliberations on the shape of the Marine Bill.

## 2. Overarching Comments

### 2.1 Aims for the Marine Bill

We broadly support the Aims for the Marine Bill, set out on page 7 of the White Paper. In particular, we welcome the recognition of the role of planning in ensuring protection of marine resources (though we would welcome a reference to biodiversity here), and the need for new tools for conservation and recovery of biodiversity. We are delighted that the White Paper includes a commitment to a network of effectively managed Marine Conservation Zones, and recognises the important role of highly protected marine reserves. However, we are concerned that the Government's commitment to conservation and recovery is undermined by the frequent references to 'proportionality' throughout the White Paper, which could be used as a way to justify business as usual.

We recognise that the new framework that will be put in place by the introduction of marine planning and the reform of the licensing regimes has an important role to play in improving the regulatory environment for sea users, in line with the Government's 'Better Regulation' agenda. We believe 'better regulation' is about reducing regulatory burdens by removing duplication and modernising out-dated regimes, but we would stress that the resulting reforms must in no way weaken or undermine the objective of regulation (we support the objective set out in the Licensing section of the White Paper – to 'regulate activities to protect the environment and the interests of other users of the sea' (5.13)). We also wish to emphasise the importance of a strong nature conservation framework – including early designation of a coherent, representative network of Marine Conservation Zones – in improving regulatory certainty.

### 2.2 Sustainable development

We welcome the statement (1.15) that Sustainable Development is at the heart of the White Paper proposals, and that the purpose of this guiding principle is described as 'to enable us to satisfy our basic needs and enjoy a better quality of life without compromising the quality of life for future generations'. Link considers the conservation and recovery of biodiversity, to ensure healthy, resilient ecosystems continue to underpin the many goods and services we derive from them, to be central to achieving this aim.

We believe that an ecosystem-based approach to managing activities will be necessary to ensure sustainable development is delivered – in particular, to ensure that we live within environmental limits, or, within the carrying capacity of the marine ecosystems from which we derive goods and services. We are thus disappointed that the ecosystem-based approach, as committed to in 'Safeguarding our Seas'<sup>1</sup> is not given more prominence in the White Paper. We are also concerned about the frequent references, throughout the White Paper, to 'balancing' various needs, which hints at trade-offs between the social, economic, and environmental 'pillars' of sustainable development. Integration is the language used in the UK's Sustainable Development Strategy<sup>2</sup> and is, we believe, more appropriate if we are to achieve genuine sustainability in the long-term.

One of the greatest challenges in achieving sustainability - and one which has perhaps not received the prominence it deserves in the White Paper - will be managing cumulative and combined effects of activities. While many activities may singularly be of insignificant impact, cumulatively the effect on local, regional or global ecosystems can be devastating.

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<sup>1</sup> Defra 2002. Safeguarding Our Seas – A Strategy for the Conservation and Sustainable Development of our Marine Environment.

<sup>2</sup> Securing the Future, The UK Government Sustainable Development Strategy, March 2005

### **2.3 Proportionality and the Precautionary Principle**

The White Paper contains a large number of references to proportionality. We understand that, as part of the 'Better Regulation' agenda, Government wishes to ensure that unnecessary burdens are not placed upon sea users. However we wish to emphasise that the starting point must be to ensure that the appropriate controls are in place to ensure the environment is properly protected, in line with the Government's vision of 'clean, healthy, safe, productive and biologically diverse oceans and seas'. We are concerned that the heavy emphasis placed on proportionality (in particular where reference is made to 'proportionate nature conservation') undermines Government's commitment to the protection and recovery of the environment.

In contrast, the precautionary principle receives very little mention in the White Paper. While Government may consider the precautionary principle to be a 'given' we are not convinced it is widely accepted as such, and would welcome a reassertion of its importance as a guiding principle in relation to our management of the marine environment. As acknowledged in 'Safeguarding Our Seas', our knowledge and understanding of marine ecosystems is incomplete and sometimes it is essential to 'sensibly err on the side of caution'.

We also suggest that the Preventive Principle and the Polluter-Pays principle – also guiding principles stated in the EC Treaty – could be given more prominence. With regard to the former, we refer to the sustainable development principle that protecting environmental resources and services and avoiding or preventing environmental damage is more cost effective than either reversing damage or dealing with its consequences. This concept was recognised by Stern in his review of the economics of climate change and its impacts<sup>3</sup>. In addition, the Marine Bill White Paper RIA, Annex 3 gives adequate arguments in support of the need and urgency for biodiversity and ecosystem protection and conservation.

### **2.4 Timescale**

While we recognise that the new measures introduced by the Marine Bill will take time to implement, we are concerned about elements of the illustrative timeline on page 9 of the White Paper - in particular, the projected timescales for completion of the MPA network and of the full suite of marine plans. The projected date for completion of the MPA network is well beyond the target dates set by OSPAR and the WSSD. We want to see more urgency with regards to site designation and management, so that marine resources and biodiversity are safeguarded and ecosystems continue to deliver goods and services. Developing marine plans will of course be a long term process, and we welcome the commitment to produce plans first where they are most urgently needed. However, we would urge Government to ensure that the MMO has capacity to take forward production of more than one plan at any one time (not only will this expedite the planning process, it will allow lessons to be learned at an earlier stage if plans are developed for contrasting areas).

### **2.5 Working Together**

Link is working with its sister organisations in Scotland, Wales and Northern Ireland to call for a joined up approach to managing UK seas, through a comprehensive UK Marine Bill and parallel, country-specific legislation where this is required. We therefore welcome the statement on page 2 of the White Paper that the UK Government and the devolved administrations are working together to manage the marine environment around the UK in a coherent way. Delivering a joined-up approach to marine planning will perhaps be the greatest challenge, and we are very pleased that the White Paper contains a commitment to produce a shared UK Marine Policy Statement to provide the basis for planning and regulation. While we accept that the responsibility for developing and implementing marine

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<sup>3</sup> Stern Review on the Economics of Climate Change [http://www.hm-treasury.gov.uk/independent\\_reviews/stern\\_review\\_economics\\_climate\\_change/stern\\_review\\_report.cfm](http://www.hm-treasury.gov.uk/independent_reviews/stern_review_economics_climate_change/stern_review_report.cfm)

plans will fall to the different administrations depending upon where they have competence to act, we strongly believe that marine planning is most likely to enable an ecosystem-based approach to management if it is based on marine ecosystems, as per the biogeographic Regional Seas defined by JNCC<sup>4</sup>, rather than on political boundaries. We therefore urge the administrations to work together to implement marine plans for areas such as the Irish Sea, the Severn Estuary and the Solway Firth. This has been achieved in the past through the RMNC Irish Sea Pilot project, and is ongoing through initiatives such as the Severn Estuary Partnership and the Solway Firth Partnership.

## 2.6 Marine Vision

The White Paper states that the Government now wishes to elaborate on its vision of 'clean, healthy, safe, productive and biologically diverse oceans and seas' and to build upon its strategic goals. Connected to this, marine objectives are being identified which will feed into the development of the UK Marine Policy Statement. We are encouraged that work has already commenced on this and development of a more detailed Marine Vision that will elaborate on how management of UK seas will look into the future. Link sees these complementary processes as an opportunity for full involvement of marine stakeholders at an early stage and would urge government to ensure fair representation of marine interests. However, we wish to see these processes go forward in tandem with the development of the Marine Bill itself. We urge the Government to ensure these processes are not allowed to delay the development of the Bill or its introduction into Parliament. New tools to protect marine biodiversity are needed urgently, and Link believes that unless the Bill is delivered during the next (2007-08) Session the Government may miss its goal of enacting the legislation during this Parliament.

Link wishes to see Government's commitment to sustainable development and the ecosystem approach set out clearly in the purpose of the Marine Bill, backed up by clear objectives for management of the marine environment. This will ensure in legislation that government's vision of 'clean, healthy, safe, productive and biologically diverse oceans and seas' can be achieved, while bringing certainty for nature conservation and sustainable development. The purpose(s) of the Marine Bill must be linked with clearly stated duties for delivery. Not everything can be safely left to the Marine Policy Statement.

## 2.7 Climate change

Link considers climate change to be one of the most serious threats to biodiversity in UK waters. In combination with pressure from over-fishing and the current mismanagement of our seas, it has the potential to push the marine ecosystem beyond its capacity to cope or recover. In the immediate term, it is essential that we manage our marine environment in a more sustainable manner, in order to make marine ecosystems more resilient to the effects of climate change, enabling them to adapt as the climate changes. Resilient marine ecosystems are themselves a key factor in mitigating climate change impacts. The oceans' phytoplankton is estimated to absorb about half of the CO<sub>2</sub> generated by humans, making our seas as important as rainforests in mitigating climate change impacts. Thus, we strongly believe that climate change makes the protection of marine biodiversity even more critical.

There is much debate about how climate change will affect the marine environment; it is likely that these changes will be gradual and predictable, but we accept the dangers are also of abrupt and non-linear change. Allowing biodiversity to adapt to a changing climate is perhaps one of the key challenges we face both on land and at sea (as recognised by the current development of terrestrial Planning Policy on climate change). Link believes that an extensive network of Marine Conservation Zones (including some Highly Protected Marine Reserves (HPMRs)), in the context of a more sustainably managed wider sea, will be key in

<sup>4</sup> Defra 2004. Review of Marine Nature Conservation Working Group Report to Government, July 2004.

enabling marine species and communities to adapt geographically as the environment changes. A minimalist approach to a MCZ network (e.g. covering ‘as small an area as necessary’) is likely to lead to important marine communities becoming isolated, and unable to move between suitable habitats in the migration north as seas warm. The MCZ network must include reefs and other structurally complex habitats that support the most diverse and rich communities, such as those found at Lyme Bay. While it is possible that the composition of the communities may change over time, the communities are likely to remain rich due to the maintenance and protection of viable habitat structure.

We have been deeply concerned that during the Marine Bill White Paper consultation period Defra officials and ministers have mentioned the need to revise nature conservation legislation (in particular the EU Birds and Habitats Directives) on the basis that it is not up to the challenge of enabling us to tackle climate change (i.e. it presents a barrier to some renewable energy developments). We appreciate that it is much easier to understand the need to reduce carbon emissions than to comprehend the complex ecology, but as stated above, far from making site protection an out-of-date concept, climate change makes it a much more urgent requirement. We strongly oppose any moves to review the site protection framework these Directives put in place. The most important aspect of the Marine Bill, in our view, is the improved nature conservation measures, in particular the introduction of legislation to allow designation of nationally important MCZs to supplement those internationally important sites protected under the EU legislation and underpin resilient, functioning marine ecosystems.

We believe that the new, strategic management framework the Marine Bill will put in place – of which protected areas will form a key element – will facilitate the sustainable development of renewable energy in the marine environment (avoiding conflicts with sites of high importance for biodiversity), which we support. Knowing where the important sites are located will lead to greater certainty for developers about where marine renewables are more or less likely to run into conflict with nature conservation interests. In our efforts to reduce carbon emissions, renewable energy projects must go hand in hand with improvements in energy efficiency, decentralised energy, and emissions reductions in other sectors including transport.

### **2.8 Planning for a Sustainable Future – White Paper**

We strongly support the new Marine Management Organisation as the licensing authority for marine projects. We are currently opposed to the decisions on larger or major infrastructure projects (MIPs) such as offshore renewable energy installations and major ports, being determined by a separate body, the proposed Infrastructure Planning Commission (IPC). The Planning Reform White Paper proposes that the threshold for delivery of renewables by the IPC is 100MW, which is the current size of Round 2 wind farms – thus effectively ensuring that all offshore wind farms would be licensed by the IPC in the future. Such a suggestion goes against the rationale that the Marine White Paper itself puts forward in favour of an MMO and its benefits. The MMO, also an independent body, will be the coordinator of marine expertise, the marine planning body and the authority for licensing a number of marine activities, and as such we believe it will be the best placed body to determine the biggest and most important projects. The MMO will also be better qualified to determine marine projects than a terrestrially-focussed body.

We fully support the proposal that the UK Marine Policy Statement (UKMPS) will be the primary consideration in decision making at sea, and so licensing decision will be made in accordance with the UKMPS. We would be concerned were the production of ‘National Policy Statements’ (NPS) under a reformed planning system may have implications for the primacy of the UKMPS in decisions affecting the marine environment.

As the Planning White Paper was only published less than three weeks before the end of this consultation, we have not yet had adequate time to analyse the proposals within. We therefore reserve the right to supply Defra with any additional views on the IPC and NPS in the future in relation to marine planning, licensing and the MMO.

### **2.9 Meeting the Energy Challenge – White Paper**

The very recent publication of the Energy White Paper, again, means that we have had insufficient time to analyse the proposals it contains and may supply Defra with additional views relating to these at a later date. We would note though, that while the Marine Bill White Paper recognises the need to consider nature conservation needs alongside energy and resource needs, the Energy White Paper is not so broadly focussed (crudely, but perhaps tellingly, a quick search reveals that the word 'biodiversity' features only once in the whole document). While Defra has, clearly, a crucial role in leading the Government's response to the desperate need to tackle carbon emissions, we urge that the parallel role of protecting natural resources and biodiversity must not be undermined. Both are crucial components of 'One Planet Living'.

### **2.10 Comments on the sections of the Marine Bill White Paper**

The following pages contain summaries of our views on each section of the White Paper. Our detailed comments on each section are attached as Appendices.

### 3. Marine Planning

#### **Please see Appendix 1 for our detailed comments on Marine Planning**

Link has campaigned for the introduction of Marine Planning as a tool to deliver sustainable use and protection of our precious marine resources and space through an ecosystem-based approach to the planning and management of activities in UK seas.

We therefore welcome the Government's proposals for a new planning system, which we hope will improve the transparency, accountability and co-ordination of marine activities and development, in seas that are increasingly busy. We look to Marine Planning to increase the sustainability of development, and to reduce conflict between different interests by helping to identify areas most appropriate for particular activities while ensuring protection of our cultural heritage and nature conservation. We also believe that planning must be based on an explicit recognition that a healthy marine ecosystem is essential for many of the economic and social benefits that are derived from the sea, and that it should be underpinned by the precautionary principle.

We endorse marine planning that covers all marine activities, and provides the primary consideration for regulatory decisions in the marine area. Link believes that all public bodies with functions relating to marine planning and licensing should have a robust duty to deliver sustainable development.

We welcome the commitment of the UK Government and the devolved administrations to create a UK Marine Policy Statement (UKMPS), setting out their joint vision and objectives for the marine environment. It appears that much weight is to be placed on the UKMPS, and we therefore expect to see a strong, detailed Policy Statement, backed up by guidance, which will provide a comprehensive basis for forward planning. We call on the Government to ensure that the UKMPS gives full consideration to the crucial role planning has to play in securing the protection and recovery of marine biodiversity, and the protection of our cultural heritage. Planning must also recognise the importance of clean, attractive and biodiverse seas to people's wellbeing, as well as to marine industries and coastal economies.

We note that work is underway to elaborate the Government's vision of 'clean, healthy, safe, productive and biologically diverse oceans and seas', and that objectives are being developed not only for the marine environment, but for all marine sectors, which will feed into the development of the UKMPS. We expect environmental, or ecosystem objectives, to ensure that the UK meets its international commitments relating to the marine environment and its biodiversity, and also to ensure that marine activities are managed within the carrying capacity of the marine ecosystem, i.e. 'within environmental limits'. This is in accordance with the UK Sustainable Development Strategy which highlights that environmental sustainability is essential if the UK is to achieve social and economic sustainability. We caution against generic high level priority setting between objectives, and suggest that the UKMPS will need to create a robust framework for decisions affecting the marine environment.

Link believes that the benefits of marine planning are likely to be greatest if it is implemented in accordance with biogeographic 'Regional Seas'. We are working with our sister organisations in Scotland, Wales and Northern Ireland to urge the UK Government and devolved administrations to commit to working together across political boundaries to deliver plans for regional seas that will best deliver an ecosystem-based approach to marine management.

We believe that the Marine Bill should provide for sub-regional plans to be developed where needed within the wider marine regions, and that it should allow for the use of tools such as habitat mapping, sensitivity mapping and zoning, to provide guidance to sea users.

We would like to see Strategic Environmental Assessment (SEA) undertaken as part of the process of developing the UKMPS, and each marine plan. Although we favour SEA only, to ensure proper consideration of the environment, SEA should be a separate and distinct element of any broader Sustainability Appraisal where an SA is carried out. In addition, Appropriate Assessment will be required where plans may affect coastal and marine Natura 2000 sites.

We believe that each marine plan should be subject to examination (e.g. through a process akin to Examination in Public carried out for Regional Spatial Strategies), to ensure its soundness and improve the confidence of sea users in the plan itself, and the planning process.

Link agrees with the Government that marine planning will 'front-load' the debate on potentially conflicting uses of the marine environment, and as such should improve certainty for sea users. We consider the swift designation of a network of Marine Conservation Zones – which we expect to be robustly protected through the planning and licensing regimes – to be an important element of the framework to achieve this. We would emphasise, however, the continued importance of project specific EIA and Appropriate Assessment where required.

Finally, we note that the Government envisages it may take 20 years for the full suite of marine plans to be drawn up. We appreciate that developing marine plans will be a time consuming process, and we welcome the commitment to produce plans first for areas where they are most urgently needed. However, we would urge the Government to ensure that the MMO has capacity to develop the full suite of plans as quickly as possible, and in particular we suggest that the MMO should work to develop more than one plan at any one time. This will allow experience to be developed more quickly, particularly if the MMO maximises its opportunity for building experience by focusing on contrasting areas concurrently.

#### 4. Licensing Activities in the Marine Area

**Please see Appendix 2 for our detailed comments on Licensing**

Link supports the decision to reform the existing assortment of regimes that control licensing of marine activities. We agree that the current system is confusing and lacks clarity and transparency. We would also agree that in many cases there is overlap and duplication of regimes and on the other hand, there are gaps amongst the tools available to manage activities adequately. We welcome the Government's intention to produce a reformed system that delivers greater transparency and consistency and fully enables stakeholder engagement, and the fact that all licensing decisions will be made within the context of the UK-wide marine policy statement and marine plans.

However, our support is conditional on a new regime which in practice ensures that decision making on marine licences delivers a system that protects marine biodiversity, assets and resources and the rights of other users, including society in general, in an equitable way. We endorse the objective for licensing put forward in this chapter: 'to regulate activities to protect the environment and the interests of other users of the sea', and we believe that this should be explicitly stated in the Marine Bill and any secondary legislation that follows.

While we can see the logic in theory behind terms such as 'Proportionality; risk-based approach; targeted approach; only regulating where necessary', we have concerns about how they are used (or abused) in practice. Any reduction of regulatory burden must not compromise the objective of protecting the environment and other users' interests. The risks of not properly protecting the environment, or the costs resulting from damaging it (or of rectifying that environmental damage) must be included in the assessment of risk – this is in line with the sustainable development principle that prevention is better than cure and usually cheaper, easier and more effective. The benefits of nature conservation to society as a whole, now and in the future, as well as the requirements to meet biodiversity objectives, must also be fully considered when determining costs, benefits, risks and proportionate action. Better regulation must still mean good regulation; to deliver long-term solutions and efficiency we believe that proactive nature conservation is paramount to achieving the environmental sustainability underpinning sustainable development.

In this vein, we emphasise that the success of the proposed tools for 'Lighter touch licensing' (exemptions; general permissions; phased activities) is dependent on their ability to achieve the aim of reducing regulation while still safeguarding the environment and the rights of other users of the sea including the public. We reserve our full support of such tools until it can be shown that they will deliver such safeguards in practice. We would reject a system where exemptions and other lighter burden licensing provisions are automatically applicable in MPAs including MCZs – it must be acknowledged that by their very nature these are important areas, potentially more sensitive and therefore at greater risk from human impact. Where 'lighter touch' regimes are used, there must be notification, monitoring and review processes to ensure that the regulator(s) are fully aware of all activities taking place and can keep track of cumulative impacts and react if necessary where conditions change. All lighter touch licensing, including exemptions, must be carried out in accordance with the UK-wide marine policy statement and marine plan(s).

We would like to see a clear requirement for licensing regulators to consult with the appropriate Government advisor on specific issues, such as the statutory nature conservation agencies with regards to environmental issues, the national heritage advisor with regards to marine heritage and the Maritime and Coastguard Agency with regards to shipping issues, etc. These requirements should apply for all licences, not only the new 'Marine Act regime'.

We believe the benefits of licensing reforms to sea users will be greater the more analogous the regulatory systems throughout UK waters. We therefore welcome the commitment of the UK Government and devolved administrations to jointly develop the UK Marine Policy Statement and the statement that the four UK Administrations are aiming for licensing regimes throughout UK waters which will be identical wherever possible and where not, at least similar. With our sister organisations in Scotland, Wales and Northern Ireland, we are urging the four administrations to commit to working together to deliver a coherent, ecosystem-based approach to management of human activities in UK seas, which we believe will bring the greatest benefits not only for marine ecosystems but also to sea users undertaking licensed activities. We have some concerns that the benefits set out in the White Paper that, sea users would expect from reforms of licensing regimes and delivery arrangements, may not be achieved equally throughout the UK.

A further concern relating to the proposed licensing reform is the licensing authority. We support the MMO as the licensing body in England, Northern Ireland and for reserved matters offshore, covering: the reformed Marine Act regime; marine minerals and aggregates dredging; carbon capture and storage, if this is approved as an activity; marine renewables; and administering Harbours Orders. However, we currently reject the proposal that a separate, primarily terrestrially focused, body – the new infrastructure planning commission (IPC) proposed in the Planning White Paper – should be responsible for determining some of the biggest, potentially most environmentally damaging projects, including wind farms with outputs greater than 100MW and ports. We currently believe that these projects should also be licensed by the MMO, a body which will have a knowledge and understanding of marine issues and an overview of what is happening at sea. The Government risks undermining the benefits sought through the licensing reforms – including reduced complexity for users – by introducing two new systems rather than one. We will be providing Defra with further details on our views regarding the IPC and the MMO in our response to the Planning White Paper.

## 5. Marine Nature Conservation

### **Please see Appendix 3 for our detailed comments on Marine Nature Conservation**

Link fully supports the Government's aim 'to introduce new tools for conservation of marine wildlife that together with existing ones can: halt the deterioration in the state of the UK's marine biodiversity and promote recovery where practicable, support healthy functioning and resilient marine ecosystems, ensure environmental considerations are at the heart of decision-making processes, and provide mechanisms that can deliver current and future European and international conservation obligations.'

We welcome the Government's recognition of the need for new mechanisms to protect nationally important biodiversity. Link has stated that we will consider the Marine Bill to have failed if it does not provide for the designation of a network of Nationally Important Marine Sites, including Highly Protected Marine Reserves (HPMRs). We therefore warmly welcome the commitment to a network of effectively managed Marine Conservation Zones, and we are also delighted that the Government has recognised the role of HPMRs, where all extractive, additive and otherwise damaging activities are excluded. We welcome the purposes put forward for Marine Conservation Zones and believe these should be included in the Marine Bill.

We also strongly support the introduction of new powers to regulate unlicensed activities to protect wildlife, including by-laws and interim measures. We consider the latter to be crucial to ensure action can be taken before biodiversity is damaged, as can happen in the time taken to enact a by-law. We are pleased that the Sea Fisheries Committees are also to have improved responsibilities and powers to use such tools to protect biodiversity from fisheries impacts.

However, we are concerned that the package of conservation measures, as currently described, is not strong enough to achieve the aim stated above.

The White Paper is peppered with phrases that undermine some otherwise strong statements, such as assertions that: Marine Conservation Zones should cover 'as small an area as necessary' (p70), that they should not result in 'inappropriate economic or social impacts, where possible', that we should 'avoid damaging [the marine ecosystem] to the point that it can no longer provide essential services' (p66), amongst others. We are also concerned about the frequent references to '[balancing] ecological, social and economic considerations'. Together, these phrases paint a picture in which conservation takes place only where it does not impinge upon economic activity. We are concerned this reflects a lack of Governmental commitment and political will to deliver the robust conservation measures we urgently need.

Link wishes to emphasise the importance of marine biodiversity in underpinning long-term economic and social sustainability. A recent study (Worm et al. (2006)) analysed local experiments, long-term regional experiments, and global fisheries data to test how biodiversity loss affects marine ecosystem services. It found that '[o]verall, rates of resource collapse increased and recovery potential, stability, and water quality decreased exponentially with declining diversity. Restoration of biodiversity, in contrast, increased productivity fourfold and decreased variability by 21% on average'. The paper concluded that 'marine biodiversity loss is increasingly impairing the ocean's capacity to provide food, maintain water quality, and recover from perturbations'. In addition the paper stated that available data suggest that trends are still reversible, if addressed by urgent and effective action.

While we strongly welcome the proposed purposes for MCZs, we regret that we do not see significant improvements in the proposed mechanism for site designation to that which has allowed almost total failure to designate Marine Nature Reserves under the Wildlife and Countryside Act (1981). While we recognise that the policy and political environment has moved on since the 1980s, we fear that the weaknesses in proposed approach to site designation (and management – see below) would likely prevent the Government from achieving its objectives for a well-managed network of MCZs. The timetable set out in the White Paper already indicates that international commitments and targets relating to MPA networks – i.e. OSPAR and WSSD - will not be met. In particular, we are concerned that the White Paper places a great deal of emphasis on MCZs not being designated where they would conflict with other interests – we fear this could critically undermine site selection for nature conservation, setting a harmful precedent whereby the only sites protected would be the ‘leftovers’, unimportant to all other sectors.

Link believes that the Marine Bill should contain a duty for the Government to designate a comprehensive, representative network of MCZs, within a specified timetable and with regular reporting requirements. This duty should be linked to the purposes for MCZs outlined in the White Paper, which we believe should be included in the Marine Bill. In addition, we believe the SNCAs should have a duty to designate MCZs (including site selection, consultation and confirmation). We believe the designation process should include the opportunity for appeals. Sites should be selected based on criteria developed in accordance with the purposes set out in the White Paper, drawing upon existing criteria including those developed during the RMNC process.

The proposed management framework for MCZs relies upon reactive, indirect and piecemeal controls, delivered by a range of authorities for which conservation is not the main function. This strongly resembles the UK’s existing MPA mechanisms, which have been beset with problems. In particular, we are concerned that this predominantly indirect approach would make it very difficult to create highly protected sites, as you would have to jump through so many hoops to effect complete protection, and we seek reassurance that where an SNCA identifies that a site should be highly protected this will be achievable. Link believes that the SNCAs will need to play a very proactive role in guiding all authorities (including the MMO, other licensing bodies and the SFCs) if well-managed sites, capable of meeting their biodiversity objectives, are to be achieved.

We welcome the commitment to impact assessment in relation to proposed activities affecting MCZs, and also the statement that advice and guidance will be provided to businesses on where activities may be of concern. However, we are concerned that the set of proposals on licensing activities on MCZs imply that, generally, projects will be permitted rather than refused. In particular, the proposals interpreting ‘in the public interest’ need to be considerably strengthened. With the proposals as set out, we anticipate it would be very hard to defend an MCZ against all manner of activities.

The White Paper makes frequent reference to habitats and species that are ‘rare’, ‘threatened’, ‘globally or regionally significant’, ‘important’, ‘of national value’ and ‘representative’ without explaining how these might be determined - for example whether it refers to Nationally Important Marine Features (NIMFs), BAP habitats and species, OSPAR priorities or a combination of these. The interpretation of these terms has enormous implications for the efficacy of the measures suggested, thus it is imperative that further clarification is provided. Link believes that each of the aforementioned categories will be important in informing the use of the new nature conservation tools, and recommends that the SNCAs are given a duty to refer to these (and possibly other) lists in developing proposals for MCZs and other nature conservation tools. We urge Defra to ensure the list of Nationally Important Marine Features is completed to ensure it provides a sensible basis for use of these tools.

The imperative for robust protection of marine biodiversity, within an improved framework for sustainable management of activities in the wider sea, is increased by the threat of climate change. We are already witnessing changes in the marine environment arising from climate change, and further changes are expected. The new marine nature conservation measures must provide strong protection for marine habitats and wildlife to enable adaptation to climate change without loss of biodiversity. We are concerned that the crucial role of biodiversity in the mitigation and buffering of climate change impacts has not been appreciated. As part of our strategy to mitigate climate change we need to ensure that the ecosystem continues to function as the largest sink for carbon via marine primary production, and as an essential element of climate regulation in the UK. Ecosystems with high biodiversity and those that maintain structural components are thought to recover more easily from climatic disturbances and so continue to provide society with ecosystem goods and services.

Marine and coastal waters are continuously being exposed to increasing human pressures through activities such as fisheries, energy production, trade and waste disposal. The effects of climate change is difficult to disentangle from direct human impacts, and indeed these impacts reduce the resilience of marine and coastal systems, making them more vulnerable to stresses of climate change. The removal of other stresses (in the case of the marine ecosystem, examples would include over-fishing and habitat destruction) is a common theme in climate change adaptation for biodiversity.

The need is recognised in many biodiversity adaptation strategies for climate change to:

- Protect adequate and appropriate space. It is important to take account of the impacts of climate change in planning protected area networks and to expand spatial scales through buffer zones and corridors to aid species migration. Planners should look for climate refugia.
- Limit all non-climate stresses. Marine Protected Areas contribute to the good health of the ecosystem allowing it to become relatively more resilient to environmental changes in comparison with those affected by additional anthropogenic pressure. The IUCN has recently identified Marine Protected Areas in general, and (Highly Protected) Marine Reserves in particular, as a vital tool in adaptation to climate change.
- Use adaptive management and strategy testing, including ongoing monitoring of areas where impact is identified, and adapting management as necessary.

## 6. Modernising Marine Fisheries Management

### **Please see Appendix 4 for our detailed comments on Marine Fisheries**

Link welcomes Defra's aim to 'strengthen fisheries and environmental management arrangements so that more effective action can be taken to conserve marine ecosystems' (pg 98). Link supports many of the proposals set out in the White Paper for modernising marine fisheries management. We look forward to seeing the same principles of modernisation and improved environmental management arrangements applied in the forthcoming review of Welsh inshore fisheries promised by the Welsh Assembly Government.

The current legislation for managing inshore fisheries originates from the 1960s, and reflects the management necessary for commercial fisheries in the mid to late 19th Century. There is a widely held perception that this legislation is not relevant, enforceable or appropriate for the effective management of today's inshore fisheries, which are characterised by a highly dynamic, diverse and competitive industry, intensively exploited stocks, widespread environmental damage and conflict with other users/activities. Managers have now also realised the need to take an ecosystem-based approach towards fisheries management, rather than the single species approach of the past. Link believes that new legislation is required to provide today's fisheries managers with the necessary powers, flexibility and adaptability to deliver true sustainable management of our inshore fisheries.

Link welcomes the overhaul and modernisation of the Sea Fisheries Committees (SFCs) in England proposed in the White Paper, but believes that in order to see real improvements, there must be a corresponding and fundamental change of in SFC culture. It is Link's view that the modernised management of inshore fisheries by SFCs must include use of SEA and EIA as well as assessment and mitigation of the environmental impacts of existing fisheries, and the routine collection of fishing effort data.

Link supports reform of the legislation governing the use of Several and Regulating Orders (SROs) for shellfish, as we consider it to be outdated and not suitable for the purpose of managing today's inshore shellfisheries.

Link warmly welcomes the introduction of a charging regime for recreational sea angling and measures to tackle hitherto unregulated fisheries.

As recommended in the Bradley Review, Link supports the concept of charging the inshore industry to support the costs of inshore fisheries management (including monitoring, regulatory and enforcement activities), and believes that such a charging regime should be introduced as soon as possible.

## 7. A New Marine Management Organisation

### **Please see Appendix 5 for our detailed comments on the Marine Management Organisation**

Link welcomes and supports the creation of a Marine Management Organisation (MMO) that is to be a 'professional and proactive marine manager, trusted by all stakeholders to contribute to sustainable development of the marine area'. We broadly support the proposed functions for the MMO, relating to planning, licensing, fisheries management, enforcement, monitoring and data management. However, we consider further clarity is needed regarding its proposed nature conservation functions, and its relationship with the SNCAs.

We believe the MMO must have a strong duty to further sustainable development, set out in the Marine Bill. Because it is proposed that the MMO will be responsible for some of the new tools provided for nature conservation (development of by-laws and interim measures), the MMO must also have a duty to further the protection and recovery of biodiversity, based on advice from the SNCAs (in addition to its duty to further the delivery of MCZ objectives).

As mentioned, we support the proposed role of the MMO in delivering marine planning and marine licensing, and we support the Government's rationale for these two, closely linked functions to rest with the same body. We are deeply concerned by the proposals set out both in the Marine Bill White Paper and the Planning White Paper (Planning for a Sustainable Future, May 2007) that a new infrastructure planning commission (IPC) will be responsible for determining applications for certain large projects in the marine environment. We believe that the MMO – which will be a centre of marine expertise – should determine all projects irrespective of size. To have two new bodies, licensing the same types of projects but of different sizes, will create a more complex system, and negate many of the benefits that support Government's rationale for creating the MMO. We will provide more information on our views regarding the MMO and the IPC in our response to the Planning White Paper.

Link is working with its sister organisations in Scotland, Wales and Northern Ireland to call on the UK Government and devolved administrations to work together, to deliver a joined up approach to the governance of UK seas through the Marine Bill and parallel devolved legislation. The UK Government and the devolved administrations will need to ensure a level playing field throughout UK waters where the same or similar services or functions are being delivered by a range of different types of bodies across the UK. The UK Government's MMO will have a critical role to play in delivering this joined-up approach, and will need to work closely with any bodies charged with delivering devolved marine management functions, including planning and management.

The MMO has a number of proposed roles in relation to nature conservation, including in relation to Marine Conservation Zones, and the development of by-laws and interim measures to control unlicensed activities (within and outwith Marine Conservation Zones). With regard to the latter two (by-laws and interim measures), the MMO must rely upon the expertise of the SNCAs on where and what measures are needed. We believe the Marine Bill should place a duty on the SNCAs to advise the MMO as to where by-laws and interim measures are required, and a contingent duty placed on the MMO to take account of this advice in order to protect, and allow recovery of, marine biodiversity. We are concerned that the White Paper does not clearly set out the nature of the relationship between the MMO and the SNCAs with regards to these matters.

We welcome the creation of an MMO as an opportunity to look at the complexity of current enforcement mechanisms, and to bring together modernised enforcement functions into one body. This section of the White Paper notes that this will bring benefits, clarity, predictability

and proportionality as well as a risk-based approach. Any such approach must consider the risks of not protecting marine biodiversity and marine resources, as well as the costs of damaging beneficial ecosystem services, the financial losses to those who use these resources sustainably and the costs of rectifying any damage. Proportionate regulation and enforcement must consider the proportionate benefits of nature conservation to society as a whole, now and in the future, as well as the UK's requirements to meet biodiversity objectives (and the consequences of not meeting those objectives, such as fines). We expect the MMO's enforcement responsibilities to be set out in the Marine Bill in relation to its duties to achieve sustainable development and to protect marine ecosystems and biodiversity.

We agree with the Government that effective and targeted monitoring of the marine environment and of activities is central to improving and future-proofing marine regulation. Data on activities and impacts on the marine environment must be brought together with environmental data in order to assess whether management tools are working successfully and to plan for the future. As far as possible, planning and regulation should be proactive in order to avoid adverse pressures and impacts rather than deal with them once marine wildlife is already declining and under pressure – rectifying damage or the consequences of damage are likely to be more costly than protection initially.

We note the MMO's proposed functions include 'assisting' with improving the system that can coordinate monitoring across the marine environment by academia, industry and government. We believe that 'best use of data' and 'availability of data' are key to the success of marine planning and the MMO's other roles. We wish to see the MMO take a lead and assume responsibility for delivering an improved system that coordinates data and makes it publicly available. This does not necessarily mean the MMO will do the data gathering or compiling, but it should have a strategic overview and ensure the system is 'fit for purpose'. In this position the MMO should be able to commission or direct new data collection or acquisition to fill the gaps for the main purpose of informing planning, management and sustainable development of UK seas.

## Appendix 1

### Section 4: Planning in the marine area

Link has campaigned for the introduction of Marine Planning as a tool to deliver sustainable use and protection of our precious marine resources and space through an ecosystem-based approach to the planning and management of activities in UK seas.

We therefore welcome the Government's proposals for a new planning system, which we hope will improve the transparency, accountability and co-ordination of marine activities and development, in seas that are increasingly busy. We look to Marine Planning to increase the sustainability of development, and to reduce conflict between different interests by helping to identify areas most appropriate for particular activities while ensuring protection of our cultural heritage and nature conservation. We also believe that planning must be based on an explicit recognition that a healthy marine ecosystem is essential for many of the economic and social benefits that are derived from the sea, and that it should be underpinned by the precautionary principle.

#### Headline points of support

Link strongly supports the Government's plans for a marine planning system as outlined in the Marine Bill White paper. In particular:

- We strongly support the aim for a new strategic marine planning system that is positive, proactive and aspirational.
- We are particularly pleased to see the statement that 'protection of marine resources now and for the future is a key element of [Government's] marine policy', though we consider that biodiversity as well as resources must be added to this statement. We also strongly support the reiteration that the ecosystem approach to the management of human activities is at the heart of the UK Administrations' marine policy. We particularly welcome the recognition by Government that there must be a reduction in impacts on the marine environment and support the commitment to a 'proactive' approach to achieving nature conservation objectives. We acknowledge the associated importance of a healthy marine environment for human well-being. [4.7-4.9; 4.17]
- We warmly welcome a UK-wide marine policy statement prepared and agreed jointly by all UK administrations, covering the full geographic extent of UK waters and continental shelf from mean high water spring (MHWS) tides. [4.15-4.16; 4.45]
- We support the proposal that marine plans should translate policy into practice and implement the UK-wide marine policy statement. [4.12-4.15]. We endorse marine planning that covers all marine activities [4.51-4.52] and all public bodies [4.89-4.91], however, we would expect non-public bodies which carry out public functions, such as Harbours Authorities, to also be covered.
- We endorse a system where the UK-wide marine policy statement and the marine plans are the primary consideration in decision-making thereby having an influence on all decisions that have an impact on the marine area, subject to any relevant material considerations. Where decisions depart from the plan or policy, we agree that decision-makers would be required to have good reason to do so and would have to publish their rationale to ensure transparency. [4.48; 4.85-4.88]
- The UK-wide policy statement and the marine plans must be kept up to date to be effective and so we support the requirements to monitor and regularly review them. We agree that such monitoring and review processes must cover and adapt to the outcomes of environmental survey and monitoring, progress monitoring, monitoring against the plan objectives and compliance monitoring. [4.29-4.32; 4.70-4.74; 4.94]

- We welcome the many assurances throughout the White Paper that stakeholders and the public will be fully engaged in the various stages of the planning process early and often to effectively ensure a system that is open and transparent with stakeholder ‘buy-in’. We believe that there should be stakeholder forums, scoping and consultation on the UK Marine Policy Statement, plan preparation and content, the soundness of plans (through ‘examination in public’), and on the guidance the Government will develop to inform production and implementation of the plans.
- We support the MMO as the planning body. We welcome the setting up in England of fit for purpose ‘marine planning steering groups’ to deliver stakeholder involvement and effectively support the MMO with the express purpose of delivering marine plans in coastal areas. [4.102-4.106] We suggest steering groups, with different membership, should also be developed to input to planning at the regional seas level.

Despite our overall support, outlined above, we do still have some serious concerns regarding specific elements of the proposals on Marine Planning, and these are highlighted here as our headline points of concern. In addition, we respond in more detail to the individual proposals below.

### **Headline points of concern**

#### **A) UK Marine Policy Statement and Marine Objectives**

Link strongly welcomes the commitment from the UK Government and devolved administrations to create a UK Marine Policy Statement (UKMPS) which will ‘articulate [their] joint vision and objectives for the marine environment’.

#### Vision & principles

Link fully supports the UK Government's vision for the marine environment. We also support and appreciate re-iteration of key goals including the ecosystem approach and sustainable development. Link considers that it is essential that the key principles of marine planning must include the ecosystem approach and sustainable development and as such it is essential that there is a strong duty to this effect. We want to see a purpose or duty that does more than just ‘contribute towards’ sustainable development but is more positive about achieving sustainable development and the sustainable use of marine resources [4.15]. The precautionary approach must be brought into play where there is uncertainty as the result of a lack of data or where there is a risk of environmental damage. Costs and proportionality must not be used as a loophole to waive environmental protection or to abandon environmental data collection.

#### Marine Objectives

Link expected Marine Ecosystem Objectives (MEOs) to provide a context for wider marine objectives, to enable Government to ensure that planning and management decisions are not pushing the environment to its limits (in accordance with the UK Sustainable Development Strategy, 2005). We believe that marine objectives for the environmental elements of the marine area are essential to make the link between the UK’s vision for the marine environment and marine management ‘on the ground’ and they are central to implementing an ecosystem-based approach to managing human activities, and in turn to allowing us to operate ‘within environmental limits’, i.e. within the carrying capacity of marine ecosystems. In particular we see the importance of environmental/biodiversity marine objectives as necessary to ensure that Marine Planning can properly deliver environmental, biodiversity and ecosystem protection and conservation, and recovery, and ensure that international commitments are met. Link is therefore concerned and disappointed that MEOs are not mentioned in the Marine Nature Conservation section of the White Paper.

### Priority setting

The White Paper states that Ministers will decide on priorities between marine objectives [4.21] with no special reference to the environment. We fear this is a reversion to 'balancing' and 'trading-off' approaches to sustainable development, and that the environment will lose out. Link would welcome a commitment from Government to produce environmental marine objectives to ensure that planning and management decisions are not pushing the environment to its limits. Paragraph 4.21 suggests that generic priorities would be set in the policy statement. We would be concerned by a situation where one policy or sector would be considered to always take priority over some or all other Government priorities, objectives and policies. Rather, we believe it is the role of policy and planning to provide a robust framework for decision-making during licensing processes which will ultimately be on a case by case basis.

### International commitments

Link would like to emphasise the importance of existing EU and international objectives and targets in the Marine environment and the UKMPS provides a useful opportunity for the range of commitments we need to deliver on to be pooled together in one place. Link would oppose any attempts to tear up the existing rule book, particularly given the UK's wealth of expertise in marine policy over the decades that has been key in most of the international negotiations.

### Policy Guidance

Link would like to see a strong, detailed Policy Statement that provides sufficient policy guidance to be of real use in forward planning for our seas. We understand that the UKMPS will fulfil the role of Planning Policy Statements in the land-use planning system, rather than separate, topic-based policy guidance being produced. We accept this, provided the UKMPS provides sufficient detail, including for example on how planning should contribute to biodiversity protection (as per PPS9), and, as per the new supplement to PPS1 which is currently under development, on how policies can support both mitigation and adaptation in the context of Climate Change. The UKMPS will need to be backed by guidance, including the equivalent of the Legal Circulars that accompany PPSs, for the planning body and all regulators.

### Primacy of the UKMPS

In government's White Paper: Planning for a Sustainable Future (May 2007) Section 5.12 government proposes that decisions on 'major marine infrastructures will be made in accordance with the Marine Policy Statement' (that follows the Marine Bill White Paper proposals). Link welcomes this proposal as the UKMPS will address all of the objectives to be achieved in the marine environment, rather than single sectors in isolation, and therefore must be the primary consideration in marine licensing decisions (as opposed to sector specific National Policy Statements proposed in the Planning White Paper). We hope that this commitment will always apply in the marine environment, including for structures considered to be of climatic, political, or public importance, for example for renewable energy. Whilst Link fully supports renewable energy to combat climate change, projects must be correctly located to minimise impacts as full implications of losing marine biodiversity which is a natural and vital 'climate regulator' and 'carbon sink' must also be considered.

## **B) Joined-up approach: Regional Seas**

Link strongly welcomes the commitment from all four UK Administrations to create a UKMPS. We urge the new devolved administrations to retain this commitment.

The White Paper confirms the UK Government and the devolved administrations' commitment to 'put an ecosystem based approach at the heart of our marine policy', which Wildlife and Countryside Link Response to the Marine Bill White Paper: A Sea Change

Link welcomes. However, we are concerned that, in practice, if plans are being developed separately by each Administration, it will be difficult to achieve an ecosystem-based approach for areas such as the Irish Sea. We accept that the responsibility for delivering plans may 'fall to different administrations depending on where they have competence to act' but we call upon the UK Government and devolved administrations to work together, as they have done in the past through the Review of Marine Nature Conservation and the Pilot Marine Spatial Plan for the Irish Sea, and as they continue to do through cross-border initiatives such as the Solway Firth Partnership, the Severn Estuary Partnership and for River Basin Management Plans. We believe plans should be developed at the scale of the biogeographic regional seas identified by JNCC.

As well as facilitating an ecosystem-based approach, a joined-up approach to marine planning is likely to benefit UK industries.

Link does not suggest the UK marine ecosystems are fully understood or ever can be (though more data would help). However, complete and comprehensive understanding is not needed to implement a management regime that is based on the ecosystem approach. Such an approach does not aim to manage the ecosystem but to manage human activities to ensure that the system is maintained in a state where it can continue to provide the functions it presently supplies.

- **Link strongly welcomes commitment from all four UK Administrations to create a UK Marine Policy Statement. We urge the new devolved administrations to retain this commitment.**
- **Link calls upon the four UK Administrations to work together to produce plans at a meaningful bio-geographic scale for the marine area, especially the Irish Sea, while recognising that delivery will be through the appropriate devolved or reserved mechanisms.**

### **C) Plan hierarchy / 'nested approach'**

Link supports a plan hierarchy with smaller scale, more detailed plans nested within larger-scale, more strategic (less detailed) plans at the regional seas scale. Regional seas plans would provide the strategic overview and context for the more detailed plans. We believe that the nested approach is the most logical approach and are concerned that it is not mentioned in the White Paper, and that the UK Government now considers that it is unlikely that there will be a nested approach to the plans (i.e. there will be only one tier below the policy statement). We are, however, pleased to see the White Paper recognises that some areas need more detailed planning than others, and that 'plans may need to be developed on a smaller scale or in more detail'. [4.47]

It should also be noted, if the four UK Administrations are to achieve a coherent approach throughout UK waters, that the Scottish Environment Minister's Advisory Group on Marine and Coastal Strategy (AGMACS) recommended that marine spatial planning should be hierarchical, 'based on a three-tier structure of plans and powers' ([www.scotland.gov.uk/Publications/2007/03/08103826/5](http://www.scotland.gov.uk/Publications/2007/03/08103826/5)). Likewise we believe that the Welsh Assembly Government is keen to develop separate, more detailed plans within Welsh territorial waters.

- **Link recommends that the Marine Bill provides the legislative tools to ensure the MMO and devolved administrations can develop smaller scale plans, nested in regional sea plans, where appropriate.**

## **D) Marine Nature Conservation**

Link is concerned that at present there is little join-up between the sections on Marine Planning and Licensing, and the Marine Nature Conservation proposals. Planning has a crucial role to play in protecting biodiversity, within and beyond designated sites, and we believe this must be clearly set out in the UKMPS.

The land-use Planning Policy Statement on Biodiversity and Geological Conservation (PPS 9) states, amongst its key principles, that 'plan policies and planning decisions should aim to maintain, and enhance, restore or add to biodiversity' and that 'the aim of planning decisions should be to prevent harm to biodiversity... Where granting planning permission would result in significant harm to [biodiversity], local planning authorities will need to be satisfied that the development cannot reasonably be located on any alternative sites that would result in less or no harm. If ...significant harm cannot be prevented, adequately mitigated against, or compensated for then planning permission should be refused.'

PPS9 also recognises the importance of networks of natural habitats, and the role of the planning system in maintaining a wildlife friendly environment outwith protected sites – this is essential if wildlife is to adapt in the face of climate change (as recognised by the new supplement to PPS1 on Climate Change, currently under development, and in the Planning White Paper, Planning for a Sustainable Future).

We recognise that the features of land-use planning will not be transferred directly to marine planning, but we believe these principles are extremely relevant. We expect the UKMPS to explain that marine planning and licensing decisions must ensure a high level of protection for MPAs (including MCZs) and – through use of tools like SEA and EIA, and zoning – for important biodiversity outwith protected sites. This is in line with the duty (NERC Act 2006) on all public bodies to have regard to the purpose of conserving biodiversity (where conserving includes restoring and enhancing biodiversity). Link looks forward to supporting the Government in developing policy in this area.

Planning will also need to recognise the importance of clean, rich, healthy seas and 'seascapes' to the local economy in coastal areas. The MMO should work with land-use planning bodies to develop a 'turquoise belt' for areas of the coastal zone, as suggested by Environment Secretary David Miliband MP for flood risk areas and similar to the green belt policy<sup>5</sup>.

- **Link recommends that the UKMPS must clearly set out the role of planning in delivering biodiversity protection and recovery.**

## **E) Strategic Environmental Assessment (SEA)**

Link believes that the Government should commit to undertaking a SEA for the UK Marine Policy Statement, as a useful and extremely necessary assessment of their UK marine policy, rather than just consider whether it is legally required. We support the commitment to undertake an SEA during the process of developing each marine plan, however, we are concerned that the proposal to incorporate it within a Sustainability Appraisal (SA) may result in the environmental assessment element required under the SEA Directive becoming 'lost' amidst the assessments of social and economic issues. As such we consider that, where SEA is carried out as part of a SA, it must be a separate and distinct component within the SA. Again to facilitate consistency throughout UK waters, it should be noted that in Scotland the process is different, with a legal requirement to do SEA by law, while in

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<sup>5</sup> Speech to the Centenary Conference of the Country Land and Business Association: 'Economy, Environment, Community: The Next Decades', London, 10 May 2007.

England SA is a matter of Government policy and the application of SEA is more limited. Link supports the approach taken in Scotland. [4.59-4.62]

Link strongly recommends that the Appropriate Assessment (AA) be separated from other processes (SEA, SA, and EIA). An AA determines the decision about whether to proceed with a plan or project. Therefore, although the data-gathering stage can be combined with the SEA, the AA should generally be conducted and reported separately. [4.60-4.62]

We also consider it critical that the definition of sustainable development is made more consistent with that in the UK's Sustainable Development Strategy, that supports integration and 'living within environmental limits' and moves away from describing it as balancing economic, environmental and social issues.

- **Link requests a commitment from Government to utilise SEA for the development of the UK Marine Policy Statement.**
- **Link recommends that the SEA for each Marine Plan, if carried out as part of a Sustainability Appraisal, should be a stand-alone or distinct component of the SA.**

#### **F) Zoning**

Link is concerned that there is no mention of zoning as an important tool of marine planning in the White Paper. While we recognise, and have highlighted in the past, the fact that marine planning is as much about detailing policy as mapping and zoning, we still consider zoning is an important tool that should be utilised. In particular, we see benefits in tools such as habitat mapping, sensitivity mapping and zoning as a form of guidance to users. We would also welcome a clear reference to the important role of MCZs in helping developers to identify which areas they should avoid in identifying locations for their projects.

- **Link recommends the Marine Bill allows the use of zoning as a useful tool in marine planning and licensing and provides for the necessary guidance to be developed to support this.**

#### **G) Certainty**

In trying to offer certainty for industry the UK Government and devolved administrations need to ensure that marine planning will not lead to environmental considerations being compromised. To manage expectations, it must be clear that the benefits to industry of certainty resulting from the planning process will not negate the need to carry out a project EIA. Plans need to be adaptable to make use of new data and information.

- **Link recommends that the Marine Bill clarifies that while marine plans will be robust and statutory, and the primary consideration in decision-making, consideration of unforeseen environmental impacts that come to light as a result of EIAs will be a material consideration and as such may necessitate a deviation from the plan.**

#### **H) Timescales**

Link agrees that the UKMPS is likely to require two years to develop, with full engagement and consultation. Link is concerned, however, regarding the timescale envisaged in drawing up a full suite of Marine Plans. We wish to see a deadline for the full suite of plans to be developed, along with milestones, and a regular reviewing process to be established.

Link believes that Marine Conservation Zones need to be developed as quickly as possible. The urgency of protecting biodiversity is such that we cannot wait for marine plans. We therefore welcome the statement (paragraph 6.44, Marine Nature Conservation) that the absence of marine plans will not delay the designation of MCZs. We also consider MCZs to be a key component of the regulatory framework, which will improve developers' understanding of locations which are unsuitable for development even before plans are in place. Where a plan is being developed for a sea area where MCZs have not yet been designated, we suggest all efforts should be made to ensure the MCZ network is developed as soon as possible.

- **Link recommends that a number of Marine Plans be developed in parallel at any one time, to ensure that the complete suite of Marine Plans is developed within a reasonable timeframe. To aid experience and capacity building we suggest the first plans are produced (concurrently) for quite different areas, and possibly at different scales.**

### **I) Marine Steering Groups**

Link is fully supportive of the proposal for Marine Planning Steering Groups (with the right membership) as proposed for English coastal areas. We also feel it is important to develop separate, appropriately constituted groups to advise the MMO on planning at regional seas level.

- **Link recommends that in addition to the proposed Marine Planning Steering Groups for English coastal areas, steering or advisory groups are developed to advise the MMO on planning at the regional level.**

### **J) Scrutiny**

Link welcomes the proposal for independent scrutiny of plans, but is concerned at the proposals that case-by-case decisions would be taken on whether plans should be subject to public examination. We suggest that an Examination in Public, or equivalent, should be undertaken for each plan. The purpose of EiP is to test the soundness of plans (e.g. ensuring they are consistent with Government policy) and we believe this will be an important aspect in ensuring stakeholders' confidence in plans, and in the planning body. We would also note that sub-regional plans, or more detailed chapters of regional plans, may require closer scrutiny. We would welcome Government's thoughts on where the independent experts to conduct scrutiny of marine plans would come from.

- **Link calls for Examination in Public (or equivalent) to be a requirement for each plan, rather than optional.**

### **Detailed comments on the White paper**

#### **Aim**

While Link considers that the aim for a strategic marine planning system (page 7) is a reasonable start, it presently makes no reference to either the ecosystem approach or biodiversity, and as such Link cannot fully support it. Link supports the mention of 'sustainable use', but does not consider 'efficient' is appropriate, as it implies more must be made with less. While Link strongly supports the aim of 'protection of our marine resources' we are very concerned that this does not also explicitly cover marine biodiversity. Using the proposed aim as our basis, we suggest the overall aim is edited to the following, which Link considers more appropriate:

*To create a marine planning system based on the ecosystem approach that will clarify our marine objectives and priorities for the future, and direct decision-makers and users towards more sustainable use and protection of our marine resources and biodiversity.*

#### **Summary of proposals (4.1-4.4)**

Link **STRONGLY SUPPORTS** the summary of proposals set out in these paragraphs.

#### **Geographic scope (4.5-4.6)**

Link has considerable concerns regarding the proposed geographic scope of Marine Planning – (please see Headline Point (B) above).

In short, while Link recognises and welcomes devolution, we call on the UK Government and devolved administrations to commit to working together to deliver an ecosystem-based approach to marine planning, operating at a regional seas scale.

#### **Rationale for planning ahead (4.7-4.10)**

**4.7 AGREE.** Planning ahead to address conflicts and increasing demands is welcomed. In addition, we agree it is important to develop legislation and policies that can deal with emerging and future technologies and uses. It is also important that the MMO or those involved in implementing the plans and the UK Marine Policy Statement are skilled in conflict resolution.

**4.8 AGREE.** EIA is a reactive tool, and to date, marine-related SEAs have not to date fully considered cumulative effects and need to become more sophisticated in their assessment of alternative scenarios. However, we consider SEAs as proactive (not reactive) tools to ensure the environment is adequately considered in decision making, and to support achievement of nature conservation objectives. We believe that only with an SEA undertaken in parallel with development of the UK Marine Policy Statement and each Marine Plan will we be able to ensure sustainability of the plans. We welcome efforts to address the combined effects of activities. Cumulative impacts must also be addressed.

**4.9 STRONGLY AGREE** with the need to consider the whole marine ecosystem, and appreciate reiteration of the UK Government's intention to put an ecosystem-based approach at the heart of policy. However, we find that the lack of commitment to the regional seas approach undermines delivering this commitment in practice (please see headline point (B) above).

**4.10 BROADLY AGREE** with the need for a robust but flexible mechanism. In particular we believe that Marine Planning will be useful in directing industries to locations that are less likely to have an adverse affect on habitats and species. We welcome the first bullet point, noting that Government wants to create a system that will set clear policies and objectives in one place, which will bring together (i.e. integrate) consideration of economic, social, cultural and environmental needs in the marine area. We also welcome that there will be consideration of how the marine environment will be used and how new technologies are emerging and the nature of activities is changing. However, in drawing up a strategic Marine Plan, the lack of local data and knowledge may result in problems, and the precautionary principle must be a key principle of the plans. Guidelines are needed on how to best monitor activities and collate data on activities and technologies in a useful format for the purpose of assessing and managing the marine environment and assessing the progress of marine plans.

#### **Regulating better**

**4.11 AGREE.** We believe the clearer basis for decision-making that planning will provide will be a huge step forward. We are keen, though, to emphasise the continued importance of Wildlife and Countryside Link Response to the Marine Bill White Paper: A Sea Change

EIAs and, where required, Appropriate Assessments, to ensure no site specific adverse effects.

### **Setting a clear direction: a shared UK marine policy statement**

#### The need for clear policy

**4.12-4.15 STRONGLY AGREE.** We support the intention to articulate clear policy as a basis for marine plans and decisions. Moving towards a more integrated approach to marine management is very welcome.

#### Marine Vision and Goals

**4.17 STRONGLY AGREE.** We particularly welcome the statement ‘Placing the ecosystem approach at the heart of our strategy meant that we were recognising the essential processes, functions and interactions among organisms and their environment, and recognising that humans, with their cultural diversity, are an integral component of, and therefore reliant upon, healthy ecosystems.’ However, we are concerned that in practice Government will find it difficult to implement its vision and goals with regard to the ecosystem approach if it does not implement the regional sea approach to marine planning boundaries (please see Headline Point (B) above).

#### Marine objectives

**4.18-4.20. AGREE.** There is a need to bring together the Government’s existing commitments and objectives.

**4.21 AGREE** that reconciliation between policy objectives is important, however, Link is concerned that in doing so attempts may be made to water down existing policy commitments or even renege on some completely. This paragraph suggests that generic priorities would be set in the policy statement. We would be concerned by a situation where one policy or sector would be considered to always take priority over some or all other Government priorities, objectives and policies. Rather, we believe it is the role of policy and planning to provide a robust framework for decision-making during licensing processes which will ultimately be on a case by case basis (See Headline Point A, above).

**4.22, 4.23** Link expected Marine Ecosystem Objectives (MEOs) to provide a context for wider marine objectives, to enable Government to ensure that planning and management decisions are not pushing the environment to its limits (in accordance with the UK Sustainable Development Strategy, 2005). We believe that marine objectives for the environmental elements of the marine area are essential to make the link between the UK’s vision for the marine environment and marine management ‘on the ground’ and they are central to implementing an ecosystem-based approach to managing human activities, and in turn to allowing us to operate ‘within environmental limits’, i.e. within the carrying capacity of marine ecosystems. In particular we see the importance of environmental/biodiversity marine objectives as necessary to ensure that Marine Planning can properly deliver environmental, biodiversity and ecosystem protection and conservation, and recovery, and ensure that international commitments are met. Link is therefore concerned and disappointed that MEOs are not mentioned in the Marine Nature Conservation section of the White Paper.

Please also see Link’s comments on marine objectives from our response to the Marine Bill Consultation, which are included below.

Q3: Do you have any views on the broad objectives of marine spatial planning laid out above?

Link largely supports the objectives detailed in paragraph 8.33 of the consultation (see specific comments below), but is concerned that they are primarily process-led objectives focussing on some of the practical benefits of MSP. We suggest that Defra should highlight a set of overarching objectives for MSP, focused on inspiring sustainable development, environmental protection, forward planning and integration and assessment of cumulative impacts to achieve sustainable use of the sea. These would provide context for the process objectives outlined in paragraph 8.33. Link supports the objectives put forward by the Statutory Nature Conservation Organisations' MSP group, as follows:

- to provide a strategic, integrated and forward-looking framework for all uses of the sea to help achieve sustainable development, taking account of environmental as well as social and economic objectives;
- to apply an ecosystem approach to the regulation and management of development and activities in the marine environment by safeguarding ecological processes and overall resilience, to ensure the environment has the capacity to support social and economic benefits (including those benefits derived directly from ecosystems);
- to allocate space in a rational manner which avoids or minimises conflicts of interest and, where possible, maximises synergy between sectors; and
- to identify, safeguard, or where necessary and appropriate, recover or restore important components of coastal and marine ecosystems, including natural heritage, cultural heritage and nature conservation resources.

Link also supports of the first objective detailed in the initial Regulatory Impact Assessment (RIA) on MSP (Annex 5A, paragraph 2.1 a) 'to develop a holistic approach towards managing and protecting the marine environment and its biological, social and economic resources. MSP provides a mechanism for looking at and harmonising the full range of objectives and priorities for the different marine resources and sectoral uses, so helping to achieve the UK Government's sustainable development objectives'.

Finally the Government response to 'Seas of Change' included a set of strategic goals, which were included in the MSP Pilot goals. Link suggests that the following should also be considered:

- To conserve and enhance the overall quality of the seas, their natural processes and their biodiversity;
- To use marine resources in a sustainable and ecologically sensitive manner in order to conserve ecosystems and achieve optimum environmental, social and economic benefit from the marine environment;
- To promote and encourage environmentally sustainable use of natural resources to ensure long-term economic benefits and sustainable employment;
- To increase our understanding of the marine environment, its natural processes and our cultural marine heritage, and the impact human activities have upon them; and
- To promote public awareness, understanding and appreciation of the value of the marine environment, and seek active public participation in the development of new policies.

We also believe that the list provided in paragraph 8.33 should include a specific objective on securing protection and recovery of marine biodiversity and ecosystems. We do not consider this to be incompatible with sustainable development objectives, and would welcome the clear statement that MSP is expected to deliver environmental, as well as social and economic, benefits. This could be linked with objective h), to 'enable a better understanding of the cumulative effects of different types of activities, both on the ecosystem and on each other'; the purpose of attaining such understanding is to ensure impacts can be managed in a way which is compatible with conservation. To date, without an integrated planning system and bringing together of data, this has been impossible, and such effects continue to threaten marine biodiversity. Link offers the following specific comments on the objectives set out in paragraph 8.33 of the consultation:

Objective (b) refers to achieving a 'fair balance' between economic, social and environmental needs in the marine area. We do not agree that sustainability can be achieved through attempts to 'strike a balance', and suggest it is more appropriate to refer to integration of economic, social and environmental objectives as is done elsewhere in this section.

We also note that a much broader set of objectives will be needed to develop the national policy statement and regional MSPs discussed later in this section of the consultation. These would sit rather awkwardly below the MSP objectives as detailed in paragraph 8.33. MSP objectives must be set which are consistent with the higher level goals considered above, and which further their delivery. Sectoral objectives and Marine Ecosystem Objectives (as discussed in Section 10 of the consultation) also need to be consistent with international policies. We note that, for some sectors, it will be necessary to draw up national policy objectives for the first time.

#### Further considerations

**4.24** The marine environment and maritime industries are such that international policy is as important to planning and management as UK marine policy. A UK marine policy statement therefore may hence only 'reflect the priorities of the UK Government and devolved administrations' insofar as they are in keeping with international policy commitments (see Headline Point A above).

**4.25** AGREE. Areas of uncertainty must be taken into account, and all policies and plans must be future-proofed as far as is possible.

#### **4.26** AGREE

**4.27** We welcome the proposal to 'integrate policies as far as possible' but have some concerns about the intention to prioritise between policies and objectives. Environmental objectives (particularly biodiversity objectives) are likely to lose out in cost-benefit analysis as they are harder to value. As mentioned above, we would be concerned by a situation where one policy or sector would be considered to always take priority over some or all other Government priorities, objectives and policies. Rather, we believe it is the role of policy to provide a robust framework for decision-making during planning and licensing processes.

We would also re-emphasise the importance of the precautionary principle, since the data will not always be available to provide a sound evidence base.

**4.28** We AGREE that the integration between marine and terrestrial issues is important, and welcome the commitment to an integrated approach in coastal areas. We welcome the statement that Integrated Coastal Zone Management (ICZM) objectives will be incorporated into the UKMPS, which, ensuring proper links are made between all plans affecting the coastal zone, we believe will improve the delivery of ICZM.

#### Preparation and Review

**4.29** AGREE with the proposals for preparation and review of the UKMPS. Link calls on the Government to commit to undertaking an SEA for the UKMPS as a useful and extremely necessary assessment of their UK marine policy.

We agree that 2 years is an appropriate timescale for the development, consultation, adoption and publication of the first UK-wide marine policy statement. However, we would assume that until the policy statement is prepared, the MMO will work to existing Government policy. We welcome public participation and believe that NGOs have valuable expertise to input into the development of the policy statement and should be involved from an early (scoping) stage. The precautionary approach must be enacted where there is the likelihood of significant risks to / impacts on natural resources and preventative measures put in place where there are data gaps that give cause for concern.

#### Monitoring Progress

**4.30-4.32** AGREE. We welcome the proposals on monitoring the relevance and implementation of the UKMPS, though we would suggest that UKMMAS work on documenting ecosystem trends must be utilised alongside complementary information on trends in uses and human pressures and demands on the marine environment. These two sets of data must be looked at together if management of our seas is to achieve sustainable use and sustainable development. We also question who would monitor the latter sets of data.

## Translating policy into plans

### The nature of marine plans

**4.33** AGREE. We also strongly request that the boundaries of marine plans must be decided with consideration of biogeographical aspects as far as is possible (see Headline Point A above).

**4.34** AGREE. Link requests that Government informs us of the ongoing work into tools and techniques to be used in the plans.

### UK administrations working together

**4.35-4.41** Link recognises and supports devolution but we believe that all four UK Administrations will need to work together at the regional sea level to implement the ecosystem approach. (see headline point A above).

**4.42** We welcome the commitment by UK Government and the devolved administrations to work together to create the most sensible approach as outlined in 4.42.

**4.43** AGREE (Please also see our comments on 4.98-4.110)

### Scope of plans

#### *Coverage*

**4.44** STRONGLY AGREE and support this proposal for marine plans to cover the whole of UK waters.

**4.45** STRONGLY AGREE that it is acceptable that marine plans will overlap terrestrial plans at the coast. We support the opinion that this overlap will compel different organisations to work effectively together 'to strive to ensure harmonisation of plans is achieved'. There is a need here to ensure that the marine planning body (the MMO in England and Northern Ireland) is skilled in conflict resolution and that where appropriate, ICZM initiatives are utilised and supported as one method to bring those involved in terrestrial and marine planning issues together to reach consensus.

**4.46** Link has strong concerns regarding points made in 4.46. Firstly we agree that in some cases, the planning body should identify the geographic areas of the plan, but there should also be clear guidance as to what parameters they use. We consider the plan area for each regional sea should be based on ecological and physical features using the JNCC's Regional Seas guidance and disagree that the amount and complexity of marine activity should be a factor with regard to defining regional seas. However, we do agree, level of activity could be a factor in sub-regional plans, provided they are nested in the regional sea plans. We believe that the biogeographical regional seas approach is a much more logical approach to setting boundaries at sea than, for example, regional or local government boundaries being used to draw up plan boundaries in English or UK waters. We agree that adjacent plans must complement each other, so as far as possible they provide consistent guidance to marine users that will operate across planning boundaries. In addition it is important that adjacent plans complement each other so that habitats that span boundaries, and species that move between boundaries, are properly protected.

**4.47** STRONGLY AGREE. We welcome the recognition that some plans may need to be developed on a smaller scale or in more detail. The development of more detailed plans in coastal areas, properly integrated with other plans, will be important in achieving the aims and principles of Integrated Coastal Zone Management.

*Timing*

**4.48, 4.49** AGREE that to be effective plans will need to be regularly reviewed and updated. It would also be useful to have a deadline for completion of a full suite of plans and milestones towards achieving that full coverage.

**4.50** Regular reviews of plans are welcomed. We hope government makes it clear that plans will be future-proofed as far as is possible beyond their expected 'life' of 25 years, so that they look at a horizon of 50-100 years for long-term implications, for example, climate change – this would be on a similar time horizon as Shoreline Management Plans (SMPs).

*Subject Matter*

**4.51** STRONGLY AGREE, particularly the reference to MCZs, climate change, seasonal patterns and migration routes.

**4.52** AGREE and welcome the comprehensive list. We would like to following additions:

- add 'spawning grounds' and 'feeding grounds' to 'habitats, breeding grounds...';
- add 'habitats' to 'nationally important ....species'
- add 'natural resources: oil & gas, aggregates resource, fisheries resource, etc'
- add 'important physical processes such as wind, wave, tide'
- add 'Ecosystem functioning, goods and services'
- add 'The air above the sea surface, e.g. inhabited/used by seabirds' to 'sea surface, water column ... seabed'

*Proportionality*

**4.53** AGREE, but we consider that where there is uncertainty the precautionary principle should prevail.

Preparing plans

*Wider public engagement in the planning process:*

**4.54 – 4.58** AGREE. We welcome Government's wish to involve those with an interest in developing the broad scope of the plan as well as in the later stages. This will help ensure ownership, buy-in and success of the final plan(s). However, we are concerned that while increasingly there is financial support for local industries to create fora e.g. in the South West and South East of England, funded by Government's RDAs, there is little such support for local communities and environmental NGOs, and hence stakeholder input could be weighted towards economic interests. We strongly recommend devising a mechanism that ensures strong community and NGO input. In addition to the Marine Planning Steering Groups mentioned in relation to English coastal areas (4.102-4.106) we suggest development of separate, appropriately constituted groups to advise the MMO on planning at regional seas level.

We are also concerned about managing expectations; although marine plans will deliver information up-front, as mentioned, project specific EIAs etc will still be needed (see headline point H above). We also recommend that if MPAs, including MCZs, are designated as early as possible developers will be better able to avoid them and thus avoid major conflicts with conservation interests.

*Appraisal of the impacts of the plan*

**4.59-4.62** PARTIALLY AGREE, We welcome the commitment to undertake SEA for marine plans, but are concerned that the environmental aspects may be diluted if this is carried out as part of a Sustainability Appraisal, and therefore would recommend that SEA is carried out

as a separate and distinct component, where a SA is carried out. However, our preference is for SEA only.

We also strongly recommend that the Appropriate Assessment (AA) be separated from other processes (SEA, SA, and EIA). An AA can determine whether to proceed with the plan; therefore, although the data-gathering stage can be combined with the SEA, the AA should generally be conducted and reported separately.

Link is keen to work with Government on developing marine objectives.

#### *Drawing up the plan*

**4.63, 4.64** AGREE. We support the proposals set out for engagement between the planning body and both statutory and non-statutory stakeholders during plan development. As per our suggestion in relation to 4.54, above, we suggest further thinking could be undertaken on creating stakeholder groups (including statutory and non-statutory bodies) for this purpose.

#### *Consideration of the draft plan*

**4.65-4.67** AGREE. Link welcomes the proposal for independent scrutiny of plans, but is concerned at the proposals that case-by-case decisions would be taken on whether plans should be subject to public examination. We suggest that an Examination in Public, or equivalent, should be undertaken for each plan. The purpose of EiP is to test the soundness of plans (e.g. ensuring they are consistent with Government policy) and we believe this will be an important aspect in ensuring stakeholders' confidence in plans, and in the planning body. We would also note that sub-regional plans, or more detailed chapters of regional plans, may require closer scrutiny. We would welcome Government's thoughts on where the independent experts to conduct scrutiny of marine plans would come from.

#### *Adoption and publication*

**4.68** AGREE. We welcome the proposal that the Secretary of State and Ministers will adopt plans. However, it is not clear which Secretary of State or Minister either at Westminster or in the devolved administrations will be responsible for adopting the plan, and we would like clarity on this issue.

**4.69** AGREE. We welcome the proposals to present plans in an easy-to-use format, and to ensure comparability between separate plans.

#### *Monitoring progress*

**4.70** AGREE. Plans should be monitored and kept up to date in the face of new or improved information.

#### *Review*

**4.72-4.74** AGREE. We support the proposal for regular review of plans, as well as the recognition that there may be need to revise plans before the formal period has elapsed.

### **Integration with other plans**

**4.75-4.83** AGREE. We welcome the intention to ensure integration between adjacent and overlapping plans.

**4.80** We AGREE it may be helpful to consider modifications of statements of land use planning policy where content of a marine plan is relevant to land use planning. In the meantime there needs to be a duty on land-use planners to take account of the UK Marine Planning Policy Statement and individual marine plans (and vice-versa). Otherwise there is a risk to the marine environment while changes to land use planning statements are awaited

under the timetable for such changes. For example, industrial developments or activities at the coast could have a detrimental effect on the marine environment.

We suggest marine planners should work together with other authorities (e.g. local planning authorities, Natural England, environment Agency) to identify areas of coast to remain undeveloped, and so free to accrete or erode as the tide ebbs and flows, as well as potential areas for managed realignment. This is key to helping the coastal environment and its biodiversity adapt in the face of climate change. It is also in line with the concept of 'turquoise belts' – strips of green space next to rivers, as proposed by David Miliband, MP in a speech to the Centenary Conference of the Country Land and Business Association, entitled 'Economy, Environment, Community: The Next Decades', in London, 10 May 2007. As David Miliband said in his speech 'rather than building expensive concrete barriers to insulate ourselves from flood risks, we could ensure that when water spills over into the green space, it would be naturally contained. Turquoise belts could be used for leisure and to improve biodiversity as well'.

**4.83** In relation to our comment on section 4.80 above, we agree that integration between marine and land planning is extremely important. It is important to collate data on socio-economic activities at the coast and note trends as well as monitoring human activities in the sea, and link all of these to environmental data in order to make good planning decisions on land and in marine plans.

### **Influencing decisions**

**4.84** AGREE. The UKMPS and marine plans must have a strong and direct link to decisions to ensure the planning system can have significant benefits.

#### Our intention

**4.85-4.88** STRONGLY AGREE We strongly support the statement that public bodies need to ensure their decisions are in line with both the plan and the UKMPS (though the processes outlined should ensure that plans would already be implementing the policy statement). We also recognise that there will be other considerations, including the results of any Appropriate Assessment or EIA. If a decision-maker departs from the plan due to such a consideration, they should be required to provide and publish their reasons for doing so, to ensure transparency.

All decisions should be taken in line with a duty to implement sustainable development, and decisions should be future-proofed, especially in consideration of climate change issues.

#### Decisions and bodies to which this would apply

**4.89** AGREE. We welcome the statement that the requirement to ensure decisions are taken in line with the UKMPS and marine plans should apply to all public bodies operating in these areas; it should also apply to non-public bodies undertaking public functions (for example, Harbour Authorities when they are the Competent Authority for marine Natura 2000 sites).

**4.90** Link AGREES with all of the bullet points except the third point that suggests that a Marine Plan will determine whether to designate a Marine Conservation Zone. We consider the function of designating the network of MCZs to be distinct from that of planning. The locations or possible locations of MCZs should be detailed in the Marine Plans, but it should not be the planning process that determines where to designate MCZs. (please also see Link's response to the Nature Conservation proposals).

**4.91** While Link accepts that policy formation should not necessarily be hindered by plans once they exist, we would be concerned if this meant that any lessons learnt or good

management practices were abandoned or ignored during future policy development. In particular we want to see a move away from the current situation where there are conflicting policies within/between UK Government Departments, to ensure that Government policies are striving for similar goals and not acting as a barrier to each other. We therefore welcome the last sentence that states that the marine planning process will inform good policy making, and so learn from previous good or bad experiences.

#### Considering marine plans together with other obligations

**4.92 STRONGLY AGREE** We support the intention to harmonise the content of plans that cover the same area (this will mean ensuring that existing plans are brought in line with marine plans where necessary, as well as marine plans being influenced by other plans).

**4.93 STRONGLY AGREE.** We welcome the recognition of the need to comply with relevant European and international obligations. The Habitats Directive states that there should only be one plan for an SAC. Therefore, marine plans will have to incorporate the objectives of any European Marine Sites, and ensure that only one set of objectives were in place of the EMS area. In many ways, an EMS plan would be one type of more detailed 'local' plan within a wider more strategic plan.

#### Ensure compliance with this approach

**4.94 AGREE.** We welcome the intention to monitor and review whether decisions are being made in accordance with the UKMPS and marine plans.

#### Activities that are not regulated by public bodies

**4.95 AGREE** marine planning should take note of these small unregulated marine activities and voluntary measures to ensure cumulative and in-combination impacts are not missed. In addition, non-public bodies which carry out public functions (such as Harbour Authorities when they are the Competent Authority for marine Natura 2000 sites), must also act in accordance with the plan.

**4.96** Link would note that the by-law making powers are not limited to MCZs (please also see Appendix 3 on Marine Nature Conservation).

**4.97 AGREE.** As mentioned above, Link is concerned that there is no mention of zoning as an important tool of marine planning in the White Paper. We see benefits in tools such as habitat mapping, sensitivity mapping and zoning as a form of guidance to users.

Link would like to emphasise the importance of marine biodiversity and seascapes to recreational activities at the coast (both on land and in the sea) and hence to the economies of many coastal communities. Marine planning must ensure these issues are taken into account, alongside other marine interests.

### **Delivering plans**

**4.98-4.99 AGREE.** We support the UK Government's intention to delegate planning functions to a new Marine Management Organisation (MMO).

#### *Preparing guidance to the MMO*

**4.100-4.101 BROADLY AGREE** Link has previously asked for the equivalent of Planning Policy Statements (PPSs) used in land-use planning, but we now accept that provided the UK Marine Policy Statement is adequately detailed, this should be sufficient. As mentioned earlier, we believe this must include clear statements relating to the role of planning in the protection and recovery of marine biodiversity. If the UKMPS is not sufficiently detailed to provide the kind of guidance given in PPSs and previously PPGs we suggest that the 'guidance' proposed will also need to provide sectoral guidance similar to Marine Minerals Wildlife and Countryside Link Response to the Marine Bill White Paper: A Sea Change

Guidance Note. We suggest that in addition to guidance, an equivalent to the Legal Circulars that accompany PPSs will be required.

Assuming the UK Marine Policy Statement sets out the policy relating to each sector in sufficient detail (for use by the MMO and all other regulators in the marine environment), we support the 'set of guidance' focussing on process guidance rather than sectoral guidance and the proposed list provides a good starting basis. 'Regeneration of coastal communities' could be perceived to relate only to economic development, and should be broadened to include 'conservation of coastal communities and ecosystems' (in line with our comments above regarding the importance of a healthy environment to coastal economies).

*Coastal areas of England: Steering Groups*

**4.102-4.106** STRONGLY AGREE. We support the proposals provided on 'marine planning steering groups', and we welcome the statement that Government is working to help coastal management operate more effectively (last bullet point, 4.103). The list (4.104) of prospective bodies to be represented on steering groups appears to be reasonably comprehensive, though we look forward to further consideration and consultation on this. We agree that it makes sense to make use of existing stakeholder networks (4.106) insofar as these are fit for purpose – changes in membership and focus may be needed to achieve this.

*Northern Ireland, Wales and Scotland*

**4.107-4.110** Link accepts that each devolved administration will consider how to deliver marine planning functions, but again we reiterate our request for all four UK administrations to commit to work together to deliver marine planning, particularly to deliver biogeographical regional sea plans. We believe that for areas such as the Irish Sea, it will be difficult to achieve a truly ecosystem-based approach where plans are being developed separately within each UK Administration (see Headline Point B above).

## Appendix 2

### Section 5: Licensing Activities in the Marine Area

#### Summary of Link's views on Licensing Reform

Link supports the decision to reform the existing assortment of regimes that control licensing of marine activities. We agree that the current system is confusing and lacks clarity and transparency. We would also agree that in many cases there is overlap and duplication of regimes and on the other hand, there are gaps and a lack of appropriate tools to manage activities adequately. However, our support is conditional on a new regime which in practice ensures that decision making on marine licences delivers a system that protects marine biodiversity, assets and resources and the rights of other users, including the public, in an equitable way.

#### Views on each of the specific licensing reform proposals

- *Reformed marine licensing regime (Marine Act regime)* – We support a reformed licensing (Marine Act) regime that consolidates and updates FEPA (Part II), CPA (Part II) and all forms of dredging including marine minerals and aggregates dredging. [5.24-5.33]
- *Carbon Capture & Storage (CCS)* – should CCS in sub-seabed geological structures be approved, we support its regulation at sea through the reformed marine licensing (Marine Act) regime [5.83-5.89]. However, our support for CCS is conditional on its use as a mitigation measure which is additional to rather than instead of on-going development of energy efficiency and demand management measures. Furthermore, we are concerned that CCS is a very expensive activity and we do not want to see it diverting essential funds from investment in truly renewable energy sources [5.76-5.78].
- *Oil and Gas* – We were disappointed that oil and gas licensing was given special dispensation to not be considered for reform. [5.90-5.91]
- *Renewable energy generators* – On the whole the proposals for reform are satisfactory and we see benefits in all elements of a renewables project, including the provisions currently under FEPA, as well as CPA for the laying of cables being consolidated into the Section 36 consent [5.96-5.98]. We support proposals for maintaining and updating existing environmental and human rights safeguards and meeting new biodiversity requirements under the Marine Bill, such as meeting MCZ objectives [5.99-5.100]. However, it must also be noted that due to how the devolution settlements are set out, the benefits of this reform will not be achieved in Welsh waters [5.102]. Our main concern with the proposed reform is the licensing authority [5.103] – we support the MMO as the licensing body for all renewable energy projects irrespective of size. We believe that the bigger, potentially more environmentally damaging projects should be licensed by the body with a knowledge of marine issues and an overview of what is happening at sea, rather than a terrestrially focused alternative.
- *Harbours legislation* – We recognise the practical reasons for retaining local harbours' powers where they are effective, but would request clarification on how and when such legislation will be reviewed to ensure that it is effective and provide alternative legislation where it is not [5.106 & 5.110]. We welcome the MMO being given responsibility for administering harbour orders and that the scope of these will be extended to include operations outside the harbour authority's jurisdiction but within that of the MMO. We welcome the environmental elements of a project being licensed under the reformed marine licensing (Marine Act) regime and being determined by the MMO except where they are met under Harbour Orders [5.107-5.108]. However, we are concerned that where there is insufficient information the determination of environmental issues through a separate marine licence will result in pressure to provide the environmental licence

[5.108] – we believe that this reinstates one of the problems with the current system, i.e. where projects are determined under a number of regimes.

- *Transport & Works Act 1992* – We support the proposal to provide guidance to ensure the full environmental and navigational requirements under the TWA. [5.112-5.113]
- *Telecommunications* – We welcome the consideration of environmental, human health and navigational issues under the reformed marine licensing (Marine Act) regime and repealing these provisions in the Telecommunications Act 1984 [5.115-5.116]. However, it is not clear which stage comes first in the process to determine the environmental assessment and whether the activities are exempt under the reformed marine licensing regime [5.116].
- *Lighter touch licensing (exemptions; general permissions; phased activities)* – The success of the proposed tools to reduce regulatory burden are dependent on their ability to achieve this aim while still safeguarding the environment and the rights of other users of the sea including the public. We reserve our full support of such tools until it can be shown that they will deliver such safeguards in practice. We also want to see a reference to the fact that, by their very nature MCZs and other MPAs are important areas, potentially more sensitive and therefore at greater risk from human impact. We would reject a system where exemptions and other lighter burden licensing provisions are automatically applicable in MPAs including MCZs. Where such regimes are used, there must be notification, monitoring and review processes to ensure that the regulator(s) are fully aware of all activities taking place in the marine area, can keep track of cumulative impacts and can react if necessary where conditions change. All lighter touch licensing, including exemptions, must be carried out in accordance with the UK-wide marine policy statement and marine plan(s). [5.49-5.61]
- *Enforcement (administrative sanctions; amending licences; revoking licences)* – We welcome the modernisation and broader scope of enforcement tools, including guidance, notification, conditions, remediation, amendment, suspension, revocation and emergency stop or prevention notices [5.62-5.72]. However, we would caution that enforcement tools are only as strong as the compliance they generate, and the ‘political’ backing for their use when needed.
- *Licensing body* – We support the MMO as the licensing body in England, for reserved matters offshore and for Northern Ireland, covering the reformed Marine Act regime; marine minerals and aggregates dredging; CCS if approved as an activity; marine renewables and administering Harbours Orders. We currently believe that the MMO should be the licensing body for marine and predominately marine projects irrespective of the size of a project. Having had less than 3 weeks to fully analyse the full implications of the proposals in the Planning White Paper and cross reference them with those in the Marine Bill White Paper, we reserve the right to provide further detail on this issue in our response to the Planning White Paper which we will share with Defra.

## Positive Points

- We fully support and endorse marine licensing regimes that take as their objective to ‘*regulate activities to protect the environment and the interests of other users of the sea*’ [5.13]. This objective is of paramount importance and should be explicitly stated at the outset. The proposed reforms to modernise the marine licensing system must be designed to achieve this objective above all.
- We acknowledge the practical rationale for the proposed legislative reform which results in a number of regimes, rather than a single licensing regime covering all activities, where the MMO will be the licensing body delivering transparent and consistent decisions. [5.23]
- We welcome the proposals to produce a reformed system that delivers greater transparency, consistency and fully enables stakeholder engagement.

- We support a system where all licensing decisions are made within the context of the UK Marine Policy Statement (UKMPS) and marine plan(s) [5.35], including those for oil and gas activities [5.91].
- The 'one project: one licence' objective seems logical and we support holistic consideration of all aspects of a project [5.40]. We also support the related proposal to have only one public inquiry for a single project even where the project requires more than one licence, e.g. terrestrial planning permission [5.38-5.39].

### Points of Concern

- Balance vs. integration – we advocate an approach where the five principles of sustainable development are integrated to seek genuine solutions rather than the more traditional focus on 'balancing' the social, environmental and economic 'pillars' of sustainable development. Integration is the language used in the UK's Sustainable Development Strategy and is we believe more appropriate if we are to achieve genuine sustainability in the long-term. Balance tends to focus on trade-offs and at a time when we believe there is an urgent need for greater environmental, nature conservation and biodiversity protection, conservation and recovery and/or enhancement, we find the recurring references throughout the White Paper to balance very negative, hence our concern. [e.g. 5.12; 5.20]
- Proportionality; risk-based approach; targeted approach; only regulating where necessary – while these terms are logical in theory, it is how they are implemented and used (or abused) in practice that is of concern. These approaches to licensing and management must not be used as a loophole to enable environmental considerations to be disregarded or de-prioritised. Any reduction of regulatory burden must not compromise 'good regulation' and therefore should only be considered where the objectives of protecting the environment and other users' interests can still be met. The risks of not properly protecting marine biodiversity, natural resources, environmental processes and ecosystem goods and services, or the costs resulting from damaging biodiversity or of rectifying that environmental damage must be included in the assessment of risk. Proportionate regulation must also consider the proportionate benefits of nature conservation to society as a whole, now and in the future, as well as the requirements to meet biodiversity objectives. Better regulation should deliver long-term solutions and efficiency and to do that effectively we believe that proactive nature conservation is paramount [e.g. 5.4; 5.11-5.12; 5.23; 5.48, etc]. In addition, in the partial RIA, Annex 3, 13-16 and 23-29 there are good examples of the benefits of protecting biodiversity.
- We are seriously concerned regarding the proposals that decisions on certain projects over a specific size (major infrastructure projects), i.e. those for large-scale offshore renewable generators and for large port developments, will not be delivered by the MMO, the Government's coordination body of marine expertise [5.124-5.129]. In addition, it is unfortunate that such decisions have been still under discussion during this consultation, leaving consultees with less than 3 weeks to cross-reference with the proposals on an independent Infrastructure Planning Commission (IPC) contained in the Planning Reform White Paper.
- There needs to be a clearer statement that projects will still be required to implement other legislative requirements, including those under the Birds and Habitats Directives, the Water Framework Directive, the Environmental Liability Directive, and the forthcoming Marine Strategy Directive.
- We want to see more explicit reference to the need to carry out SEA for plans and programmes, to examine alternative scenarios, and EIAs to determine the project specific environmental impacts.

- We want to see an explicit reference to licensing regulators having to consult with the appropriate Government advisor on specific issues, such as the statutory nature conservation agencies with regards to environmental issues, the national heritage advisor with regards to marine heritage and the Maritime and Coastguard Agency with regards to shipping issues, etc., for all licences not just the new reformed 'Marine Act' regime. [5.42]

**Detailed Response to the Marine White Paper’s Licensing Reform Proposals**

<p><b>Aim</b></p>	<p>While we welcome the positive aspirations of the licensing reform aim, in particular, ‘<i>better more consistent licensing decisions</i>’ and the creation of a system that is ‘<i>easier to understand and to use</i>’, we are concerned that the aim for modernisation does not refer to the responsibility of such regimes to ensure that the environment is protected and that the Government’s marine vision is achieved. We believe that the rationale for such controls is to ensure that where activities are permitted to take place, they do so without damaging the environmental resources. For this reason we support the objective [§5.13] that states that marine licensing must ‘<i>regulate activities to protect the environment and the interests of other users of the sea</i>’.</p>
<p><b>Summary (5.1)</b></p>	<p>We will cover the main points from the summary in relation to the detailed text.</p>
<p><b>Introduction</b></p>	
<p><b>5.2-5.4</b></p>	<p>We agree with the statement that licensing processes are the route through which the policies and objectives for the marine area (as set out in the marine plans and the UK-wide marine policy statement) are translated into practice.</p> <p><b>5.4</b> – While the principles of <i>better regulation; accountability; consistency; targeted; proportionality; and transparency</i>, are logical, it is how they are interpreted and implemented (‘used and abused’) that will make all the difference to how successful the reformed licensing system will be. We are concerned that the process of ‘better regulation’ may be used as a loophole to avoid environmental actions and so undermine conservation tools, marine objectives and the Government’s vision for the marine area. Referring to the recently published Stern Review on the costs of climate change, any assessment of the costs of environmental protection must consider the costs of rectifying environmental damage and the costs of not protecting biodiversity initially, i.e. that prevention is better and cheaper than cure. The partial RIA, particularly Annex 3, gives adequate arguments in support of the need and urgency for biodiversity and ecosystem protection and conservation.</p>
<p><b>Geographic scope 5.5-5.7</b></p>	<p>We strongly support the statement that licensing regimes throughout UK waters will be identical wherever possible and where not, at least similar [5.7] and that all UK administrations are seeking solutions that implement and deliver consistency, though for devolved functions, delivery mechanisms may vary between the administrations. We do not see the latter as a major issue, assuming all appropriate safeguards (environmental, human rights, etc) are in place.</p> <p><b>5.6</b> – However, the above approach is somewhat negated by the reference to possibility of reform of devolved functions being different in ‘scope and nature’ between the administrations – this is a different issue from methods of delivery. In addition, we would note that licensing decisions would require consultation with neighbouring European Member States, especially between Northern Ireland and the Republic of Ireland on decisions that may have transboundary impacts.</p>
<p><b>Need to reform Marine Licensing 5.8-5.10</b></p>	<p>We agree that the current system is out dated and does not deliver all the requirements of modern life or law. We agree that many existing systems fail to fully deliver for developers, users, regulators, consultees, the public or wildlife. In many cases, it lacks transparency and</p>

	<p>consistency.</p> <p>The licensing system must be seen as a tool to protect important marine features and processes and the interests of other sea users and the public, rather than simply a tool to deliver for development while minimising the disruption from environmental concerns. This must be stated from the outset. (Also see Link's response to 5.13.)</p>
<p><b>Holistic approach 5.10</b></p>	<p>We support sustainable development as the purpose for marine licensing regimes. However, the wider benefits of a project need to be considered along with not only the local or immediate impacts to the environment but also the wider environmental consequences. We would refer to the sustainable development principle that protecting environmental resources and services and avoiding environmental damage is more cost effective than either reversing it or dealing with its consequences. In addition, EIAs require regulators to consider the cumulative and in-combination impacts of projects on the wider environment.</p> <p>We would also suggest that on the whole it is the role of the UK-wide policy statement and the marine plans to take the wider, more strategic view.</p>
<p><b>Regulating better 5.11-5.12</b></p>	<p><b>5.11</b> – ‘keeping the burdens imposed to the minimum necessary’; ‘regulate only where necessary’ – while these statements are theoretically sound, it is how they are implemented that is crucial. We are concerned that such language can be interpreted as ‘paying lip-service’ to environmental considerations, particularly those that would impede development, and want to see more detailed explanation of how biodiversity and ecosystem goods and services will be safeguarded.</p> <p>We believe that better regulation is about reducing the burden, by removing duplication and modernising out-dated regimes, but that the resulting reforms must be able to meet the objective of regulation – protecting the environment and the rights and interests of other users and society in general. Further to that, we are of the opinion that as the marine environment is currently quite degraded, regulation will still be required in most cases if we are to achieve our environmental objectives.</p> <p><b>5.12, Bullet 1</b> – We support the need to control activities for environmental reasons.</p> <p>As we have stated throughout our response, we do not agree that ‘balance’ is what we should be aiming to achieve, but integration and looking for the best outcomes from decisions. Therefore we would suggest that where there are competing uses, regulators should be aiming to license the most appropriate activity for that location rather than just ‘striking a balance’ between them.</p> <p>In addition, it is not only ‘finite’ marine resources that we should be aiming to use sustainably but all marine resources, as for example use of physical processes such as wave or tidal energy could have knock-on effects in other parts of the ecosystem.</p> <p><b>5.12, Bullet 2</b> – We would add that efficiency of achieving the objectives for the marine area is as, if not more, important than speed of decisions. Arriving at the correct decision is of utmost importance, and we would</p>

	<p>caution that speed of the licensing processes should not be at the expense of environmental scrutiny.</p> <p>We support bullets 3 and 4 – consistency and transparency.</p> <p><b>5.12, Bullet 5</b> – again we disagree with the proposal to ‘balance’ regulation and entrepreneurship. While we agree that any reformed licensing system would benefit from the flexibility to consider new or novel activities or technologies, all the standard considerations must still take place when considering applications for such activities, including environmental considerations and the need to meet environmental objectives. There is an argument that it would be more beneficial to create a stable framework for entrepreneurship through a consistent regulatory environment as this is the environment that developers will have to deal with should they go commercial.</p>
<p><b>Customer focus 5.13</b></p>	<p>This is a very important paragraph, we believe that this is the objective and rationale of marine licensing – to ‘<i>regulate activities to protect the environment and the interests of other users of the sea</i>’ (where users includes the public), and should be stated more explicitly at the beginning of the White Paper proposals for reform. Moreover, as the objective for marine licensing, any future reform must respect this objective. The sea is a common resource and as such must be managed to provide benefits for all UK citizens not just industry or one particular sector, developer or activity.</p> <p>We would note that other stakeholders and/or consultees also need to be seen as ‘customers’ in this sense.</p>
<p><b>Integration at the coast 5.14-5.15</b></p>	<p>We support the proposals to promote integration of the licensing system at the coast through the promotion of best-practice and stakeholder dialogue, and using marine plans.</p> <p>We assume the proposed ‘Marine Planning Steering Groups’ would have a role in this process.</p>
<p><b>Enforcement 5.16</b></p>	<p>We support the principle that to ensure the effectiveness of a licensing regime it needs to be monitored and compliance enforced, and that regulators must have the appropriate tools to carry out that role.</p> <p>As we have stated a number of times already, targeted, proportionate and risk-based approaches (to enforcement) must not be at the expense of environmental safeguards or objectives and should not impact on others users’ interests.</p>
<p><b>One project: one licence 5.17-5.20</b></p>	<p>We welcome the concept of ‘<i>one project: one licence</i>’ in principle and it appears to be a logical approach, where it can be achieved. We would caution that it must not be achieved at the expense of the environment, human health and other users’ considerations. In addition, we would caution that it does not become overly bureaucratic.</p> <p><b>5.18</b> – We agree that the approach should further the goal of sustainable development. We would reiterate that the purpose or objective of such an approach must be to protect the environment and the interests of other users (please see our response to 5.13.)</p> <p><b>5.19</b> – As already stated, we believe that all marine licensing regimes should be given the express over-riding purpose of ‘regulat[ing] activities</p>

	<p>to protect the environment and the interests of other users of the sea'. Therefore, to use the example in the White Paper, the target to generate renewable energy must be achieved without this purpose or objective being sidelined –we support the urgent need for renewable energy, but not at any price, i.e. marine renewable generators must be located to avoid detrimental impacts to marine biodiversity and ecosystems.</p> <p>Therefore, when examining the impacts and benefits of a project, if the wider benefits are to be included, so must the wider costs, including environmental costs, as well as the cumulative impacts of a project. We refer again to the sustainable development principle that the costs of not protecting the environment and having to restore damage are likely to be greater than the costs of protection and prevention of damage in the first place.</p> <p>On specifics, Link strongly believes that we can reach our renewables targets through a combination of energy efficiency and a move to renewables. However, we are also convinced that with carefully planning and more investment in baseline data collection offshore, that we can ensure that offshore renewables are accommodated by siting the most appropriate technology in the most appropriate locations without excessive damage to environmental resources and without compromising environmental objectives. And while avoidance is better than cure, there is a certain amount of resistance to limiting where renewable energy schemes can be located, based on possible, rather than certain, impacts on species or sensitive habitats. We believe that this results in delays which could otherwise be avoided.</p> <p><b>5.20</b> – We do not believe that it is a case of balancing the benefits of a project against its costs (social, environmental and economic in either case). This is the traditional approach of ‘trade-offs’. We would expect Government to follow its own approach as set out in the UK’s Sustainable Development Strategy, the purpose of which is to ‘be pursued in an integrated way’. The UK SDS states that ‘[f]or a policy to be sustainable it must respect all five [guiding] principles’ – (i) living within environmental limits; (ii) ensuring a strong, healthy and just society; (iii) achieving a sustainable economy; (iv) promoting good governance; and (v) using sound science responsibly.</p>
<p><b>Delivering our vision</b> <b>5.21-5.22</b></p>	<p><b>5.21</b> – We welcome the three principles of reform: (i) legal reform; (ii) the creation of a single licensing body (in England and Northern Ireland); (iii) provision of guidance, advice and ensuring that enforcement bodies have adequate powers to ensure compliance. However, we will explore all the specific pros and cons of these principles where they are covered in detail in the White Paper, whether in this section or the MMO section. It is currently unclear what is being proposed for Wales and we would welcome further discussion on this. We would be keen to see the benefits of reform and good practice as described here, delivered for Welsh waters.</p>
<p><b>Creating a modern, streamlined &amp; simplified marine licensing regime</b></p>	
<p><b>5.23</b></p>	<p>In Link's response to the 2006 consultation on A Marine Bill, we stated our preference for a fully integrated regime, i.e. a fully integrated piece of legislation, operated by a single independent licensing body (the MMO). We are willing to accept proposals for reform that, for practical reasons,</p>

	<p>result in a number of separate pieces of legislation but which have the same overarching purpose of ‘regulat[ing] activities to protect the environment and the interests of other users of the sea’, where the individual pieces of legislation are delivered in a transparent and consistent way by the MMO.</p> <p>For this reason we can support the proposed reform set out here which although not delivering full legislative integration will meet many of our requirements and through a series of legislative reforms that results in: (i) a Marine Act regime (covering construction, alteration and maintenance works, putting and removing materials in, on or under the seabed, dredging including for marine minerals, and possibly CCS); that sits alongside regimes for (ii) marine renewable installations; (iii) harbours ; and (iv) oil and gas. However, our support of these principles is conditional on the associated administrative integration provided through delivery of the above regimes by the MMO (which is not always the case in the above regimes and which we will come back to in our detailed comments below and in Section 8, on the MMO).</p> <p>The proposal is for a reformed regime that only regulates where activities ‘pose a significant risk’ to the environment, marine heritage and other legitimate uses. However, any lighter touch licensing must set out clear guidelines on what type of activities fit into the various categories, and in what circumstances such lighter touch licensing provisions would be revoked - for example in relation to a protected site or species, should circumstances change, etc. All activities must be logged and monitored to ensure that they continue to pose no ‘significant risk’. (For further details, see Link’s response to 5.48-5.72.)</p>
<p><b>Consolidating general marine licensing controls</b> 5.24-5.27</p>	<p>We broadly support the proposal to consolidate Part 2 of FEPA and Part 2 of CPA into a new Marine Act regime also incorporating all forms of marine dredging including those for marine minerals, such as sand and gravel, and currently unregulated dredging techniques or activities. [5.27]</p> <p>We would expect all associated elements of the existing licensing regimes to be reviewed and modernised to ensure the consolidated version is flexible and adaptable enough to deal with issues such as requiring longer baseline data collection periods for e.g. seabirds and other mobile species or seasonal migrants, especially given the limited data available for the offshore environment (e.g. existing bird data have large gaps in coverage, few data are less than 10 years old, and there is coarse spatial resolution). The same flexible approach must be available for post construction monitoring to ensure that long-term impacts or impacts on long-lived species are properly monitored.</p>
<p><b>Incorporation of dredging</b> 5.28-5.33</p>	<p>We welcome a system that controls all forms of marine dredging and has the flexibility to do so irrespective of the methodology or the material being dredged. We also welcome a system that recognises that site specific conditions will need to be considered and has the flexibility to do so.</p> <p><b>5.30</b> – While we recognise that in some cases small scale, ongoing dredging can have minor significant environmental impacts, we believe that both small and larger scale ongoing activities should be monitored and regularly reviewed to ensure that impacts really are negligible, or that circumstances have not changed over time. It is also the case that it would be helpful for the MMO as regulator and planner to have an overview of all</p>

	<p>marine activities and potential impacts, whether direct, indirect or cumulative.</p> <p><b>5.32</b> – We would reiterate that if controls are to be disappplied, it must only take place where it is clear that it does not compromise environmental objectives or interfere with the interests of other users. Such exemptions would also need to be logged and monitored so that managers and regulators are fully aware of what is happening in the marine area and where, and can make fully informed decisions regarding cumulative impacts. Therefore, exemptions will need to be reviewed and regularly inspected to ensure that damage is not occurring, that circumstances have not changed and that any conditions are being met.</p> <p>However, we are unclear as to how the threshold for regulation and how the test for the significance of impact will be determined and by whom (the MMO, in consultation with the statutory nature conservation agencies?).</p>
<p><b>Making fair &amp; well-informed decisions</b> <b>5.34-5.44</b></p>	<p><b>5.35</b> – We welcome the statement that licensing decisions will be made within the context of the marine plan(s).</p> <p><b>5.36</b> – We agree that the MMO as the licensing body will bring consistency and as such would reiterate our view that the MMO should be the licensing body for all marine licensing regimes, irrespective of the size of the development.</p> <p><b>5.38 -5.39</b> – Where a project crosses the land-sea boundary, e.g. the land fall for the cables from an offshore wind farm, and is subject to more than one piece of legislation, there will only be one public inquiry considering all matters relevant to the project to determine whether the project in its entirety will be permitted, which we support. We would also assume that the same approach would apply where there are still two pieces of legislation in operation, where the project doesn't cross the land-sea boundary.</p> <p>Any public inquiry process needs to be defined and set out in law, so that the process is clear and transparent. Ministers will be able to require a public hearing or inquiry to be held before the final decision is made. It will be made clear in advance when these sorts of powers might be exercised and what constitutes appropriate circumstances. In addition, any appeals process will also need to be set out and be clear, transparent and easy to use.</p> <p><b>5.40-5.41</b> – We support the commitment to an open, transparent and consistent decision-making process. We also support the requirement for regulators to publicise applications and make information available.</p> <p><b>5.42</b> – We strongly support a requirement for the appropriate bodies to be consulted about applications. We also believe that it should be a requirement to consult non-public bodies, such as NGOs, who have a particular expertise or interest in an area or activity, or who the decision is likely to impact.</p> <p><b>5.43-5.44</b> – We welcome the proposal to introduce a defined licensing process that covers the practical elements of applying for a licence, including EIA, public consultation, cost recovery, formats, etc and how to deal with unpredictable events.</p>

<p><b>Making timely decisions</b> 5.45-5.47</p>	<p>We welcome the setting of timescales for licensing decisions, which are flexible enough to deal with issues arising where necessary. We would however caution against regulators such as the MMO making the wrong decision quickly vs. the correct decision over a longer period.</p> <p>We believe that in the setting of timescales, it must be acknowledged that many of the delays in getting a decision are as a result of developers submitting applications that are rushed or do not initially contain adequate environmental assessment information, requiring them to provide further information and in some cases carry out more survey work.</p>
<p><b>Proportionate and targeted regulation</b> 5.48</p>	<p>While we can acknowledge the philosophy behind stating that the legal requirements are the minimum to do the job effectively, in practice, we would only support such a statement where is in tandem with a requirement to achieve the objective of the 'regulat[ing] activities to protect the environment and the interests of other users of the sea'.</p> <p>Who will decide the criteria or threshold for the burden being proportionate to the risk associated with the activity, and how will the criteria be determined? We have fears that this could be used as a method to bypass proper environmental regulation and protection.</p> <p>Proportionate regulation must also consider the proportionate benefits of nature conservation to society as a whole, now and in the future, as well as the requirements to meet biodiversity objectives. Such a system must ensure that the objective of protecting the marine environment is met. Decision-makers will also need to consider the costs of damage to the ecosystem now vs. the costs in the future of the consequences of such damage which are likely to be higher, more severe and more urgent (see RIA, Annex 3, 13-16; 23-29).</p> <p>Proportionate and risk-based regulation will also need to consider a number of principles, such as the polluter-pays principle, i.e. those that cause the damage should pay for the damage; and the precautionary principle, i.e. where a lack of data creates uncertainty and there is a risk of environmental damage.</p>
<p><b>Provisions to lighten or remove the regulatory burden</b> 5.49-5.50</p>	<p>We would recommend that the question is asked from the opposite perspective, and so rather than assuming that currently unlicensed activities do not require licensing under the reformed regime, that regulators should ask the question – 'does this activity meet environmental objectives and not impede other legitimate users of the sea without regulation' and only if the answer is yes can the activity be exempted from the licensing process. We would also anticipate appropriate monitoring to ensure the situation does not change over time. Such a system will require very strong guidance and inspection to ensure that environmental considerations are fully protected. Where activities are taking place under the lighter touch licensing rules, we would expect that those activities that have been granted exemptions or general permissions and licenses would still be required to carry out their activities in accordance with the UK-wide marine policy statement or plan(s).</p> <p>The success of the proposed tools to reduce regulatory burden are dependent on their ability to achieve it while still safeguarding the environment and the rights of other users of the sea including the public. We reserve our full support of such tools until it can be proven that they will deliver such safeguards in practice.</p>

	<p>All lighter touch licensing schemes must have a requirement to log all activities, and ensure that rules and conditions are monitored and compliance enforced. If there is no requirement to log activities, there will be no way for the MMO to have an overview of what is happening and where in the marine area. It will be impossible to assess the risk to the environment and the interests of other users (under the risk-based approach) and impossible to assess the cumulative, additive and in-combination effects of such activities.</p>
<p><b>Exemptions 5.51-5.54</b></p>	<p><b>5.51</b> – While we acknowledge that in some cases the impacts of individual projects are insignificant, we would note that the regulators will also have to consider in-combination and cumulative impacts resulting from current and forthcoming projects. We would also note that an activity that has little or no impact in one area or habitat may not be as benign in another area or a more sensitive habitat – also highlighting the need for regulators to be informed about what’s happening and where.</p> <p>In addition, looking at the proposals in the White Paper as a package, many, if not all regulators will be given new duties to protect marine resources and meet the environmental objectives of MCZs. This will change the test against which existing activities are considered to have negligible impacts or not in the future. In fact, we would reject a system where exemptions are automatically applicable in MCZs or any other MPA (e.g. SACs, SPAs, SSSIs, etc) as by their very nature these sites are important, probably more sensitive and therefore at greater risk from human impact.</p> <p><b>5.52</b> – We would expect all exemptions to be logged and monitored, with regular inspections, to ensure that regulators, especially the MMO, have a complete inventory of what is happening where and what impacts, particularly cumulative impacts, these activities could be having, and any changes in circumstances.</p> <p>We welcome the approach that puts conditions on exemptions and powers to revoke an exemption where necessary.</p> <p><b>5.54</b> – We welcome the inclusion of powers for the MMO to make by-laws to regulate activities such as tourism and recreation where they have the potential to cause damage to important biodiversity (note the precautionary principle should be enacted if necessary).</p>
<p><b>Lighter touch licensing 5.55-5.58</b></p>	<p>Again as for exemptions, any move towards ‘lighter touch’ regulation, i.e. general permissions or general rules for specific activities, would need to be properly logged and monitored, to ensure that there are no changes in the impact status of the activity and to ensure that these ‘<i>small scale, low impact</i>’ activities aren’t resulting in cumulative impacts, thus requiring inspections procedures.</p> <p><b>5.56</b> – Where developers do not require a licence under a general permission, how will regulators log, monitor and manage the process as a whole? Such information is essential to feed back into other decision making processes including the management of cumulative impacts and marine planning.</p> <p><b>5.57</b> – If developers are to determine whether their activity falls into the</p>

	<p>category of a general permission rather than needing to apply for a licence they will need to be provided with very clear, specific guidelines on what constitutes a small scale, low impact activity. In such situations, whose responsibility is it to determine cumulative impacts? Should it arise that an EIA and/or an AA are necessary, there should be a requirement for a licence rather than the permission. For these reasons, we believe that developers must inform regulators where activities are being carried out under a general permission, and that such activities must be regularly monitored and inspected.</p> <p>We support the powers given to regulators to act, i.e. require a specific licence or enforcement action, should issues arise under a general permission.</p> <p><b>5.58</b> – While we note the benefits of a general permission particularly for smaller businesses, there need to be requirements to log, monitor and inspect the use of permissions and any cumulative impacts to ensure that these activities do not impact on the environment or other users.</p>
<p><b>Phased activities 5.59-5.61</b></p>	<p>We acknowledge the benefits of one licence covering a phased approach to a project or a series of activities. The requirement to make an initial assessment of the likely environmental conditions and impacts over the course of the phased project is to be welcomed.</p> <p>Depending on the project activities and the length of the project, the environmental assessment should be monitored and reviewed regularly to ensure the original assessment is still valid, particularly as climate change impacts are likely to lead to changes in environmental conditions.</p> <p>We welcome the powers to remove such licences should circumstances change over time or if adverse impacts are seen.</p> <p>It would be useful to have an indication of what timescale is considered a long-term permission.</p>
<p><b>Enforcing licensing 5.62-5.64</b></p>	<p>We agree that to be fully effective, an enforcement regime must support the licensing regime. We therefore welcome the proposal to broaden the range and flexibility of enforcement tools and powers available to regulators. In particular, we support the need to have powers to require remediation that anticipate future damage or can be used in an emergency, powers to modify or suspend a licence or put new or additional conditions on a licence.</p> <p>In addition, we believe enforcement powers must be able to invoke the precautionary approach.</p> <p>However, as we have stated a number of times, we are concerned that principles such as proportionality will be used in practice to do as little as possible. Therefore, such principles need to be set within the context of the marine vision and the objective of marine licensing to protect the environment and the interests of other users. [5.62]</p>
<p><b>Administrative sanctions 5.65-5.70</b></p>	<p>We agree that the purpose of enforcement is to ensure compliance. We believe that the measures must act as a deterrent to illegal activities. Therefore, while we note that administrative sanctions are quicker and easier to enact, we believe that they must be supported by the necessary criminal sanctions where administrative sanctions do not act as a deterrent</p>

	<p>and illegal activities continue.</p> <p>Formal guidance, formal notices, improvement notices, stop or prevention notices all appear to be useful enforcement tools.</p> <p><b>5.69</b> – We welcome the proactive approach proposed for emergency stop or prevention notices, ensuring they can be used to prevent damage in the first place and enabling them to be served where harm could arise from marine activities. The latter enacts the precautionary approach. However, the concept of preventative measures to be used only in an emergency are likely to require specific guidance on their use as it may be complex to be proactive and preventative as well as determining whether it is an emergency or not.</p> <p>We also support emergency stop or prevention notices being used for all activities including unlicensed or exempted activities and permitted or general licence activities, and even activities that are operating within the conditions of their licence.</p> <p><b>5.70</b> – We welcome the retention and subsequent modernisation of powers to require remedial action where environmental damage has occurred – this is consistent with the polluter-pays principle. We want to see such powers available across all the licensing regimes. We would also want to see such powers available to regulators where damage occurs to nationally important MCZs, however, we believe that the most appropriate way to achieve this would be to strengthen the UK’s current proposals for implementing the EU Environmental Liability Directive with respect to nationally important sites.</p>
<b>Amending or revoking a licence</b> 5.71-5.72	We support the powers to amend, adapt and revoke a licence. Such a system must to be supported by a formal and adequately resourced review and inspection process.
<b>Changing the scope of marine licensing</b> 5.73	N/A
<b>Carbon Capture &amp; Storage (CCS)</b>	
5.74-5.78	In order to avoid the most dangerous climate change effects, there is a case for employing as wide a range of sustainable technologies as possible in doing so. However, CCS is an expensive activity and we have concerns that money used to support its development and deployment would be diverted away from investment in truly renewable technologies, energy efficiency measures and demand reduction measures.
<b>International context</b> 5.79-5.82	<b>5.82</b> – We would like clarification of what form the national regulatory infrastructure is likely to take if it is to ‘ <i>encourage</i> ’ CCS? This is an activity that is likely to be highly profitable for those companies that are carrying out the activities; therefore we want to see the Government concentrating on ensuring that it is carried out to the highest standards and meeting the licensing objective to prevent environmental damage or interference with other users of the sea and their rights. As already stated, we are concerned that CCS could result in the focus of investment being diverted from truly renewable energy generation solutions.
<b>UK developments</b>	<b>5.83</b> – We would reiterate our view that it is not clear what a risk-based

<p><b>5.83-5.89</b></p>	<p>approach to environmental assessment will mean in practice and we believe that it could be used as a loophole to sideline environmental concerns – this is not sustainable development.</p> <p>We would oppose storage of CO<sub>2</sub> in the water column. Increased acidification of the seas is already occurring because of increased CO<sub>2</sub> in the atmosphere, and is having an adverse effect on marine species and ecosystems. Sequestration in the water column or deep sea would almost inevitably increase acidification, possibly catastrophically. CO<sub>2</sub> would have to be sequestered in old oil and gas fields, and we continue to have severe reservations about such an activity on biodiversity grounds. Any such proposals would certainly need to be subject to rigorous SEA and EIA (and where necessary AA) before they could even be considered.</p> <p><b>5.86-5.87</b> – When presenting the benefits of consolidating existing regimes and ensuring that they are flexible enough to deal with new or novel technologies in the future, it would seem that the only logical approach to licensing CCS activities at sea in sub-seabed geological structures in the future would be through the Marine Act reformed licensing regime. Such a situation was one of the reasons for licensing reform that produces a flexible and adaptable regime.</p> <p>Again we raise concerns that terminology such as ‘proportionate’ and ‘only regulating if necessary’, although logical in theory, can be abused in practice and that environmental concerns must not be ignored under such a guise. We refer again to the objective of licensing – ‘to protect the environment and the interests of other users’.</p> <p><b>5.89</b> – We agree that the MMO should regulate the licensing of CCS at sea in sub-seabed geological structures, adding more support for use of the reformed licensing regime that the MMO will also manage. We agree with the argument that the MMO as ‘Government’s coordinator of marine expertise’ would have the best overview of all marine activities and will be best placed to liaise with technical experts in making licensing decisions on CCS projects. In Scotland, if treated as waste disposal, it would be regulated by the Scottish Executive; however, once there is a Scottish MMO as recommended by the AGMACS group, we would expect this function to be transferred to that body.</p>
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<p><b>Oil &amp; Gas</b></p>	
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<p><b>5.90-5.93</b></p>	<p>We welcome the affirmation that the licensing of oil and gas activities will be subject to the marine plan and UKMPS as are other marine activities. [5.91]</p> <p>To provide consistency with other marine regimes and ensure an open and transparent process, we see no logical reason why oil and gas activities should not be licensed by the MMO too.</p> <p><b>5.91</b> – Our view that oil and gas should be considered as part of the reform process originated on the one hand from an ideal that all activities were to be reviewed; it seems special treatment to not even consider oil and gas activities. On the other hand, while we have no evidence that the current Petroleum Act regime is failing and there are a number of processes and forums that cover environmental issues, we still find the process as a whole (including the SEA process) lacks transparency when it comes to the actual decision making process.</p>
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**5.92-5.93** – Link and Link members do not have a great deal of experience in this matter, however, we strongly agree that should any storage of natural gas in sub-seabed geological structures take place, then, like CCS, it would have to first be subject to rigorous SEA and EIA (and where required AA) to avoid any detrimental impacts to biodiversity, marine ecosystems and the wider marine environment.

**Constructing renewable energy installations in the sea**

**5.94-5.104**

**5.97** – We welcome the consolidation of Section 36 of the Electricity Act and FEPA, along with CPA for associated cables to produce one regime for marine wind farms (over 1MW in territorial waters and 50MW offshore) that maintains existing environmental safeguards.

**5.99** – We welcome the commitment to maintaining proper environmental safeguards, and that the reforms to the renewables licensing regime will not sidestep existing or new environmental provisions under the Marine Bill. We particularly welcome the acknowledgement of the environmental duty in Schedule 9 of the Electricity Act – to take environmental impacts of a project into account. We also welcome the proposal to update the environmental provisions that renewables applications are subject to, including advertising and public inquiries [5.100].

**5.101** – We welcome the proposals to maintain the power of the licensing authority to also grant planning permission for the landfall elements of a marine renewable installation [5.103], providing all the normal safeguards are adhered to, as is the current approach. It seems logical to think of marine renewable projects such as wind farms, the cables to land and the coastal sub-station, as one project. We also agree that one public inquiry should cover all issues related to the offshore project whether they are on land or at sea.

**5.102 & 5.98** – It would appear that the benefits of this consolidation will only be gained by developers operating in ‘English’ waters or ‘Scottish’ waters including the offshore areas that are closest to these administrations, i.e. where renewables and environmental licensing functions rest with the same administration. Northern Ireland is currently intending to have a similar approach, but the decision is dependent on the new Assembly; and in Wales, environmental functions are devolved but renewables above 50MW are reserved even in territorial waters.

**5.103** – We strongly support the independent MMO as the licensing authority for marine renewable licensing. We are currently opposed to the decisions on larger or major offshore renewable energy installations (major infrastructure projects) being determined by a separate body, an independent Infrastructure Planning Commission (IPC). In addition, the Planning Reform White Paper proposes that the threshold for delivery by the IPC is 100MW which is the current size of Round 2 wind farms thus effectively ensuring that all wind farms would be licensed by the IPC. Such a suggestion goes against the rationale that the Marine Bill White Paper itself puts forward in favour of an MMO and its benefits (see 5.121-5.123). The MMO, also an independent body, will be the coordinator of marine expertise, the marine planning body and the authority for licensing a number of marine activities, and as such it is best placed to determine the

	<p>biggest and most important projects. The MMO will also be more qualified to determine marine projects than a terrestrially focussed body. The IPC could have a role as an advisor to the MMO on such projects especially on the land-related issues. Breaking up the licensing of renewables projects between a number of licensing authorities adds unnecessary complexity at a time when Government claims to be reducing complexity.</p> <p>However, the Planning Reform White Paper was only published less than 3 weeks before the end of this consultation and we have not had adequate time to analyse the proposals within in detail yet, therefore we reserve the right to return to this issue when we have, and will supply Defra with any additional views on the IPC in the future.</p> <p>We would note that any renewables licensing body would have to be subject to making decisions that are consistent with the marine plans, barring further material considerations.</p> <p>Empowering the licensing body ‘to direct that a licence has been given under the reformed licensing regime’ [§5.98] is a more logical approach where the MMO is the licensing authority since it is the proposed licensing authority for the reformed regime and the coordinator of marine expertise.</p> <p><b>5.104</b> – We agree that these are the possible benefits of the proposals but only where the MMO licenses all projects. Having two licensing authorities adds complexity and reduces transparency. This is the first explicit mention of the benefits for other stakeholders and consultees, which we welcome. We note again our concern over what ‘proportionate’ means in practice and that it must ensure environmental protection and the interests of other users, including the public.</p>
<p><b>Harbours legislation</b></p>	
<p><b>5.105-5.106</b></p>	<p><b>5.106</b> – We understand the retention of local harbour powers where they are in place and we would assume, where they are effective. However, it is not clear from the White Paper text how and when that assessment of effectiveness will be carried out, and that where local harbour rules are in place but not effective that they will be replaced with the reformed marine licensing regime.</p>
<p><b>Specific proposals</b> <b>5.107-5.111</b></p>	<p><b>5.107</b> – We support Harbour Authorities being the navigational authority within their jurisdiction for all activities and all applications, as this is their area of expertise. For similar reasons, we agree that the environmental impacts of a project should be controlled under the reformed marine licensing regime from the MMO.</p> <p><b>5.108</b> – It is our understanding that the MMO will administer HROs and HEOs (see 5.128), and that where sufficient detail is contained in the Harbour Order in respect of dredging disposal there will be no need for an applicant to apply for a ‘FEPA-equivalent’ under the reformed marine licence regime – the Harbour Order will cover it all. We welcome this simplification of the process, provided the environmental elements of the FEPA-equivalent are retained, as it should ensure all of the environmental impacts of a Harbour Order are considered together. This will avoid the current situation of post-hoc consents for FEPA applications related to Harbour Orders and should greatly improve the currently poor public consultation on dredging disposal.</p>

	<p>However, we are concerned at the suggestion that where sufficient environmental detail cannot be supplied, the separate licence required under the reformed marine licensing regime should be applied for later. We consider such a situation as one of the issues that leads to blockages and delays in the current licensing system and which has resulted in a common failure to consider all the environmental impacts of the wider project at the same time. The developer needs to have all necessary licences before commencing work, and to have ensured that all environmental requirements have been met.</p> <p>We agree that where the environmental requirements are met through the Harbour Orders they must be able to include operations and impacts (direct, indirect and cumulative) both inside and outside the harbour area, i.e. they must be able to incorporate all the requirements of the EIA Directive. This would be consistent with the geographic scope of the MMO's powers.</p> <p>We recommend that both the Harbour Authority and the MMO (as the licensing body) liaise not only with developers but also with the statutory nature conservation agencies particularly on environmental issues, and other stakeholders including NGOs. We would expect public consultation.</p> <p><b>5.110</b> – We understand the rationale for dealing with the variety and complexity of local navigational rules under Local Acts through secondary legislation by the Secretary of State or the appropriate devolved Minister. It would be helpful to have clarification as to how and when Government will assess which Local Acts will require updating by the Secretary of State, and how these will be prioritised.</p> <p><b>5.111</b> – Northern Ireland is to consider implementing the reformed Harbour regime. We would welcome the reformed Harbour regime in Northern Ireland (subject to our comments on 5.105-5.111), as it would result in a more modern regime with greater environmental safeguards.</p> <p>Finally, we are surprised that Government is not using this opportunity to modernise the provisions for dealing with objections to Harbour Orders, to bring them into line with the system currently operating under the Town and Country Planning system. This would enable objections to be dealt with in a proportionate way, dependent on the nature of the objection raised and its relevance to the wider public interest – ranging from written representations through to major public inquiries.</p>
<p><b>Transport &amp; Works Act 1992</b> <b>5.112-5.113</b></p>	<p>We support the need for guidance on environmental protection, navigational safety and other users' interests under the TWA to ensure they are considered in a manner consistent with the reformed marine licensing regime.</p>
<p><b>Small scale telecoms</b> <b>5.114-5.117</b></p>	<p><b>5.115-5.116</b> – We welcome the clarification that protection of environment, heritage and other users' interests will be regulated under the reformed marine licensing regime.</p> <p><b>5.116</b> – However, it is not clear how the decision on the need for an assessment of environmental or other impacts can be made before the decision to use or exempt the reformed marine licensing regime. We are concerned that in the past there has been a preconception that telecoms</p>

	<p>activities do not have a significant environmental impact but it is an activity that results in the laying of hundreds of miles of cables, traversing many and diverse seabed habitats and environmental conditions, and once completed, limits the other activities that can coexist in an area.</p> <p>We believe that the impacts of telecoms cable laying needs to be properly covered under the Marine Bill as it is highlighted as a growth sector by the European Parliament Committee on Industry, Research and Energy<sup>6</sup>.</p>
<p><b>Delivering a new licensing regime</b></p>	
<p><b>5.118-5.123</b></p>	<p><b>5.121-5.122</b> – We strongly support this rationale for the MMO (in England and Northern Ireland) and the benefits that it will deliver. In particular, we acknowledge the statement that ‘the most important benefits simply could not be as effectively delivered by two or more organisations’. For this reason we again raise our current objection to a separate, primarily terrestrially-focussed body delivering decisions on licensing of the bigger renewable energy generation installations at sea.</p> <p><b>5.123</b> – We support the description of the MMO as Government’s coordinator of marine expertise. The MMO must actively liaise with other specialised Government advisors and be required to consult them on licensing decisions.</p>
<p><b>MMO licensing functions</b> <b>5.124-5.129</b></p>	<p>We support the MMO as the licensing body for the regimes under consideration in the Marine Bill. We therefore currently reject the proposal to have a separate body license major infrastructure projects, such as ports and marine renewables. We believe that the body with marine expertise and experience should license projects irrespective of size and that introducing a second primarily terrestrial-focussed body is increasing rather than reducing complexity. However, with less than 3 weeks to fully analyse the proposals on this issue in the Planning Reform White Paper, we reserve the right to return to this point at a later date and will provide our views in detail in our response to the Planning Reform White Paper.</p> <p><b>5.125</b> – We welcome the MMO taking over the current Defra functions under the MCEU and the MFA (now the M&amp;FA), CLG functions for marine mineral dredging and currently non-licensed dredging</p> <p><b>5.126</b> – This paragraph does not provide information on the MMO’s role in licensing marine renewables, however, we have presented our detailed comments about the MMO’s renewables functions in response to paragraphs 5.103-5.104 &amp; 5.121-5.123. We support the MMO as the licensing body for all marine renewable projects irrespective of size and do not support the proposal for a separate body to license bigger projects.</p> <p>In addition, we believe that the MMO should license activities under the Petroleum Act regime.</p> <p><b>5.127</b> – We believe that the MMO should be the licensing authority for CCS</p> <p><b>5.128</b> – We agree that the MMO should administer the regulation of harbour developments, including Harbour Revision Orders (HROs) and</p>

<sup>6</sup> Draft Opinion on the Maritime Policy for the Union, 2006/2299(INI), 6 March 2007  
Wildlife and Countryside Link Response to the Marine Bill White Paper: A Sea Change

Harbour Empowerment Orders (HEOs), and local and private harbour Acts in England and non-fisheries ports in Wales. As for marine renewables, we support the MMO as the licensing body for all ports projects regardless of size.

## Appendix 3

### Section 6: Marine Nature Conservation

#### Summary

Link fully supports the Government's aim '*to introduce new tools for conservation of marine wildlife that together with existing ones can: halt the deterioration in the state of the UK's marine biodiversity and promote recovery where practicable, support healthy functioning and resilient marine ecosystems, ensure environmental considerations are at the heart of decision-making processes, and provide mechanisms that can deliver current and future European and international conservation obligations.*'

We welcome the Government's recognition of the need for new mechanisms to protect nationally important biodiversity. Link has stated that we will consider the Marine Bill to have failed if it does not provide for the designation of a network of Nationally Important Marine Sites, including Highly Protected Marine Reserves (HPMRs). We therefore warmly welcome the commitment to a network of effectively managed Marine Conservation Zones, and we are also delighted that the Government has recognised the role of HPMRs, where all extractive, additive and otherwise damaging activities are excluded. We welcome the purposes put forward for Marine Conservation Zones and believe these should be included in the Marine Bill.

We also strongly support the introduction of new powers to regulate unlicensed activities to protect wildlife, including by-laws and interim measures. We consider the latter to be crucial to ensure action can be taken before biodiversity is damaged, as can happen in the time taken to enact a by-law. We are pleased that the Sea Fisheries Committees are also to have improved responsibilities and powers to use such tools to protect biodiversity from fisheries impacts.

However the package of conservation measures, as currently described, is too weak to achieve the stated aim. Key weaknesses include:

#### **A) Lack of ambition**

The White Paper is peppered with phrases that denote a disappointingly unambitious attitude to marine biodiversity conservation. In places these phrases undermine otherwise strong proposals. Examples include the statements that Marine Conservation Zones should cover 'as small an area as necessary' (p70), that they should not result in 'inappropriate economic or social impacts, where possible', that we should 'avoid damaging [the marine ecosystem] to the point that it can no longer provide essential services' (p66), that the Government 'will aim to minimise the number of sites that are established in areas where there are high levels of potentially damaging industrial activity or existing licences', while the existence of socio-economic interests 'would not necessarily preclude the designation of a MCZ'(p74), amongst others. While one such phrase would be a limited cause for concern, together they paint a picture in which conservation takes place only where it does not impinge upon economic activity.

Link is concerned that this lack of ambition could be carried forward into the legislation. Equally importantly, Link is concerned that the tone of the paper reflects a lack of Government will to deliver robust conservation measures, and that this will severely restrict implementation of the Bill. It indicates that there has been a failure to comprehend that a healthy environment is an essential basis for many of the key socio-economic interests. The draft Bill and forthcoming policy documents must better reflect the intentions previously expressed by Government by taking a significantly more robust stance on marine nature conservation, and recognising that as part of the ecosystem approach it is sometimes

necessary for marine biodiversity and the health of the marine ecosystem to take priority over direct socio-economic interests.

### **B) Balancing ecological, social and economic considerations**

Link is concerned by the Government's intent to 'balance ecological, social and economic considerations', during both the selection and designation of Marine Conservation Zones. The concept that closely linked outcomes can be balanced against each other is fundamentally flawed. Not only does this concept fail to recognise that the outcomes are to a degree interdependent, it also assumes wrongly that the pressures from one sector can somehow be brought into equilibrium with the pressures from another. In order to deliver the UK Sustainable Development Strategy's objective of 'living with environmental limits', the environment should be the prime consideration, with social and economic considerations nested within it. This approach has been applied in the development of Defra's 2027 Fisheries Contract. Such an approach is especially pertinent when designating sites specifically for conservation of marine biodiversity.

We emphasise the importance of marine biodiversity in underlying economic and social long-term sustainability. A recent paper by Worm et al <sup>7</sup> supports this. The authors analysed local experiments, long-term regional experiments, and global fisheries data to test how biodiversity loss affects marine ecosystem services across temporal and spatial scales. 'Overall, rates of resource collapse increased and recovery potential, stability, and water quality decreased exponentially with declining diversity. Restoration of biodiversity, in contrast, increased productivity fourfold and decreased variability by 21% on average'. The paper concluded that 'marine biodiversity loss is increasingly impairing the ocean's capacity to provide food, maintain water quality, and recover from perturbations'. In addition the paper stated that available data suggest that trends are still reversible, if addressed by urgent and effective action, in particular emphasising the need for Marine Protected Areas. Similar conclusions were reached in two reports commissioned by Defra, which are referred to in the RIA.

### **C) Weak designation process for MCZs**

We regret that we do not see significant improvements in the proposed mechanism for site designation to that which has allowed almost total failure to designate Marine Nature Reserves under the Wildlife and Countryside Act (1981). While we recognise that the policy and political environment has moved on since the 1980s, we fear that the weaknesses in proposed approach to site designation (and management – see below) would likely prevent the Government from achieving its objectives for a well-managed network of MCZs. The timetable set out in the White Paper already indicates that international commitments and targets relating to MPA networks – i.e. OSPAR and WSSD - will not be met. In particular, we are concerned that the White Paper places a great deal of emphasis on MCZs not being designated where they would conflict with other interests – we fear this could critically undermine site selection for nature conservation, setting a harmful precedent whereby the only sites protected would be the 'leftovers', unimportant to all other sectors.

We believe that more robust legislation will be critical to delivering the Government's biodiversity commitments, and we are keen to work with Defra to help develop a more robust, fit for purpose, mechanism.

Link believes that the Marine Bill should contain a duty for the Government to designate a comprehensive, representative network of MCZs, within a specified timetable and with

<sup>7</sup> Worm *et al* (2006). Impacts of biodiversity loss on ocean ecosystem services. *Science* **314**:5800, pp 787-790.

regular reporting requirements. This duty should be linked to the purposes for MCZs outlined in the White Paper, which we believe should be included in the Marine Bill.

In addition, we believe the SNCAs should have a duty to designate MCZs (including site selection, consultation and confirmation). We believe the designation process should include the opportunity for appeals. Sites should be selected based on criteria developed in accordance with the purposes set out in the White Paper, drawing upon existing criteria including those developed during the RMNC process.

#### **D) Piecemeal management framework and Highly Protected Marine Reserves**

The proposed management framework for MCZs relies upon reactive, indirect and piecemeal controls, delivered by a range of authorities for which conservation is not the main function. This strongly resembles the UK's existing MPA mechanisms, which have been beset with problems. In particular, we are concerned that this predominantly indirect approach would make it very difficult to create highly protected sites, as you would have to jump through so many hoops to effect complete protection, and we seek reassurance that where an SNCA identifies that a site should be highly protected this will be achievable.

Link would like to see a very proactive role for the Statutory Nature Conservation Agencies (SNCAs) in MCZ management. We support the proposal that the SNCAs should develop site objectives; we also suggest a list of activities likely to impact on the achievement of these objectives should be developed for each site, and set out in a brief management scheme to communicate to all relevant public bodies their duties in relation to the site. The SNCA should advise the MMO, Sea Fisheries Committees and other regulators directly on regulation of activities to enable these bodies to fulfil their duty towards the site's objectives (which in some instances, as stated, may mean the exclusion of all activities). The SNCAs should be responsible for monitoring the condition of sites, and monitoring of any activities within sites will also be necessary.

#### **E) Presumption in favour of development in MCZs**

The proposals for licensing activities in MCZs - including assessment, mitigation, alternatives, public interest and compensation – should be strengthened. We welcome the commitment to environmental assessment, and the proposal to provide guidance to business. However, Link expects a high level of protection to be provided to MCZs through the marine planning and licensing regimes, and we are concerned that the proposals relating to licensing imply that, generally, projects affecting MCZs will be permitted rather than refused. We would highlight the importance of the precautionary principle as a guiding principle. We believe there should be a presumption against development in protected sites. The burden of proof must lie with the prospective developer in MCZs, and development should not be permitted unless it can be shown that there will be no damage or disturbance to the site. The Marine Bill should include a duty on the SNCAs to advise the licensing authority on the potential impacts of a proposal on a MCZ. This should be accompanied by a duty on the licensing authority to consult the SNCA before granting permission for any development or other activity that could result in damage to an MCZ (this should apply to applications outside the MCZ as well as those within). Should the SNCA's advice not be followed, the licensing authority should then be required to show how it has taken the SNCA's advice into account, and also to give the SNCA notice of this decision (within a timeframe specified in the legislation). The SNCA would then have recourse to the relevant Secretary of State.

The proposals relating to activities in the public interest also provide cause for concern. In particular Link is concerned by the suggestion that developments could proceed if 'there is a clear and demonstrable direct environmental benefit on a national or international scale'

(which appears to trade off biodiversity conservation against other environmental issues), where 'there is substantial contribution to regional economic development or regeneration;' or if 'failure to proceed would have substantial undesirable environmental, social or economic consequences.' With these broad and ambiguous opt-outs, we anticipate it would be very hard to defend an MCZ against all manner of activities. As such, the UK Government would not meet its objectives for a well-managed network of MCZs, nor provide resilience and refugia for marine biodiversity to adapt to climate change. We would like to see clarification of the meaning of these phrases and clear guidance on how they might be applied so as to avoid compromising the MCZ network. It should be made clear that reasons of over-riding public interest will have to be demonstrated.

#### **F) Lack of clarity about what is eligible for protection.**

The White Paper makes frequent reference to habitats and species that are 'rare', 'threatened', 'globally or regionally significant', 'important', 'of national value' and 'representative' without explaining how these might be determined - for example whether it refers to Nationally Important Marine Features (NIMFs), BAP priority habitats and species, OSPAR priorities, species included in the schedules of the Birds and Habitats Directives, and the Wildlife and Countryside Act, or a combination of these. The interpretation of these terms has enormous implications for the efficacy of the measures suggested, thus it is imperative that further clarification is provided.

Link advises that each of the aforementioned categories will be important in informing the use of new nature conservation tools. We recommend that the SNCAs are given a duty to refer to these (and possibly other) lists in developing proposals for MCZs and other nature conservation tools, and in advising public bodies on all of their relevant functions (including planning, licensing, and by-laws to control both fisheries and unregulated activities). We urge Defra to ensure the list of Nationally Important Marine Features is completed to ensure it provides a sensible and comprehensive basis for use of these tools, and we wish to see statutory underpinning for the NIMF list in the Marine Bill. Coastal features, and those currently poorly represented by the NIMF and BAP lists - such as seabirds - would also need to be included. For example, nationally important sites will have to be designated for seabirds at sea to fulfil the UK's obligations under Article 3 of the Birds Directive. Link would like to be involved in further thinking on developing a suitable list (or lists) to accompany the Marine Bill.

#### **G) Climate change**

We are already witnessing changes in the marine environment arising from climate change, and further changes are expected. The new marine nature conservation measures must provide strong protection for marine habitats and wildlife to enable adaptation to climate change without loss of biodiversity.

Link is concerned that the crucial role of biodiversity in the mitigation and buffering of climate change impacts has not been appreciated. The adaptation and mitigation strategy for climate change in the marine environment must recognise the inherent links between the adaptation of marine biodiversity to climate change and mitigation measures. This not only includes provision of offshore renewables to the energy mix, but also the need to ensure that the ecosystem continues to function as the largest sink for carbon via marine primary production and as an essential element of climate regulation in the UK.

Ecosystems with high biodiversity and those that maintain structural components are thought to recover more easily from climatic disturbances. Marine and coastal waters are continuously being exposed to increasing human pressures through activities such as fisheries, energy production, trade and waste disposal. The effect of climate change is

therefore difficult to disentangle from direct human impacts; indeed the latter reduces the resilience of marine and coastal systems which then become more vulnerable to stresses of climate change. The removal of other stresses (in the case of the marine ecosystem, examples would include over-fishing and habitat destruction) is a common theme in climate change adaptation for biodiversity. Ecosystems become more resilient to the impacts of climate change if we remove as many of the other external pressures as possible.

The need is recognised in many biodiversity adaptation strategies for climate change to;

- Protect adequate and appropriate space  
It is important to take account of the impacts of climate change in planning protected area networks and to expand spatial scales through buffer zones and corridors to aid species migration. Planners should look for climate refugia.
- Limit all non-climate stresses. Marine Protected Areas contribute to the good health of the ecosystem which then could become relatively more resilient to environmental changes in comparison with those affected by additional anthropogenic pressure. The IUCN has recently identified Marine Protected Areas in general, and (Highly Protected) Marine Reserves in particular, as a vital tool in adaptation to climate change.
- Use adaptive management and strategy testing, including ongoing monitoring of areas where impact is identified, and adapting management as necessary.

**Full response**

	<b>Summary of proposals</b>
<b>6.</b>	STRONGLY AGREE. Link fully supports the Government's aim 'to introduce new tools for conservation of marine wildlife that together with existing ones can: halt the deterioration in the state of the UK's marine biodiversity and promote recovery where practicable, support healthy functioning and resilient marine ecosystems, ensure environmental considerations are at the heart of decision-making processes, and provide mechanisms that can deliver current and future European and international conservation obligations.'
<b>6.1</b>	AGREE. We welcome the recognition that biodiversity is being damaged, and that this impacts upon marine ecosystems and the benefits we derive from them.
<b>6.2</b>	AGREE, though Link would emphasize the need to manage activities in the marine environment, rather than managing the environment itself (which we lack the knowledge to attempt).
<b>6.3</b>	AGREE. We welcome the recognition of the need to protect biodiversity of national value; as we comment later in this response, we would like to see clarification of 'species and habitats considered of national value' (see also point F in summary above). We also emphasise that the new approach must also be capable of delivering international commitments under OSPAR, CBD and WSSD.
<b>6.4-6.6</b>	AGREE. We welcome the proposed new tools including by-laws and interim measures.
<b>6.7</b>	AGREE, though Link is concerned by the apparent shift of emphasis from environmentally-focused Marine Ecosystem Objectives to Marine Objectives that include economic objectives. We still believe it is essential that MEOs are developed, relating specifically to marine ecosystem components (species, habitats and processes), reflecting that healthy marine ecosystems underpin a wide range of goods and services. This should be reflected in the relationship between MEOs and other objectives. Link believes that MEOs should provide the context within which broader sustainable development objectives should be set, if they are to enable government to deliver sustainable development through an ecosystem-based approach.
	<b>Objectives for marine biodiversity and ecosystems</b>
<b>6.8</b>	AGREE.
<b>6.9</b>	STRONGLY AGREE. Link welcomes the recognition that marine biodiversity is linked to significant and important marine processes including waste assimilation, nutrient recycling and climate regulation.
<b>6.10</b>	DISAGREE. The implication of this paragraph is that it is acceptable to push the marine ecosystem to just short of its breaking point, provided that you go no further. Given our limited understanding of marine ecosystem functioning, and the clear signs that the UK's marine environment is already in decline, Link would like to see a much more precautionary approach. 'Business as usual' is no longer an option.
	<b>Climate change</b>
<b>6.11</b>	<p>AGREE. We are already witnessing changes in the marine environment arising from climate change, and further changes are expected. The new marine nature conservation measures must provide strong protection for marine habitats and wildlife to enable adaptation to climate change without loss of biodiversity.</p> <p>Link is concerned that the crucial role of biodiversity in the mitigation and buffering of climate change impacts has not been appreciated. The adaptation and mitigation strategy for climate change in the marine environment must recognise the inherent links between the adaptation of marine biodiversity to climate change and mitigation</p>

	<p>measures. This not only includes provision of offshore renewables to the energy mix, but also the need to ensure that the ecosystem continues to function as the largest sink for carbon via marine primary production and as an essential element of climate regulation in the UK.</p> <p>Ecosystems with high biodiversity and those that maintain structural components are thought to recover more easily from climatic disturbances. Marine and coastal waters are continuously being exposed to increasing human pressures through activities such as fisheries, energy production, trade and waste disposal. The effect of climate change is therefore difficult to disentangle from direct human impacts; indeed the latter reduces the resilience of marine and coastal systems which then become more vulnerable to stresses of climate change. The removal of other stresses (in the case of the marine ecosystem, examples would include over-fishing and habitat destruction) is a common theme in climate change adaptation for biodiversity. Ecosystems become more resilient to the impacts of climate change if we remove as many of the other external pressures as possible.</p> <p>The need is recognised in many biodiversity adaptation strategies for climate change to;</p> <ul style="list-style-type: none"> <li>* Protect adequate and appropriate space</li> </ul> <p>It is important to take account of the impacts of climate change in planning protected area networks and to expand spatial scales through buffer zones and corridors to aid species migration. Planners should look for climate refugia.</p> <ul style="list-style-type: none"> <li>* Limit all non-climate stresses. Marine Protected Areas contribute to the good health of the ecosystem which then could become relatively more resilient to environmental changes in comparison with those affected by additional anthropogenic pressure. The IUCN has recently identified Marine Protected Areas in general, and (Highly Protected) Marine Reserves in particular, as a vital tool in adaptation to climate change.</li> <li>* Use adaptive management and strategy testing, including ongoing monitoring of areas where impact is identified, and adapting management if necessary.</li> </ul>
	<b>Current conservation mechanisms</b>
6.12	AGREE. However, while existing mechanisms may have 'proven valuable in delivering conservation gains', these have been nowhere near sufficient to halt the decline in marine biodiversity.
6.13-6.14	AGREE. Link highlighted the flaws and failings of the current mechanisms in some detail in our response to the 2006 Marine Bill consultation.
	<b>Geographic scope</b>
6.15-6.21	AGREE. In particular, Link strongly supports the application of marine nature conservation measures to 200 nautical miles and on the UK Continental Shelf beyond 200 nautical miles. We also support the landward boundary at Mean High Water Springs and the capacity to control land-based activities where appropriate. Link is encouraging the devolved administrations to introduce complementary measures so that a comparable level of protection exists in their waters.
	<b>Regulating better</b>
6.22	AGREE. Link would particularly emphasise the need for 'the necessary commitment and resources' to implement and enforce marine nature conservation measures.
6.23.	PARTIALLY AGREE, though Link would emphasise the importance of the precautionary principle, and caution against setting the bar too high in relation to 'demonstrable need'; otherwise we fear a failure to address the cumulative and combined impacts of the various pressures impacting marine biodiversity.

	<b>The Marine Bill and European legislation</b>
6.24	AGREE, though Link would challenge the need for the new approach to have even greater flexibility than the Habitats Directive to take account of socio-economic factors (see comments in points B and C of the summary), as this has been one of the weaknesses in the management of European marine sites.
6.25	AGREE. Link supports consolidation of the regulations that transpose the Birds and Habitats Directives. We would welcome indication of a timescale for this.
	<b>Marine Conservation Zones</b>
	<p>Link broadly welcomes the vision for Marine Conservation Zones (p70). In particular, we welcome the commitment to a network of effectively managed MCZs, including highly protected sites. However, the vision expresses a worrying lack of ambition (see also point A in the summary above). Link strongly disagrees that the network of MCZs should cover ‘as small an area as necessary.’ We contend that the network should cover the area that is needed to be sure that the network fulfils its full range of functions and can achieve its objectives.</p> <p>Link welcomes the inclusion of a timetable for MCZ designation in the White Paper, and we believe that a timetable should be included in the Bill. However, the timetable should be somewhat more ambitious, as the current timetable misses EU Habitats Directive, OSPAR, WSSD and EU draft Marine Strategy Directive deadlines, as well as the deadline to halt biodiversity loss by 2010. The timetable should also be more detailed, including milestones, to ensure good progress with the designation of national sites. For the same reason, we recommend a duty in the Bill to report every 3 years on progress towards the network of sites. This would complement the annual reporting under both the Natura 2000 network and OSPAR. We are also concerned by the suggestion of approximate numbers of sites to be designated (30 Natura sites and around 100 other MCZs). These estimates are not based on a comprehensive scientific review and must not be translated into legislation or accepted in policy.</p>
6.26-6.30	AGREE. We welcome the recognition of the important role MPAs have to play in delivering biodiversity benefits, and of the limitations in scope of the EU legislation.
	<b>Purposes of marine conservation zones</b>
6.31	<p>STRONGLY AGREE. Link fully supports the list of purposes for MCZs. This list should be included in the Bill. Guidance will be required regarding the interpretation of terms such as ‘important’, ‘rare or threatened’, ‘globally or regionally significant’ and other similar terms - for example, whether they refer to NIMFs, BAP priority habitats and species, OSPAR priorities, species included in the schedules of the Birds and Habitats Directives, and the Wildlife and Countryside Act, or a combination of these. The interpretation of these terms has enormous implications for the efficacy of the measures suggested, thus it is imperative that further clarification is provided.</p> <p>Link advises that each of the aforementioned categories will be important in informing the use of new nature conservation tools. We recommend that the SNCAs are given a duty to refer to these (and possibly other) lists in developing proposals for MCZs and other nature conservation tools, and in advising public bodies on all of their relevant functions (including planning, licensing, and by-laws to control both fisheries and unregulated activities). We urge Defra to ensure the list of NIMFs is completed to ensure it provides a sensible and comprehensive basis for use of these tools, and we wish to see statutory underpinning for the NIMF list in the Marine Bill. Coastal features, and those currently poorly represented by the NIMF and BAP lists - such as seabirds - would also need to be included.</p>

	It is important that the list or guidance used does not exclude features already included as European features for SACs, as it may be necessary to protect examples of these features that are of national importance but that do not qualify for European protection.
<b>6.32-6.34</b>	AGREE. We welcome the recognition of the contribution of MCZs to the functioning and quality of the wider marine environment.
	<b>Conserving other important marine features</b>
<b>6.35</b>	In relation to the second bullet point, we are concerned that the heritage protection mechanisms under consideration by DCMS are limited to 12 nautical miles. We urge DCMS to ensure that measures are in place to protect sites and areas of archaeological or historic interest throughout the UK marine area.
	<b>Site selection</b>
<b>6.36</b>	AGREE. It is important that the network can be built up gradually and in response to new information, rather than having to be planned out from the outset.
<b>6.37</b>	AGREE. Link agrees with the concept of replication within the network. However, we are concerned by the term 'proportionate network' and seek clarification as to what this means.
<b>6.38-6.39</b>	AGREE. Link would emphasise the importance of guidance on site selection. This should be developed and agreed by the SNCAs. We would welcome clarification on what would be considered a 'relevant plan'.
	<b>Balancing ecological, social and economic considerations</b>
<b>6.40-6.43</b>	<p>DISAGREE. Link is concerned by the Government's intent to 'balance ecological, social and economic considerations', during both the selection and designation of Marine Conservation Zones. The concept that closely linked outcomes can be balanced against each other is fundamentally flawed. Not only does this concept fail to recognise that the outcomes are to a degree interdependent, it also assumes wrongly that the pressures from one sector can somehow be brought into equilibrium with the pressures from another. In order to deliver the UK Sustainable Development Strategy's objective of 'living with environmental limits', the environment should be the prime consideration, with social and economic considerations nested within it. This approach has been applied in the development of Defra's 2027 Fisheries Contract. Such an approach is especially pertinent when designating sites specifically for conservation of marine biodiversity.</p> <p>We emphasise the importance of marine biodiversity in underlying economic and social long-term sustainability. A recent paper by Worm <i>et al</i><sup>8</sup> supports this. The authors analysed local experiments, long-term regional experiments, and global fisheries data to test how biodiversity loss affects marine ecosystem services across temporal and spatial scales. 'Overall, rates of resource collapse increased and recovery potential, stability, and water quality decreased exponentially with declining diversity. Restoration of biodiversity, in contrast, increased productivity fourfold and decreased variability by 21% on average'. The paper concluded that 'marine biodiversity loss is increasingly impairing the ocean's capacity to provide food, maintain water quality, and recover from perturbations'. In addition the paper states that available data suggest that trends are still reversible, if addressed by urgent and effective action. Similar conclusions were reached in two reports commissioned by Defra, which are referred to in the RIA.</p> <p>We regret that we do not see significant improvements in the <b>proposed mechanism for designation of MCZs</b> to that which has allowed almost total failure to designate</p>

<sup>8</sup> Worm *et al* (2006). Impacts of biodiversity loss on ocean ecosystem services. *Science* **314**:5800, pp 787-790.

	<p>Marine Nature Reserves under the Wildlife and Countryside Act. While we recognise that the policy and political environment has moved on since the 1980s, we fear that the weaknesses in proposed approach to site designation (and management – see below) would likely prevent the Government from achieving its objectives for a well-managed network of MCZs. The timetable set out in the White Paper already indicates that international commitments and targets relating to MPA networks – i.e. OSPAR and WSSD - will not be met. In particular, we are concerned that the White Paper places a great deal of emphasis on MCZs not being designated where they would conflict with other interests – we fear this could critically undermine site selection for nature conservation, setting a harmful precedent whereby the only sites protected would be the ‘leftovers’, unimportant to all other sectors.</p> <p>We believe that more robust legislation will be critical to delivering the Government’s biodiversity commitments, and we are keen to work with Defra to help develop a more robust, fit for purpose, mechanism.</p> <p>Link believes that the Marine Bill should contain a duty for the Government to designate a comprehensive, representative network of MCZs, within a specified timetable and with regular reporting requirements. This duty should be linked to the purposes for MCZs outlined in the White Paper, which we believe should be included in the Marine Bill.</p> <p>In addition, we believe the SNCAs should have a duty to designate MCZs (including site selection, consultation and confirmation). We believe the designation process should include the opportunity for appeals. Sites should be selected based on criteria developed in accordance with the purposes set out in the White Paper, drawing upon existing criteria including those developed during the RMNC process.</p>
	<p><b>Site selection and marine planning</b></p>
<p><b>6.44</b></p>	<p>AGREE. It is important that site selection can proceed in advance of the completion of marine plans. However, wherever the first plans are developed, the MCZ network should be developed in tandem, if it has not been already developed in that area.</p>
	<p>Site objectives</p>
<p><b>6.45-6.51</b></p>	<p>AGREE. Link supports the setting of objectives for each site by the SNCAs. The site objectives will be critical to the success of the individual sites and the network as a whole. We support an approach based on broad objectives such as ‘prevent abrasion of the sea bed’ or ‘prevent removal of species’, as well as more strategic objectives such as ‘promote full recovery’.</p> <p>We welcome recognition of the importance of Highly Protected Marine Reserves (HPMRs) and their inclusion within the MCZ network to allow sites to fully recover and develop. We also welcome recognition of the specific role for HPMRs as reference sites in which the habitats and wildlife can recover to a near-natural state, acting as a benchmark. These sites have a vital place in an ecosystem approach and are critical to our understanding of marine ecosystem functioning.</p>
	<p><b>Stakeholder engagement and the site selection process</b></p>
<p><b>6.52-6.56</b></p>	<p>Link agrees that the designation process should include consultation. As mentioned, however, we are concerned at the approach outlined earlier in this section to balancing social, economic and environmental considerations (see comments under 6.40-6.43 above).</p> <p>We would note that once MCZs are designated they should help provide certainty because developers will be expected to avoid making inappropriate applications</p>

	<p>affecting them. The initial uncertainty described is simply an extension of the current situation - this adds to the imperative to designate sites as soon as possible.</p>
	<p><b>Designation</b></p>
6.57	<p>As mentioned above, Link believes that the Marine Bill should contain a duty for the Government to designate a comprehensive, representative network of MCZs, within a specified timetable and with regular reporting requirements. This duty should be linked to the purposes for MCZs outlined in the White Paper, which we believe should be included in the Marine Bill.</p> <p>In addition, we believe the SNCAs should have a duty to designate MCZs (including site selection, consultation and confirmation). We believe the designation process should include the opportunity for appeals. Sites should be selected based on criteria developed in accordance with the purposes set out in the White Paper, drawing upon existing criteria including those developed during the RMNC process.</p>
6.58-6.59	<p>AGREE. However, Link would highlight the real risk of damage to certain sites and the fallibility of voluntary measures (as observed in Lyme Bay, for example). The decision to utilise statutory rather than voluntary interim measures whilst a site is under consideration for designation should be taken by the SNCAs in discussion with the MMO and Sea Fisheries Committees. The approach taken with European Marine Sites in the UK has been to treat them as if they are designated from the moment they are proposed. We would endorse the extension of this approach to all MCZs, with protection commencing when the formal consultation process begins.</p>
	<p><b>Management</b></p>
6.60	<p>PARTIALLY AGREE. We accept that site management will be delivered by a number of authorities, who will have a duty to contribute to the delivery of site objectives. However, we are concerned that this predominantly indirect approach would make it very difficult to create highly protected sites, as you would have to jump through so many hoops to effect complete protection. We therefore seek further reassurance that this mechanism will be able to achieve HPMRs.</p> <p>We would argue that the SNCAs should have a central, proactive role in site management and protection, and that a management scheme - including a list of activities likely to impact on the achievement of site objectives – should be provided to authorities to inform the exercise of their functions. The Marine Bill should include a duty on the SNCAs to advise the MMO and the SFCs on by-laws that may be required to protect a site, as well as the MMO and other licensing bodies on specific project proposals. This should be accompanied by a duty on the authorities to consult the SNCA before granting permission for any development or other activity that could result in damage to an MCZ (this should apply to applications outside the MCZ as well as those within). Should the SNCA's advice not be followed, the licensing authority should then be required to show how it has taken the SNCA's advice into account, and also to give the SNCA notice of this decision. The SNCA would then have recourse to the relevant Secretary of State.</p>
6.61	<p>AGREE.</p>
	<p><b>Duties to deliver site objectives</b></p>
6.62-6.63	<p>AGREE. We welcome the proposal to place a duty on ministers, Government departments and public bodies to contribute to the delivery of site objectives. This must also apply to non-public bodies which undertake public functions (e.g. Harbour Authorities). We agree that bodies will require guidance as to how to assess the impact</p>

	of activities to support this duty. As already mentioned, we believe a management scheme for each site will help to ensure public bodies fully understand their responsibilities, and the SNCAs must provide advice directly on license applications and use of tools including by-laws.
6.64	AGREE. We welcome the commitment to seek action from international bodies to secure protection for MCZs, and we believe this should be included in the Marine Bill. This is an issue that will inevitably grow in importance as EU member states progress towards implementation of offshore Natura 2000 and OSPAR MPA networks. While, at present, there is no mechanism for resolving such conflicts, Link advocates that this will need to change.
	<b>Licensed activities</b>
6.65 – 6.70	<p>DISAGREE The proposals for licensing activities in MCZs - including assessment, mitigation, alternatives, public interest and compensation – should be strengthened. We welcome the commitment to environmental assessment, and the proposal to provide guidance to business. However, Link expects a high level of protection to be provided to MCZs through the marine planning and licensing regimes, and we are concerned that the proposals relating to licensing imply that, generally, projects affecting MCZs will be permitted rather than refused. We believe there should be a presumption against development in protected sites. The burden of proof must lie with the prospective developer in MCZs, and development should not be permitted unless it can be shown that there will be no damage or disturbance to the site. The Marine Bill should include a duty on the SNCAs to advise the licensing authority on the potential impacts of a proposal on a MCZ. This should be accompanied by a duty on the licensing authority consult the SNCA before granting permission for any development or other activity that could result in damage to an MCZ (this should apply to applications outside the MCZ as well as those within). Should the SNCA's advice not be followed, the licensing authority should then be required to show how it has taken the SNCA's advice into account, and also to give the SNCA notice of this decision. The SNCA would then have recourse to the relevant Secretary of State.</p> <p>The proposals relating to activities in the public interest also provide cause for concern. In particular Link is concerned by the suggestion that developments could proceed if 'there is a clear and demonstrable direct environmental benefit on a national or international scale' (which appears to trade off biodiversity conservation against other environmental issues), where 'there is substantial contribution to regional economic development or regeneration;' or if 'failure to proceed would have substantial undesirable environmental, social or economic consequences.' With these broad and ambiguous opt-outs, we anticipate it would be very hard to defend an MCZ against all manner of activities. As such, the UK Government would not meet its objectives for a well-managed network of MCZs, nor provide resilience and refugia for marine biodiversity to adapt to climate change. We would like to see clarification of the meaning of these phrases and clear guidance on how they might be applied so as to avoid compromising the MCZ network. It should be made clear that reasons of overriding public interest will have to be demonstrated.</p> <p>Link is concerned by the possible implications of forthcoming planning reforms on licensing arrangements in MCZs. The White Paper Planning for a Sustainable Future (May 2007) proposes that a new Infrastructure Planning Commission should be responsible for determining proposals for larger renewables installations and ports. Link's current view is that the MMO should be responsible for determining all applications for marine licenses (for further information please see Appendix 2 to this response, on Licensing Activities in the Marine Area).</p>

	<b>Review of licences</b>
<b>6.71-6.72</b>	DISAGREE. We would like to see the Government taking a tough stance on marine nature conservation, recognising that as part of the ecosystem approach it is sometimes necessary for marine biodiversity and the health of the marine ecosystem to take priority over direct socio-economic interests, especially in relation to MCZs. While sites of industrial activity e.g. wind farm sites, may provide incidental benefits for wildlife, we feel it is important to recognise that these sites have very different goals which may only be occasionally or adventitiously delivered together by any given site. Therefore we would not wish the search for sites that meet both goals to become a driving factor in MCZ selection. See also our earlier comments on resilience and climate change.
<b>6.73-6.76</b>	AGREE. We recognise that the power to review, vary and revoke licenses is positive, however this is undermined by the caveats in paragraph 6.75. Further guidance would be required in relation to the circumstances in which it would be appropriate to review licences to protect MCZs, including clarification of ‘significant benefits to nature conservation’, ‘disproportionately high [costs] in relation to conservation benefits’ and ‘in the public interest’. See also our comments on public interest above.
	<b>Fisheries</b>
<b>6.77</b>	AGREE. Link welcomes the ‘positive obligation’ on fisheries authorities with regard to MCZs. We have provided detailed comments on the Fisheries proposals (please see Appendix 4 to this response).
	<b>Unregulated activities</b>
<b>6.78</b>	AGREE. Link welcomes the new controls for unregulated activities.
	<b>Adaptive management</b>
<b>6.79-6.85</b>	AGREE. Link welcomes the intent for MCZs to achieve benefits over long timescales. We cannot, however, envisage any circumstances in which ‘there may be a need to designate sites for a shorter period.’
	<b>Overlapping sites</b>
<b>6.86-6.88</b>	AGREE. However, it is important that the objectives of overlapping sites should be able to be integrated with each other and overlap where appropriate, in order to achieve the objectives of both sites.
	<b>Management schemes</b>
<b>6.89-6.90</b>	As mentioned earlier, Link believes that management schemes should be compulsory for all MCZs, and that they should be developed by the SNCAs in consultation with other authorities and stakeholders. Experience in European Marine Sites has demonstrated that a management scheme is essential for an MPA, and the Irish Sea Pilot <sup>9</sup> came to the same conclusion. We also believe this will help secure the UK’s delivery of its commitment under OSPAR to well-managed MPAs. We would add that we do not consider management schemes need to be onerous – as the Irish Sea Pilot pointed out, clarity and simplicity are preferable.
	<b>Repeal of MNRs</b>
<b>6.91-6.92</b>	AGREE. The change-over from MNR to MCZ should be managed so as to provide continuous protection without any gaps.

<sup>9</sup> Vincent, M.A., Atkins, S.M., Lumb, C.M., Golding, N., Lieberknecht, L.M. and Webster, M. (2004). *Marine Nature Conservation and Sustainable Development – the Irish Sea Pilot*. Report to Defra by the Joint Nature Conservation Committee, Peterborough.

	<b>Seaward limit of SSSIs and ASSIs</b>
<b>6.93-6.94</b>	AGREE. The approach of setting a standard limit for SSSIs but allowing flexibility where appropriate seems sensible.
	<b>Offences</b>
<b>6.95-6.98</b>	<p>AGREE. We welcome offences related to license conditions and by-laws, together with the recognition that a further offence, relating to activities not covered by these tools, is needed.</p> <p>In relation to 6.97 Link would like the offence to apply broadly to any feature within a site, in keeping with an ecosystem approach.</p> <p>We agree that the MMO and SFCs should be the prosecuting bodies in relation to offences. Further guidance will be required on these offences.</p>
	<b>Species protection 6.99 – 6.128</b>
	<p>AGREE. Link supports the vision but seeks clarification with regard to the terms ‘the most important marine species and plants’ and ‘viable populations’.</p> <p>As mentioned earlier, Link advises that NIMF, BAP and OSPAR priority lists (and possibly others) will be important in informing the use of new nature conservation tools, and other regulatory functions (e.g. fisheries by-laws, planning and licensing). We recommend that the SNCAs are given a duty to refer to these (and possibly other) lists in developing proposals for MCZs and other nature conservation tools, and in advising other public bodies on the exercise of their functions.</p> <p>In a number of cases it will be necessary to conserve population levels at current or historical levels that may be significantly higher than the population level required to ensure that the species is ‘viable’ in UK waters. This sometimes requires controlling impacts on individual animals, or small groups.</p> <p>Link also questions the confidence expressed in the White Paper that existing measures (such as licensing and fisheries tools) will suffice to conserve populations of nationally important mobile species. Past application of these measures has not succeeded in addressing the threats to mobile species and halting or reversing their decline (for example, see WWF’s Marine Health Check 2005<sup>10</sup>). If these measures are to be relied upon to deliver species conservation, it is vital that they are backed up by considerably more resources and political will than at present.</p> <p>In reference to paragraph 6.106, we believe that important feeding areas for mobile species should be included within ‘areas which are important for key life cycle stages, such as for rearing and breeding’. Many mobile species travel large distances to visit our waters expressly for feeding, thus these areas are just as important to their lifecycle as their breeding ground.</p> <p>The reliance on existing measures and protected areas to deliver species conservation makes it even more critical that the mechanism for MCZs is robust and fit for purpose (see previous comments).</p> <p>Under Section 40 of the NERC Act 2006 all public bodies have a duty to have regard to the purpose of conserving biodiversity (conserving is defined to include restoring and</p>

<sup>10</sup> [http://www.wwf.org.uk/filelibrary/pdf/marine\\_healthcheck05.pdf](http://www.wwf.org.uk/filelibrary/pdf/marine_healthcheck05.pdf)

	enhancing). This duty applies to public bodies operating in the marine environment, and Defra will need to ensure that all marine authorities are aware of the duty and what it means.
	<b>Control of unregulated activities</b>
<b>6.129-6.140</b>	<p>AGREE. However, we seek clarification of ‘significant impact on achievement of an MCZ’s objectives or on the conservation status of an important marine species’. In particular, we caution that it may not be possible to demonstrate a significant impact on the conservation status of an important marine species in one specific area – if these new powers cannot be used to regulate impacts on species without evidence of this scale of impact, then it will not be possible to address cumulative impacts, and the value of this tool will be severely undermined.</p> <p>We accept the MMO as the by-law making authority, but please see our comments in relation to 6.143-6.146 below.</p>
<b>6.141-6.142</b>	AGREE. However, Link would highlight the limitations of voluntary measures and the need for recourse to legislative controls.
<b>6.143-6.146</b>	<p>PARTIALLY AGREE. Link considers by-laws to be an essential part of the nature conservation tool kit, and as such the advice of the SNCAs on use of by-laws should be afforded high importance. Link believes the SNCAs should have a duty to advise the MMO on the need for by-laws. The MMO should be required to take account of this advice, and should provide reasons if it is not followed.</p> <p>In addition, because the MMO is to be responsible for implementing nature conservation measures, it should have a duty to further nature conservation within and beyond MCZs. Paragraph 6.159 hints that this will be the case, but we seek further clarification on this point.</p>
<b>6.147-6.150</b>	AGREE. We support the use of licensing, where appropriate, to make by-laws less blunt measures. However, Link is concerned about the terms ‘proportionate’ and ‘inappropriate impacts’ (see point A, above) and seeks clarification. We suggest there are likely to be occasions when complete exclusion of an activity is necessary. Again, the approach taken should be determined by the SNCA’s advice.
<b>6.151-6.157</b>	AGREE. However, Link would highlight the limitations of voluntary measures and the need for recourse to legislative controls. We also seek clarification of at what stage of selection a site would be considered a ‘proposed MCZ.’ In our view this should coincide with the commencement of the formal consultation process.
	<b>Enforcement 6.160 – 6.182</b>
	<p>Link welcomes the proposed role for the MMO in enforcing nature conservation provisions, and the proposals to allow the MMO to enter agreements with other bodies in relation to this role.</p> <p>We are alarmed, however, at the statement in 6.181 that public bodies are not subject to offences or penalties. This proposed exclusion raises precisely the same flaw identified in Regulation 29(2) of the draft Offshore Marine Conservation (Natural Habitats, &amp;c) Regulations. This Regulation specifically excluded public bodies from the offences relating to European offshore marine sites. We consider that the same concerns apply in respect of offences under the Marine Bill. We strongly recommend that public bodies be guilty of an offence in respect of MCZs if they exercise their functions recklessly, resulting in damage or disturbance (directly or indirectly) to the MCZ.</p> <p>We would also like to reiterate our recommendation for a very proactive role for the SNCAs in MCZ management and for the requirement on relevant public bodies to notify</p>

	and consult the relevant SNCA on any decisions involving development or other activity that could result in damage to an MCZ.
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## Appendix 4

### Section 7: Modernising Marine Fisheries Management

#### Headline Points

- Link welcomes the overhaul and modernisation of the Sea Fisheries Committees (SFCs) proposed in the White Paper, but believes that in order to see real improvements, there must be a corresponding and fundamental change in SFC culture. It is Link's view that the modernised management of inshore fisheries by SFCs must include use of SEA and EIA as well as assessment and mitigation of the environmental impacts of existing fisheries, and routine collection of fishing effort data.
- Link supports reform of the legislation governing the use of Several and Regulating Orders (SROs) for shellfish, as we consider it to be outdated and not suitable for the purpose of managing today's inshore shellfisheries.
- Link warmly welcomes the introduction of a charging regime for recreational sea angling and measures to tackle hitherto unregulated fisheries.
- As recommended in the Bradley Review, Link supports the concept of charging the inshore industry to support the costs of inshore fisheries management (including monitoring, regulatory and enforcement activities), and believes that such a charging regime should be introduced as soon as possible.

#### Introduction

Link welcomes Defra's aim to 'strengthen fisheries and environmental management arrangements so that more effective action can be taken to conserve marine ecosystems' (pg 98). Link supports many of the proposals set out in the White Paper for modernising marine fisheries management.

The current legislation for managing inshore fisheries originates from the 1960s, and reflects the management necessary for commercial fisheries in the mid to late 19th Century. There is a widely held perception that this legislation is not relevant, enforceable or appropriate for the effective management of today's inshore fisheries, which are characterised by a highly dynamic, diverse and competitive industry, intensively exploited stocks, and stakeholder conflict. Managers have now also realised the need to take an ecosystem-based approach towards fisheries management, rather than the single species approach of the past. Link believes that new legislation is required to provide today's fisheries managers with the necessary powers, flexibility and adaptability to deliver true sustainable management of our inshore fisheries.

Link welcomes the comprehensive proposals for the reform of the Sea Fisheries Committees in England, to ensure that they can deliver inshore fisheries and environmental management responsibilities effectively. We are also pleased to note recommendations for changes to be made to the 1967 Sea Fisheries (Shellfish) Act, improving the processes of application, extension and operation of Several and Regulating Orders for shellfish; and proposals for extending regulatory control to recreational sea angling and other hitherto unregulated fishing activities.

It is Link's view that new inshore fisheries legislation must require a 'joined up' approach to management, with Strategic Environmental Assessments (SEAs) including all future planning strategies that are developed for inshore fisheries and aquaculture. Link is on the Project Steering Group for the NESFC pilot SEA, and we fully support the development of fisheries SEAs as an integral component of ecosystem-based management. In developing the concept of fisheries SEA, Link believes that multi-sectoral SEA, undertaken on a 'sea area' approach in the context of Marine Planning would lay the foundations for genuine

integrated management of UK waters. There must also be a requirement for all new inshore fishery projects (including developments in aquaculture, new fishery projects or practices, significant changes in gear design, and new areas of exploitation) to be the subject of an Environmental Impact Assessment (EIA). Link was disappointed to note that neither SEA nor EIA for fisheries are mentioned in this section of the White Paper, and we urge Defra to ensure that SFC purposes include a requirement to ensure that these procedures are implemented. We also recommend an obligation being placed on SFCs to undertake assessment of any known or potential environmental impacts of existing fisheries along with a duty to introduce measures to mitigate these impacts and to monitor their efficacy.

### **Sea Fisheries Committees in England**

Link welcomed Defra's announcement in June 2006 that the SFCs were to be retained and modernised, to deliver improved management of fish stocks and the marine environment for England. We support the comprehensive proposals laid out in the White Paper for SFC reform, particularly the inclusion of a marine stewardship role for the SFCs, along with enhanced powers and duties to protect the marine environment from the impacts of fisheries activities. Link also supports the reduction in numbers of SFCs in England (and Wales) from 12 to 6 (**7.65**), and recommends the Bradley Report 'Preferred Option' scenario (Paragraph A13.13) for the reasons described. We look forward to further consultation on the details of how this reduction in numbers might best be achieved.

Link supports the renaming (and associated re-branding) of the SFCs to mark their new functions (**7.70**), whilst recognising that a change in name is a necessary but not a sufficient condition for an associated change in SFC culture. Link considers it vitally important that SFC culture does change to reflect the broader remit of the modernised organisations.

### **Purpose and duties**

Link supports the recommendation to give the SFCs a clearly-defined, updated core purpose (**7.18** and **7.19**) that ensures the integration of environmental considerations into fishery management. It is Link's view that there is a fundamental need to move away from species management towards ecosystem management, and that the SFCs must be given the mandate to manage inshore fisheries in an integrated way. Link believes it is imperative that SFCs are given defined duties to enable them to achieve their purpose, such as the duties proposed in paragraph **7.20**. We feel that the new purposes and duties laid out in the White Paper are both well-worded and comprehensive, and welcome the fact that the wording used reflects the recommendations of the Inshore Working Group to the Defra Fisheries Minister in March 2005 following the Net Benefits report (please refer to Defra Coastal Waters Policy team for further information).

It is Link's view that in order to deliver their updated purpose and duties, the modernised SFCs should use a variety of management methods including those recommended by the same Inshore Working Group:

- licensing fishing;
- charging users;
- requiring reporting of effort, catches and landings;
- requiring marking of fishing equipment;
- control measures such as:
  - Fishing effort (method restrictions, gear specifications and limitations etc);
  - Fishing areas/zones (including no- or low take zones);
  - Catch levels; and
  - Fishing seasons, periods and times.

- consulting relevant bodies on appropriate issues;
- establishing executive/consultative/advisory bodies as appropriate; and
- establishing emergency regulations.

We are therefore very pleased to see that the proposals in this section of the White Paper will empower the modernised SFCs to use these methods of management for the benefit of fisheries and the environment (see also more detailed comments below on particular proposals).

### **Constitution and governance**

Link supports the modernisation of the SFCs' constitution and governance structures. One of the strengths of SFCs is that they provide stakeholder input to local fisheries management. While this needs to include local authority membership, it is also desirable, given the proposed new purpose and duties, to build on the present arrangements for representation from the fishing industry and environmental interests. Link therefore supports proposals (7.25) to reduce the proportion of local authority members on each Committee. Such a reduction would allow an increase for other interests (such as environmental or recreational angling). Allowing only local authority members to vote on the levy (7.55), counters the arguments put forward in the Bradley Report regarding the need for local authorities having the majority vote regarding funding (paragraph A12.5, pg 103). Link is also pleased to see the recommendation in paragraph 7.26 that seven Committee seats will be shared by: 'the fishing industry, anglers, conservation bodies and other relevant interests'; and we would appreciate further clarification on the proposed split between these different interests, and how this split will be defined.

We are supportive of Defra's desire to increase environmental representation on the Sea Fisheries Committees, by proposing a seat for Natural England on each Committee (paragraph 7.25, pg 103). However, in the light of NE's reluctance to accept this position, we suggest that allowing NE to remain outside the Committee structure and instead requiring the SFCs to take their advice on environmental matters could achieve a similar incorporation of nature conservation agency expertise into the SFC decision-making process. So as not to lose the environmental representation on the Committees themselves, we propose that this seat should instead be made available to relevant environmental NGOs, e.g. via Link.

Link supports the proposal in paragraph 7.30 for enhancing the function of the ASFC. As well as the additional roles suggested here, the ASFC could be tasked with reviewing the effectiveness of SFCs (as recommended in the Bradley Review (Paragraph A14.5 pg 114)). Furthermore, it should assist in continuing development of clear lines of communication between the SFCs and Central Government departments.

### **Funding arrangements**

Link has long campaigned for a more secure funding framework for the SFCs that removes the uncertainty over their future support and enables them to perform their fisheries and environmental duties to the full. The Environment Act 1995 increased the scope of the marine conservation obligations placed on the SFCs, without providing adequate funding for them to fulfil these obligations. All SFCs should be appropriately and fully funded to carry out the tasks they are charged with, to manage local, national or international (CFP, Birds Directive, Habitats Directive, Water Framework Directive, etc) obligations. Where appropriate, Link agrees that funding arrangements should enable the SFCs to recover some of the costs of inshore fisheries management (e.g. 7.56).

Link agrees that all local authorities with a sea or estuary coastline (tidal waters) should contribute to relevant SFC levies (7.22; 7.55). The example of the NWNWSFC illustrates the need for this; as a consequence of the abolition of metropolitan counties in the 1980s, the SFC lost about 25% of its income and then, when there was further reorganisation later lost a further 25% as Cheshire's status was changed.

### **By-law making powers**

Link welcomes the reform of by-law making powers to improve the legislative 'toolkit' that the SFCs have at their disposal for the delivery of sustainable management of inshore fisheries. In particular, Link supports the proposal to introduce an interim measure that could be used at short notice in particular circumstances (7.33 – 7.34). There is a need to ensure that SFCs not only have the powers to adopt a precautionary response in reaction to emergency situations by using these interim measures, but also have a duty to positively do so.

Link has called previously for the introduction of an effective licensing system for inshore fisheries management, and therefore supports the proposals to 'put beyond doubt the use of permit schemes to control fishing effort for conservation and enforcement purposes' (7.38). The ability to limit numbers prosecuting a fishery is an essential tool for proper management, facilitating the sustainable exploitation of all fish stocks, and providing a mechanism to adjust fishing effort rapidly in response to conditions, e.g. fish stock levels, and marine conservation duties, e.g. bycatch levels. It is also important that SFCs should be able to attach conditions to permits issued, to allow the control of fishing effort for nature conservation purposes, as suggested in paragraph 7.38.

Link agrees that SFCs should be provided with a clear remit to gather basic fishing effort data. This should include information from both commercial and recreational fishermen, from all vessel size classes and should include gear characteristics, location and timing of fishing operations. This information is essential to effective fisheries management both in relation to setting catch and effort limits and to identifying appropriate technical or management responses to any environmental impacts such as non-target species bycatch. While discussions on fishing effort data collection are ongoing within the EU, there are already requirements for effort data, for instance, in assessing cetacean bycatch under Regulation (EC) 812/2004, to allow the extrapolation of observed bycatch to the whole fishery concerned.

Under the terms of a resolution agreed recently by ASCOBANS (The Agreement on the Conservation of Small Cetaceans of the Baltic and North Seas) the UK undertook to collect and provide information on the extent, type and distribution of static gillnet and tangle net effort (Resolution No.5, MoP5). At the subsequent meeting of the Advisory Committee to ASCOBANS (April 2007) the scope and format of this effort data provision was discussed and an outline agreed for the set net fisheries sector. However, the type of data requested could equally be applied to other inshore fisheries.

In the past, Link has called for the SFCs to be able to regulate certain activities associated with fishing: for example the use of vehicles to collect catch from a beach, which may cause significant damage to an area's wildlife interest. We note that with the extension of SFC jurisdiction inland (7.43) it may now be possible for SFCs to regulate such activities using their by-law making powers. We would welcome more clarity on this issue: whether it is considered within the remit of the SFCs to regulate such activities, or whether it is deemed best left to the MMO. Link would support close working between the SFCs and the MMO to ensure that areas of potential confusion and overlap like this are identified and action agreed upon, so that no regulatory gaps are left. We would like to emphasise the importance of Natural England's advice in relation to these functions (please also see Appendix 3 to this response, on Marine Nature Conservation).

### **Several and Regulating Orders for shellfish**

Link supports reform of the legislation governing the use of Several and Regulating Orders (SROs) for shellfish, as we consider it to be outdated and not suitable for the purpose of managing today's inshore shellfisheries. We would support restricting the granting of Regulating Orders to SFCs only within England (7.86) as a sensible move towards consolidating the management of England's inshore fisheries within the SFCs.

Link believes that Several and Regulating Orders could be very useful tools for promoting sustainable inshore fisheries management of some shellfish species, if some important changes were made to their focus and delivery. By reducing the likelihood that applicants will face a public inquiry (7.83), the number of Several and Regulating Orders applied for will likely increase – potentially increasing the proportion of sustainable shellfisheries in inshore waters. Therefore, Link supports proposals for simplification and acceleration of the currently lengthy application process, provided that the emphasis on the development of a comprehensive management plan for the area proposed for an Order is not lost. Link also recommends introduction of a Ministerial power to withdraw a Regulating or Several Order where (significant) environmental damage is occurring, either directly within the Order areas, or where it is having impacts outside the boundary, or where stock sustainability is at risk (with a requirement for full consultation before withdrawal).

Link has made several recommendations on the reform of inshore fisheries legislation in the past that have not been picked up in this White Paper. Previously, we have called for clarification on what species and what methods of harvesting are covered by the legislation. We would like to see all shellfish species covered, as well as regulation of all vehicles (tractor dredgers as well as boats) and methods of fishing. Link also called for the lifetimes of Orders to be reduced from a 60 year maximum to a lower limit (e.g. 20 years), an imposition of some upper limit on the maximum size of an area to be covered by a Several Order, and a requirement to manage Several Order areas in line with sustainable use of the resources and with regard to the environment. We recognise that these reforms might be picked up by policy changes rather than revised primary legislation, but would still recommend they are included as a package of reformed SRO administration.

### **Recreational sea angling and unregulated fishing**

Link agrees it would be beneficial to introduce a regulatory framework and charges for recreational sea angling and hitherto unregulated fishing. We are particularly pleased to note that some of the proposals apply to hitherto unregulated fishing activities, as these activities can have significant negative impacts on the environment and yet still prove difficult or impossible to control under the present system of management.

Link supports the proposals to introduce a chargeable licence applicable to all recreational sea fishing activities involving a rod and line, and to ensure that it is possible to set appropriate 'bag limits' for recreational anglers (7.114; 7.122). Recreational fishing has been implicated in localised depletions of fish stocks in some areas. Setting of recreational fishing bag limits is commonplace and widely accepted in many other countries as a mechanism for reducing trade in 'black' fishing. For example, in Queensland, Australia, there are bag limits for bass (2), wrasse (5) and estuary cod (10) as well as for some shellfish<sup>11</sup>. In return, anglers might expect to play an active role in resource management and decision-making and obtain equal (though not necessarily open) access to well-managed stocks.

Link agrees that fisheries managers need access to information about the number and location of fish caught by anglers to inform decision-making on conservation measures for

<sup>11</sup> <http://www.sea-ex.com/fishphotos/baglimitsqld-salt.htm>

the stock (7.118). We would therefore support any initiative by Defra to require sea angling licence holders to provide information on their activities.

### **Enforcement and control of commercial fishing**

Link supports the recommendation made in paragraph 7.145, to give officers the powers to seize gear in the sea that has been set illegally and may be causing harm to the marine environment. Fishing gear tends to be constructed from modern synthetic fibres that are non-biodegradable. This means that snagged or lost gear and torn fragments of net may continue to catch fish indefinitely (termed 'ghost fishing'). Any powers taken must cover all gear types, not just nets, as of further concern are pots, creels and traps, which tend to be constructed from more durable materials and have a rigid structure. As well as the impact on commercial fish species, ghost fishing can affect other marine species, notably birds and marine mammals.

Link welcomes the proposal in paragraph 7.49 to increase the maximum fines available for successful prosecutions. Current limits (i.e. £5,000 for breaking a by-law) are often not much of a deterrent and Link agrees that a new maximum of £50,000 would be preferable.

### **Charging the fishing industry**

Link supports the principle that the fishing industry should be charged for its share of the cost of monitoring, regulatory and enforcement activities (7.153). It should be noted that public costs are also incurred for CEFAS scientific work and this should be recognised as a subsidy. While it is noted that the undesirability of charging UK vessels alone and affordability in the light of cumulative burdens may preclude charging of the offshore industry at present (7.151), a charging regime should be established and initiated at a time when the offshore industry is viewed as 'profitable'.

As recommended in the Bradley Review, Link supports the concept of charging the inshore industry to support the costs of inshore fisheries management (Recommendation 32 and paragraph 10.11). The report estimates that a relatively modest fee, averaging around £1,000 per vessel (scaled according to vessel capacity/size), could raise around £2.5m after costs; this compares with the estimated value of inshore landings of £40-50m. At present SFCs do not charge the industry, except in some cases under Regulating Orders, from which they obtain a total income of around £170,000 (total funding of SFCs in 2003/04 was £5.5m). We acknowledge that this concept raises major issues of acceptability if charging for offshore fishing were not introduced at the same time. One mitigation measure could be to use a portion of funds raised to increase resources available to CEFAS to monitor the condition of inshore fisheries. A good model for funding some of the background research/monitoring required to improve inshore fisheries management could come from the Australian system. They have used licence fees and levies on landings to support the Fisheries Research and Development Corporation (FRDC) which provides funding (subject to competitive bidding) for research projects of specific relevance to the fishing industry.

## Appendix 5

### Section 8: A Marine Management Organisation

#### Summary

- Link welcomes the prospect of a Marine Management Organisation (MMO) that is ‘a professional and proactive marine manager, trusted by all stakeholders to contribute to sustainable development of the marine area’ (8.4). We have waited a long time for a central body that can facilitate joined-up government and marine planning and management in UK seas. Link feels that the MMO should have a duty to further sustainable development in UK seas, not just contribute to it as government suggests. The Government will need to set out clearly and in some detail the objectives that the MMO will deliver in order to achieve Government commitments on sustainable development, the ecosystem approach, and the protection and recovery of biodiversity.
- It is essential to have a joined-up approach in order to deliver sustainable development and the ecosystem approach in UK seas. We look forward to the MMO becoming a body of marine knowledge and expertise (8.29). We also hope that the MMO will make full use of expertise in other bodies, and it must take the advice of others such as the statutory nature conservation agencies (SNCAs) where appropriate in order to deliver the conservation sections of the Marine Bill.
- Link wishes to see the duties and functions of the MMO set out in the Marine Bill, particularly in relation to how the MMO will play its role in fulfilling Government’s commitments to nature conservation in the marine environment (8.58-8.60), including a network of MCZs that encompasses a suite of Highly Protected Marine Reserves (HPMRs). In addition to the general biodiversity duty on public bodies (NERC Act 2006), and the proposed duty on public bodies to further the objectives of MCZs, the MMO will need specific duties relating to its role in implementing nature conservation tools (including by-laws) in the wider sea. We wish to see a duty on the SNCAs to advise the MMO as to where by-laws and interim measures are required, and a contingent duty placed on the MMO to take account of this advice in order to protect, and allow recovery of, marine biodiversity. The relationship of the MMO to other bodies, particularly the SNCAs, needs to be clarified.
- Link believes that the MMO’s central planning and licensing roles will be critical to securing protection of biodiversity in the wider marine environment (8.31), as well as to ensuring that our use of the marine environment takes place within the carrying capacity of the ecosystem.
- Link regrets that there will remain areas and functions where MMO is not to have direct licensing powers (8.40), particularly where other government departments retain functions, such as for oil and gas exploration, and where a primarily terrestrial-based body – the Infrastructure Planning Commission (IPC) proposed in the Planning White Paper – could be given the licensing role for larger projects. Link currently believes the MMO should license marine projects irrespective of size. To have two or more bodies licensing the same projects but of different sizes at sea, will create a more complex (rather than a more simple) system and negates many of the benefits that support Government’s rationale for an MMO. In addition, Link believes the MMO must be closely involved in any planning decisions taken on such major structures at the coast that have a marine element and indeed, any other developments affecting the marine environment. Having had less than three weeks to fully analyse the full implications of the proposals in the Planning White Paper and cross reference them with those in the Marine Bill White Paper, we reserve the right to provide further detail on this issue in our response to the Planning White Paper which we will share with Defra.
- We would expect the MMO to contribute to the successful delivery of marine related functions by others, including in MCZ management (where there is a duty on public

bodies to deliver the objectives of the MCZ as mentioned above) (8.49), and in fisheries management (8.50 – 8.57).

- The MMO must be seen as an objective body and inclusive of other government departments and marine stakeholders, whilst taking a strong lead. The relationship of the MMO with marine stakeholders (8.109) will be extremely important when delivering its functions, especially in relation to marine planning. Its relationship with marine stakeholders, including non-statutory stakeholders such as NGOs, will be crucial to the success of the marine plans and implementation of the Marine Bill. It is important that the MMO has good facilitation and diplomacy skills in order to bring sometimes disparate bodies and stakeholders together under the planning system (8.20). We would like to see clear duties relating to stakeholder involvement in the body of the Marine Bill.
- In addition to the Marine Planning Steering Groups proposed in relation to English coastal areas (4.102-4.106) we suggest development of separate, appropriately constituted groups to advise the MMO on planning at regional seas level (at present there is no detail of how marine specialists in DfT, DTI, etc. will feed into the MMO). Stakeholders must also be enabled to have a say, and contribute expertise, in the wider marine environment.
- Link is working with its sister organisations in Scotland, Wales and Northern Ireland to call on the UK Government and devolved administrations to work together (8.7- 8.16) to deliver a joined up approach to the governance of UK seas through the Marine Bill and parallel devolved legislation. We therefore warmly welcome the commitment to jointly develop a UK Marine Policy Statement. The UK administrations will always be faced with the challenges of integrating policies and planning across devolved boundaries. Link calls on the UK Government and the devolved administrations to acknowledge this challenge as something they have to work with into the future, and to commit to close collaborative working arrangements between the devolved governments and agencies of Scotland and Wales and the UK and Northern Ireland MMOs.
- The MMO could be established soon after the Marine Bill is enacted. This means it will exist ahead of development of the Marine Policy Statement. The MMO could therefore be a key facilitator for ensuring stakeholder input to the Marine Policy Statement. Link wishes to see stakeholder involvement in development of the Marine Policy Statement (including SEA), which will be crucial guidance for planning and management of UK seas for the future.
- We note the MMO's proposed functions include 'assisting' with improving the system that can coordinate monitoring across the marine environment by academia, industry and government. We believe that 'best use of data' and 'availability of data' are key to the success of marine planning and the MMO's other roles (8.5 & 8.38). We wish to see the MMO take a lead and assume responsibility for delivering an improved system that coordinates data and makes it publicly available.
- The MMO must be given enough resources for all its roles, including data management and the responsibility of gathering new data. The UK's maritime activities contribute at least 5% of the UK GDP<sup>12</sup>. An appropriate proportion of the public purse must be put back into management of UK seas in order to manage them well.
- We welcome the MMO being well-placed to provide a consolidated source of advice to support UK representation at European and international forums where its knowledge and expertise will be useful. However, where the MMO is not the expert, we suggest advice should be attained from the appropriate expert body, e.g. nature conservation advice should be sought from the SNCAs; heritage advice from English Heritage and the other heritage agencies, and so on.

<sup>12</sup> <http://www.defra.gov.uk/wildlife-countryside/resprog/findings/mb-rationale/index.htm>

**Detailed comments**

	<b>Introduction</b>
<b>8.4-8.5</b>	<p><b>Marine Management Organisation Vision</b> We welcome the prospect of an MMO that is ‘a professional and proactive marine manager, trusted by all stakeholders to contribute to sustainable development of the marine area’.</p> <p>We question the MMO providing a sound framework for ‘proportionate nature conservation’ - we would welcome clarification of the term ‘proportionate’. We are of the opinion that should an area or a species or ecosystem component require protection then Government must deliver that protection, on a scale that delivers the conservation objectives. When determining the costs and benefits of biodiversity protection, the longer-term costs of environmental damage, the costs of rectifying that damage and the costs of not meeting EU or international obligations must be considered, as well as the benefits of environmental sustainability, resource protection and the benefits we get from healthy ecosystem goods and services.</p> <p>We would like to see government reiterate its commitments set out in the UK’s Sustainable Development Strategy that economic prosperity can only be achieved where we (government and society) are achieving a healthy society and are living within the capacity of the environment. Therefore, we would stress that nature conservation is an essential element of sustainable development, alongside management of man’s activities and we would welcome more overt commitment from Government to this.</p>
	<b>Geographic scope</b>
<b>8.6-8.16</b>	<p>We are pleased that the UK Government and devolved administrations are committed to working in a joined up way whilst respecting the devolution settlement, and we have welcome their commitment to developing a UK Marine Policy Statement (UKMPS). Many aspects of marine management cannot be contained within boundaries. Marine species, from plankton to fish and mammals, move, as do pollutants and marine currents. Many human activities will also span boundaries. Link strongly believes that the most useful bio-geographic scale at which to implement Marine Planning is that of the regional seas, defined by JNCC<sup>13</sup>. We accept that the responsibility for delivering plans may ‘fall to different administrations depending on where they have competence to act’ but we are concerned that, in practice, if plans are being developed separately by each Administration, it will be difficult to achieve an ecosystem-based approach for areas such as the Irish Sea. We therefore call upon the UK Government and devolved administrations to commit to work together, as they have done in the past through the Review of Marine Nature Conservation and the Pilot Marine Spatial Plan for the Irish Sea, and as they continue to do through cross-border initiatives such as the Solway Firth Partnership, the Severn Estuary Partnership and for River Basin Management Plans. It is imperative that the best working arrangements possible are agreed to enable clear and transparent trans-boundary working and management between UK responsibilities, and responsibilities in England and the devolved countries. (Please also see Appendix 1 to this response, on Marine Planning).</p> <p><u>Northern Ireland</u></p> <p><b>8.10</b> We welcome the proposal for a regional MMO office in Northern Ireland. We hope that the recently reinstated Northern Ireland Assembly will also support a</p>

<sup>13</sup> Defra 2004. Review of Marine Nature Conservation Working Group Report to Government, July 2004.

	<p>Northern Ireland MMO. Following reinstatement of government in Northern Ireland, it is essential that a Northern Ireland MMO is accountable to Northern Ireland Ministers. The Northern Ireland MMO should be able to call on the UK MMO's expertise, and must liaise with the UK MMO and any other MMOs (e.g. a Scottish MMO), as well as the appropriate bodies and Government Departments in the Republic of Ireland.</p> <p><u>Scotland</u></p> <p><b>8.11</b> We welcome the AGMACS recommendations to create a Scottish MMO. We would expect the UK MMO and the Scottish MMO to jointly prepare plans where there are dual responsibilities. In the meantime, we expect the UK MMO to liaise with the Scottish Executive and appropriate agencies to develop joint plans.</p> <p><u>Wales</u></p> <p><b>8.13</b> While we fully acknowledge the Welsh Assembly Government's right to not have an MMO, however we believe there are possible disadvantages to users in Wales who without an MMO, may only have recourse to object through the judicial review process. This raises concerns about equality of access to justice throughout the UK. Therefore should WAG decide not to have an MMO both they and the other UK administrations will have to consider how to achieve a level playing field for users throughout UK waters in this matter.</p>
	<p><b>Integrated management within a single organisation</b></p>
<p><b>8.17-8.22</b></p>	<p><b>8.17</b> We welcome a single MMO, integrating functions within a single body and agree this will lead to more transparent and efficient arrangements and better outcomes, provided policies and legislation are carefully written and then implemented by a properly resourced MMO. The MMO must be seen as an objective body and inclusive of all appropriate government departments, agencies and marine stakeholders.</p> <p><b>8.19</b> We welcome the prospect of an MMO that can deliver a wide range of marine management functions as stated here. This will give much better opportunities for government to gain an overview of all activities and uses in our seas, and use that overview for better management with the ecosystem approach and sustainable development at its core.</p> <p>We agree with the bullet points listed here and particularly welcome a new approach of 'integration and consistency between licensing regimes' (<i>4th bullet</i>), and 'integration of fisheries management with environmental priorities' (<i>5th bullet</i>).</p> <p><i>3rd bullet</i> – 'a clearer framework for resolving potentially conflicting objectives between conservation and the use and enjoyment of our marine environment' – we believe that the marine planning system, integrated licensing, marine conservation zones and the MMO will all contribute to providing the framework to reduce conflict.</p> <p><i>6th bullet</i> – 'risk-based' enforcement – this must not compromise the precautionary approach. Any reduction of regulatory burden must not compromise 'good regulation' and the risks of not properly protecting marine biodiversity, natural resources and environmental processes must be considered along with the costs resulting from damaging biodiversity or of rectifying environmental damage.</p> <p><i>7th bullet</i> - We welcome implementation of an efficient and transparent system for managing data across all MMO functions.</p> <p>The <i>8th bullet</i> point is extremely welcome: 'More effective relationships with marine developers, nature conservation bodies and recreational users of the sea – who will</p>

	<p>be able to communicate with a single organisation at planning, licensing and enforcement stages of marine management’. We would add ‘heritage bodies’ to this list. We assume ‘nature conservation bodies’ includes conservation NGOs, otherwise we would add that the MMO must build relationships with NGOs and the public as well.</p> <p><b>8.20</b> We welcome involvement of stakeholders in the development of draft plans. We strongly favour consultation processes that include workshops and meetings and face to face involvement of stakeholders, rather than ‘paper consultations’ – meeting stakeholders early and often. We welcome the idea of establishing ‘Marine Planning Steering Groups’ (MPSGs) wherever possible. We welcome the regional and local dimension. These groups should involve an appropriate range and level of statutory and non-statutory stakeholders. This approach is resource-intensive during plan development, but an extremely worthwhile investment. This approach will go further to ensure the plans are accepted and implemented by stakeholders. The resulting degree of ownership will be relevant to stakeholders’ actual involvement in plan development. To not take this approach is a false economy. In the long term the MMO and government would then be dealing with many more issues of conflict over a longer time period and implementation of marine plans would be hindered.</p> <p><b>8.21</b> We would expect the MMO to contribute to the successful delivery of marine related functions by others, including in MCZ management (where there is a proposed duty on public bodies to deliver the objectives of the MCZ) and in fisheries management. It is essential to have a joined-up approach in order to deliver sustainable development and the ecosystem approach. It is important that the MMO has good facilitation and diplomacy skills in order to bring sometimes disparate bodies and stakeholders together under the planning system.</p> <p><b>8.22</b> We welcome the MMO being well-placed to provide a consolidated source of advice to support UK representation at European and international forums, based on its expertise and experience. However, we believe that it will not be possible or appropriate for the MMO to be the expert on all topics and where the MMO is not the expert, that the advice should be attained from the appropriate expert body, e.g. nature conservation advice should be sought from the SNCAs; navigational and oil spill contingency planning advice from the Maritime and Coastguard Agency (MCA); heritage advice from English Heritage and the other heritage agencies; etc.</p> <p>In setting up the MMO, the UK government is leading the way in Europe, and hopefully will share its ‘lessons learnt’ from this approach and positively influence other countries. Likewise, we hope the MMO will look widely at other countries that have sought to achieve sustainable development and an ecosystem approach. We trust the MMO will take on board the experience and advice of others working on marine planning and management systems around the world.</p>
	<p><b>Regulating better</b></p>
<p><b>8.23 – 8.26</b></p>	<p>We agree that existing arrangements for managing marine activities and protecting the marine environment have developed piecemeal over many years and this sectoral approach within and outside government cannot continue. We agree that these complex and sometimes unwieldy arrangements have added unnecessary burdens to both stakeholders and government.</p> <p>We welcome the prospect of a new organised framework with properly managed strategic planning, decision-making, management and enforcement. We want an</p>

	<p>MMO that is properly equipped with a modernised suite of enforcement tools, and exercises them in a way that gives effect to best regulatory practice, and also ensures proper protection for our marine wildlife. We feel this promise of a new efficient and effective approach can save resources in the long term and help ensure we have a functioning marine ecosystem alongside human activities and development. It should also seek to support development of offshore renewables in the appropriate places as speedily as possible through a proper planning regime which ensures protection of biodiversity, in order to urgently mitigate for the effects of climate change. However, we are disappointed that Government is proposing dividing the licensing of renewables and ports projects, giving the responsibility for the bigger projects to another body – a primarily terrestrial focussed body – the proposed Infrastructure Planning Commission (Planning for a Sustainable Future (May 2007)).</p>
<p><b>8.27-8.96</b></p>	<p><b>Functions of the new Marine Management Organisation</b></p>
	<p><b>8.27</b> We welcome the concept of a holistic marine management system. We are therefore disappointed that Government is considering another body to potentially license some element of some marine regimes. We believe this proposal adds rather than reduces complexity.</p> <p><b>8.28</b> We understand and welcome the need for a UK marine policy statement that will guide the MMO and the cycle of marine management. We welcome the commitment that all the UK administrations will jointly develop and agree on this statement. We feel that development of the marine policy statement must be completed as quickly as possible whilst achieving a worthwhile statement (we accept the two year timeframe proposed), and in the interim we would assume that the MMO will work to existing Government policy.</p> <p><b>8.29</b> We are pleased that the MMO will act in a transparent manner and involve marine stakeholders whenever possible (please see our comments to 8.20 above). We look forward to the MMO becoming a body of marine knowledge and expertise.</p> <p><u>Marine Planning</u></p> <p><b>8.30</b> A system of marine planning that furthers sustainable development and contributes to sustainable management in UK seas, and implementation of the ecosystem approach (at the regional seas level) will be welcomed. The UK government and Northern Ireland intend to delegate the planning role to the MMO. In the waters under the jurisdiction of the Welsh Assembly Government, we hope that the Welsh administration will set up arrangements whereby the MMO can work with it to ensure a holistic and integrated approach to management of UK waters. In Scotland, marine planning should be managed by a Scottish MMO within a Scottish statutory framework (through a Scottish Marine Bill) as set out in the AGMACS recommendations and supported by key marine stakeholders. We urge the new Scottish Administration to come forward with legislation to implement this and the other AGMACS proposals urgently.</p> <p>We believe the MMO should be the planning body wherever the UK Government and Northern Ireland Administration have responsibilities. Therefore the MMO should be given the role to liaise with all appropriate devolved departments and agencies in areas where there are dual responsibilities, rather than just where the UK and Northern Ireland have sole responsibility for planning.</p> <p><b>8.31</b> Our views on the urgency of the UKMPS are noted above in response to 8.28. We welcome the concept of the MMO as a neutral organisation to deliver marine plans and not be unduly biased towards any particular marine stakeholder or group.</p>

However, we feel the MMO must have clear objectives for ensuring the health of our seas, and a functioning marine ecosystem. These must be high-level objectives that achieve the principle of living within environmental limits (UK Sustainable Development Strategy), and which along with the principle of providing a just society, are the context for sustainable development. In addition, the MMO will be expected to achieve the UK's marine vision and the strategic goals and objectives set out in the Government's Seas of Change response.

**8.32 – 8.33** are welcomed.

**8.34** We welcome the arrangement where some of the MMO functions can be delivered from local MMO port offices (currently MFA offices) at a local level. We welcome the proposal to set up MPSGs to foster involvement of local community input.

**8.36** We note that the MMO will set up MPSGs for some or all coastal plans where there is a clear need. Resources devoted to this task are essential (see our comments in response to 8.20 above). We note that the setting up of these Steering Groups will draw on existing structures wherever possible. However, where used, the MMO must ensure that such 'structures' are fit for purpose and are inclusive and if not they must be required to adapt or evolve, or alternatively a separate marine planning steering group with specific planning terms of reference must be set up. The MPSGs must include the full range of stakeholders and statutory consultees, including those with responsibility and interests on land that could affect coastal waters and shorelines. We trust that the MMO will maintain a strong lead in terms of an objective approach, with a culture of transparency, diplomacy and making all efforts to achieve conflict resolution.

We are anxious to learn if the Marine Planning Steering Groups are seen by government as the vehicles that can provide the overlap and communications between terrestrial planning, marine planning and other government functions, such as implementation of the Water Framework Directive, i.e. what are the links between MPSGs and other stakeholder groups?

Link feels it is important that there is a joined up approach to management across these planning systems including delivering international commitments under the WFD. We wish to see the Marine Bill ensure that this joined up approach can be implemented.

In addition to the MPSGs mentioned in relation to English coastal areas (**4.102-4.106**) we suggest development of separate, appropriately constituted groups to advise the MMO on planning at regional seas level. (At present there is no detail of how marine specialists in DfT, DTI, etc. will feed into the MMO). Stakeholders must also be enabled to have a say, and contribute expertise, in the wider marine environment. We accept that in coastal areas, more input will be needed from a wider set of stakeholders, but in addition, there must be some joining up and cross-fertilisation of management in coastal areas and the wider marine environment, as management of each area will affect the other.

**8.38** Management of data from a central source is important. We hope that 'free flow of information around the MMO' means there will be a free flow of data to and from the MMO, reducing the cost to developers and others and negating the need to gather data over and over for new planning proposals and licensing consents. If this is the case, resources previously put to repeated gathering of the same data can be allocated to gathering new informative data. This is one way that the data bank can

grow. We hope that a central portal for data will be provided, where data can be integrated and accessed by all stakeholders, wherever possible for free.

Marine Licensing

Please also see Appendix 2 to this response, on Licensing Activities in the Marine Area.

**8.39** We agree with the need to streamline and simplify the licensing process and to provide integration and consistency between licensing regimes, greater transparency about decision making and to remove duplication between regimes and fill any existing gaps. However, any process to streamline the licensing regimes must ensure that the environmental safeguards are in place and are effective. We support the concept of ‘one project: one licence’, However, we would be concerned should such a process become overly bureaucratic. This should be a better way to deal with the total potential impacts of a project including environmental aspects of any development, through one proposal package giving a holistic overview to a single project.

**8.40** We agree the MMO as a single delivery body adds value to the licensing reforms and the introduction of a marine planning system. However these benefits will not be felt equally across the UK or every regime – there will remain areas and functions where MMO is not to have direct powers, such as in territorial waters of Wales and Scotland, and where other government departments retain functions, such as for oil and gas exploration. The government is also proposing that a primarily terrestrial-based body – the proposed IPC - could be given the licensing role for some larger projects. The Marine Bill, the new marine planning system, the UKMPS and devolved marine legislation must therefore be clear on how separate powers are brought together to ensure UK seas are managed holistically and in an integrated way to ensure sustainable development and implementation of the ecosystem approach. In addition, we can see the benefits of the MMO being lost should the Government introduce a second body (the IPC) that overlaps with the MMO’s marine powers – this will result in a more rather than less complicated system, and Link currently opposes the proposed role of the IPC in marine licensing.

*Delivery of marine licensing under the reformed generic licensing regime*

**8.41** Duties of the MMO to assume responsibility for licensing and enforcement under the reformed generic marine licensing regime are welcomed.

*Delivery of offshore licensing under the amended Electricity Act 1989 and Energy Act 2004*

**8.42** The MMO will be the planning and licensing body with a strategic overview of marine activities and as such will have a body of expertise in such matters. Link currently believes that as such a body the MMO should license marine projects irrespective of size.

*Harbour Revision or Empowerment Orders and Harbour Acts licensing*

**8.43** Please see above. The MMO should administer all ports application irrespective of size.

**8.44** A responsibility placed on the MMO to administer all harbour revision, all harbour empowerment orders, and local and private harbour Acts, in England and the adjacent territorial sea, and where devolved, Wales is welcomed.

**8.45** We note harbour responsibilities will remain with the Scottish Executive, and that Northern Ireland has not yet decided whether the MMO will exercise equivalent

<p>functions under the Harbours Act (Northern Ireland) 1970.</p> <p>The MMO must maintain an overview of UK port development and activities, and collaborate closely with DfT and the devolved governments to ensure the best strategic decisions are achieved, that provide port and shipping functioning while avoiding adverse impacts on the marine ecosystem and biodiversity.</p> <p><i>Delivery of licensing sub-seabed storage of carbon dioxide</i></p> <p><b>8.46</b> Should Carbon Capture and Storage (CCS) qualify as a licensable activity, then the most appropriate place for that regime to sit would be the reformed generic marine licensing regime and be licensed by the MMO. This is precisely the rationale behind ensuring that the new systems are flexible enough to adapt to and deal with new or novel activities.</p> <p><i>Approach to delivering licensing functions</i></p> <p><b>8.47</b> We note that the MMO will take a risk-based approach and make use of proposed provisions to minimise regulation of activities with little or no adverse impact. Such an approach must only be considered where it can be shown that environmental safeguards are being met and that the risk analysis also considers the risks of damage to the marine ecosystem and biodiversity.</p> <p>We also note that licensing decisions will be made in accordance with the shared UKMPS and any relevant marine plan. We would expect that those activities that have been granted exemptions, general permissions or licenses would still be required to continue to carry out their activities in accordance with these. In this case, the UKMPS and the marine plan must be robust enough to guide licensing decisions and decisions on the smaller activities considered to be ‘of little or no impact’.</p> <p><b>8.48</b> We welcome this approach of a ‘single organisation philosophy’ for both planning and licensing as noted in this section, and the strong linkages between planning and licensing decisions delivered through the MMO.</p> <p><b>8.49</b> We are pleased that the MMO is to have a duty to further the objectives of Marine Conservation Zones. We consider this makes the MMO jointly responsible for delivery of the objectives of MCZs and hope that it will inform the conditions the MMO attaches to licenses, and therefore we hope provide for a more joined-up approach between licensing and nature conservation.</p> <p><u>Fisheries management functions</u></p> <p><b>8.50 – 8.57</b> We support the incorporation of the functions of the MFA (now the M&amp;FA), and some SFI functions for Northern Ireland into the MMO. We would like to see the broader responsibilities of the MFA retained in this transition, especially to contribute to the sustainable use of marine resources. The MMO’s sustainable development duty must be strong and recognise the need to ensure that environmental sustainability is achieved (‘living within environmental limits’, UK Sustainable Development Strategy 2005) to underpin a just society and a sustainable economy (<b>8.55</b>).</p> <p>We agree with the independence of the Sea Fisheries Committees (SFCs) (see Appendix 4 to this response for further detail), and the observation that the challenges of inshore fisheries and environmental management often require local management solutions and decision-making. We would like to see close working relationship between SFCs and the MMO, especially regarding enforcement, and free exchange of data and information.</p>
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Nature conservation functions

**8.58 – 8.60** We welcome the duty on public bodies to further the objectives of MCZs, and we are calling for statutory requirements for the MMO and other public bodies to consult the SNCAs in this regard, and to take account of their advice (please see Appendix 3 to this response, on Marine Nature Conservation, for further detail).

We also wish to see a duty on the SNCAs to advise the MMO as to where by-laws and interim measures are required, and a contingent duty placed on the MMO to take account of this advice and to take action in order to protect, and allow recovery of, marine biodiversity (this duty must not be limited to MCZs, as these functions also relate to the wider sea). The relationship of the MMO to other bodies, particularly the SNCAs, needs to be clarified.

Link believes the MMO should be required to take advice from the SNCAs on all aspects of marine management and planning that affect the natural marine ecosystems.

Monitoring

**8.61** We agree that effective and targeted monitoring of the marine environment and of activities is central to improving marine regulation. We feel it is essential to know the current state of the marine environment, and the location, nature and scale of marine activities and their impacts. It is also essential to be able to assess, predict and manage trends in human uses of the marine environment in order to plan ahead and to future-proof regulation.

Data on activities and impacts on the marine environment must be brought together with environmental data in order to assess whether management tools are working successfully and to plan for the future. As far as possible, planning and regulation should be proactive in order to avoid adverse pressures and impacts rather than deal with them once marine wildlife is already declining and under pressure – rectifying damage or the consequences of damage is likely to be more costly than protection initially.

**8.62** We note the MMO's role includes 'assisting' with improving the system that can coordinate monitoring across the marine environment by academia, industry and government. Data for the marine environment must be brought together. 'Best use of data' and 'availability of data' are key to the success of marine planning and the MMO's roles. We wish to see the MMO take a lead and assume responsibility for ensuring the improved system will coordinate data and make it publicly available. This does not necessarily mean the MMO will do the work, but it should have a strategic overview and ensure the system is 'fit for purpose'; that the data is up to date; and that gaps in data continue to be filled in for the main purpose of informing planning, management and sustainable development of UK seas.

**8.63 – 8.65** Using existing MFA infrastructure is logical as long as it is fit for purpose and will fulfil the requirements of the MMO's roles.

We would expect the MMO to put monitoring regimes in place that not only monitor environmental conditions and parameters, but also whether the planning and licensing regimes are meeting their objectives, compliance monitoring and also monitoring the MMO's performance related progress.

Enforcement

There is no mention in this section about the MMO collaborating with the MCA or the

	<p>Ministry of Defence regarding enforcement. The MMO must take a lead in bringing these and other organisations with enforcement powers together, with the aim of making the best use of all resources in order to achieve an efficient approach to enforcement for nature conservation, and health and safety.</p> <p><b>8.66</b> We welcome the commitment to effective enforcement that has until now been at best poor and at worst, sadly lacking in UK seas, especially for nature conservation. To be effective, enforcement must provide an adequate deterrent.</p> <p>Enforcement at sea is challenging, because of the vastness and the dynamic nature of the environment. However, if we are willing to exploit the marine environment for man’s activities, we must be responsible and willing to protect it too.</p> <p><b>8.67 – 8.68</b> We welcome the creation of an MMO as an opportunity to look at the complexity of current enforcement mechanisms and to bring together modernised enforcement functions into one body. This section notes that this will bring benefits, clarity, predictability and proportionality as well as a risk-based approach. Any approach must consider the risks of not protecting marine biodiversity and marine resources, against the costs of damaging beneficial ecosystem services, the financial losses to those who use these resources sustainably and the costs of rectifying any damage. Proportionate regulation and enforcement must consider the proportionate benefits of nature conservation to society as a whole including the public, now and in the future, as well as the UK’s requirements to meet biodiversity objectives (and the consequences of not meeting those objectives, such as fines).</p> <p><b>8.69 – 8.71</b> We expect the MMO’s responsibilities and powers for enforcement to be set out in the Marine Bill in relation to its duties for sustainable development and protection of marine ecosystems and their biodiversity.</p> <p><i>Enforcement of licensing legislation</i></p> <p><b>8.72 – 8.73</b> The MMO must be given sufficient resources to monitor and enforce licenses.</p> <p><u>Science and data</u></p> <p><i>The MMO’s data needs and data management within the MMO</i> Please see also our response to Sections <b>8.61 – 8.63</b> above.</p> <p><b>8.81 – 8.91</b> The MMO must have clearly-defined functions and powers to ensure that data is made available, collated and made publicly accessible, even if the actual management and tasks are undertaken by another organisation or organisations. The MMO’s responsibilities for managing the marine environment and its data needs will sit alongside such responsibilities for data management, and justify this overarching responsibility.</p> <p>Although there is a reference to data generated ‘in house’ [8.86], there is no explicit mention of new data collection. Even where the MMO is not the data collection body, we believe that it should have resources available to commission data collection and survey work, e.g. from the appropriate Government scientific advisors such as CEFAS.</p>
<p><b>8.97 – 8.105</b></p>	<p><b>Governance</b></p>
	<p>While the MMO must have a sustainable development duty and be independent, there will still be environmental and biodiversity objectives that the MMO will be expected to</p>

	<p>deliver, such as the objectives of MCZs and wider ecosystem objectives for marine planning.</p>
	<p><b>Relationships with other bodies</b></p>
	<p><u>Relationships between the MMO and Natural England and JNCC</u>  <b>8.110 – 8.112</b> (please also see <b>8.58-8.60</b>) We would like clarification of the relationship between the MMO and NE/JNCC (and EHS in Northern Ireland), particularly relating to the management of MCZs and the implementation of conservation measures – e.g. by-laws – in the wider sea. We welcome the duty on public bodies to further the objectives of MCZs, and we are calling for statutory requirements for the MMO and other public bodies to consult the SNCAs in this regard and to take account of the advice given. We also wish to see a duty on the SNCAs to advise the MMO as to where by-laws and interim measures are required, and a contingent duty placed on the MMO to take account of this advice in order to protect, and allow recovery of, marine biodiversity.</p> <p><u>Relationships between the MMO and CEFAS</u>  <b>8.113 – 8.117</b> Link supports CEFAS retaining independence from MMO, we believe it should retain its role as an independent and impartial scientific advisor to Government, and in the future, the MMO.</p> <p><u>Relationship between the MMO and English Heritage</u>  <b>8.124 – 8.125</b> Link welcomes the fact that the MMO will take advice from English Heritage (EH) on the historic environment in or on the seabed in the UK territorial sea and beyond 12 nautical miles to the limit of the UK’s jurisdiction. Currently EH only has a remit out to the limit of the territorial sea and there is no government body that has responsibility for the marine historic environment beyond the 12 nautical mile limit. This deficiency must be addressed urgently by all government departments if the MMO is to be appropriately advised.</p> <p><u>Relationship between MMO and the Environment and Heritage Service Northern Ireland</u>  <b>8.126 – 8.127</b> see above for NE and JNCC</p> <p><u>Relationship between MMO and the Environment Agency</u>  <b>8.135 – 8.136</b> There is a need for close collaboration between the MMO and the EA regarding implementation of the WFD and marine planning. The MMO must ensure close collaboration with the EA, and ensure the EA is engaged in marine planning as well as carrying out its own functions.</p> <p><u>Relationship between MMO and Maritime and Coastguard Agency</u>  <b>8.139</b> We believe the MCA should be a member of the proposed marine planning steering groups, and play a role in the preparation of marine plans, as well as being a consultee in relation to marine licensing decisions that have an impact on navigation.</p> <p>The MCA has an important role to play in the marine environment, in particular its role in major oil spill and pollution incidents and monitoring oil spills (sometimes from the air). The MCA is an expert on shipping movements and should contribute to planning for other marine health and safety issues, such as safety zones around renewable energy structures. It could also contribute to monitoring and enforcement for nature conservation while going about general MCA duties.</p> <p>Please also see our comments under sections 8.63 – 8.65 Enforcement above.</p>

	<p><u>Relationship between the MMO and the Marine Data and Information Partnership</u>  <b>8.141 – 8.144</b> Please see our comments under 8.38 and 8.62 above</p> <p><u>Relationship with Regional Assemblies, Local Authorities and Regional Development Agencies</u>  <b>8.145 – 8.147</b> We agree with the MMO must build close relationships with regional bodies and local authorities to ensure a joined up approach to coastal issues and developments. We agree that these terrestrial bodies: Regional Assemblies, local authorities and Regional Development Agencies must consider the impacts of their decisions on the marine environment. They must be aware of the implications of the Marine Bill and comply with the UKMPS. They should be consulted on marine plans and take responsibility for implications of terrestrial decisions and developments that could affect the marine environment.</p> <p>The Marine Bill should present opportunities for regional bodies and local authorities to be involved in MPSGs where appropriate, and be involved in coastal groups such as coastal fora, where it is deemed appropriate to use such coastal fora as networks to engage in marine planning.</p>
	<p><b>Implications of previous reviews for the MMO</b></p>
	<p><u>Hampton Review</u>  <b>8.161</b> We welcome the reiteration from the Hampton Review that ‘reducing administrative burdens ...’ must be achieved ‘... without compromising regulatory standards or outcomes’, as we believe that this is an important point to remember in the Marine Bill process.</p>