

Wildlife and
Countryside



A Marine Bill - A consultation document of the Department for Environment, Food and Rural Affairs

Response from Wildlife and Countryside Link

June 2006



A Marine Bill - A consultation document Response from Wildlife and Countryside Link June 2006

Wildlife and Countryside Link (Link) is a coalition of the UK's major environmental non-governmental organisations concerned with the conservation, enjoyment and protection of wildlife, the countryside and the marine environment. Taken together, our members have the support of over eight million people in the UK.

This response is supported by the following organisations:

- Buglife – The Invertebrate Conservation Trust
- Marine Connection
- Marine Conservation Society
- Royal Society for the Prevention of Cruelty to Animals (RSPCA)
- Royal Society for the Protection of Birds (RSPB)
- Shark Trust
- The Wildlife Trusts
- Whale and Dolphin Conservation Society (WDCS)
- WWF-UK
- Zoological Society of London (ZSL)

Contents

1. General comments on consultation package	3
Introduction	3
Why Have A Marine Bill (Section 3)	3
Key Principles (Section 4)	4
Responsibilities In UK Waters (Section 5.4)	4
Marine Data And Information (Section 5.15)	5
Enforcement And Duty Of Care (Section 6.22)	5
Closing Remarks	6
2. Managing marine fisheries (Section 7, pp. 25-30)	7
3. Planning in the marine area (Section 8, pp. 31-59)	18
4. Licensing marine activities (Section 9, pp. 60-87)	34
5. Improving nature conservation (Section 10)	41
5.1 Marine Ecosystem Objectives (pp. 95-97)	41
5.2 Marine Protected Areas (pp. 97-105)	46
5.3 Species protection measures (pp. 106-115)	56
6. The potential for a new marine management organisation (Section 11, pp. 116-131)	64

Note: The text in brackets refers to the relevant section of the consultation.

1. General comments on consultation package

INTRODUCTION

Wildlife & Countryside Link (Link) has been calling for many years for comprehensive legislation to achieve better protection for marine wildlife and effective management of the seas around the UK. We are therefore delighted with the Government's commitment to a Marine Bill, first in its General Election Manifesto and more recently in its legislative agenda for 2005-06. Link is encouraged that the Government is proposing a wide-ranging Bill, which will address marine nature conservation as well as the management of activities at sea. We believe the current Marine Bill consultation is a very important step to achieving this.

Link is also pleased that those responsible for drafting the Marine Bill consultation have, in the main, been innovative, and have not relied on existing models, such as those that apply to land management, which are not entirely applicable to the sea.

Link would like the Marine Bill to provide a coherent legislative framework that will deliver the Government's stated goal of "*clean, healthy, safe, productive and biologically diverse oceans and seas*"¹. This framework should set out clear goals, objectives, targets and indicators for social, economic and environmental elements, but must place the environment at the heart of the management of marine activities, in order to deliver an ecosystem approach. The marine environment is not being sustainably managed at present, and the need for a change in approach is urgent - 'business as usual' is not an option.

We welcome the proposed new planning system, which we hope will bring more transparency and accountability to marine development. We also believe the framework for this system 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.

Implementing the ecosystem-based approach will require the Marine Bill to look at all of the different sectors that have interests in the marine area, and develop a holistic and strategic approach to their future development. A wide variety of national and regional bodies, representing many interests, are involved in decisions relating to the management of these sectors, but they do not currently operate in the context of an overall national strategy. We firmly believe that a holistic approach, considering all of the pressures and benefits arising from human activities at sea, is essential to the achievement of sustainable development.

The Marine Bill consultation gives much emphasis to the need to improve and streamline regulation, to provide benefits for sea users. Link supports these aims, provided improvements are made to ensure that environmental protection is consistently central to marine regulation, and the Bill provides robust nature conservation measures. The latter are essential to underpin sustainable development.

WHY HAVE A MARINE BILL (SECTION 3)

Link welcomed the first Marine Stewardship report, *Safeguarding Our Seas*, which set out a strategy for the conservation and sustainable development of the marine environment. We welcome, in particular, reference in the consultation to the Government's commitment to an ecosystem-based approach to managing the sea. However, we are concerned that the

¹ Defra (2002) *Safeguarding our Seas: A Strategy for the Conservation and Sustainable Development of our Marine Environment*.

emphasis in Section 3 of the consultation is very much on improving regulation. The purpose of the Bill is described as “*to introduce...a new framework for the seas, based on marine spatial planning, that balances conservation, energy and resource needs*” (paragraph 3.8). We would suggest that the focus should be on integrating, rather than balancing these often competing needs (as, indeed, described in paragraph 3.2 on the ecosystem approach), and that the achievement of healthy marine ecosystems should be the central aim of marine management.

The frequent references to “striking a balance” between the different pillars of sustainable development seem to undermine the Government’s commitment to marine nature conservation. Indeed, it is stated in Section 10 of the consultation (Improving Marine Nature Conservation) that “*our nature conservation policies must leave room for all three pillars*”. Link firmly believes that robust nature conservation is essential to achieving sustainable development, and we are concerned that conservation often appears to be the secondary goal for the Bill. We will consider the Bill a wasted opportunity if it does not provide for a strong marine nature conservation framework.

KEY PRINCIPLES (SECTION 4)

We are pleased that the ecosystem approach is referred to in this section, and several times in the consultation, as a key principle, and that healthy ecosystems and integrated policy development are listed as key components of this approach. Discussion of how to integrate environmental considerations into broader policies, and how to live within environmental limits, is much more helpful than an emphasis on balancing different objectives if sustainable development is to be achieved. We wish to see the ecosystem approach enshrined in the Marine Bill as key to implementing long-term sustainable use of marine resources. English Nature, OSPAR and others have invested in developing documents to explain this approach. The ecosystem approach must be properly explained to sea users and the public in conjunction with the Marine Bill.

We welcome the reference to the Government’s commitment to halt biodiversity loss by 2010 (paragraph 4.5), and to the precautionary and polluter pays principles. The preventative principle, also internationally recognised, should be highlighted in this section as it is in others.

RESPONSIBILITIES IN UK WATERS (SECTION 5.4)

Link believes that further thought needs to be given to integration between the different devolved areas of UK waters in order to deliver ecosystem-based management, based on the regional seas approach, and to avoid administrative duplication. Without a regional seas approach, management of seas according to devolved jurisdictions alone (for instance the extensive area to the west of Scotland between 12 and 200 nautical miles), could lead to duplication and contradiction, and a greater regulatory burden on industry. These problems are particularly acute in the case of the Irish Sea where there are at least seven different administrative regimes. The Review of Marine Nature Conservation’s key recommendation 2 states: “*Government should promote regional seas with other countries and take action to identify and adopt a series of UK regional seas*”. In its report to government, it suggests that the regional seas should be considered as a basis for strategic planning. Link and others therefore welcomed the development of the Irish Sea Pilot, and saw this as providing an example of how the regional seas approach could work. Link would like the Bill to encourage a more integrated approach to the management of regional seas both internationally and within UK waters.

MARINE DATA AND INFORMATION (SECTION 5.15)

Link agrees with the statement that “*central to the success of many of the UK’s policies will be the collection, management and availability of marine data and information.*” Marine governance must take into account the relative lack of information and understanding about the marine environment and the effects of development upon it. This demands a more proactive and precautionary approach than we are perhaps used to on land.

Whilst every effort must be made to minimise the burden of data collection, data requirements must be explored, and data access should be managed and facilitated centrally and to common standards. A new Marine Management Organisation (MMO) could have a role in data management, enabling organisations and government departments to find and access information quickly so that, once recorded, knowledge could be used repeatedly for different purposes. This would greatly increase its value. Link suggests that, in its consideration of a centralised marine data portal, the Government should look to existing models where data is managed and is available through such portals - e.g. the National Biodiversity Network (NBN)², and the new NHS information warehouse, UNIFY³.

ENFORCEMENT AND DUTY OF CARE (SECTION 6.22)

Enforcement

Enforcement can be difficult and potentially resource-intensive, particularly away from the coast. Link is pleased that the consultation suggests that the UK Government is committed to putting in place effective enforcement arrangements. We believe a duty to enforce marine protection measures should be placed on the appropriate existing marine authorities, such as the Royal Navy, the Maritime and Coastguard Agency, and the Marine Fisheries Agency (MFA). We note that the MFA may be integrated into a new MMO, and suggest that this body could have a role in co-ordinating enforcement functions. It is important that all authorities involved in enforcement work together and share information.

Duty of care

All maritime competent authorities should have a statutory duty to further the conservation of marine biodiversity. This would require them to take biodiversity into account in the exercise of their functions, an essential component of wider marine management if a healthy marine ecosystem is to be achieved. Competent authorities should also have a duty to further the conservation objectives of Marine Protected Areas (MPAs) (further information is provided in our response to Section 10).

We emphasise throughout our response the key role of the Statutory Nature Conservation Organisations (SNCOs), including JNCC, in relation to the Marine Bill. We believe that the SNCOs must retain their independent advisory role (in relation to all aspects of marine management). We also call for new powers and duties for SNCOs in relation to MPAs and the protection of biodiversity in the wider sea.

² The NBN is a project to build the UK’s first network of biodiversity information – see <http://www.nbn.org.uk/>

³ Further information on UNIFY can be found at http://www.dh.gov.uk/PolicyAndGuidance/OrganisationPolicy/Modernisation/ReducingBurdens/DataCollection/DataCollectionArticle/fs/en?CONTENT_ID=4113515&chk=B/WYQk

CLOSING REMARKS

Looking back, it feels as though we have travelled a long way since the time when better protection of the marine environment was low on the political agenda, with only lip service paid to it by the Wildlife and Countryside Act 1981 and the Countryside and Rights of Way Act 2000. The united voices of the UK's major environmental NGOs, coupled with a realisation in government that something must be done to give better protection to marine wildlife and to simplify notoriously complicated planning and consenting systems in increasingly crowded seas, have put the marine environment at political centre stage.

The current consultation represents a major step towards the Marine Bill, but Link's members know that there is still a long way to go. We are well aware of the vicissitudes of the legislative process, and the need to maintain pressure for a full Bill to be brought forward for consideration by Parliament at the earliest opportunity. Link will continue to press to ensure that our common objectives are achieved, and that the UK's forgotten underwater wildernesses are finally accorded the protection they deserve, and so desperately need.

2. Managing marine fisheries (Section 7, pp. 25-30)

INTRODUCTION

The Marine Bill consultation contains little on fisheries. The Government justifies this exclusion by referring to the number of specific fisheries consultations in recent years (e.g. *Securing the Benefits, Review of Marine Fisheries & Environmental Enforcement, Bass Management Plan* etc) and the key driver, 'Net Benefits', the Prime Minister's Strategy Unit's analysis of the problems and opportunities facing the UK fishing industry. However, while not stated explicitly in the document, policy makers have privately expressed their desire to receive suggestions, ideas and plans on fisheries for inclusion in the Bill.

In developing the response to "Net Benefits" (*Securing the Benefits*) the UK Government identified the following areas where primary legislation through the Marine Bill may be required:

1. Inshore fisheries management reform;
2. Enforcement powers (including powers of inspectors);
3. A more active approach to managing recreational fisheries; and
4. Charging.

Conversations with officials have revealed that the Marine Bill offers the opportunity to consider changes in the legislation for Several & Regulating Orders (SROs) and the inshore boundary; 0-6nm or 0-12nm. In the absence of explicit consultation questions on fisheries we have focused on the areas requiring primary legislative changes, as we believe they are most likely to be included in a Bill.

Marine Management Organisation

Link welcomes the Government's objective of managing fisheries '*effectively within a healthy and flourishing marine environment*', and the broader aim of '*sustainable commercial fisheries, recreational fisheries and environmental conservation*' (paragraph 7.8). As highlighted in the consultation, the proposals for fisheries provisions in the Bill will be intimately linked to proposals in other workstreams, sharing the objective of ensuring sustainability of the marine environment and its resources (paragraph 7.9). *Net Benefits* suggests that Fisheries Administrations should consider integrating fisheries management tasks inside a marine environment agency responsible for broader management tasks, if such a body or bodies were established.

It is this area, the potential for an MMO (Section 11), which offers consultation questions that can be answered from a fisheries perspective – though not to the exclusion of other priorities such as Marine Spatial Planning (MSP). The consultation questions on an MMO have been addressed briefly to stimulate discussion on the structure of the fisheries component of an MMO (or otherwise).

Fisheries and marine protected areas

One of the other potential mechanisms for integrating fisheries policy with other systems of marine protection is the establishment of multi-purpose MPAs (paragraph 7.14). Link believes that the ecosystem-based approach to management requires legislation to provide for the designation of a representative network of Nationally Important Marine Sites (NIMSS) which must include a series of Highly Protected Marine Reserves (HPMRs). This should go alongside new and improved measures to protect species and habitats throughout the marine environment, including provisions for monitoring. While we understand (in cost/benefit terms) the drive to integrate MPAs for nature conservation and fisheries purposes, it is important to recognise that these are different goals, which are unlikely to be fully delivered together by any given site. **The search for sites that meet both goals should not preclude the need to set**

up sites that primarily serve either nature conservation or fish stock conservation purposes.

Finally, fisheries is a devolved matter, and it is therefore up to the devolved administrations to manage fisheries taking place in waters under their jurisdiction. This is taken into account in our response.

FISHERIES PRIMARY LEGISLATION TARGETS

The UK Government's preferred approach, shared with the devolved administrations, is to achieve as much as possible without primary legislation. However, the consultation sets out a number of general areas where government considers that changes to existing primary legislation or creation of new legislation may be required to deliver its commitments to strengthen the way fisheries are managed and fisheries policy is developed. These include modernising inshore fisheries management arrangements; a more active approach to managing recreational and hobby fishing activities around the coast; the need to update or strengthen wider enforcement powers; and charging for the costs of managing marine fisheries.

Accordingly, the Marine Bill provides an opportunity for Link to advocate its desired approach to fisheries management practices.

1. Inshore Fisheries Management Reform

Several recent government publications on fisheries policy (such as "*Securing the benefits*" and "*Charting a new course*" – both 2005) have deferred discussion of inshore fisheries management with mention of consultation on proposals for inshore fisheries in the Marine Bill. Now, however, even this consultation is deferring consideration of inshore fisheries management. We would welcome assurances from Defra that the inshore fisheries provisions of the forthcoming Marine Bill will be open to consultation, and that Link will be among those consulted. We would also welcome more precise detail on Defra's proposals for inshore fisheries management reform, as well as a timetable for future consultation on inshore fisheries.

The Government's stated goal of "*clean, healthy, safe, productive and biologically diverse oceans and seas*" will only be achieved if the framework governing inshore sea fisheries is seen as a priority issue within the Marine Bill, given that fishing in the inshore sector is known to have a critical impact on the wider marine ecosystem.

A new legislative framework is required that will address the weaknesses, gaps and inadequacies in the current system, and allow both current and new management practices to deliver the ecosystem approach. This framework must clarify the aims and objectives of Sea Fisheries Committees (SFCs) and require the adoption of a proactive, precautionary, ecosystem-based approach.

There are positive aspects within the existing Sea Fisheries Committees (SFC) system, which a new legislative and management framework for inshore fisheries must continue to deliver. Of particular benefit has been the potential for local decision-making and participative management by people with a detailed knowledge and experience of the local fisheries. It is vital that we do not lose the unique qualities of community and involvement of individual fishermen that are presently found in the SFCs. However, it is also vital that the composition of SFCs is reformed, to redress the current bias towards members with a vested interest in the local fishing industry. There must also be a strong, central co-ordinating role to ensure consistency in structure, approach and enforcement.

Link also believes that inshore fisheries management should be incorporated into the framework of MSP (Section 8) to allow the adoption of an ecosystem-based approach. MSP (through

development of regional sea and sub-regional plans) should provide a context in which particularly important areas for inshore fisheries can be identified and potential conflicts between inshore fisheries and other sectors can be addressed. SFCs should be statutory consultees in the development of Marine Spatial Plans (MSPs), which would be subject to Strategic Environmental Assessment (SEA). SFCs should have a significant role in the development of any marine spatial plans (and associated SEAs) and should provide information on current fishing activities, the effect of these on the environment, possible mitigation measures for these effects, and the effects of other activities on inshore fisheries and on new and developing fisheries. All future strategies that are developed for inshore fisheries and aquaculture should be included in marine spatial plans.

It is Link's view that fishery managers must be given the powers to manage inshore fisheries in an integrated way, and must attempt to balance the various objectives – ecological, biological, economic, social, cultural and administrative – which are implicit in the concept of sustainable development. There is a fundamental need to move away from species management towards ecosystem management. A fished species cannot be conserved without also conserving the ecosystem that supports it - noting, of course, that different life history stages of commercial species often live in very different places within different ecosystems.

A new legislative framework for inshore fisheries

The current UK fisheries legislation originates from the 1960s, and reflects the first origins of the system of fisheries management in the late 19th Century. There is a widely held perception that legislation is neither relevant, enforceable nor appropriate for the effective management of today's UK fisheries, which are characterised by a highly dynamic and competitive industry, intensively exploited stocks, and stakeholder conflict.

Link believes that it is only with the repeal of existing outdated and ineffective Acts and regulations, and their replacement with new legislation, that fisheries managers will be provided with the necessary powers, flexibility and adaptability to deliver true sustainable management of inshore fisheries. Above all, it is essential that the legislative 'toolkit' that inshore fisheries managers have at their disposal is (at the very least) sufficient for them to be able to deliver against management objectives.

We believe that the Government should introduce new legislation for inshore fisheries that:

- i - gives clear, logical and well-defined terms of reference to all authorities involved in the management framework of inshore waters;
- ii - is applied appropriately and sensitively across all sectors, and introduces new ways of regulating the use, management, recovery, protection and monitoring of the marine environment, alongside better enforcement;
- iii - requires a joined up approach, with SEA undertaken on a sea area basis, as applicable to the fisheries involved, and including all future planning strategies that are developed for inshore fisheries and aquaculture;
- iv - contains a requirement for all new inshore fishery projects to be the subject of an Environmental Impact Assessment (EIA), including developments in aquaculture, new fishery projects or practices, significant changes in gear design and new areas of exploitation;
- v - establishes a duty of care on all fisheries managers;
- vi - develops, implements and resources an inshore fisheries strategy based on delivering economic, social, environmental and resource conservation objectives; and
- vii - provides mechanisms to deliver environmentally-friendly, sustainable fisheries.

Each of these points is expanded in more detail below.

i - The Government should introduce new legislation for inshore fisheries that gives clear, logical and well-defined terms of reference to all authorities involved in the management framework of inshore waters.

Integration of environmental considerations into fishery management is both an international and UK requirement. Future integrated fisheries management should incorporate and apply to all fisheries in the inshore sector, including finfish, shellfish, mariculture and recreational sea angling.

ii - Any new legislation for inshore fisheries must be applied appropriately and sensitively across all sectors, and introduce effective new ways of regulating the use, management, recovery, protection and monitoring of the marine environment, alongside with better enforcement.

Legislative changes, and their objectives, must apply across all sectors if the Government's objective of managing fisheries 'effectively within a healthy and flourishing marine environment' and the broader aim of 'sustainable commercial fisheries, recreational fisheries and environmental conservation' (paragraph 7.8) are to be achieved.

Any new legislation for inshore fisheries should take account of all sectors and activities and ensure an integrated approach to management. The objective is to enable efficient, forward-looking and holistic decision-making, delivering sustainable development and supporting an ecosystem approach.

iii - New legislation must require a "joined up" approach to inshore fisheries management, with SEAs including all future planning strategies that are developed for inshore fisheries and aquaculture.

An integrated, ecosystem-based approach can be achieved through a range of management tools. Two key assessment tools within the ecosystem approach are SEA and EIA.

The *Review of Marine Nature Conservation Report*⁴ states: "The Strategic Environmental Assessment Directive should be applied to both inshore and offshore fisheries" (Recommendation 9.14). *Net Benefits* also recommends: "Fisheries departments should introduce Strategic Environmental Assessments of both inshore and offshore fisheries by the end of 2006 as the first stage of establishing comprehensive Environmental Management Systems (8.3.5)". SEA has so far been applied sector by sector in the marine environment, and this has not achieved an integrated approach. Link believes that multi-sectoral SEA, undertaken on a "sea area" approach in the context of Marine Spatial Planning, would greatly increase the cost-efficiency of the process, and lay the foundations for genuine integrated management of UK waters.

iv - New inshore fisheries legislation must contain a requirement for all new inshore fishery projects to be the subject of an Environmental Impact Assessment (EIA), including developments in aquaculture, new fishery projects or practices, significant changes in gear design and new areas of exploitation.

The EU Directive requiring EIAs for large projects was passed in 1985 (Directive 85/337/EEC). It seeks to ensure that where a development is likely to have significant effects on the environment, the potential effects are systematically addressed in a formal environmental statement. Marine fish farming and other large projects are listed in the Directive.

Link believes that EIA should be applied to new inshore fishery projects. Guidelines on the production of robust and efficient EIAs should be provided to inshore fishery managers, and SFCs should only consider a change in fishing practice or development of a new fishery after

⁴ Defra (2004). *Review of Marine Nature Conservation – Working Group Report to Government*.

an EIA has been presented to the SFC. The SNCOs and members of the SFC should be fully consulted on any inshore fisheries EIA.

v - New inshore fisheries legislation must establish a duty of care on all fisheries managers.

A duty of care is a legal obligation imposed on an individual, requiring that they exercise a reasonable standard of care while performing their role. A duty of care may be considered a formalisation of the implicit responsibilities held by an individual towards another individual within society.

Defra has currently established one duty of care, for waste legislation and licensing. This is set out in Section 34 of the Environmental Protection Act 1990 and associated regulations. It applies to anyone who is the holder of controlled waste, and ensures that the waste is managed properly, recovered or disposed of safely, does not cause harm to human health or pollution of the environment and is only transferred to someone who is authorised to receive it.

vi - New inshore fisheries legislation should develop, implement and resource an inshore fisheries strategy based on delivering economic, social, environmental and resource conservation objectives.

Local and regional inshore fisheries in the UK are diverse, and require area-specific management plans if they are to be controlled and developed to the optimum. A wide variety of national and regional organisations representing many interests are currently involved in decisions relating to inshore fisheries management but there is no overall national strategy and the existing localised management structures have not been given the tools (legislation) to ensure sustainable development.

Localised control with authority (or ownership) under a broad national strategy, is a prerequisite of effective management and development. Defra has recently published a "*National Development Strategy for Shellfish*", and this should now be followed by a dedicated strategy for finfish, and a wider strategy that incorporates economic, social, environmental and resource conservation objectives.

vii - New inshore fisheries legislation must provide mechanisms to deliver environmentally friendly, sustainable fisheries.

It is not possible to eliminate catches of unwanted specimens, but it is possible to reduce them significantly through targeted measures, and by making fishing operations as selective as possible. This would ensure that only target fish specimens of the right species and size were retained, with a minimum impact on the marine environment. A significant reduction in bycatch and discards would reduce the level of fishing mortality, and help optimise the yield from targeted stocks. A range of technical measures can achieve enhanced species selectivity. These include:

- Gear specifications such as the size of net meshes, the use of square-meshed panels and other escape devices;
- Closed areas and seasons;
- Bans on the use of certain fishing gears; and
- Restrictions on the size composition and species composition of landings.

The first step towards environmentally-friendly fishing is to develop multi-annual management plans to align fishing effort with long-term sustainable fishing. These plans should include initiatives to reduce fishing effort to sustainable levels and keep it there, minimising both bycatch and the impact of fishing on habitats.

Inshore Fisheries Management Bodies

Defra's decision of 20th June 2006 states that modernised SFCs will deliver improved management of fish stocks and the marine environment in England. Link believes that these modernised SFCs should have the following roles and functions:

- A stewardship role for the marine environment, encompassing a duty to balance marine nature conservation with other factors that affect the exercise of their sea fisheries functions.
- Management of inshore fisheries based on a number of key principles:
 - Ecologically sustainable management in the context of the wider marine environment;
 - Setting of integrated environmental, social and economic objectives;
 - Adoption of the precautionary principle;
 - Introduction of the polluter and user pays principle; and
 - Adaptive management styles.
- Delivery of national obligations arising from the European Habitats and Birds Directives through work as "relevant authorities" and "competent authorities".

In order to fulfil these roles and functions, the modernised SFCs should be empowered to:

- license fishing;
- charge users;
- require reporting of effort, catches and landings;
- require marking of fishing equipment;
- use the following control measures:
 - 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.
- consult relevant bodies on appropriate issues;
- establish executive/consultative/advisory bodies as appropriate; and
- establish emergency regulations.

Officers should have powers (subject to the standard appropriate safeguards) to stop, inspect, search, seize and detain. These powers should match British Sea Fishery Officer (BSFO) powers.

Link supports the 'preferred option' of boundary changes, as detailed in Annex 13 of the *Review of Marine Fisheries & Environmental Enforcement*, when SFCs are reformed. The existing SFC structure should be modernised and reformed, as suggested in the *Review of Marine Fisheries & Environmental Enforcement* (Annex 12). Reducing the number of SFCs and increasing their size would improve the scope for a developed staffing and career structure, could trigger changes in SFC culture and approach, and would provide a better basis for other development of their activity.

There should be new legislation for Sea Fisheries Committees that:

- i - clarifies their aims and objectives, strengthens their powers and capacity (including to enforce), and requires the adoption of a proactive, precautionary and ecosystem-based approach;
- ii - provides them with a secure funding framework, removes the uncertainty over their future support, and enables them to perform their fisheries and environmental duties to the full;
- iii - ensures adequate resources for monitoring and scientific research capabilities to provide data and information for evidence-based management;

- iv - introduces an effective licensing system for inshore fisheries that facilitates sustainable exploitation by giving them the power to attach conditions to fishing licences when issued;
- v - allows for the establishment of environmental objectives and a mechanism to achieve them via assessment, monitoring, and mitigation, followed by feedback into the system; and
- vi - develops clear lines of communication between them and central Government departments.

As previously, each of these points is discussed in more detail below.

i - There should be new legislation for Sea Fisheries Committees that clarifies their aims and objectives, strengthens their powers and capacity, and requires the adoption of a proactive, precautionary and ecosystem-based approach.

Under current law, SFCs can only be constituted “*for the regulation of the sea fisheries*” (Sea Fisheries Regulation Act, 1966). This function should be broadened to include a wider stewardship role for the marine environment. SFCs should be given a duty to ensure that the management of inshore fisheries is based on a number of key principles, including the need for ecologically sound management of the marine environment and adoption of the precautionary principle.

In addition to their broader remit, the SFCs will need powers to regulate fisheries for the purposes of stock conservation, wildlife conservation, environmental protection and socio-economics. They should fully take into account the views of all stakeholders with an interest in inshore waters. Stakeholders should include, but not be limited to, non-governmental organisations (NGOs), fishermen, anglers, fisheries managers, port authorities, shellfish fishermen, mariculture, wildlife operators and scientists.

ii - SFCs should be provided with a secure funding framework that removes the uncertainty over their future support and enables them to perform their fisheries and environmental duties to the full.

The Sea Fisheries (Wildlife Conservation) Act 1992 requires fisheries managers to have regard to nature conservation in making decisions, and to find a balance between this and other considerations. SFCs and other fisheries regulators have a duty to balance the conservation of marine flora and fauna with other factors that affect the exercise of their sea fisheries functions. The Environment Act 1995 placed wider marine conservation obligations on the SFCs. However, despite being authorised to enforce EC and national fisheries regulations, and required to work as “relevant authorities” and “competent authorities” to deliver national obligations arising from the European Habitats and Birds Directives, SFCs do not at present receive adequate funding. Any new framework must provide secure and adequate resources for SFCs, and a structure that reflects their enhanced marine conservation duties. An SFC should be appropriately and fully funded to carry out the tasks it is charged with to manage local, national or international (Common Fisheries Policy (CFP), Birds Directive, Habitats Directive, Water Framework Directive, etc) obligations.

iii - New legislation for the SFCs must ensure adequate resources for monitoring and scientific research, in order to provide data and information for evidence-based management.

This is essential if the ecosystem approach is to be successfully adopted. Research is needed to establish population status baselines and trends: the need for this information is far wider than just the fishing industry. A commitment to monitoring the environmental impacts of fisheries will allow the determination of appropriate mitigation targets and measures.

This funding could be sourced from a new charging regime as per paragraph 10.18 in the *Review of Marine Fisheries and Environmental Enforcement*.

iv - The new legislation for SFCs should introduce an effective licensing system for inshore fisheries that facilitates sustainable exploitation by giving the SFCs the power to attach conditions to fishing licences when issued.

In particular, Link believes that the current legislation prevents SFCs from fulfilling their environmental duties, as it fails to provide powers to limit excessive fishing effort, except by way of regulations made under Regulating Orders and reactive byelaws. A SFC byelaw cannot be made to control new methods of fishing until it can be demonstrated that they impact adversely on other species, the fishery or the environment.

The new legislative framework, if it is to deliver truly integrated management, should introduce an effective licensing system for inshore fisheries, which would facilitate sustainable exploitation and management of the wider marine environment. Such a licensing system would necessarily be designed to reduce fishing effort. The very process of issuing licences enables restrictions on numbers to be implemented, and this has proved a successful and equitable method of restricting fishing effort in several fisheries in other countries. Legislation should be included to allow SFCs to attach conditions (such as technical conservation measures) to fishing licences when issued. They should also be able to discriminate between part-time and full-time fishermen, and between fishing methods (currently, all restrictions, tolls etc. must apply to all persons equally). The way in which quotas are set in shellfisheries should be rationalised, and a simpler system introduced that allows rapid adjustment of access to stocks to reflect available resources. Consideration should be given to ways in which setting the number of shell-fishing licences can be made more flexible to reflect the highly variable nature of shellfish stocks. The SFCs must also have the power to revoke licences if a condition is breached or the situation changes.

v - Legislation must allow for the establishment of environmental objectives and a mechanism to achieve them via assessment, monitoring, and mitigation, followed by feedback into the system.

Precautionary environmental objectives should be determined for each fishery, dealing with issues such as the mortality of non-target species and habitat disturbance. The development of ongoing monitoring programmes will provide the data to assess the environmental impacts of the fishery and establish whether these environmental objectives are being met. Determining the nature and level of any environmental impacts will enable the development of appropriate mitigation measures (technical, restrictive or prohibitive), and abiding by these should be made a condition of the licence. Provisions for the enforcement of any licence conditions will need to be considered and included. The monitoring programme will also have to include studying the efficacy of any mitigation measures employed, and a suitable feedback mechanism for the results of this will need to be in place so further changes can be brought in if environmental objectives continue not to be met.

At present, most fisheries are managed on the basis of the size and distribution of stocks of individual fish species. It is now recognised that this approach does not adequately take account of the interactions between fish species, or take full account of what happens in a fishery that aims to catch one species, but also catches others. While there has been some progress in incorporating the above interactions, little account has been taken of the effects of fishing on the wider marine environment. A new approach to fisheries management is therefore necessary; one which integrates fisheries management and marine conservation policy and addresses the marine ecosystem as a whole rather than as separate, individual parts.

vi - Legislation must develop clear lines of communication between SFCs and Central Government departments.

While not requiring primary legislation, this is a necessary improvement if SFCs are to perform their duties successfully.

2. Enforcement powers (including powers of inspectors)

The principal legislation governing inshore fisheries (<6nm) is the Sea Fisheries Regulation Act 1966, a consolidation of 19th Century legislation, which defines the powers and responsibilities of these SFCs for the management of inshore fisheries. Under the 1966 Act, SFCs may make byelaws regulating activities within the SFC district. The Sea Fisheries (Shellfish) Act (1967) (amended 1997) grants Several Orders (to individuals) and Regulating Orders (to companies) for the purpose of regulating the fishing opportunities of a range of shellfish species in a way designed to promote sustainable exploitation.

Paragraph 2.18 of the *Review of Marine Fisheries and Environmental Enforcement* notes that significant increases in future fisheries enforcement are not expected but major increases are forecast in environmental enforcement.

Inshore fisheries managers should be given improved enforcement powers, coupled with better resources for enforcement, to complement their broader remit and increased powers and duties. Provisions for the enforcement of any licence conditions will need to be considered, as will provisions for enforcing other stock conservation and environmental protection measures such as restrictions on fishing seasons, methods and gears, the establishment of low or no-take zones, and catch levels. Inshore fisheries managers should also be able to enforce emergency regulations.

3. A more active approach to managing recreational fisheries

Link would support the introduction of a licensing scheme for recreational sea anglers, along with measures such as 'bag limits' and powers to charge anglers if necessary, as suggested in paragraph 7.26, p29.

Link does not feel that it would be unreasonable to introduce charges on recreational anglers. 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.

While the concept of bag limits has been mooted previously (in the *Review of Marine Fisheries and Environmental Enforcement*), what has not been considered is which species to consider limits for. Bag limits are currently associated only with bass, although in some areas it has been suggested that nearshore populations of cod may benefit from the implementation of such limits.

In order to achieve compliance, the criteria used to determine which species of fish are subject to bag limits, and the number that can be caught, must be clear and defensible, ideally based on sound ecological and/or management objectives. The recreational sector is unlikely to accept bag limits based on reducing mortality in order to increase availability to the commercial sector, or indeed to limit the perceived impacts of angling on the availability of fish to commercial fishermen.

4. Charging

The Government's usual policy is to charge for regulatory services. Both *Net Benefits* and the *Review of Marine Fisheries and Environmental Enforcement* recommend the introduction of charging in the fishing industry, subject to some important conditions. Link supports the principle that the fishing industry should be charged for its share of the cost of monitoring, regulatory and enforcement activities. It should be noted that public costs are also incurred for CEFAS scientific work and this should be recognised as a subsidy.

While we note that the undesirability of charging UK vessels alone, and issues about affordability in the light of cumulative burdens, may preclude charging of the offshore industry at

present, a charging regime should be established and initiated at a time when the offshore industry is viewed as “profitable”.

As recommended in the *Review of Marine Fisheries and Environmental Enforcement*, 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 £1000 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 over £155m. 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 resourcing of 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. There, licence fees and levies on landings have been used 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.

5. Several and Regulating Orders

Link believes that Several and Regulating Orders could be very useful tools for promoting sustainable inshore fisheries management; however some changes to their focus and delivery would first be necessary, including:

- simplification and acceleration of the currently lengthy application process, without losing the emphasis on the development of a comprehensive management plan for the area proposed for regulation;
- 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 consultation before withdrawal);
- clarification of what species can be covered by Regulating and/or Several Orders - we would like to see all shellfisheries covered⁵;
- clarification of what methods of harvesting are covered, with regulation of all vehicles (tractor dredgers as well as boats) and methods of fishing, as well as activities associated with fishing (for example the use of vehicles to collect catch from a beach, which can cause significant damage to an area's wildlife interest);
- a reduction in the lifetime of an Order from a 60 year maximum to a lower limit (e.g. 20 years), after which the Order could be renewed on re-application, with environmental assessment;
- imposition of some upper limit on the maximum size of an area to be covered by Several Order, and a requirement for the applicant to justify the extent of the area that they are applying for;
- a requirement to manage Several Order areas in line with sustainable use of the resources and with regard to the environment. This would require greater clarification of the enforcement powers of the fishery order grantee over the leaseholder of the Several Order area;
- the basis for an effective licensing system for inshore fisheries, facilitating the sustainable exploitation of all stocks, and providing a mechanism to adjust fishing effort rapidly in response to conditions, e.g. stock levels. The Regulating Authority must have the ability to be more flexible in restricting the number of licences issued, and it should be possible to set

⁵ With the exception of EU quota species such as *Nephrops*.

conditions on licences issued. Licences should cost, with any money raised in this manner spent on the management of inshore fisheries.

An additional factor to consider is the continued requirement for Defra to administer applications. The transfer of the application process from central government to the IFMB could act both to promote Fishery Orders through greater local-awareness, and to accelerate the process by cutting out steps that are arguably unnecessary for primarily local measures.

6. Inshore Seaward Boundary

In England and Wales, the current inshore managers, SFCs, have a seaward jurisdiction of 6nm from baselines. In Scotland the Scottish Executive has legislative control out to 12nm under powers conferred by several Acts, in particular The Inshore Fishing (Scotland) Act (1984).

There have been calls to extend the jurisdiction of inshore managers to 12nm. Indeed, the Conservation (Natural Habitats &c.) Regulations (1994) extends the Habitats Directive to 12nm. However, a 12-mile limit would bring current inshore managers (SFCs) into contact with foreign vessels with historic access rights. Furthermore, the ability to extend their byelaws or other controls to 12nm seems to be limited by the overarching reach of the CFP. Within 6nm, the status of the CFP with regard to environmental legislation is immaterial, as national legislation or SFC byelaws can be imposed to restrict damaging fishing activities. Therefore, Link recommends that inshore fisheries managers have a seaward jurisdiction of 6nm. Link would rather see well-managed inshore waters extending only to 6nm than poor management applied over a larger area.

7. Fisheries and a potential Marine Management Organisation.

Link agrees with the Government's view that creating an MMO could improve co-ordination and delivery and introduce economies of scale by combining marine management functions within the same organisation. We also agree that it would be inappropriate to bring the scientific research and development functions of CEFAS within the MMO (question 80) – although while these functions should retain independence, it might be possible to bring other specific, discrete functions currently undertaken by CEFAS within an MMO.

Link could support the delivery of recreational fisheries management by an MMO as a non-core function (question 85). In terms of inshore fisheries management in general, Link supports a system of regional fisheries management, rather than a completely centralised system. There could still be potential for an MMO to have a role in the co-ordination of inshore fisheries management, as Defra retains some roles in inshore fisheries management despite the partial devolution of control to the SFCs. If the MMO were to have any role in the co-ordination of inshore fisheries management, then a more precise definition of the nature of its relationship with the regional fisheries management bodies (SFCs) would be required (question 89).

3. Planning in the marine area (Section 8, pp. 31-59)

SUMMARY

Link welcomes the well written, researched and reasonably comprehensive MSP section of the Marine Bill consultation. We support most of what is in it.

Link believes that we urgently need Marine Spatial Planning (MSP) to deliver an ecosystem-based approach to the management of activities in UK seas, and to ensure sustainable use of precious marine resources. **MSP is key to improving the planning and management of all activities in UK seas, as well as to nature conservation. However, we are concerned that the MSP section focuses heavily on economic and regulatory objectives and benefits, and that environmental benefits are not given equal regard.**

MSP must be statutory, or it will not be delivered. The Marine Bill should include a statutory purpose for MSP, based on sustainable use of the seas within environmental limits, delivered through an ecosystem-based approach to marine management.

RESPONSE TO CONSULTATION QUESTIONS

Q1: Is it appropriate for the UK Government to consider creating a new system of marine spatial planning?

Link believes that Marine Spatial Planning (MSP) is an urgently needed tool for the development of an ecosystem-based approach to the management of activities in UK seas, and is essential to ensure sustainable use of marine resources. The current sectoral approach to managing marine industries does not allow an overview of their cumulative impacts on marine ecosystems, with the result that sustainability of development and resource use is not secure. The current approach can also mean that decisions in relation to development applications can be delayed due to unforeseen conflicts between different uses of the sea. There are also numerous national and international policy drivers that make the Government's consideration of MSP timely, and present opportunities for the UK to take the lead in developing thinking on MSP in international fora⁶.

MSP offers numerous benefits for industry, government and marine biodiversity. It will provide an overview of environmental impacts, and enable potential conflicts between sectors to be identified and resolved at the planning stage, rather than at a later stage when considerable investment has been made for individual proposals. Marine Spatial Plans (MSPs) will guide developers on where applications are more likely to succeed or fail thus increasing certainty and reducing risks for investors. While MSP will not replace the need for project-specific EIA, SEA carried out as part of the planning process may assist with defining the scope of individual EIAs, and in the longer term may lead to a reduction in specific data-collection needs at project level. In addition, MSP could facilitate the sustainable development of new technologies, for example wave and tidal energy, by identifying and safeguarding important resource areas for those sectors.

⁶ E.g. On a national level: Safeguarding Our Seas (2002), RMNC Working Group Report to Government (2004), Labour Party Manifesto 2005. Internationally, the possible future EU Maritime Policy and the proposed Marine Strategy Directive, OSPAR commitments to consider MSP and UNCED commitments to the ecosystem approach.

Q2: If so, should Government consider statutory provisions within the Marine Bill in order to implement a new system of marine spatial planning, or should alternative methods be considered?

Link believes that statutory provisions for MSP are essential. We need new legislation to provide a statutory framework for delivering a spatial planning system at sea, just as the Town and Country Planning Act 1990 provided for a plan-led approach on land, recently updated in the Planning and Compulsory Purchase Act 2004. MSP will require strong commitment from across Government and stakeholders, as well as the creation of a new organisation. It requires “teeth” to ensure its capability to deliver. MSP must be established on a sound legal basis to ensure:

- (a) the planning process actually happens;
- (b) plans have the necessary weight and primacy in decision-making (plans and policies should be binding on decision-makers, in a similar way to land-use plans under the Town & Country Planning Act 1990);
- (c) buy-in and engagement by all authorities and public participation of stakeholders; and
- (d) a robust, long-term planning system, with greater certainty for developers and nature conservation.

The failure of voluntary integrated coastal zone management, in many areas, to resolve any significant conflicts of interest should be a key lesson when considering whether MSP needs statutory backing. **Link does not believe a non-statutory approach can secure the commitment needed for MSP to happen effectively, let alone provide the much-needed move towards integrated marine management.**

TABLE 1: Components Link believes MSP legislation should include

- Identification of the plan making-body, and a duty to produce regional and sub-regional MSPs
- Identification of statutory bodies involved;
- A requirement for decisions to be made in accordance with the marine spatial plan, unless material considerations indicate otherwise;
- Involvement of non-statutory stakeholders in development of the plan, ideally through an advisory group that works with the plan-making body;
- Definition of all duties and powers associated with marine spatial plans for public bodies (Secretary/ies of State, UK and devolved government departments, agencies and other marine competent authorities - these should be clarified in the Marine Bill and detailed guidance that accompanies it);
- A requirement for public consultation on all MSPs;
- A mechanism/s for independent scrutiny of MSPs;
- A requirement for Government to sign-off MSPs;
- The principle of sustainable use (including development and all human activities) of our seas, and implementation of an ecosystem-based approach to management of human activities;
- A commitment to implement an ecosystem-based approach through co-ordination with devolved administrations;
- A requirement for the collection of all data needed to draw up MSPs, and provisions to ensure the sharing of these data;
- Provisions to ensure that it is possible to plan for any new activities, threats and developments in UK seas, e.g. Carbon Capture and Storage;
- Provisions to ensure that it is possible to deal with and adapt to unexpected or unpredictable impacts, so that activities can be immediately halted when an adverse impact on the marine environment is identified; and
- A requirement for the whole of each regional and sub-regional plan, as well as the national strategic statement to be regularly reviewed.

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.

Links 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.

Q4: What are your views on marine spatial planning as a context or framework for decision-making?

A statutory MSP framework is essential. It should not only provide the context for decision-making, but fundamentally drive or influence decisions relating to regulation and management of marine activities, to enable the transition from the current unco-ordinated, sectoral approach to a fully integrated one. We welcome the description in paragraphs 8.34 - 8.38 of how MSP might fulfil this role. We particularly welcome the reference in paragraph 8.35 to the undertaking of an SEA for the whole area of the plan – however, we would suggest that, rather than being supplementary, SEA is an integral part of the holistic approach described.

Q5: To what extent, if at all, should plans be ‘binding’ on decision-makers and decision-making? (See the initial Regulatory Impact Assessment at Annex 5A for further information.)

Link believes that plans should be binding on decision-makers to ensure MSP is implemented and its benefits realised.

Link agrees that planning decisions should accord with MSPs, unless other material considerations exceptionally dictate otherwise, as is the case with land use planning. Decision-makers must be able to depart from the plan where there are good reasons to do so, for example to address hitherto unknown activities, threats and developments, e.g. bioprospecting, and to deal with and adapt to unexpected or unpredictable impacts. This would allow activities to be immediately halted when an adverse impact on the marine environment is identified. Adequate justification for such departure should be required. Link hence fully supports Option 4: binding plan, as detailed in paragraph 8.42 of the consultation.

Adaptive management: As MSP is such a new proposal, Link believes that there must be an element of flexibility, and some scope for adaptive management that allows aspects of plans to change as knowledge and understanding increase over time and in different areas: the ‘learn by doing’ approach. However, there needs to be a careful balance between improved certainty for developers and the opportunity for adaptation of plans according to new information, changing circumstances and new technologies. This will necessitate monitoring and assessment of plans against their objectives to identify whether changes are required to enable the objectives to be met, and should be part of a regular review process.

Once sufficient information has been compiled in MSPs, with stakeholder involvement, developers can have additional confidence that applications made in line with the plan are more likely to succeed than some have experienced under the current sectoral system.

Link opposes the alternative options detailed in paragraphs 8.39-8.41 of the consultation for the following reasons:

Doing nothing (see paragraph 8.39 of the consultation) is not an option. Biodiversity is declining, while pressures for marine resources and development continue to increase. It is no longer tenable to manage marine industries sector by sector, with little regard to other industries or to the pressures placed on the marine ecosystem. Planning decisions should be made with regard to all the activities impacting on them. In the current planning regime, decisions take up unnecessary and costly time and effort, because different sectors and government departments are not 'joined-up' by an integrated planning process. MSP is a way of improving decision-making and delivering a more ecosystem-based approach to managing marine activities. In essence, it is a planning tool that enables integrated, forward-looking and consistent decision-making on the use of the sea.

Information collation and mapping (see paragraph 8.40 of the consultation) will be an extremely useful tool in developing MSPs but, alone, it cannot deliver what is needed. MSP is about shaping and delivering integrated policies and forward-looking development plans at the regional sea level, based on national policies. Mapped data will help both to provide the basic information required to express MSP policies and objectives to sea users, and for the delivery of MSPs. Central to the process of MSP is the involvement of stakeholders in the development of the regional MSP policies.

In addition, an SEA cannot be developed without a plan to assess. Each regional sea marine spatial plan therefore needs to be developed to enable multi-sectoral SEAs at the regional sea level, so that the cumulative effects of current and future activities can be assessed and addressed. It is possible that these could replace sectoral SEAs.

A non-binding marine spatial plan: For reasons set out earlier in this response, Link believes that this option would achieve little more than doing nothing.

Q6: Do you have any views on the broad underlying principles for marine spatial planning, as laid out above?

Link has the following comments to make on the four key principles outlined in paragraphs 8.44 – 8.49 of the consultation.

We are supportive of sustainable development as a key principle and purpose of MSP. The explanation of how MSP can help to deliver sustainable development in paragraphs 8.44 and 8.45 is also welcome, as it hints at integration rather than "striking a balance". However, we believe that MSP must encompass all activities at sea, and we therefore suggest that it would be more appropriate to refer to "sustainable development and resource use" or just "sustainable use" (including development and all human activities).

Link is very pleased that the ecosystem approach is included as a key principle, as we believe this is fundamental to marine management, and MSP is a key tool for its delivery. We welcome the description of the ecosystem approach as one that "*places the emphasis on a holistic planning system which manages human activities in a way that maintains the health of ecosystems for the benefit of current and future generations and integrates and reconciles marine protection objectives with sustainable economic, social and cultural goals*". However, as mentioned earlier, we do not consider "striking a balance" to be the appropriate terminology.

Link recognises and supports 'better regulation' as a government aspiration, though we would suggest that it might be more appropriate as an aim or objective of MSP rather than a principle. Notwithstanding this comment, we welcome the statement in paragraph 8.47 that streamlining must happen within a framework of impact assessment and environmental protection. We believe that greater transparency, clear accountability and consistency between plans will be important benefits of MSP. In relation to paragraph 8.47 (c), we would urge that environmental benefits should be considered (as well as benefits to regulators and industry) in assessing proportionality.

MSP will be key to ensuring integration of and compliance with international and EU obligations. Link believes that the precautionary principle, the preventative principle and the polluter-pays principle need to be given greater prominence, and emphasised as key principles underpinning marine policy, as per the Marine Stewardship Report (see Table 2 below).

While environmental protection is inherent in the ecosystem approach, Link would welcome a clear statement from government that environmental protection is a key principle in relation to MSP. As already mentioned, we do not consider this to be out of line with the broader principle of sustainable development.

TABLE 2: Government principles for the marine environment ⁷

- Sustainable Development
- Integrated management
- Conservation of biological diversity
- Robust science
- Precautionary principle
- Stakeholder involvement

Q7: Do you have any views on the potential increase or reduction of regulatory burden on Government or business, at either the planning stage or during subsequent licensing stages, as the result of a system of marine spatial planning?

Overall, Link believes that following initial investment of time and resources to its development, MSP will lead to a reduction in the regulatory burden on government and industries for the following reasons:

- It will provide an overview of environmental impacts and enable potential conflicts between sectors to be identified and resolved at the planning stage, rather than at a later stage when considerable investment has been made for individual proposals. MSPs will guide developers on where applications are more likely to succeed or fail thus increasing certainty and reducing risks for investors. MSPs will allow for early identification of potential conflicts, and therefore a chance to resolve them, between industries (e.g. windfarms and shipping lanes) and therefore offer a chance to resolve them, between development and important wildlife areas. Developers will be able to predict where proposals will be likely to gain consent with much greater certainty, thus reducing work and costs that currently arise when conflicts are identified at later stages of the planning process.
- MSP could facilitate the sustainable development of new technologies, for example wave and tidal energy, by identifying and safeguarding important resource areas for those sectors.

⁷ Abbreviated from Defra (2002). *Safeguarding Our Seas: A strategy for the conservation and development of our marine environment.* (Page 6)

- Surveys, data collation and maps produced for the marine spatial plan could be made available to those carrying out EIAs or SEAs and vice versa. This should assist in scoping and reduce the burden of data collection for individual projects. It will also facilitate a quicker and more reliable consenting process with all available information to hand and understood by decision-makers.

Q8: Do you have any views on the geographical application of any new system of marine spatial planning?

Link believes that MSP is necessary to deliver an ecosystem-based approach to management of activities in UK seas.

MHWS to 200nm: Link agrees with paragraph 8.55, that MSP should be applied from Mean High Water Springs. As paragraph 8.55 notes, this not only conforms with the current principal controls (the Food and Environment Protection Act and the Coast Protection Act), but would also ensure that the key contribution of intertidal areas to marine ecosystems is recognised. MSP should apply seaward to the outer limits of UK jurisdiction (usually 200nm).

Q9: Do you have any views on ways in which regulatory efficiency could be improved in the intertidal zone, if a new system of marine spatial planning were created? (See also paragraphs 8.98 to 8.101)

We recognise that the coastal zone poses particular challenges in terms of planning and management, for reasons including intensity of activity and the interface between terrestrial and marine regulatory systems. The coastal zone is also of vital importance for wildlife, and coastal habitats play a key role in marine ecosystems. Link believes that the introduction of MSP should provide for greater recognition of the fact that marine developments can have implications for terrestrial land use, and vice versa. It should also ensure that the importance of coastal habitats in the context of marine ecosystems is properly taken into account.

Link recommends:

- A formal process to ensure close co-ordination between MSPs and land-use plans (including Regional Spatial Strategies, Local Development Frameworks (where appropriate in the context of sub-regional planning), River Basin Management Plans, and Shoreline Management Plans). This will require engagement by terrestrial authorities in developing MSPs;
- A duty on regional government and local authorities to have regard to the marine spatial plan (at regional and sub-regional level) and the Strategic Marine Planning Policy Statement; likewise the marine planning authority should be required to have regard to terrestrial plans; and
- Where Integrated Coastal Zone Management (ICZM) initiatives exist they should be capitalised upon to support delivery of joined-up planning in the coastal zone.

All competent authorities in the coastal zone (which include port and harbour authorities, local authorities, the Environment Agency, and Sea Fisheries Committees) should have a duty to further the conservation of marine biodiversity. (Link is calling for the Marine Bill to deliver a biodiversity duty throughout the marine area, expanding on Section 40 of the NERC Act 2006 – please see our response to Section 10).

Link believes that close co-ordination between MSP and terrestrial planning processes should improve coherence in regulation at the coast, such that there is a reduction in the incidence of development applications where the terrestrial-based consents are approved, but the sub-tidal consents are not. Inappropriate proposals (in terms of both landward and seaward impacts) should also become less likely.

Q10: Is this overall approach, involving a strategic marine planning policy statement, followed by spatial plans, appropriate?

Link supports the proposals for a Strategic Marine Planning Policy Statement to provide context for regional marine spatial plans. Sub-regional plans, as well as being guided by national policy, will need to take account of regional marine spatial plans. The Strategic Marine Planning Policy Statement will need to contain clear policy guidance, refer to overarching international and national marine policies, and assist in the integration of sectoral policies.

We note that reference is made in question 12 to a “strategic marine planning policy *framework* statement”, although it is clear from the text that this refers to the same statement referred to in question 10. We feel that these titles imply different things – the word framework implies that this statement represents a strategic approach to integrating sectoral and environmental marine policies at the national level, whereas “planning policy statement” could equate to a Planning Policy Statement (PPS) under the terrestrial system. The text supporting question 12 suggests that framework is indeed an appropriate term, and that the strategic statement is distinct from planning guidance (equivalent to a terrestrial PPS) which will also be required – indeed, a key difference is that a strategic framework is more likely to require SEA. Link supports the development of such a framework at national level.

Q11: Are there particular aspects of, or experience gained from the terrestrial or any other planning system, which should be considered when developing a marine planning system?

Link has considered the land-use planning system in all of its proposals for MSP, from the importance of forward planning and spatial planning, through the need for statutory underpinning and the binding nature of plans, to the importance of planning guidance, stakeholder engagement and independent scrutiny. Prior to the reform of the land-use planning system through the Planning and Compulsory Purchase Act 2004, the Royal Commission on Environmental Pollution made a number of recommendations which Link believes are relevant to MSP (see Table 3, below).

TABLE 3: Royal Commission on Environmental Pollution recommendations relevant to MSP

The Royal Commission on Environmental Pollution’s report identified a number of important shortcomings of the land-based planning system⁸, and made the following recommendations:

- There should be comprehensive, mutually consistent and unambiguous policies that place the protection and enhancement of the environment as the foundation for sustainable development;
- A clear statutory purpose should be introduced for the planning system. The purpose of planning in protecting and enhancing the environment must be made explicit in a way that recognises other purposes;
- Integrated spatial strategies should rationalise the current plethora of plans and cover all aspects of Government policies;
- There should be a statutory requirement for sub-regional and local plans to comply with the Regional Spatial Strategy;
- Integrated spatial strategies must cover all forms of land use, not just built development; and
- The planning framework must have the confidence of the public and include full participation of all stakeholders.

⁸ Royal Commission on Environmental Pollution (2002). *Twenty-third Report: Environmental Planning*.

Q12: Do you have any views on the elements of a strategic marine planning policy framework statement laid out in this section?

Link welcomes the outline presented in paragraph 8.64.

We support the proposal in paragraph 8.64b for sectoral marine planning policy statements, particularly since some marine industries do not have established policy documents. These will be needed for every sector, including marine nature conservation (an offshore equivalent to PPS9).

All MSP objectives for regional seas must further objectives developed through international agreements such as OSPAR. Where sectoral policies exist, the marine PPS can reflect these, but Link believes that MSP also provides an opportunity for progressive forward thinking in policy development, to ensure sustainability and to 'climate change-proof' MSP.

In addition to the elements outlined, we suggest the statement will need to refer to Marine Ecosystem Objectives (MEOs), discussed in Section 10 of the consultation. MEOs should provide the context for sustainable development and resource use in the marine area, by ensuring that activities are managed in a way that is consistent with the Government's vision of achieving clean, healthy, safe, productive and biologically diverse oceans and seas.

Q13: Do you have any views on the way in which a strategic marine planning policy framework statement should be developed and the timeframe it should cover?

The Strategic Marine Planning Policy Framework Statement (the Statement) needs to be developed and owned by all Government departments with competencies relating to the marine environment. Provisions should be made for stakeholder participation in the development of the Statement e.g. through Stakeholder Advisory Groups (see question 14). The Statement should also be subject to public consultation. The MMO could play a co-ordinating role in these processes. We would suggest the Statement should be produced to cover a period of ten to twenty years, but should be reviewed every five years. Developments in international policy, new technologies, changes to marine ecosystems and identification of failures to meet plan objectives (in particular MEOs) might signal the need for changes to the Statement. Where possible the Statement should attempt to look further forward than the ten to twenty year timescale (e.g. a hundred years).

Q14: What are your views on the nature and role of the planning body which would undertake the development of spatial plans?

Please also see Link's response to Section 11 on the MMO.

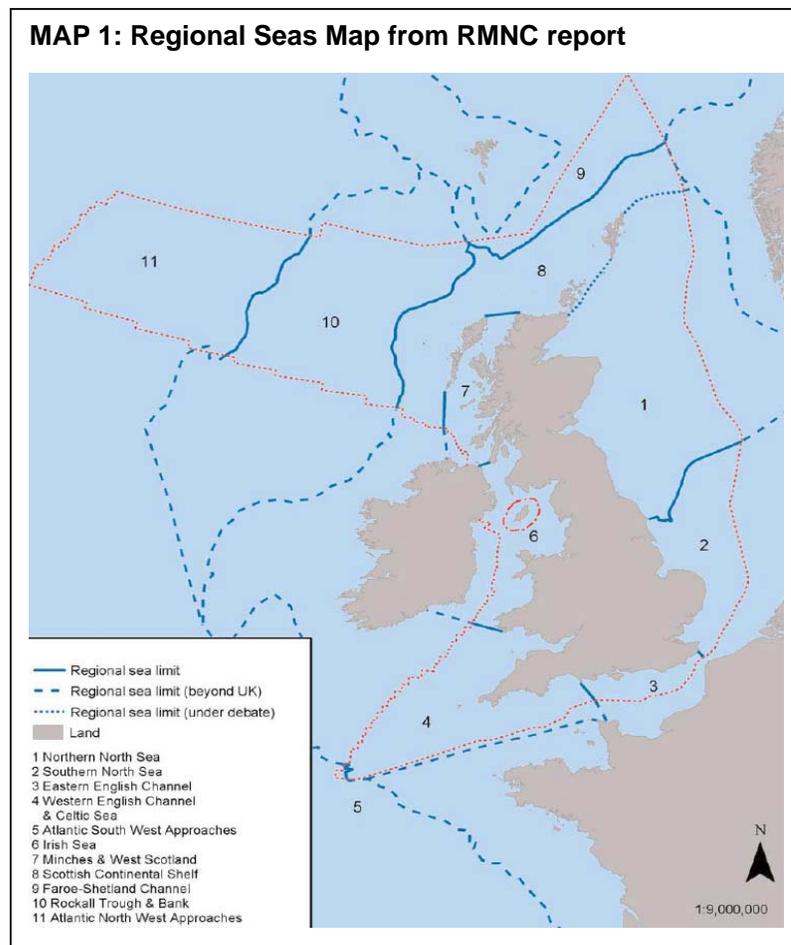
Link agrees with the statement in paragraph 8.67 of the consultation that a new body will be needed to undertake the development of MSPs. We believe that the proposed MMO should be responsible for development and implementation of MSPs. The MMO will need to be a UK body, with a planning remit relating to English territorial waters, and the offshore area around the whole of the UK to the limit of jurisdiction. It is important that any new body has the power to bring all the responsible authorities to the table to ensure each regional MSP is developed through integrated working. It must act in a diplomatic and committed manner, and a major part of its role should be to facilitate integrated working of Government Departments and agencies, together with other authorities that have planning and consenting responsibilities, while ensuring that non-statutory stakeholders can participate and contribute information in development of the marine spatial plan. It will also be crucial for the MMO to work with the devolved administrations to deliver an ecosystem-based approach to MSP based on regional seas. The MMO must also facilitate co-operation and conflict resolution between stakeholders through the planning process. MSP must be about 'planning with people' not just 'planning for people'. The MSP Pilot

workshops demonstrated a key benefit of the MSP process; that of sharing information and expertise between key marine stakeholders including maritime industries and NGOs. Stakeholder involvement in the development of MSPs could be delivered through the setting up of Stakeholder Advisory Groups for each regional sea plan and the National Statement.

Once MSPs are developed they will need to be made available for public consultation. Processes will also be needed for independent scrutiny of MSPs. Further comments on this are made in our response to question 28.

Q15: What are your views on the scale, location and possible boundaries of the areas used for spatial plans?

In order to deliver an ecosystem-based approach to managing human activities, Link believes that regional MSPs should be developed on the basis of regional seas as proposed by the RMNC (see map 1)⁹.



UK wide approach: In order for the ecosystem approach to be implemented, Link is calling for a UK wide approach to the implementation of MSP through co-operation between UK and devolved administrations. As the management of many activities in the territorial waters of Scotland, Northern Ireland and Wales is devolved, Link's sister organisations in those countries are calling for marine legislation to be introduced in parallel with the Marine Bill, and for the four

⁹ Taken from Defra (2004). *Review of Marine Nature Conservation: Working Group Report to Government*. (page 132) Copyright: JNCC 2003

UK administrations to work closely together in the development and implementation of MSP. This is critical because MSP must be based on bio-geographical, rather than political, boundaries if it is to implement the ecosystem approach.

Link believes that sub-regional MSPs will also be needed, for example in estuaries or intensively used inshore areas.

Q16: Do you think that Marine Spatial Planning should apply in the same way in all parts of UK waters?

Link believes that MSP should apply in the same, or similar, ways in all parts of UK waters, though we consider the more intensively used regional seas to be the first priority. In regions where there is less activity, there are still likely to be benefits from MSP (and associated SEA) covering, for example, fisheries, shipping and oil and gas exploration, although the plan would be less detailed than elsewhere. The Bill should allow for an element of flexibility and an adaptive approach according to the regional sea concerned.

We welcome the statement that the Strategic Marine Planning Policy Statement would still guide decisions in areas where regional MSPs had not been developed. (See question 15 with regard to the need for integrated working to enable MSP in areas that cross Scottish, Northern Irish and Welsh waters).

The UK should also, where possible, work with other EU Member States (such as the Republic of Ireland) towards joined or trans-boundary MSPs, in order to develop a true ecosystem approach. Mechanisms are under development through the EU Marine Strategy (and associated Marine Framework Directive), and regional agreements (e.g. OSPAR) to ensure that neighbouring countries work to a shared vision, share best practice and work together to address cross-border issues.

Q17: What are your views on the need for planning at sub-regional or local level?

We agree that, as described in paragraph 8.73, sub-regional MSPs will be needed in intensively used marine areas usually, but not exclusively, in the coastal zone e.g. the Thames region. Sub-regional plans will need to comply with the National Statement and the relevant regional MSP, and a process will be needed to ensure co-ordination between MSP and neighbouring land-use and other coastal plans.

Sub-regional MSPs will need to be as much about management of existing sea uses as forward planning, to ensure cumulative impacts are properly managed. In intensively used coastal areas, for example, activities are likely to include recreational use, fishing, ship-to-ship transfer, shoreline management and others, in addition to development. As such, sub-regional MSPs will be critical to ensuring environmental protection in heavily used areas.

A two-way exchange of information and policies between regional MSPs and sub-regional plans will be essential. These sub-regional plans will also need to be integrated with existing ICZM initiatives, with the involvement of ICZM fora. Linkages with River Basin Management Plans, Regional Spatial Strategies, Local Development Frameworks and other relevant plans will also be required. To ensure the plans dovetail and are integrated, processes for liaison between the various bodies must be established (see our response to question 9, above).

Q18: What are your views on the activities, developments and resources within the marine area, which might be considered within spatial plans?

Link believes that all marine activities, developments and resources should be considered in a marine spatial plan. However, for a regional sea MSP we suggest that the coverage of coastal

land use, tourism and marine recreation is quite broadscale (where these activities are intense, sub-regional plans may be needed).

We also agree that it is important to integrate data on all of the resources listed in paragraph 8.76. While we support the marine landscapes approach, and welcome the UK Sea-Map project which is mapping marine landscapes for the whole UK continental shelf, we would emphasise that this approach does not provide sufficient detail on benthic habitats to ensure they are adequately considered in regulation of activities. Individual project EIAs will still need to gather detailed information about biodiversity, but we would suggest integrating any available data on benthic habitats into MSPs to provide more useful, up-front information for sea-users.

Q19: Are there any anticipated future types of marine use, or technological advances, which you think the UK Government should consider when developing the strategic marine planning policy statement or in the marine spatial plans?

Any future marine activities should be managed within the context of MSP. Regular review of the National Strategy, as well as regional MSPs, should allow plans to be adapted to encompass emerging sea uses. Carbon Capture and Storage and sub-sea storage of natural gas are two potential future uses raised elsewhere in the consultation (please also see Link's comments in questions 48 - 51 on licensing). Bioprospecting is another activity that needs to be considered.

Q20: What are your views on data and information availability in relation to marine spatial planning?

MSP is not just about maps and data; integration between sectoral policies and plans is just as important. However, Link does agree with the statement that "*central to the success of many of the UK's policies will be the collection, management and availability of marine data and information*" (paragraph 5.15)¹⁰. But we do not consider this too difficult or expensive to make MSP a success. Link has been involved in all of the DTI's oil and gas and energy SEAs to date, as well as the RMNC Irish Sea Pilot and MSP pilot, and we consider these useful indications of cost and data availability. The UK's is one of the most mapped and surveyed sea areas in the world. Maximum use should be made of existing data held by many different bodies and current sea-bed mapping exercises, such as those being undertaken for the Ministry of Defence. Much of the work needed is therefore in the pooling and integration of existing data, whether this is held by government, universities, NGOs or industry following EIA surveys. New surveys are of course also needed, and Link suggests that the MMO should have a role in identifying these.

Link believes that once a reasonable investment is made in surveys and data collation there will be sufficient information to begin each marine spatial plan. However, this will not preclude the need for EIAs to be carried out at the project level, nor the need for a precautionary approach due to the relative lack of understanding of marine systems. Link strongly recommends the creation of a central data portal for marine data. In developing this, lessons should be learnt from existing data portals, such as the National Biodiversity Network (NBN). Link believes the MMO could have a key role in delivering this portal.

To support a centralised data portal, Link recommends that:

- Principles are established for co-ordination of data and standards;
- Guidelines are developed for data to be collected in a way that is consistent with standardised and compatible methodologies;
- Systems are created to ensure release of data collected as part of a regulatory process (e.g. for SEAs or EIAs); and

¹⁰ This data must include data on habitats and species.

- Issues of longevity are considered, i.e. we need a long term commitment to gather data e.g. on climate change.

Q21: What are your views on the plan making process?

Link supports the outline given in paragraphs 8.81-8.84 of the plan-making process, including the development of strategic data collection and collation, identification of preferred areas and a mechanism to handle conflicts. We note that much more detail remains to be developed.

Link believes that full engagement of stakeholders will be key to facilitating conflict resolution during the planning process. We consider one of the key benefits of MSP to be the bringing together of all sectors, as opposed to relying on bilateral discussions to resolve issues arising at the project stage. We provide further thoughts on stakeholder engagement in our response to questions 26-28.

We also make specific comments in response to question 25, on the need to consider sustainability and environmental impacts of plans. However, we would like to stress that, rather than being carried out at the end of the planning process, such assessment should be a fully integrated part of the process. SEA will be crucial to integrating the various environmental and sectoral objectives that MSP seeks to bring together, and will also provide a clear focus for stakeholder input and involvement.

Joined up decision-making and consensus-building in the development of regional MSPs should come about through integrated working by government departments and agencies, with valued input from non-statutory stakeholders. This process should be facilitated by the proposed new MMO, which should be given the necessary statutory powers. There must be clear lines of responsibility for decision-making, a mechanism for conflict resolution, and a wholly transparent planning process. The process of MSP must ensure the integration of different sectoral policies, taking into account environmental, economic and social factors. In addition, the health of the marine ecosystem must be considered to be an over-riding objective.

A mechanism to address conflicts which cannot be resolved through discussion will also be needed (see our response to question 28 below).

At the time of adoption, MSPs should be signed off at Government level.

Q22: How should conflicting demands on marine space be addressed in the development of spatial plans?

Link considers it essential that the MSP process respects MPAs and other designated sites. The planning process should help to ensure that conflicts between MPA interests and incompatible uses do not arise at the project stage.

We hope that, by taking a strategic view of regional seas, in an open way – with input from all relevant regulators and stakeholders – MSP will facilitate a reduction in the likelihood of conflict over specific sea areas. The MMO should initially identify all existing uses of the relevant marine area, and in doing so should seek to identify any potential conflicts and synergies.

Where conflicting demands are identified, the MMO could facilitate specific meetings between the relevant departments, statutory nature conservation advisors and stakeholders. Within a strategic context, it should be possible to identify alternative possibilities for interests which conflict with other industries that are more location-specific, or with nature conservation interests. The SNCOs will need to provide the MMO with independent advice. The decision-making process will have to be transparent but, ultimately, the MMO must have the power to

make decisions, considering all relevant factors, even where such decisions would disappoint some parties.

There should be an opportunity to comment on draft MSPs, and a process for independent scrutiny of plans.

Q23: What are your views on the allocation of 'preferred areas' for certain activities, future development or protection of resources?

Link is content with the proposal to allocate "preferred areas", provided these take full account of nature conservation interests and priority is given to the designation of MPAs (including Natura 2000 sites, NIMSS and HPMRs). We also expect decisions taken in the context of MSP regarding non-designated areas to take full account of biodiversity.

We note that a variety of zoning tools are already used to restrict or promote activities in the marine environment – e.g. MPAs, Marine Environmental High Risk Areas (MEHRAs), fisheries management zones – and that MSP will need to integrate these.

Q24: What are your views on the process of developing maps or charts as part of the marine spatial planning process?

Please also see our response to question 20.

Link strongly supports the development of maps, diagrams, illustrations or other descriptive or explanatory materials in respect of the general policies in the marine spatial plan, as appropriate. However, this must be in addition to, or part of, producing a marine spatial plan, not an alternative to it.

Mapping of data will be an important tool in plan delivery and the plan maker should:

- Map the physical, chemical, biological and historic environment, as well as the living and non-living natural resource;
- Identify gaps in data, assess the information needs of spatial planning authorities and support delivery of new information;
- Map policy and development proposals on a geographical basis; and
- Provide diagrams, illustrations or other descriptive or explanatory materials as appropriate.

Q25: Do you have any views on the need to consider the sustainability and environmental impacts of spatial plans, including the use of SEA in the process?

Link considers that cross-sectoral SEAs for each regional sea will be a key advantage of developing MSPs. The sectoral SEAs that are currently undertaken are not achieving a thorough assessment of cumulative or in-combination impacts, because it is not possible to include consideration of data from all other marine sectors. There is a need for comprehensive, multi-sectoral forward planning to realise the full benefits of SEA in identifying the most sustainable outcomes. It will enable the cumulative and in-combination impacts of all maritime industry sectors to be considered in the development of forward-looking plans, in the context of Marine Ecosystem Objectives (MEOs).

Link would prefer a purely SEA approach to be taken to MSPs, as opposed to the combined Sustainability Appraisal/SEA that is now applied to the land use planning system in England and Wales. We would stress that the SEA Directive was introduced in order to correct the traditional dominance of social and economic considerations in public sector decision-making. The SEA Directive requirement to consider 'material assets' and 'population' ensures that social and economic appraisal issues can be addressed within an environmental context. However, regardless of whether an SA or SEA approach is used to evaluate MSPs, it is vital the

environmental issues are identified and fully addressed using all available evidence and taking a precautionary approach. We believe that an assessment of the sectoral policies within MSPs, in combination, will allow environmental objectives to be met, and is key to delivering an ecosystem-based approach to the management of activities at sea.

Q26: In what ways could Government ensure that marine spatial planning would be open, transparent and inclusive?

Planning by consensus and involving all stakeholders will be essential if a sense of ownership is to be encouraged. MSP must be about 'planning with people' not just 'planning for them'. We have suggested (see question 14) that Stakeholder Advisory Groups should be set up to input to plan development at national, regional and sub-regional level. Plans should also be made available for public consultation prior to adoption, and there should be a process for independent scrutiny. Please also see Link proposals in response to questions 21 and 28.

Q27: What are your views on the way in which the rights of individuals or organisations may be affected by the planning process?

We do not consider MSP to represent an additional restriction on individuals' rights to use the marine area sustainably. Rather, we believe that it will offer a more coherent approach to the management of marine activities, in line with the Government's objectives for the marine environment. As we have described elsewhere, MSP should be transparent and accessible to sea users.

Link believes that all MSP documents, all marine development consent applications and associated documents (scoping studies, EIAs, SEAs), and possibly even statutory advisors' responses, should be made electronically available to the public. Not to provide free access to large marine development applications and associated EIAs may contravene the Freedom of Information Act or the Aarhus Convention. Since most marine applications are electronic today, establishing a system to enable this to happen would be reasonably simple for the MMO.

Q28: What are your views on establishing a forum or scrutiny process to test the soundness of the plans?

As mentioned in our responses to questions 14, 21 and 26, Link supports the development of Stakeholder Advisory Groups to ensure that all marine stakeholder groups have the opportunity to input to plan development. We believe that draft plans will also need to be subject to wider public consultation prior to adoption.

Link also believes that an independent scrutiny process, through which comments on the draft plan can be considered, is essential. Experience should be drawn from the land-use planning system in determining the appropriate process.

Please also see Link proposals in response to questions 14, 21 and 27.

Q29: Do you have any views on the implementation, monitoring and review of plans?

Implementation: Implementation of MSP must be delivered through regulation and management of marine activities. Link supports the development of a new, integrated marine licensing regime to be administered by the MMO (see our response to Section 9); if this system is delivered, the MMO will need to provide decisions relating to licensing applications in the context of the plan, and enforce any conditions attached to consents. If other bodies retain responsibility for licensing, these functions will rest with them.

Monitoring and Review: Plans should be reviewed at least once in every five years, and updated as necessary. Factors which will indicate that plans need to be updated could include failure to meet objectives (particularly MEOs), changes in national policy, new activities in the marine area, or new international commitments and legislation. Monitoring of indicators, linked to plan objectives, will be key to this process. Failure to meet plan objectives could indicate a need to review the plan itself, or national policy, and the MMO should report to government where it believes this to be the case. Review should also represent an opportunity to identify further research and data needs.

As mentioned above, MEOs and their associated indicators will be important in monitoring the success of the plan. MEOs may need to be “regionalised” to ensure they are relevant in the context of each regional MSP. Some sustainability indicators will be needed for each marine sector in addition to MEO indicators. These should look not only at the level of a resource (e.g. gravel, oil, tidal currents, space) being exploited, but at associated environmental issues (e.g. provisions made, such as area set aside, for biodiversity dependent on the resource; discharges resulting from operations; area impacted by activities etc).

Q30: Do you have views on how the duration of time for which plans should apply and how often plans should be formally reviewed or modified outside of such reviews?

Link suggests that marine spatial plans should apply for ten to twenty years, but should also look much further forward (e.g. a hundred years). They should be reviewed every five years. Changes in national policy (e.g. resulting from new EU legislation) which need to be implemented in between reviews should be communicated through guidance.

Q31: Do you have any views on how UK Government can ensure marine spatial planning works effectively with other planning systems, particularly in the coastal zone, in order to achieve the aim of integrated coastal zone management?

Please see Link’s responses to questions 9 and 17.

4. Licensing marine activities (Section 9, pp. 60-87)

SUMMARY

Link welcomes the opportunity the Marine Bill provides to improve the licensing system for development in UK waters and at the coast. We note that the licensing system would operate within the context of a marine spatial planning system. Link sees this as essential to enable more effective management of conflicting uses in UK seas, to address the cumulative and in-combination impacts of activities on the marine ecosystem, and enable UK Government to adopt a longer term, more strategic view of the UK maritime area. Licensing of all sectors must take full account of MSP in UK seas, including the policies set out in MSP, as well as relevant international obligations and commitments, such as those under OSPAR and the Convention on Biological Diversity (CBD).

RESPONSE TO CONSULTATION QUESTIONS

Q32: Do you have any views on whether it is appropriate to use the Marine Bill to simplify and streamline the licensing system for marine activities?

Link supports simplification and streamlining that enables efficient planning and licensing, provided government ensures that all licensing is aligned with ecosystem-based management in the marine environment. As quoted in paragraph 9.5 (a) of the consultation, the Marine Stewardship report proposed *“reviewing the regulatory framework affecting coastal and marine development, with a view to simplifying the regulatory system and protecting the marine environment.”* Securing protection of the marine environment must be a core objective of any marine licensing regime, and the Marine Bill should deliver this.

Link also supports a more efficient system if it results in a more integrated approach to decision-making, thus reducing time spent by statutory nature conservation organisations (SNCOs), government departments and stakeholders (including developers and NGOs) on the current unwieldy and under-resourced licensing system.

There is a need for a readily transparent process, including feedback to those who have sent in comments about licence applications. ‘Simplifying and streamlining’ must not result in less consultation. However, quicker and more efficient routes to obtain the views of government bodies and other organisations should be found. For example, if representatives of certain bodies (such as SNCOs) are involved in the MSP process and already knowledgeable about the area of that marine spatial plan, they could be the conduit for comments from their own organisation for a planning application. As part of a new planning licensing system, transparency and accessibility to stakeholders of information relating to applications should be improved. Additional resources for Natural England Maritime Officers to consider MSPs, SEAs, EIAs are also particularly important.

As NGOs, we wish to continue to be involved in this process as we are often amongst the most knowledgeable on the nature conservation interests of an area.

Q33: Are there any particular emerging trends, new technologies or novel types of activity, which any future licensing system should address?

The following activities are noted in the consultation:

- Major proposals for ports;
- Growth in development of marine renewables;

- Sub-sea bed storage of gases – natural gas transported from abroad and stored in geological structures, plus associated ship transfer facilities (also in questions 48 and 49);
- Carbon Capture and Storage (CCS), with the “*intended aim of alleviating global warming and its impacts, e.g. ocean acidification*” (also addressed in questions 50 and 51); and
- Increased demands for aggregates e.g. for coastal defences and major projects such as building for the Olympic Games in 2012.

Link believes the Marine Bill must ensure sustainable use of marine resources, including management of existing activities and trends. Any new, integrated licensing regime introduced by the Marine Bill must enable regulation of new and even currently unknown technologies in order to protect biodiversity, and ensure sustainable use of marine resources in the future. For example, there is a need to ensure bio-prospecting (for medicinal cures etc) is fully managed and controlled to ensure there are no adverse impacts from harvesting of marine species. These activities must also be fully integrated into MSP.

Some licensing decisions affect the coast and issues inshore. Link believes that a more efficient licensing regime (as supported by many stakeholders) under the Marine Bill must seek to achieve better, more integrated decision-making, for example combining planning decisions at the coast with marine licensing decisions. One example would be making sure ports' planning applications were submitted as a 'package' to include consents required for the marine environment and those on land, e.g. navigational channels plus development on land. This is also relevant for marinas, which can have impacts both above and below high water mark. The new licensing regime should avoid a developer using a terrestrial planning consent (e.g. development on land favouring job creation etc) as a 'lever' to gain another (e.g. marine consent for navigational channel in a sensitive area). As discussed in our response to Section 8, we believe that coherence between marine and terrestrial plans in the coastal zone should help to reduce the likelihood of this.

All development proposals must be considered for impacts at the regional sea and sub-regional, as well as the local, levels (including cumulative impacts when considered in combination with other activities or developments). For example, developments below high water mark and capital dredges, that can result in loss of estuarine inter-tidal and sub-tidal habitat would require such consideration.

Q34: Do you have any views on the inclusion or exclusion of certain regimes from the scope of the proposed licensing reforms in this consultation?

Link believes that all of the regimes outlined in paragraph 9.25 of the consultation should be included in consideration of a new, integrated licensing regime. We are very disappointed and concerned that controls relating to oil and gas exploration and exploitation have been excluded at the consultation stage.

While we understand the Government's commitment to energy security, we cannot see how the integration of oil and gas regulation into a new regime would jeopardise this, and therefore do not believe it is justified to rule it out at this stage.

We are also alarmed that later parts of this section propose introducing new, separate regimes for potential new uses, including Carbon Capture and Storage (CCS). Any integrated regime should aim to encompass all future activities (see also our answer to questions 50 and 51 below).

Government suggests it is committed to better regulation, including legislative and administrative simplification. The reformed licensing system must result in regulators adopting a more holistic and long-term approach to the management of the marine environment, streamline current

arrangements and improve the way in which regulators (e.g. the MMO and land-based authorities) work together and develop consistency.

In paragraph 9.26, other exclusions are explained, including consents for discharges in coastal waters under the Water Industry Act 1991, the Water Resources Act 1991 and the Pollution Prevention and Control Act 1999. We accept that it is important to maintain coherence when dealing with these largely terrestrial controls, which relate in the main to land-based inputs to the marine environment. However, Link believes that **all** consents that may affect the marine environment must take full account of the MSP policies and regional MSPs that emerge as a result of the Marine Bill. We would also suggest that the MMO should be a statutory consultee in relation to licences issued under these Acts.

Q35: Do you have any views on improvements that might be made to the process and administrative aspects of marine licensing, which UK Government could consider throughout the development of proposals for the Marine Bill?

As explained in response to questions 46 and 47, Link favours the introduction of a new integrated licensing regime, administered by the MMO.

The MCEU (Marine Consents and Environment Unit) was formed in 2001 as a cross-departmental Unit. The consultation states that it has not addressed the need for developers to continue obtaining overlapping licences for many types of project – the introduction of a new marine licence would address this. In addition, Link members have heard from developers and planning authorities that this unit is under-resourced and therefore unable to provide an efficient service. Ownership of a new licensing regime by the MMO should foster the development of a centre of expertise in licensing across the marine sectors, and as such improve efficiency and accessibility for sea users and other stakeholders.

We reiterate here that Link believes **all** human activities and plans must be considered under one single marine planning regime. All licence applications must take account of and be guided by marine spatial plans for each regional sea in UK waters. In this way, an integrated approach to the management of UK seas can be achieved. A reformed planning and licensing system should aim to provide and encourage experience, knowledge, and best practice as exemplars for all users of the sea, and make the licensing system much more effective for everyone involved. We believe that MSP itself will bring improvements to licensing, for example by informing sea users about the best locations for applications.

Q36: How do we insure that the Marine Bill reduces the regulatory burdens within Government and on business within the licensing system?

Business may answer the above question in some detail. However, Link believes the current regulatory burden also falls on SNCOs and stakeholders such as NGOs. This is a particular problem when nature conservation issues are at stake and resources are diverted from conserving nature and designating sites to 'fire-fighting' planning applications. Link wishes to see this burden on nature conservation organisations reduced, whilst marine licensing systems are improved through integrated marine planning and licensing.

We expect the introduction of MSP to help considerably with reducing these burdens in the long term, by enabling prospective developers to avoid unsuitable locations for applications. MSP, including sectoral marine Planning Policy Statements, should also help to define the scope of EIAs, so that comprehensive EIAs are produced, and time-consuming requests for additional data, e.g. from the SNCOs, are reduced.

In the context of a new planning and licensing system, the MMO should ensure that all relevant data relating to applications is accessible to stakeholders so that less time needs to be spent trying to obtain it.

Q37: Are the objectives for a reformed licensing system laid out above sensible?

The objectives laid out in paragraph 9.37 are sensible. Link particularly welcomes “a) a more holistic, long-term approach to manage human activities at sea”. We would emphasise again that **all** marine licensing should operate in the context of MSP.

Link wants to see all licensing of marine and coastal operations undertaken in the context of MSP, and to implement policies set out in the MSP framework and regional MSPs, including the ecosystem-based approach to management. Link also particularly welcomes “h) public involvement in and transparency of the decision-making process”, to the extent that this is possible.

Q38: Are there any other key principles that should be considered as part of any changes to the regulatory system?

We welcome the inclusion of the ecosystem approach in the consideration of key principles – we believe this is crucial to delivery of sustainable development and resource use. We note that English Nature, OSPAR and others have invested in documents to explain this approach, which must be also needs to properly communicated to sea users and the public in conjunction with the Marine Bill. While it is an inherent truth that an ecosystem-based approach to managing human activities must have, at its core, the principle of environmental protection, we would again find it helpful for the protection of the marine environment to be included as a key principle. This would help to emphasise to all stakeholders that environmental protection is a key aspect of sustainable development.

An explanation of the ecosystem approach is offered here: “Ecosystem approach” means the comprehensive integrated management of human activities based on best available scientific knowledge about the ecosystem and its dynamics, in order to identify and take action on influences which are critical to the health of marine ecosystems, thereby achieving sustainable use for ecosystem goods and services and maintenance of ecosystem integrity.”¹¹

We accept the drive for Better Regulation (provided “better” is not simply a euphemism for “less”) but would urge that assessment of “proportionality” should include consideration not only of economic costs and benefits, but also of the costs and benefits, respectively, of environmental degradation and improvement. For example, healthy marine ecosystems are a key benefit, which should not be overlooked in assessing whether regulation is “proportionate”.

We welcome the clear reference to international obligations in paragraph 9.43, in particular the precautionary, preventative and polluter pays principles.

Q39: Are these appropriate options to consider in this consultation? Are there alternatives to, or variations on the above options, which should be considered? (The initial Regulatory Impact Assessment in Annex 5B which accompanies this section of the consultation invites your views on the costs and benefits of the proposed options).

It is imperative that the issuing of all licences is guided by MSP, to ensure an ecosystem approach to management of UK seas and sustainable use of marine resources. The issuing of all licences should demonstrate that account has been taken of relevant international and

¹¹ English Nature, Report No 538: Adopting an ecosystem approach for improved stewardship of the marine environment: some overarching issues. This is also the definition arrived at by the EU Marine Strategy Stakeholder Workshop held in Denmark on 4-6 December 2002.

national policies, and the implementation of the UK's MSP system, thus ensuring that due weight is given to protecting the UK's marine biodiversity, and that all efforts are made to minimise adverse impacts on the marine environment and avoid cumulative impacts. We recognise that there are drivers for considering the four options presented in the consultation, but we believe that they differ widely in their ability to deliver this consideration of marine biodiversity.

Q40: What are your views on the advantages or disadvantages of the 'Do Nothing' option? &

Q41: Would Option 1 address the objectives and key underlying principles for an updated licensing system, as set out in paragraphs 9.38 to 9.43 of this consultation document?

Link believes that to 'do nothing' when there is such an opportunity to make much-needed improvements to the licensing system would be disastrous. Clearly, it would not help government to achieve the objectives and principles set out in this section. As noted in paragraph 9.50 government would still be obliged in future to make any necessary changes to all of the existing licensing regimes as a result of European law, international obligations and to address new or novel activities. Reform of marine licensing should ensure that government:

- Honours its commitments as set out in "*Safeguarding our Seas*";
- Meets its domestic and international commitments to nature conservation, for example the CBD; and
- Deals with new or novel activities so that they are fully integrated into an ecosystem-based approach to marine management from the outset (before they damage the marine environment, rather than waiting for new provisions to be made in order to deal with them).

Q42: What are your views on the advantages or disadvantages of Option 2, to 'merge the environmental and navigational controls'?

& Q43: Would Option 2 address the objectives and key underlying principles for an updated licensing system, as set out in paragraphs 9.38 to 9.43 of this consultation document?

Link would welcome the merging of features and controls currently exercised under the Food and Environment Protection Act (FEPA) and the Coast Protection Act (CPA) into one fit-for-purpose, cross-cutting regime, as explained in 9.52 to 9.58, provided the appropriate environmental safeguards are incorporated. This is one step in the right direction, but not the whole solution. On its own, option 2 would not fully address the objectives and key underlying principles as set out in paragraphs 9.38 to 9.43 – in particular, objectives a) and h). Therefore, we do not believe that this represents the best option for delivery of an ecosystem approach and achievement of sustainable development.

In paragraph 9.58 it is noted that further consideration would be needed as to whether a new combined (FEPA and CPA) regime should move from Defra. We would prefer the MMO to administer an integrated licensing regime covering all sectors, giving proper consideration to all activities and to the protection of the marine environment. However, if other controls remain sectoral, we would be concerned if the administration of FEPA/CPA were removed from Defra.

Q44: What are your views on the advantages or disadvantages of Option 3, a simplified sectoral regime? &

Q45: Would option 3 address the objectives and key underlying principles for an updated licensing system, as set out in paragraphs 9.38 to 9.43 of this consultation document?

Link strongly opposes option 3, which proposes a unified regime for each sector, incorporating FEPA and CPA within sectoral legislation. Under this option, each leading or sponsor

Government department responsible for each sector regime would still hold separate responsibilities for sectoral development in the marine environment.

As noted in paragraph 9.66, “there would need to be a reliable process of co-ordination between the various sectoral licensing UK Government Departments or regulating bodies to ensure a consistent approach, that would deliver sustainable development of the marine environment and further the UK Government’s marine objectives and our [government’s] commitment to the ecosystem approach”. The need for close consultation between departments, to assess the combined and cumulative effects etc, is also noted. It is also stated that an MSP system could facilitate such co-ordination. Link is concerned because, rather than moving toward more integrated management, this option would be open to the risk of competition between sectors for space in the sea, making it difficult to facilitate a fully integrated approach to MSP and licensing. We do not have confidence that such a system would secure fair decisions that took all issues into account, including sectoral needs, and protected marine biodiversity.

Q46: What are your views on the advantages or disadvantages of Option 4, an integrated regime? &

Q47: Would Option 4 address the objectives and key underlying principles for an updated licensing system, as set out in paragraphs 9.38 to 9.43 of this consultation document?

We believe that option 4 offers a number of advantages over the current sectoral approach and the other options set out in this consultation.

The introduction of a new marine licensing regime would provide the opportunity to ensure that environmental considerations were properly built into the regulation of all types of development in the marine area. For example, some of the current systems have no statutory requirement for EIA – e.g. FEPA, and the Telecommunications Act, which governs the laying of cables. A new regime should ensure applications for laying pipelines and cables are considered together with those for offshore installations, and that the environmental impacts of all aspects of a development are assessed. It would also provide the opportunity to apply consistent consultation requirements with respect to all industries.

We believe that an integrated regime, administered by a new MMO, would offer a more simple, transparent and accountable system than currently exists. We would expect that, under such a new regime, the departments and agencies would be statutory consultees with regard to applications, and that the SNCOs’ advice would have a special status where decisions affected statutorily protected sites. Should conflicting advice be received, the MMO would have to take a decision based on the marine spatial plan and any other material considerations. Such a system should allow all issues, including the environment and nature conservation in particular, to receive proper consideration in respect of all proposed developments.

For this option to work, the MMO must have clear lines of responsibility to government, whether to a number of departments, or, ultimately, a single one. As under the terrestrial planning system, there should be a mechanism whereby government can call in applications (e.g. if the MMO is minded to depart from the marine spatial plan), as well as a mechanism for proponents to appeal if they are refused a licence. In either case, representations from all interested parties should be examined by an independent body, through a public inquiry where appropriate. The independent body responsible for these processes should be the same body responsible for scrutiny of MSPs (discussed in our response to Section 8).

As noted in Link’s answer to question 34, above, we are very concerned that the decision has been taken prior to this consultation to exclude oil and gas licensing from any future integrated system. Ideally, an integrated regime should cover all marine developments. Should it prove genuinely unhelpful to integrate specific regulatory regimes, we would expect the rationale for

this to be set out through future consultation, looking at how best to deal with such regimes and ensuring appropriate environmental checks and balances are in place.

Q48: Do you have any views on the storage of natural gas in sub-sea bed geological structures and the provision of facilities to unload gas that has been transported by ship?

Link is concerned about the proposal to store natural gas in sub-sea bed geological structures. Such storage poses another threat to habitats on or near the sea bed. The unloading of gas that has been transported by ships is another potential environmental hazard in the marine environment, for both safety and environmental reasons. Before any such activity is permitted, we believe that generic safety and environmental implications need further investigation. Any specific technology designs will also need assessment, and specific proposals should be subject to the strictest environmental assessments (both SEA and EIA), and assessed together with other activities that may cause problems when considered in –combination, in the context of MSP. The environmental impacts should be assessed strategically alongside those on land, to determine if storage in seabed geological structures is the appropriate option.

Q49: Do you have any views on the proposal to create a fit-for-purpose licensing proposal for the storage of natural gas that has been transported from elsewhere, in sub-sea bed geological structures?

Link would prefer that natural gas is not transported by ship and then stored in sub-sea bed geological structures. If this were to be considered, we do not believe that a separate, fit-for-purpose licensing regime should be developed. This activity should be licensed, like any new activity, by the MMO, in the context of an integrated licensing regime.

Q50: Do you have any views on the capture and subsequent storage of carbon dioxide in naturally occurring sub-sea-bed geological structures to alleviate the effects and impacts of climate change and ocean acidification? &

Q51: Do you have any views on the creation of fit-for-purpose licensing provisions for the capture and storage of carbon dioxide in naturally occurring sub-sea bed geological structures?

Link has a number of concerns about Carbon Capture and Storage (CCS). In particular, we do not wish to see it used as an excuse to continue emitting CO₂ ad infinitum into the future, undermining efforts to reduce emissions at source.

There are also concerns about the environmental impacts of CCS. Injection of carbon dioxide directly into the water column constitutes an unacceptable risk to marine life, and we would object strongly to the development of this process. Storage in sub-seabed structures also carries inherent risks, and these would need to be subject to further research, with very thorough environmental and strategic assessment prior to use, the criteria and methodology for which still need to be developed.

If following thorough environmental assessment the decision is taken to implement CCS, we believe that the regulation of this new activity should take place through an integrated marine spatial planning and licensing regime. Under the Marine Bill we would expect any new type of development realised in the future to be regulated through the same system. We would also insist on a thorough SEA of the proposal at the strategic level, as well as project-specific EIAs.

5. Improving nature conservation (Section 10)

5.1 Marine Ecosystem Objectives (pp. 95-97)

SUMMARY

Link welcomes the development of thinking on MEOs. We were represented on the Review of Marine Nature Conservation (RMNC) Working Group, and the Steering Group of the associated Irish Sea Pilot. As such, we have already contributed to the development of strategic goals and conservation objectives for the marine environment, and we are keen to be involved in the further development of MEOs. We supported the recommendations made through the above-mentioned processes, and welcome the undertaking in “Safeguarding Sea Life”¹² to integrate consideration of MEOs into marine management processes. We recognise that a framework of objectives to make the link between the UK’s vision for the marine environment and marine management “on the ground” is central to implementing an ecosystem-based approach to managing human activities, and in turn to allowing us to operate “within environmental limits”. We further recognise the difficulties in making this relatively simple concept operational, and note the synergies between the process of developing objectives to meet the UK’s marine vision, that of developing Ecological Quality Objectives (EcoQOs) under OSPAR, and formulating strategies to achieve good environmental status as required by the proposed European Marine Strategy Directive.

We note that work is ongoing to consider socio-economic objectives and how these relate to MEOs or “ecological objectives”. Whilst we recognise the role of people within marine ecosystems, we believe it is essential that MEOs should relate specifically to marine ecosystem components (species, habitats and processes¹³), reflecting that healthy marine ecosystems underpin a wide range of goods and services. This should be reflected in the relationship between MEOs and socio-economic objectives. Link believes, therefore, that MEOs provide the context within which socio-economic objectives should be set, if they are to enable government to deliver sustainable development through an ecosystem-based approach. In this context, we believe the concept of sustainable development must reflect the sustainable use of ecosystems. If development is really to be sustainable, objectives for industries must be sustainable – therefore, “sustainable development objectives” may be a more appropriate term than “socio-economic objectives”.

COMMENTS ON TECHNICAL PAPER

Link welcomes the technical paper which supports the otherwise very slim section on MEOs. We do not attempt to respond in detail to it here, but wish to make a number of comments.

Firstly, neither the consultation nor the technical paper explores the feedback loops which must be a crucial part of the role MEOs can play. Monitoring of the identified indicators should provide information about whether objectives are being met, and there must be a response if they are

¹² Defra (2005). *Safeguarding Sea Life: The joint UK response to the Review of Marine Nature Conservation*. PB 11298 Defra Publications.

¹³ Ecosystem components include every aspect of the marine ecosystem from below the sea bed to the climate above the sea surface. This includes: temperatures, pH, pollutants, salinity, density, transport pathways, stratification patterns, nutrients and their speciation, light properties such as UVa, day length, suspended solids, gaseous exchange, seasonality, sea levels, storminess, storm surges, wave energy and properties, tidal ranges, tides, noise, abstraction and extractions, inputs, technologies and structures, e.g. cables, boats, rigs, turbines, sediments, discharges, wastes, viruses, biota, phenology, life cycle characteristics, physiologies, behaviour, habitats, changes over time and the interactions between all these.

not. Depending on the objective/indicator, the response required could be an adjustment to the way a marine region, or a particular activity, is managed, or it could be a review of the relevant policies. The consultation makes note of the likely need to review the suite of MEOs – we accept this need, but would emphasise that it should be justified by improvements in understanding of these objectives and the ability to measure parameters, rather than by a failure to meet or progress towards MEOs. The latter should result in a review of the management measures needed to achieve MEOs, rather than the objectives themselves.

As the Technical Paper notes, MEOs do not replace the need for measures to manage activities directly. Link believes MEOs should have a role in steering and focusing management effort, and is calling for the Marine Bill to introduce a number of relevant tools, including MPAs and measures to protect biodiversity in the wider sea. We also recognise that a number of important sectoral management measures are already in place, e.g. to reduce pollution from oil- and gas-related developments agreed under OSPAR. We believe that such tools are essential to achieving the UK's vision for the marine environment.

We believe that JNCC's Regional Seas will (in general) be the appropriate scale for monitoring of MEOs, but that management measures will be needed to ensure that actions at local level are consistent with the objectives. We would note, however, that understanding the status of populations of different species and habitats will require consideration of different spatial scales. For example, cetacean populations will have much larger ranges than static species such as echinoderms. However, the reproductive range of the latter species will need to be taken into account in terms of understanding the possibility of replenishing an area after a species has been removed.

We note that a large number of indicators, associated with both national and international objectives, have already been developed, and that in the development of MEOs, it will be necessary to identify a set of indicators which is well suited to report on ecosystem structure, function and health¹⁴. As stated in Laffoley *et al* (2006)¹⁵, MEOs will also need to address elements where there is a high risk of loss and which may foreclose future options for the conservation of biodiversity and delivery of sustainability – i.e. they should be threat-relevant. Laffoley *et al* also recommend that MEOs should be comprehensive, representative, precautionary, temporally relevant and user-oriented. Given that halting the decline in biodiversity is a key Government target, we believe that objectives and indicators relating to the list of Nationally Important Marine Features (NIMFs) currently under development by JNCC and others should be integrated into MEOs.

Sainsbury & Sumaila (2003)¹⁶ note that three broad and inter-related elements exist that allow ecosystem objectives to be practically and operationally incorporated into marine fisheries management systems, and we suggest these elements also have relevance for MEOs in general:

1. Indicators and reference points, and consequently performance measures, must relate explicitly to the high-level objectives of management;

¹⁴ E.g. Gubbay, S. (2004) *A review of marine environmental indicators reporting on biodiversity aspects of ecosystem health*. The RSPB, Sandy, UK

¹⁵ Laffoley, D'd'A, Brockington, S., Gilliland, P. *Developing the concepts of Good Environmental Status and Marine Ecosystem Objectives: some important considerations*. English Nature, Peterborough. Draft English Nature Research Report.

¹⁶ Sainsbury, K. and U. R. Sumaila. (2003). *Incorporating Ecosystem Objectives into Management of Sustainable Marine Fisheries, Including 'Best Practice' Reference Points and Use of Marine Protected Areas*. p. 343 - 361. In Sinclair, M. and G. Vladimarsson. [ed] *Responsible Fisheries in the Marine Ecosystem*. FAO & CABI Publishing. 426pp.

2. The structure and focus of reports on sustainability must be derived transparently from the high-level objectives; and
3. Performance assessment must be of the management system as a whole, rather than looking solely at the merits of particular parts of it.

It is essential that the indicators chosen to monitor MEOs provide useful information about the ecosystem component in question. We do not feel that this is made clear by the example objectives explored in the Technical Paper. For example, the Technical Paper provides a worked example of how the system of high level and operational objectives should link to management measures, as follows:

- The operational objective is to avoid the risk of physical harm and to reduce disturbance of marine mammals;
- The target is “no dead or seriously harmed mammals in UK waters”; and
- The associated indicator is that seismic surveys are undertaken with full compliance to JNCC guidelines.

This indicator does not provide information about whether in fact there *are* dead or seriously harmed mammals in UK waters, and it therefore cannot inform us about whether changes are needed to the management measure in question. We assume that this is intended simply as an illustrative example, but feel it helps to make this point. This is not to suggest that we do not consider it important to monitor the application of management measures, which will be important in assessing compliance (and is therefore also likely to be an important element in the feedback loop mentioned above).

A related but wider comment is that we believe that to meet the UK's vision and international objectives, MEOs will need to focus effort on improving the condition of marine ecosystems, rather than simply maintaining them in their current state. We believe that not only existing, but also new, management measures will be necessary to achieve this and we are calling for a number of new or improved measures to be provided by the Bill (including NIMSS and HPMRs, as well as well-enforced measures to protect biodiversity in the wider sea). In addition, as mentioned above, the monitoring of progress towards MEOs must help us to assess where existing measures need to be adapted.

We recognise that, as stated in paragraph 10.43 of the consultation, MEOs will initially reflect parameters about which we have greater understanding, and that improvements in scientific understanding will have to be absorbed to allow the set of MEOs to evolve. The initial set of MEOs put forward following the Manchester Workshop is based on ecosystem components – habitats, species, and water quality. We agree that these types of objectives are needed but recognise also that understanding of ecosystem processes and functions, and how these may be monitored is increasing and hope that resources will be provided to develop this further¹⁷.

Setting specific reference points – targets and limits – may be impossible or inappropriate for some indicators. Laffoley *et al* (2006) suggest that monitoring trends in indicators or indices is likely to be more suitable in many cases. For example, the marine Biodiversity Action Plan (BAP) co-ordinating team reported (in November 2004) that it was difficult, perhaps impossible, to set SMART targets for marine biodiversity, given the lack of information available. While reference points may be useful for well-monitored components such as commercial fish stocks, for some indicators a management response would be needed on observation of a change in

¹⁷ Laffoley, D'd'A, Brockington, S., Gilliland, P. *Developing the concepts of Good Environmental Status and Marine Ecosystem Objectives: some important considerations*. English Nature, Peterborough. Draft English Nature Research Report; and Bremner, J., Rogers, S.I., Frid, C.L.J. (2005). *Methods for describing ecological functioning of marine benthic assemblages using biological traits analysis (BTA)*. *Ecological Indicators* 2005

trend. Use of trend data would represent an important element of a precautionary approach, given that we are unlikely to be able to set reference points with 100% confidence.

On a related point, Link believes that the current system in the UK for monitoring against the objectives listed in Box 1 (p96 of the consultation) is not comprehensive, and data is deficient to report against each of these MEOs at a regional and national level (for example, the voluntary nature of the BAP means that funding is piecemeal, and currently only provides a very limited view on the status of rare and threatened marine biodiversity). Adequate resourcing for both research and monitoring will be key to the success of MEOs.

RESPONSE TO CONSULTATION QUESTIONS

Q52: Which marine management regimes or processes should include the consideration of marine ecosystem objectives?

Holistic, integrated management of all human activities at sea is necessary to deliver sustainability through an ecosystem-based approach to management, and MEOs are a key component of this approach, helping to define which impacts on the ecosystem may or may not be acceptable at a given scale. They will therefore inform where specific management measures or policies need to be reviewed (i.e. they are key to adaptive management). Consideration of MEOs should thus be required by all marine management regimes and processes, including the following:

Marine Spatial Planning: MEOs should be integrated into the development of marine spatial plans. Monitoring against MEOs should inform whether and how plans may need to be adapted.

Licensing: MEOs will be relevant to all licensed activities. Guidance will be necessary, as well as sector-specific management measures to help sea users take MEOs into account, and to enable competent authorities to assess applications.

Fisheries: MEOs must be integrated into the management of inshore fisheries. Link advocates the identification of measures which will be triggered according to particular indicators, e.g. cetacean bycatch. It seems likely that fisheries in the area beyond UK competence will impact upon whether some MEOs can be achieved – monitoring of MEOs should allow any such unsustainable impacts to be identified, and assist the Government in bringing issues to the attention of the European Commission.

Unlicensed activities: Link believes that measures are necessary to control the impacts of unlicensed activities on marine species and habitats. Monitoring of MEOs and of the efficacy of management measures may indicate the need for revision of measures or the introduction of new ones. Link advocates the introduction of Biodiversity Stop Orders, which could be used by the conservation agencies to control unlicensed activities under certain circumstances, along with byelaws (see section 5.3 of this response). Changes in the condition of MEO indicators, for example, could prompt the use of these tools.

Nature conservation: As mentioned earlier, Link believes that new tools to deliver marine nature conservation will be key to the delivery of MEOs. Our proposals for MPAs and other biodiversity measures are set out later in this section.

Government policy: Monitoring MEOs should provide the information needed to assess whether government policies are capable of achieving international objectives and delivering an ecosystem-based approach in the marine environment. It should also allow the Government to make a clear case for changes to international management regimes (e.g. the CFP) where they are demonstrated to be incompatible with the overall goal of healthy ecosystems (i.e. where the Government does not possess the necessary powers to manage impacts caused either by UK

nationals or by nationals of other EU member states). In this context, we again note the relevance of the proposed EU Marine Strategy Directive, and the need for a robust and complementary system at different levels of government.

Q53: Should consideration of objectives be required through policy guidance, changes to management regimes or a statutory duty?

Link believes that all three approaches will be necessary.

We agree with the statement in paragraph 10.43 that the MEOs themselves should not be included in the Marine Bill. However, we believe that the Bill should contain a number of duties in relation to MEOs, including (but not limited to):

- A statutory duty on the Secretary of State (and the devolved administrations) to develop a set of MEOs for the purpose of achieving the UK's vision for the marine environment, and to review these on a regular basis;
- A statutory duty on all public bodies to contribute to the achievement of MEOs in the exercise of their functions (e.g. through preparation of sustainable development objectives, MSPs and SEAs, considering licensing applications and exercising direct management tools, e.g. biodiversity stop orders/byelaws – see section 5.3 of this response);
- Statutory duties on public bodies to carry out monitoring (through a range of tools such as SEA and MPAs) in order to measure progress against MEOs, and to supply any data gathered in the exercise of their functions for the purpose of monitoring of MEOs, where appropriate;
- Statutory duties on competent authorities to review management measures where monitoring indicates that MEOs are not being met;
- A statutory duty on the Secretary of State (and the devolved administrations) to initiate a review of relevant policies where monitoring shows that MEOs are not being met; and
- A statutory duty on the Secretary of State (and the devolved administrations) to make representations to relevant international fora where policies beyond the competence of the UK are having an impact on the UK's ability to progress MEOs.

The Marine Bill should also integrate consideration of MEOs into specific management and regulatory regimes including MSP, licensing (e.g. a new "Marine Bill Licence" should require consideration of MEOs by licensor and licensee), and management of inshore fisheries (more detail is provided in our answer to question 52 above). In order to respond to rapid changes in MEO indicators, SNCOs will need new powers vis à vis emergency measures and byelaws (see section 5.3 of this response).

Policy guidance will be necessary to enable sea users and managers to ensure that MEOs are adequately addressed in their activities.

5.2 Marine Protected Areas (pp. 97-105)

SUMMARY

Link welcomes the inclusion in the consultation of proposals relating to the designation and protection of MPAs. We believe that the Marine Bill offers a critical opportunity to provide for the designation (including selection, management and enforcement) of such areas, and specifically a representative network of Nationally Important Marine Sites (NIMSSs), which must include a suite of Highly Protected Marine Reserves (HPMRs). The new MPA mechanism should be statutory rather than voluntary, and the primary purpose of these sites should be to support the recovery and conservation of biodiversity and ecosystem processes.

Link believes that NIMSSs and HPMRs are pre-requisites for the sustainable management of the UK's marine environment. They will also be the principal delivery mechanism in respect of the UK's commitments on MPAs under the OSPAR Convention and the World Summit on Sustainable Development (WSSD). Furthermore, they will play a vital role in the maintenance and monitoring of 'good environmental status', as required by the draft European Marine Strategy Directive. If the Bill does not provide a mechanism for delivering effectively managed MPAs for biodiversity conservation and recovery (NIMSSs and HPMRs), it is Link's view that it will have failed.

RESPONSE TO CONSULTATION QUESTIONS

Q54: Do you agree that a mechanism for the designation of protected areas should be introduced in the Marine Bill? Paragraphs 10.47-10.51.

Link welcomes the re-affirmation of the Government's commitment to "*establishing networks of marine protected areas to contribute to the attainment of healthy, functioning and resilient ecosystems and to help to halt the decline in marine biodiversity*" (paragraph 10.47). We support the three functions of marine protected areas outlined in the consultation:

- a. *protecting areas of threatened species and habitats to help ensure that biodiversity is not lost as a result of widespread damaging activities;*
- b. *protecting areas of representative species and habitats to help ensure that they do not become threatened as a result of human activities;*
- c. *providing some relatively unaffected areas of high biodiversity value to support the structure and functioning of the wider marine ecosystem."*

Link supports the view that the designation of Natura 2000 sites will not be sufficient to meet the UK's international commitments on MPAs, for example under the OSPAR Convention (paragraph 10.48). More importantly, we believe that the network of Natura 2000 sites will not be sufficiently comprehensive, nor offer a sufficient level of protection, to fulfil the three functions listed above.

The existing mechanisms for Marine Nature Reserves (MNRs) and Sites of Special Scientific Interest (SSSIs) are also insufficient to deliver the required protected area network, due to being restricted to the coastal zone (paragraph 10.50). These mechanisms are also unsuitable in other ways. SSSIs are a terrestrial designation, designed to operate in the context of terrestrial land ownership and land-use planning and practice, rather than in the marine context. In contrast, the MNR mechanism, while specific to marine sites, is flawed in a number of critical areas, and has been acknowledged as such both by government and the Statutory Nature Conservation Organisations (SNCOs).

The consultation states that “*some area protection can currently be provided through fisheries restrictions, and spatial planning may provide the ability to ‘zone’ activities...*” (paragraph 10.50). Experience in the UK (for example, in Lyme Bay, and in the Lundy MNR) has demonstrated that fisheries management and planning tools are no substitute for a dedicated, fit-for-purpose biodiversity conservation framework. While sustainable fisheries management and ecosystem-based marine spatial planning would undoubtedly deliver benefits for biodiversity, the need for biodiversity-specific tools – including a network of protected areas – remains, driven by biodiversity conservation objectives.

Link’s view is that only a statutory approach to MPA designation will be robust enough to deliver the appropriate measures to ensure recovery and conservation of biodiversity. While the various voluntary MPAs around the UK coast have made a valuable contribution to raising public awareness of the marine environment, these sites do not have the tools or the ‘teeth’ needed to control damaging activities. Similarly, a long-standing voluntary agreement between fishermen in Lyme Bay, designed to protect biodiversity and reduce fisheries conflict, recently collapsed when non-local fishermen started to exploit the area in response to an increase in the scallop stock.

For the reasons outlined above, the Marine Bill must introduce a new statutory mechanism for the designation (including selection, management and enforcement) of protected areas. Specifically, the Bill must provide for a representative network of Nationally Important Marine Sites (NIMSSs), which must include a suite of Highly Protected Marine Reserves (HPMRs) (see below for more information). Link considers that, without these sites, the UK will not fulfil its commitment under OSPAR and WSSD and will fail to establish the foundations for sustainable management of the marine environment.

Link notes that the Government is seeking advice on “*how many additional sites might be needed*”. We would welcome an in-depth assessment of the extent of a protected area network that would be required to fulfil the listed functions. However, we would urge government not to set limits at this stage, either on the number of sites or the percentage area of UK seas. Link advocates a gradual, progressive and adaptive approach to the building of the protected area network, responding to new information and new understanding of marine ecosystem functioning and network design. The Bill must enable the designation of new protected areas but must not prescribe limits.

Link welcomes the proposal (paragraph 10.51) to “*introduce a mechanism for the designation and protection of marine protected areas throughout the marine waters for which we have responsibility*”. In order to derive the full benefits of the network of protected areas (including Natura 2000 sites, NIMSSs and HPMRs), it is essential that the network extends throughout waters where the UK has jurisdiction and responsibility – i.e. the whole UK continental shelf, and superjacent waters out to the 200nm limit (noting that the devolved administrations have responsibility for nature conservation to 12nm)¹⁸.

The model that Link supports comprises an ecologically coherent network of sites, offering two tiers of protection for marine biodiversity:

- **Marine Protected Areas** (including Natura 2000 sites, intertidal SSSIs (see questions 64-66) and new NIMSSs). These are sites within which a variety of activities may take place provided that they are consistent with the site’s specific conservation objectives (including when effects are considered in combination with those of other activities). Link envisages that management of such sites would allow for a flexible approach, from minimal

¹⁸ The Scottish, Welsh and Northern Irish administrations all have responsibility for specific affairs out to 12nm, including marine conservation. Biodiversity policy and legislative proposals will need to consider these arrangements individually, and are likely to require a legislative approach that reflects these arrangements.

management to a range of restriction and mitigation measures for extractive and non-extractive activities, as appropriate to delivering site and network objectives.

- **Highly Protected Marine Reserves (HPMRs).** These may encompass all or part of an MPA, and would be afforded a higher level of protection. All commercial extractive activities and other damaging activities would be excluded.

In order to implement this model, the Marine Bill must introduce provisions for the designation and implementation of both NIMSSs and HPMRs. In essence, the former are the sites that would 'plug the gaps' left by the Natura 2000 approach to MPAs in the UK. In addition to providing protection for rare and threatened habitats and species of national importance, NIMSSs would also protect representative examples of the full range of the UK's biodiversity. In doing so, they would represent a shift to an ecosystem approach to MPAs, helping to underpin the functioning of the wider marine ecosystem, rather than focusing on a few selected components. NIMSSs should be the main building blocks in the ecologically coherent network of MPAs required under OSPAR and the WSSD. NIMSSs will also represent an important route to the contribution of 'good environmental status' as required under the draft European Marine Strategy Directive.

In addition to NIMSSs, there is a clear and pressing need for areas that benefit from the highest level of protection. HPMRs would represent the precautionary approach in action, providing a safety-net to counter the risk of biodiversity loss in less-protected MPAs and the wider sea. While the management of NIMSSs and other MPAs would aim to maintain, conserve, and/or restore biodiversity, there is always the risk that unpredicted losses might occur due to environmental and management uncertainties. HPMRs provide an essential back-up, and would play a key role in the recovery process. In essence, HPMRs should provide breathing space for marine habitats and wildlife to exist in conditions as near as possible to the unexploited state, helping to maintain biodiversity-rich areas and allowing biodiversity to recover at previously impacted sites. Placing HPMRs within larger MPAs, whether NIMSSs or Natura 2000 sites, would give them the potential to make a significant contribution to the delivery of MPA objectives. Furthermore, HPMRs would allow for baseline surveys and ongoing monitoring to inform the future decision-making process, providing a vital feedback mechanism for adaptive management (see below). As part of a coherent network of MPAs, HPMRs will help to support the wider marine ecosystem, buffering or moderating the effects of human activities outside the network, and increasing the resilience of marine ecosystems, for example in the face of climate change.

In parallel to developing provisions to be included in new legislation, it is important that stakeholders continue to engage in the issue and receive clear articulation of a national strategy (addressing policy and implementation) both on MPAs (see, for example, New Zealand's MPA Policy and Implementation Plan¹⁹) and broader marine nature conservation policy. This should be supported with new policy guidance.

Q55: Should the new mechanism complement or replace legislation for Marine Nature Reserves? Paragraph 10.52.

It is Link's view that the new mechanism should replace legislation for MNRs. There are only three MNRs in existence (only one in waters under Westminster's jurisdiction) and, provided that these sites were immediately transferred to the new system, there would be no benefit in maintaining the MNR legislation. The designation of the existing MNRs as NIMSSs and/or HPMRs (as appropriate) should be treated as a priority during the implementation of the new legislation. To avoid a period in which the sites are unprotected, the MNR legislation should only be repealed once the new legislation is in place.

¹⁹ Department of Conservation and Ministry of Fisheries, New Zealand, December 2005

Q56-57: Which of the purposes listed should the new mechanism cover? Are there any others that should be considered? What are your views on site protection measures being used to protect interests other than those for which a site is primarily designated? Paragraphs 10.53-10.58.

Link supports the establishment of “*a mechanism that can conserve and promote the recovery of:*

- a. *vulnerable species and habitats* (NB This should include rare, threatened and sensitive habitats and species);
- b. *representative species and habitats* (NB We believe that this should be fully representative, rather than focusing exclusively on “*those that play an important role in supporting marine ecosystems and biodiversity*”, due to our limited understanding of what is required to support marine ecosystems and biodiversity, and the need for a precautionary approach); and
- c. *physical marine features and ecological processes* (see comment in reference to ‘b’ above).”

Indeed, Link believes that the conservation and recovery of biodiversity and ecosystems, through protection of the elements listed above, should be the prime purpose of NIMs and HPMRs.

While there is undoubtedly potential for some NIMs and HPMRs to offer protection for geological features, historic sites, seascapes, views, spawning and nursery areas and areas for marine ecosystem research or educational purposes (paragraph 10.54, items d to h), these considerations should not be included in the statutory purpose or legislation for the protected area network. Rather, such elements should be considered secondary objectives and agreed on a site by site basis, as appropriate.

Although this may lead to overlapping designations (for example, a protected wreck or fisheries closed area within a NIM), Link believes that the alternative – a single, multi-purpose site protection mechanism – would lack the clear purpose and focus required to deliver biodiversity conservation on the ground²⁰. NIMs and HPMRs are biodiversity conservation tools, and the policy and legislation behind them must reflect this. Where synergy with other purposes (e.g. ecosystem research) exists, this should be explored and developed at the site level or on a regional seas basis, as part of the MSP approach, rather than being driven by multi-purpose legislation.

In relation to the list of auxiliary considerations listed above, Link would emphasise the importance of NIMs, and especially of HPMRs, as a potential resource for research into the functioning of marine ecosystems and the impacts of human activities on biodiversity and natural processes. Such research is fundamental to the future sustainable management of the sea. NIMs and HPMRs could provide the ‘control’ or ‘reference’ sites needed to disentangle natural and anthropogenic factors in the marine environment and identify causal relationships. NIMs and HPMRs could also provide a valuable educational resource, helping to increase public awareness of, and engagement in, the marine environment.

²⁰ Based in a climate where there currently remains some confusion regarding MPA terminology and definition.

Q58: Do you agree that, where options exist, a range of factors including social and economic considerations should be taken into account in choosing between sites? Paragraphs 10.59-10.62.

Link agrees that “*there may be areas of the marine environment that we want to protect because they are particularly special or are essential for the structure and functioning of marine ecosystems and the support of marine biodiversity.*” In other words, there are some sites or features that are unique, or are so important in other ways that their protection is imperative, irrespective of the socio-economic impacts. In contrast, there will be many cases in which there is apparently a choice of sites that could be designated to fulfil the conservation objectives of the MPA network, especially for those sites intended to protect representative examples of a particular feature.

Link believes that, in either case, sites designated for marine nature conservation should be selected on a purely scientific basis. Key factors for consideration should include the current condition of the sites and their potential for recovery, their potential role in supporting ecosystems and biodiversity and their contribution to the protected area network. The scientific case for designation should be open to challenge, but non-scientific matters, including social and economic considerations, should not influence any decision about designation.

All site designations proposed by the SNCO would require confirmation by that organisation’s Board or Council. It is highly probable that this group would have a duty to exercise its functions in order to contribute to the achievement of sustainable development. Therefore, it is at this point that socio-economic interests would be taken into account as appropriate. Socio-economic activities would also be considered in the development of direct and indirect management measures for MPAs, and through the MSP process (see questions 62-63 below).

Link supports the view that “*the final process will need to be capable of leading to the designation of networks of sites in reasonable time to ensure that necessary protection can be provided and international obligations met*” (paragraph 10.62).

Q59: Should we include provision for altering site boundaries, or de-designation of sites? Under what circumstances? Paragraph 10.63.

NIMSSs and HPMRs should be viewed as permanent designations in order to derive full benefits in the long term. However, Link accepts the need for provision for altering site boundaries under specified circumstances. These circumstances should relate closely to the purpose of the site and the network. For example, new hydrological research might indicate that network connectivity would be more effective if the boundary were extended to include a particular feature or area. Alternatively, climate change might result in a key feature (for example an inter-tidal habitat) moving outside the existing boundaries, requiring the movement of the boundary to enable effective protection of the feature.

We recommend that MPA boundaries should not be drawn too ‘tightly’ around the edges of the key features, and that site and network design should consider the value of buffer zones. The main function of this would be to apply an approach that protected ecological processes as well as habitats and species. However, this approach should also reduce the need for boundary relocations. Link also accepts the need for a mechanism for de-designation of part of a site (for example in relation to a boundary movement), or a site in its entirety in exceptional circumstances and on a site-by-site basis. Boundary alterations and de-designations must directly benefit biodiversity conservation and network function, and there must be a transparent process (including explicit criteria) for agreeing and implementing these changes. However, it may not always be necessary to de-designate or move boundaries. Indeed, it may be appropriate to review the value of an existing site in fulfilling the full range of MPA functions. For example, a site originally designated to protect a particular feature (e.g. a vulnerable species or

habitat) might bring value to the MPA network by offering protection to a representative habitat/feature (or a different vulnerable species or habitat), even though the original species or habitat was no longer present. Link believes that such considerations are important as part of a flexible system.

Q60-61: Do you agree that different marine nature conservation sites will need to have different levels of objectives? What are your views on a flexible site mechanism where levels of protection can be altered to meet site needs and objectives? Paragraphs 10.64-10.66.

Link's view is that all MPAs should have biodiversity and ecosystem recovery and conservation as their sole purpose. Appropriate powers and duties should be provided to enable both direct and indirect control of activities in all MPAs (see response to question 62 below), together with appropriate enforcement activity.

Within the over-arching purpose cited above lie three functions, as stated in paragraph 10.47 of the consultation:

- a. *“protecting areas of threatened species and habitats to help ensure that biodiversity is not lost as a result of widespread damaging activities;*
- b. *protecting areas of representative species and habitats to help ensure that they do not become threatened as a result of human activities;*
- c. *providing some relatively unaffected areas of high biodiversity value to support the structure and functioning of the wider marine ecosystem.”*

For all sites, the over-arching management objective is to provide conditions that support the recovery and conservation of vulnerable or representative examples of habitats and species. Each site will also have specific management objectives, relating to its particular function within the MPA network. These site-specific management objectives will translate into detailed management measures on the ground.

For NIMSS (as with Natura 2000 sites), this would require appropriate restriction of those activities deemed to be damaging to the biodiversity interest of the site. Restrictions would be considered on a site-by-site basis, according to the condition and vulnerability of the site's features. Link recommends that the SNCOs be required to produce a list of 'operations likely to damage' for each NIMSS, as is done for SSSIs, in order to identify the necessary restrictions. Individuals wishing to carry out any operation on the list would then be required to apply to the relevant SNCO for consent, and the SNCO would only consent the operation provided it was not considered damaging to the conservation interest of the NIMS (see further detail in our answer to questions 62-63, below).

NIMSS are likely to differ from each other in the specific measures adopted for them (e.g. certain fisheries might be restricted in some NIMSS but not in others). Link supports the need for adaptive management of NIMSS, responding to emerging knowledge of ecological processes and human impacts. In this respect, the NIMS approach represents a flexible site mechanism, whereby restrictions on activities can be selected, and potentially altered, to meet site needs for achieving the objective. Delivery will require a formal and transparent process in new legislation.

For HPMRs, an additional management objective is to provide conditions that are as close as possible to the natural state, in order to promote recovery and conservation of biodiversity and ecological processes for the long term. This requires permanent restriction of extractive and other damaging activities. There should be no flexibility around this option, or scope to reduce the level of protection once recovery has occurred.

Link is strongly opposed to the concept of reducing the level of protection for NIMSSs and HPMRs that are perceived to have recovered. This approach would negate the critical long-term benefits of MPAs and the MPA network.

Q62-63: What are your views on whether MPAs should directly control activities managed at the national level, or provide protection through wider marine management mechanisms? What would be required to make each approach effective? Are there any other mechanisms that we should consider introducing for site protection? Should we introduce a requirement for an appropriate assessment to be carried out where activities are likely to cause significant damage to a site? Paragraph 10.67.

Experience from protected areas in the UK and overseas suggests that there should be both direct and indirect control of activities within HPMRs and NIMSSs. In New Zealand, for example, the Marine Reserves Act (1971) provides for direct management of a range of activities, while legislation also allows for sectoral indirect management within MPAs. In England, terrestrial SSSIs and Natura 2000 sites are also managed through a combination of direct and indirect controls. The terrestrial SSSI system, in particular, offers examples of good practice in terms of site management mechanisms that could be adapted to provide an effective system of management for any new MPAs established.

Link advocates that the Marine Bill should provide powers for SNCOs to exercise direct control to protect NIMSSs, through the control of 'operations likely to damage' for each site (see also answer to question 61 above). There should be a statutory requirement for the SNCO to produce a management plan for each MPA designated, within a prescribed time period from the date of designation. This management plan should detail the conservation and management objectives for the site, examining the existing use of the site and determining to what extent it should be regulated. At this point, the SNCO should also produce the list of 'operations likely to damage' for each site. Such management plans would be a key input to marine spatial planning.

Any party wishing to carry out a listed 'operation likely to damage' in a site should be required first to gain consent from the SNCO. This consent would only be granted if, following assessment, the SNCO considered that the specific proposed operation would not cause damage to the site or reduce the effectiveness of site management measures in delivering its conservation objectives. The SNCO's decision should have to take into account an ecological impact assessment provided by the proponent, which would, among other things, address the likely cumulative impacts of the proposed operation with other activities, plans and projects.

The SNCOs should be granted powers to stop or regulate activities considered to be damaging, for example through 'Stop Orders' in emergency situations and the use of byelaws (the need for which might be identified in the management plan). These powers should take precedence over those relating to other sectoral interests active within the MPA (e.g. fisheries byelaws).

Link recognises that this represents a different approach to the current management of marine Natura 2000 sites, and that clarification will be needed as to the relationship between Natura 2000 sites and NIMSSs/HPMRs.

Indirect controls will also be important for site protection. We propose a duty on public bodies to fulfil their functions in a way that is compatible with the conservation of NIMSSs and HPMRs and the achievement of site and network objectives – akin to the duty to conserve and enhance SSSIs for the 'Section 28G' bodies under the Wildlife and Countryside Act 1981 (as amended). This duty should apply with respect to licensing regimes, spatial planning and other management functions. Thus, at the strategic level, MSP should identify MPAs as areas unsuitable for development. Any authority assessing applications for development or any other activity that could result in damage to an MPA (this should apply to applications outside the MPA itself as well as those within) should be required to consult the SNCO before granting

permission. Should the SNCO's advice not be followed, the authority would then be required to show how it had taken the SNCO's advice into account, and also to give the SNCO notice of this decision. The SNCO would then have recourse to the relevant Secretary of State/devolved administration.

Where an activity is likely to cause a negative impact, but this is not proven, for example for a development based on new technology, it will be particularly important that any consent or licence addresses the concerns raised, and clearly states mitigating action and follow-up, including the need for adequate monitoring (i.e. present and longer term). Where an activity results in unacceptable impacts, the use of 'Stop Orders' (see below) should be implemented whilst the development is reviewed, and while further mitigation measures are being agreed.

Link considers that there should be a strong presumption against activities that would have a significant detrimental impact on a MPA. Such activities should only proceed in cases of overriding public interest when there is no viable alternative. In such cases, there should be a requirement to ensure no net loss of biodiversity and network connectivity, for example through compensatory measures.

Link also advocates a requirement for the Department responsible for MPAs to inform and seek action from the relevant European Directorate when activities regulated at a European level are preventing the MPA from fulfilling its function. This is an issue that will inevitably grow in importance as 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 anticipates and advocates that this will need to change.

Q64-66: Do you consider that the seaward boundary of SSSIs should be clarified? Which option would you prefer for the interface between the two regimes? What are the key considerations? What do you consider are the best options for the landward boundary for MPAs and the seaward boundary for SSSIs, and why? Paragraph 10.70.

We consider that the seaward boundary of SSSIs should be clarified to take account of the new MPA regime. We advocate a pragmatic approach that aims to avoid duplication and overlap of designations while focusing on maintaining the ecological integrity of the site. We support option 2, in which there is a common boundary between SSSIs and MPAs, with flexibility to enable either designation boundary to be extended in order to offer the most suitable protection for the interest features. We suggest that the default landward boundary of MPAs should be Highest Astronomical Tide and the default seaward boundary of SSSIs Mean Low Water, but with flexibility in either direction. Whilst an overlapping regime would give even greater flexibility in terms of management options, we feel that this could result in unnecessary bureaucracy.

RIA Questions

Q128: How would you value the benefits to business and others in improvements to the state of the marine biodiversity in MPAs?

Link supports the list of values laid out in the RIA (Annex 5C, 5.1):

- a. Direct use values
- b. Indirect use values
- c. Existence value
- d. Bequest value
- e. Altruistic value
- f. Option value

Link believes that there is currently insufficient knowledge to express these values in financial terms. As such, there is a strong likelihood that indirect use values, existence value and other less tangible values will be under-valued in any cost-benefit analysis.

The UK's seas are currently damaged and degraded, and this impacts upon all of the values listed above. Improvements to the state of marine biodiversity in MPAs, combined with the function of MPAs in underpinning the wider marine ecosystem, would boost all of these values and deliver seas that were healthier, more productive and more valuable, in all of the above senses.

Another way of looking at this is to consider the costs of not providing an effective MPA network to support biodiversity conservation. Recent studies have emphasised not only that 'prevention is better than cure', but also that 'prevention is cheaper than cure'. A study for the World Bank found that the cost of protecting the Mediterranean Sea is much lower than the cost of restoring damage²¹. Moreover, delegates at a multi-sectoral conference on recovery and restoration of UK marine habitats²² agreed that, in most cases, active restoration is not a practicable option for marine habitats and species. The conference highlighted the importance of prevention (versus cure), and the critical role of MPAs in the protection of unimpacted areas, recovery of impacted areas and as scientific reference sites (for example in setting benchmarks for 'good ecological status').

Finally clarification of MPA policy and legislation benefits industry by identifying areas of high biodiversity conservation value, thereby providing greater certainty about direct and indirect implications for business. Furthermore, a clear streamlined management process again adds clarity for business in terms of planning.

Q129: What are the costs of modifying, mitigating or compensating for development proposals, fisheries, leisure or other activities to help conserve protected areas? Please give quantified examples where possible.

Developers stand to benefit in two ways from the existence of an effective, coherent network of MPAs. Firstly, MPAs help to achieve and maintain a healthy, productive marine ecosystem, which is essential for many of the socio-economic benefits that are derived from the sea. Secondly, when applying for a licence for a new development, developers will benefit from a greater certainty with regard to areas that are important for biodiversity. This could speed up the licensing process and reduce costs. For example, an aggregates company might exclude protected areas from consideration at the earliest stage of resource location and planning, rather than further down the line when costs have been incurred.

Q130: What are the costs of agreeing and implementing voluntary protected areas?

The costs of agreeing and implementing voluntary MPAs would be similar to the costs of statutory MPAs. The main costs relate to stakeholder engagement, survey, monitoring and compliance/enforcement activities. However, a statutory system will ultimately have 'teeth' and be much more effective than a voluntary approach. As such, a statutory approach is much more cost-effective than a voluntary approach and, in the long term, less costly as well.

²¹ Cited in 'State of Nature', English Nature, 2002.

²² The Wildlife Trusts' South East Marine Programme, in prep.

Q131: To what extent would businesses be prepared to modify activities to avoid causing significant damage to voluntary MPAs? What level of take-up of voluntary site conservation measures would you anticipate across marine industries?

Experience in the UK has demonstrated that businesses are often reluctant to modify activities to avoid causing significant damage to voluntary MPAs. This is another good reason to support a statutory approach.

5.3 Species protection measures (pp. 106-115)

SUMMARY

Link welcomes Defra's stated commitment to protecting marine species that are vulnerable to human impacts (p.106). We look to the Marine Bill to introduce wide-ranging measures to support the protection, conservation and recovery of biodiversity, throughout waters where the UK has jurisdiction and responsibility – i.e. the whole UK continental shelf, and superjacent waters out to the 200nm limit (noting that the devolved administrations have responsibility for nature conservation to 12nm)²³. Notwithstanding this, the species protection measures contained in the Wildlife and Countryside Act 1981 (WCA) are considered important for those marine species particularly threatened by human activities. Link is anxious that introducing a new approach should not mean dismissing the measures which are already available (but need tightening up) through the WCA. Therefore, we support the following two options:

1. Replace relevant sections of the WCA with clauses more specific to marine species in the Marine Bill, along with additional, new measures for protection, conservation and recovery of marine biodiversity (species and habitats) in the wider sea (all applicable to 200nm); or
2. Amend identified elements of the WCA to address loopholes and ensure applicability to the marine environment, extend application of WCA to 200nm, AND introduce additional, new measures for protection, conservation and recovery of marine biodiversity (species and habitats) in the wider sea.

As previously discussed, Link is in principle supportive of work being undertaken to develop MEOs, but firmly believes that improved measures to protect biodiversity in the wider sea (as well as through spatial tools such as MPAs), will make an essential contribution to biodiversity protection and recovery. Such measures are therefore likely to be key to meeting MEOs. Link believes that MEOs do not obviate the role of Part 1 of the WCA in protecting marine species. We believe that this (or similar) legislation needs to be applied throughout marine waters, to 200nm. In addition, we advocate amendments to Part 1 of the WCA to ensure its effectiveness in the marine environment.

Link also recommends measures requiring public bodies to work towards agreed targets and status for marine features, as suggested in the RMNC report (paragraph 7.32). We believe that objectives and indicators relating to the list of Nationally Important Marine Features (NIMFs), currently under development by JNCC and others, should be integrated into MEOs, to help build biodiversity conservation and recovery into marine management.

RESPONSE TO CONSULTATION QUESTIONS

Q67: Are there threats to the conservation of marine species in the offshore area or elsewhere that are not addressed by existing measures and controls? Please give examples

Biodiversity is not limited to the inshore zone – indeed some species regularly move between inshore and offshore areas – and human activities which may impact upon biodiversity are increasingly moving offshore. Therefore, nationally important marine biodiversity should be protected by UK law throughout waters where the UK has jurisdiction and responsibility – i.e. the

²³ The Scottish, Welsh and Northern Irish administrations all have responsibility for specific affairs out to 12nm, including marine conservation. Biodiversity policy and legislative proposals will need to consider these arrangements individually, and are likely to require a legislative approach that reflects these arrangements.

whole UK continental shelf, and superjacent waters out to the 200nm limit (noting that the devolved administrations have responsibility for nature conservation to 12nm)²⁴.

For example, satellite tracking of basking sharks has revealed that they spend about 80% of the year outside the UK 12nm coastal limit²⁵. This tracking shows that only by extending biodiversity protection provisions to the limit of the UK's marine jurisdiction will we be able to protect this species adequately throughout its full range within UK waters. Indeed, this research has recently led to the basking shark being listed on the Bonn Convention of migratory species, requiring adjacent states to introduce measures to protect the species in international waters.

In the last quinquennial review, JNCC recommended the addition of four skate species and the angel shark to Schedule 5 of the WCA. This would make it illegal to catch these species (currently only within territorial waters), and to land them (regardless of where caught) in Britain. Because these are large, relatively robust animals, the fact that these laws would encourage their return to the water would benefit the species' conservation²⁶. These species have declined dramatically in UK seas during the 20th Century, and Defra recognised, in the consultation on the fourth quinquennial review, that all possible legal tools should be used to protect them. Link has urged Defra to accept JNCC's recommendation to include these species on Schedule 5, and considers that the WCA would offer them important protection. Once again, these species' ranges are not restricted to territorial waters; this highlights the importance of extending the provisions of the WCA to 200nm.

In summary, the 12nm limit is arbitrary for species such as those described above. Link therefore argues that the provisions of the WCA should be extended to 200nm. While we recognise that there are limited resources to enforce more extensive legislation at sea, we believe the Marine Bill should provide the **opportunity** to prosecute individuals who intentionally or negligently impact upon protected species beyond 12nm. Extending the WCA (or similar new legislation) to 200nm would send a clear message to marine stakeholders that such activities are not acceptable, and act as a deterrent to the law-breaking minority. In addition, Link believes that the Marine Bill must take the opportunity to improve the enforcement of nature conservation legislation (this is discussed in more detail in our response to question 73). The functions of the Marine Fisheries Agency (which may be integrated into a new MMO) should be extended so that it can enforce nature conservation laws as well as fisheries regulations. The Agency is likely to be well placed to identify incidental catches of protected species, such as the skates and angel shark discussed above. Furthermore, with increasing levels of use in the offshore area, such controls are likely to become increasingly relevant over time. The Marine Bill provides a key opportunity to build a flexible approach that meets the needs of marine species now and in the future.

Q68: Which option for species protection in the Marine Bill would be most compatible with the principles described in section 4? Are there any other options that should be considered?

Link supports "*option b – extend species protection legislation*" which will provide protection for domestically listed species throughout UK waters. We also believe there is a need to amend identified elements of the WCA to address loopholes and ensure applicability to the marine environment; and to introduce additional, new measures for the protection, conservation and

²⁴ The Scottish, Welsh and Northern Irish administrations all have responsibility for specific affairs out to 12nm, including marine conservation. Biodiversity policy and legislative proposals will need to consider these arrangements individually, and are likely to require a legislative approach that reflects these arrangements.

²⁵ Sims DW, Southall E.J., Metcalfe, J.D. and Pawson M.G. (2005). Basking shark Population Assessment. Defra, London.

²⁶ Defra (2005). *Fourth Quinquennial Review of Schedules 5 and 8 of The Wildlife and Countryside Act 1981: A consultation by the Department for Environment, Food and Rural Affairs.*

recovery of marine biodiversity (species and habitats) in the wider sea. Alternatively, Part 1 of the WCA could be replaced by bespoke measures throughout the whole of the marine area, to achieve the same type of protection for those species which would benefit. Whether species protection is achieved through extension of the WCA or the introduction of new bespoke legislation, it must be integrated fully with other elements of the Marine Bill, particularly MSP, licensing, and MPAs.

We do not support “*option a – maintain current coverage*”. As discussed above, biodiversity is not restricted to inshore waters, and nationally important marine biodiversity should receive equal protection throughout the UK’s jurisdiction. We also reject “*option c – repeal existing species protection legislation*” unless bespoke marine species protection measures are introduced. While of some value, the approaches to species protection outlined in paragraph 10.81 will not, alone, provide the level of protection required, for the reasons described as follows:

- a. Voluntary approaches – Such schemes are of limited success in protecting threatened species, and are perhaps more appropriate for the inshore zone than beyond 12nm²⁷.
- b. Sectoral approaches – Sectoral approaches, such as the introduction of pingers to reduce bycatch or the incorporation of restrictions or mitigation measures into licences for marine developments, will provide increased protection for certain species from certain activities, but measures are needed to address unlicensed activities.
- c. Protected areas – While Link is highly supportive of proposals to introduce a network of MPAs, including for mobile species and ecosystems that support mobile species, this represents only one of the tools available. Protection is also needed within the wider marine environment outside MPAs. For example, Link doubts that the dolphin populations of the Moray Firth and Cardigan Bay are only resident within the waters of these Special Areas of Conservation. These wide-ranging species require protection measures outside of designated MPAs to be included in any effective nature conservation toolbox for rare and threatened UK marine biodiversity.
- d. Wider marine management – As discussed above, while Link supports the concept of MEOs, we believe that they do not obviate the role of Part 1 of the WCA in protecting marine species from potentially damaging activities – Part 1, or equivalent bespoke measures, are part of the wider marine management toolkit. MEOs will be high-level objectives, which will need to be implemented through a range of mechanisms, including the provision of clear, unequivocal protection to rare and threatened UK marine species throughout the marine area.

A package of measures is required to protect marine species, including all of the approaches outlined in paragraph 10.81, through either the extension of the WCA or the introduction of new, bespoke measures. If the WCA is extended throughout the marine area, Link further suggests the following amendments are required:

New offence of reckless killing

The Council Framework Decision on Environmental Crime (2003/80/JHA) requires that unlawful killing of protected fauna and flora is established as a criminal offence when committed with negligence. Extending existing provisions to include reckless as well as intentional killing would meet the requirements of the Framework Decision in this regard.

Under the WCA, birds, Schedule 5 animals and Schedule 8 plants are currently protected against intentional, but not reckless, killing. Link believes that there is now a major inconsistency

²⁷ The voluntary closed area of Lyme Bay to mobile gears has not restricted the recent influx of trawlers from Scotland and further afield causing damage to pink seafan colonies in the bay. Similarly, a voluntary no-anchor zone in Plymouth West Hoe has been unsuccessful in preventing anchor damage to the local fanshell population. The voluntary closed area in St Agnes, Cornwall was fished by one of two full time potters, with 17 other hobby and part time fishermen respecting the boundaries.

in the legislation, which adds the term 'reckless' to the lesser offences of disturbance, but not to the more important offences of killing, taking or destruction of birds and animals and not at all to any offences involving wild plants (we recognise this latter is not relevant to the marine area beyond 12nm). To overcome these inconsistencies, we propose that the term 'reckless' be added to all appropriate sub-sections of the WCA which currently demand that intent is proven, namely 1(1), 3(1)(a), 9(1), 13(1)(a) and 13(1)(b). However, the implications of the introduction of this term need to be considered for the conservation of all animals and plants, and adequate legal consideration given to ensuring that the law does not undermine the necessary survey and management work for these protected species and their habitats.

The introduction of a statutory, national code of conduct, to inform sea users on how to behave in order to minimise disturbance to marine wildlife, should serve both to limit the occurrence of disturbance of or damage to protected species, and would help law enforcers and prosecutors to determine when an offence had been committed (see below).

Defences

The WCA includes a defence that allows damage to protected species as 'the incidental result of an otherwise lawful operation' (Part I, Section 10 (3) (c)). Link argues that this is a significant loophole in the protection of species and that, while damage may be an incidental result of an operation, it is often not an unpredictable one. We suggest that this could be addressed by including in the legislation requirements to identify potentially damaging operations, assess their impact on the species in question, develop and introduce mitigation measures, and monitor their effectiveness so that further measures can be developed if necessary.

For example, in Cornwall a voluntary approach (code of conduct) to reduce porpoise bycatch was developed in 2004 by gill-netters after a considerable number of porpoises and dolphins were stranded in Mounts and St Austell Bay with clear signs of gill-net entanglement. Within the code (which was developed by the Sea Fisheries Committee and the Cornwall Fish Producers Organisation), fishermen were asked to refrain from setting nets if porpoises were sighted in the vicinity of these two bays. It appears that the code had some success in raising the profile of the issue, and it has since been adopted by the industry for the whole county. However, there has been no monitoring by the fishermen themselves or by independent observers of the results of the operation in terms of reducing bycatch, and illegal fishing has since been reported by the Environment Agency, with salmon and eel nets set too high at the mouths of estuaries, resulting in porpoise bycatch.

Protection of areas of important habitat for protected species

Some terms in wildlife law must be adapted to be usefully applied to marine species – for example, current laws offer protection to any 'structure' or 'place' used by protected species for shelter and protection, and to their breeding sites and resting places. These concepts are difficult to apply in the marine context, where many animals breed in the water column. Protection of 'structures, shelters or habitats important for stages of the life cycle' would be more pertinent for marine species.

Marine Wildlife Watching Code

A national, consolidated code of conduct for marine wildlife watching is needed. A generic code with statutory backing, with the possibility of developing additional clauses for local situations and different species, could be used. Such a code would provide guidance on how to operate and behave, in order to minimise disturbance to marine wildlife from both leisure and commercial pleasure craft that come into contact with marine wildlife. As well as making disturbance offences less likely, a code would aid enforcers and prosecutors, as non-compliance with the code could be used as supporting evidence for the offence of disturbance. The Nature Conservation (Scotland) Act 2004 introduced a requirement for Scottish Natural Heritage (SNH) to consult on, produce and publicise a Marine Wildlife Watching Code. However the code itself is

not statutorily binding, in that those who do not abide by it cannot then be prosecuted under the Act.

Q69: Do you consider that unlicensed activities currently threaten the conservation of marine ecosystems and biodiversity? If so which activities are of most concern and why?

Unlicensed activities (e.g. use of leisure craft) can disturb wildlife. There is evidence that disturbance has been increasing over the past ten to fifteen years, particularly with the advent of jet skiing. There is concern that direct collisions with propellers, anchors, divers and so forth can injure, and sometimes kill, marine wildlife, but there is also a need to monitor increasing boat traffic targeting 'hotspots' for marine wildlife, and the impact this may have on the use of key breeding, feeding or resting grounds for species such as seabirds, basking shark and cetaceans. Harassment of certain species (e.g. cetaceans) by pleasure boats is also a real issue, in particular in relation to underwater noise.²⁸ Human-induced noise has been documented to induce behavioural reactions including cessation of feeding, socialising and vocalising, changes in diving behaviour as well as avoidance or attraction. In addition, noise has been documented as causing displacement of cetaceans from preferred habitats. If disturbances are repeated, or are of long duration, they may cause stress, debilitation and ultimately mortality²⁹.

Q70: What are your views on the introduction of byelaw-making powers for the control of unlicensed activities?

Link believes that powers should be given to competent authorities to create zones where, for example, speed restrictions can be put in place or vessels prevented from entering, for reasons of wildlife protection. Such powers could be used flexibly, to protect specific areas at certain times of the year, for example when young animals (e.g. seal pups during August and September) are more sensitive to intrusion by people and vessels. Use of byelaws, for example by the SNCOs, could be a useful means of reducing conflict and disturbance to wildlife in the coastal zone. In the context of MSPs, we suggest that the MMO should also be given byelaw-making powers. However, byelaws alone may be insufficient and further powers may be required for competent authorities (such as the ability to issue "Biodiversity Stop Orders" (see below) for the purpose of conserving biodiversity).

Q71: Are there alternative regulatory approaches to the control of such activities that we should consider?

Link does not consider the following to be alternatives to the above, but measures to be used in conjunction with those outlined in other sections.

Biodiversity stop orders (BSOs)

The SNCO should be given powers to call an urgent halt to activities likely to damage Nationally Important Marine Features (NIMFs) (including Biodiversity Action Plan habitats and species – see question 76). These powers would be relevant where, for example, ongoing operations were discovered to be having an unacceptable impact upon a species or habitat, or where a population of a mobile marine species unexpectedly occurred in an area where an operation could impact upon it. The potential benefits of providing such emergency powers was recognised in the RMNC's final report (paragraph 7.32). Link believes BSOs are a vital tool, given the fragility of some marine communities and the long-term damage that can be caused by a single activity during a short timescale. They should be quick to enact, providing an effective tool by which activities can be stopped until a byelaw or other appropriate mechanism can be

²⁸ Kelly C, Glegg, GA and Speedie, CD (2004). Management of Marine Wildlife Disturbance. *Ocean and Coastal Management* 47 (1-19).

²⁹ Simmonds MP, Dolman S and Weilgart L (2003). Oceans of Noise. Published by WDCS. www.wdcs.org

implemented. Monitoring of the effectiveness of and compliance with BSOs and byelaws will also be required.

Q72: Should any powers to control unlicensed activities be related to marine protected areas, or capable of wider application?

Link believes that any powers to control unlicensed activities should be capable of wider application beyond MPAs. Many of the species (e.g. cetaceans and sharks) that attract wildlife watching range over such large areas that, while MPAs may be important to protect them at certain life cycle stages, they cannot provide comprehensive protection. A Marine Wildlife Watching Code and powers to make BSOs and byelaws (as discussed above) should thus apply throughout the marine area.

In order to facilitate biodiversity conservation in the offshore area, it is important that, where the UK is unable to take unilateral action, a clear remit and process for competent authorities (e.g. Government departments) is set out in policy guidance, so that they can seek action through the relevant international bodies. For example, where fisheries issues which fall under European Community competence impact on the UK's ability to achieve domestic conservation objectives, the Secretary of State should be required to report to the European Commission.

Q73: What do you think are the most important improvements that the Government could make to the prevention of marine nature conservation offences and the enforcement of relevant legislation?

There have been no prosecutions under the WCA for offences relating to marine species since 1981, in spite of reported impacts on protected species. This does not mean that the legislation is redundant, but instead highlights the need for effective enforcement. While we recognise that resources for enforcement will be limited, we believe that the introduction of new nature conservation measures will provide a clear indication to marine stakeholders that behaviour which negatively impacts upon protected species is not acceptable. We further believe that this will act as a deterrent to the majority of sea users. We believe that the introduction of a Marine Wildlife Watching Code will make offences less likely, as well as aiding enforcement.

In a similar way to that in which sea fishery officer duties are often endowed upon other authorities (e.g. Royal Navy, SNCOs), powers for the enforcement of nature conservation legislation could be given to all appropriate competent marine authorities, including the newly formed Marine Fisheries Agency (MFA), the Royal Navy, and the Maritime and Coastguard Agency, thus providing an efficiency gain. There should be a requirement for all authorities involved to work together, and develop best practice and an effective framework for joint enforcement of marine wildlife protection measures. We note that the MFA may be integrated into a new MMO, and suggest that the MMO could play a co-ordinating role in nature conservation enforcement.

A centrally co-ordinated system for recording wildlife crime incidents should be established, which would result in more effective use of resources, allowing their direction towards conservation priorities and the identification of areas where there is a high incidence of wildlife law breaches. For example, particular attention could be paid to busy tourist areas adjacent to nesting, breeding or feeding grounds of potentially vulnerable species. A National Wildlife Crime Unit is being established – see <http://www.defra.gov.uk/news/2006/060228c.htm> - and its role in the marine context should be defined.

Q74: What are your views on which organisations should (or should not) carry out different stages of marine nature conservation functions arising from the Marine Bill to ensure the principles in section 4 and those in paragraphs 11.16-11.25 are delivered?

Link believes that the SNCOs must retain their independent nature conservation advisory role in relation to all aspects of marine management. They should also have responsibility for the identification, designation, direct management and monitoring of MPAs.

We also advocate that appropriate powers, duties and functions be given to the appropriate authorities to enforce marine nature conservation legislation, including the Royal Navy, the Maritime and Coastguard Agency and the MFA. We note that the latter may be integrated into the new MMO, and we suggest that the MMO could provide the necessary co-ordination between nature conservation enforcement bodies (see question 73).

Furthermore, we believe all public bodies and office-holders should be given a statutory duty to further the conservation of biodiversity (see question 76) and to contribute to the achievement of MEOs (question 53 also outlines a number of other duties in relation to MEOs).

Q76: Do you consider that any changes to functions, powers or duties of delivery organisations are needed to facilitate the implementation of nature conservation legislation in the Marine Bill?

Biodiversity Duty and Nationally Important Marine Features

A general duty should be placed on all public bodies and office-holders to further the conservation of marine biodiversity. Link believes that a requirement for public bodies to further, rather than simply have regard to, biodiversity conservation would require them to give greater attention to the needs of biodiversity in the exercise of their functions. The NERC Act 2006 contains a duty for all public bodies to “*have regard, so far as is consistent with the proper exercise of those functions, to the purpose of conserving biodiversity*”. Clarification is needed of whether this duty applies throughout the marine jurisdiction of the UK, i.e. beyond the territorial waters of England and Wales and whether any new public body – such as an MMO – would be subject to this legislation. We also urge the Bill drafting team to consider stronger wording similar to that contained within the Nature Conservation (Scotland) Act 2004 i.e. “*It is the duty of every public body and office holder in exercising any functions, to further the conservation of biodiversity so far as is consistent with the proper exercise of those functions*”.

Following on from the RMNC process, work is currently underway to develop a list of nationally important marine species and habitats, which together are known as nationally important marine features (NIMFs). Link considers that a number of measures will be needed to provide for the conservation and/or recovery of NIMFs, both through the designation and protection of important areas, and in the wider sea. We argue that the list of NIMFs should be given a legal status, as in Section 41 of the NERC Act relating to England, and that (again as in the NERC Act) the Secretary of State (or the devolved administrations) should be required to take steps to further the conservation of the species and habitats on the list, and to promote the taking of such steps by others. There should also be a requirement for the list to be revised, on a regular basis, and in consultation with the SNCOs.

Marine Ecosystem Objectives

We believe that objectives and indicators relating to the list of NIMFs currently under development by JNCC and others should be integrated into MEOs, and that a number of statutory duties are required to ensure MEOs are taken into account in all aspects of marine management. Please refer to our response to questions 52 and 53 above for further information.

Byelaw making powers

Link believes that powers should be given to certain authorities to create zones where, for example, speed restrictions can be put in place or vessels restricted from entering, for reasons of wildlife protection. Such powers could be used flexibly, to protect specific areas at certain times of the year, for example when they are important for raising young and animals are more sensitive to intrusion by people and vessels (e.g. seal haul outs during pupping season), whilst not restricting activities outside these areas or at other times of the year. Use of byelaws, for example by the SNCOs, might be a useful means of achieving this in the coastal zone. However, byelaws alone may be insufficient, and further powers may be required for competent authorities, e.g. operating in the context of MSP.

Measures to address noise pollution

There is considerable evidence that human activities have significantly increased the overall level of sound in the oceans during the last few decades. Accordingly, there is growing concern that this trend is having a significant negative impact on marine life. Recent scientific evidence supports the observation of mass strandings overseas of cetaceans as a result of chronic (propeller, sonar) and point (seismic survey, piling) impacts from noise in the marine environment. Cetaceans are also susceptible to displacement, stress, disruption to normal behaviour, injury or even death from underwater noise. Significant noise sources include increasing boat traffic, construction work (e.g. pile driving), seismic survey and military sonars³⁰. Statutory acoustic guidelines should be developed and applied to all industries which introduce potentially harmful noise into the marine environment, with subsequent monitoring and reporting requirements and enforcement. Regulatory standards for the construction, design and use of technology in the marine environment should consider noise production levels along with other environmental concerns. Noise pollution should also be considered in the development of codes of conduct for unlicensed activities (discussed above).

Link has identified a number of other functions, powers and duties which are discussed elsewhere in this section, including a code of conduct for marine wildlife watching, Biodiversity Stop Orders, enforcement functions etc.

³⁰ Simmonds, M.P., Dolman, S. and Weilgart L. (2003). Oceans of Noise. Published by WDCS – available on WDCS website: www.wdcs.org

6. The potential for a new marine management organisation (Section 11, pp. 116-131)

Link believes the planning body which would undertake development of Marine Spatial Planning (MSP) must be a new body (referred to here as the MMO) and should be charged with implementing a MSP framework, with a duty to implement ecosystem-based management as a key tool for sustainable use of marine resources. It must have enough power to facilitate cross-departmental working in government in relation to MSP, and to bring all relevant bodies together when such decisions are required. It must also have clear lines of responsibility to higher government.

Its role should also be to:

- Lead on delivery of the policy principles, structure and timetable for implementation of regional seas MSP over UK seas, out to the continental shelf for all UK powers whilst collaborating closely with devolved administrations on MSP in territorial waters;
- Ensure non-statutory stakeholders are involved in the planning process through one or more advisory bodies that have a role contributing to the setting up developing, and ongoing process of MSP; and
- Advise UK government on where it needs to influence international activities and decisions to the benefit of the marine ecosystem, where international agreements override UK powers.

Link believes that the MMO should set up a Stakeholder Advisory Group, to work alongside development of MSP and provide an advisory role to the MMO. The Stakeholder Advisory Group must include representatives of non-statutory stakeholders, for example NGOs and leisure users such as the Royal Yachting Association and anglers, plus fisheries. The Stakeholder Advisory Group should also be involved in the development of MSP policies. Likewise, stakeholders should be engaged in development of regional and sub-regional MSPs, and have continued involvement in the planning cycle, including monitoring and review. This arrangement would ensure a more transparent approach to management at sea. It would also mean that government would receive expert advice from sea users, and organisations represented would be more likely to 'buy in' to the plan and aid its implementation.

There should be a National Stakeholder Advisory Group that could be modelled on the group originally formed to consider the RMNC. In addition, each regional MSP should have a stakeholder group for the reasons explained above.

The consultation states that "*creating an MMO could improve the co-ordination and delivery of marine management functions by combining them within the same organisation.*" The two core functions proposed for the MMO are MSP and the delivery of an integrated licensing regime.

With devolution comes a range of options. For example, the Welsh Assembly Government (WAG) may choose to set up its own 'Marine Body' in-house (WAG is not supportive of external agencies) and the Scottish Executive has the power to set up its own 'MMO'. It is important that all of the UK's constituent countries integrate their actions to manage UK seas within a MSP regional seas regime i.e. in biogeographical regions, including territorial waters and beyond. If this does not happen, Link is concerned that there may be an imbalance of human activities, leading to cumulative impacts and loss of biodiversity. Without a joined up approach between the countries to managing development, for example, there is a risk that the permitted developments will be beyond the ecological carrying capacity of the wider UK seas ecosystem.

RESPONSE TO CONSULTATION QUESTIONS

Q77: Have we correctly identified the functions that are 'core' to deciding whether to create an MMO?

Link agrees that MSP and delivery of an integrated licensing regime should be the core functions for a new MMO.

We agree with the statement in paragraph 11.43 that Government Departments would need to be responsible for the preparation of the Strategic Marine Planning Policy Framework Statement described in Section 8 of the consultation. Government should also be responsible for issuing the necessary planning guidance. We believe that paragraph 11.43 correctly identifies data collation, mapping, SEA, consultation, monitoring and review as MSP functions which the MMO should undertake. We would suggest that the preparation of regional and sub-regional MSPs should be included in this list.

There is also an urgent need for data to be managed and facilitated centrally and to common standards. A new MMO could have a role in data management to enable organisations and government departments to find and access information quickly so that, once recorded, the knowledge can be used repeatedly for different purposes, thereby greatly increasing its value. Link suggests that, in its consideration of a centralised marine data portal, the Government should look to existing models where data is managed and is available through data portals - e.g. the National Biodiversity Network (NBN)³¹, and the new NHS information warehouse, UNIFY³².

Link welcomes government's aim to implement the SEA process for each marine spatial plan. SEA is a key tool for ensuring that adverse impacts on the environment are minimised.

We believe it is appropriate for the MMO, as planning body, to manage a new, integrated licensing regime. The MMO must have clear lines of responsibility to government, whether to a number of departments, or, ultimately, a single one. As under the terrestrial planning system, there should be a mechanism whereby government can call in applications (e.g. if the MMO is minded to depart from the marine spatial plan, or, where an MPA may be affected, it is minded not to follow SNCO advice), as well as a mechanism for proponents to appeal if they are refused a licence. In either case, representations from all interested parties should be examined by an independent body, through a public inquiry where appropriate. The independent body responsible for these processes should be the same body responsible for scrutiny of MSPs (discussed in our response to Section 8). In addition, as a licensing body, the MMO would need to be the equivalent of a Competent Authority under the various Habitats Regulations which apply to the marine environment, to ensure that all of the safeguards were implemented in relation to marine Natura 2000 sites.

Link wishes the MMO to operate as the much-needed objective body for implementation of MSP policies and plans, and to be well placed to aid integrated working and conflict resolution. It must avoid any perceived bias towards any sectoral body or sea user as this would detract from the value of this role.

³¹ The NBN is a project to build the UK's first network of biodiversity information – see <http://www.nbn.org.uk/>

³² Further information on UNIFY can be found at http://www.dh.gov.uk/PolicyAndGuidance/OrganisationPolicy/Modernisation/ReducingBurdens/DataCollection/DataCollectionArticle/fs/en?CONTENT_ID=4113515&chk=B/WYQk

Q78: Are there other functions that you consider 'core' to an MMO? Why?

Link has not identified any other core functions at this stage.

Q79: Do you consider that the Marine Fisheries Agency should be merged into an MMO, if established?

Link can see some advantages in the Marine Fisheries Agency (MFA) becoming an arm of the new MMO. The MFA's experience of enforcement could be capitalised upon, and its enforcement powers should be extended to support other MMO functions (i.e. licence conditions), as well as nature conservation (the MFA's monitoring of vessels' VMS data is particularly relevant to these roles). In addition, incorporating the MFA into the MMO could help ensure that fisheries considerations are integrated into wider marine management, in particular through MSP. However, not all of the listed MFA functions (Annex 5D, Appendix i, i.v) so clearly enhance the MMO's core functions. We would stress that the body implementing the MFA's functions must retain a clear link to those in government responsible for fisheries policy (i.e. Defra).

Q80: Do you consider that CEFAS should remain outside an MMO, if established?

Link believes CEFAS should remain outside an MMO, as it is a profit-making organisation and in some ways, works more like a consultancy than a government department. However, it is essential that data gathered by CEFAS that can inform MSP is readily available for the new planning system at sea. We agree that it is sensible to consider further whether specific CEFAS functions should be moved over to the MMO at a later stage.

Q81: Have we identified the right marine organisations for potential inclusion in an MMO?

We note that Government is currently not minded to include the Maritime and Coastguard Agency (MCA) within the MMO. The MCA should provide information to the MMO that will inform the MSP, for example on shipping movements in relation to offshore energy developments. The MCA should also work closely with the MMO, to contribute to enforcement for the protection of the marine environment, including managing disturbance and destruction of marine habitats and species, and pollution by shipping.

Link's view on inclusion of the MFA in the MMO is noted under question 79, above.

Q82: Are there other marine organisations that we should be considering merging into an MMO?

Link has not identified any other organisations that it believes that Defra should be considering merging into an MMO at this stage.

Q83: Do you wish to make any points to be included in our consideration of whether individual non-core functions should be delivered by an MMO?

With reference to Table 2, 'Potential MMO functions':

Link agrees that the core functions of an MMO are MSP and delivery of an integrated licensing regime.

Under non-core Functions, Link's view is as follows (each function is in bold type):

11.48 MPAs

The SNCOs must be the lead bodies in the designation of MPAs and protection of marine species and habitats.

The SNCOs should therefore be undertaking the

- 'initial analysis of areas in need of protection and options for representative sites',
- site selection,
- site designation,
- development and agreement of site objectives,
- selection of measures for site protection, and site casework.

We suggest another function should be added to this list, namely biological monitoring and surveillance.

11.49 Natura 2000

Identification of Natura 2000 sites should remain the duty of the SNCOs (see section 5.2 of this response).

11.50 Co-ordinated licensing application system

Were the Marine Bill not to introduce a new integrated licensing regime, or were it to introduce a new regime integrating licenses for some, but not all, sectors, we believe this role should be considered. Even if the MMO were not responsible for the final decision in relation to a particular sector, it could provide a useful interface for potential applicants from that sector. In particular, as the keeper of the relevant marine spatial plan, it could provide advice on whether a particular application would be likely to succeed and point to any possible modifications or alternatives. It could also highlight the specific data needs (e.g. for EIA) in relation to the location and the type of development, depending on the data already available in the marine spatial plan, and any knowledge regarding local nature conservation interests. The MMO could receive all applications, and obtain the necessary decisions from the involved departments prior to communicating the consent or refusal to the prospective developer. It should also advise decision-makers to ensure decisions are made in accordance with the marine spatial plan. This would provide some streamlining for developers, by shifting some of the work involved in attaining a consent from the developer to the regulators. The regulators could also experience some benefits if a pre-application advisory role for the MMO meant that inappropriate applications were less likely to be made. However, careful consideration should be given to whether reducing the burden on applicants simply means transferring this burden to the MMO, and so to the public purse.

11.52 – 11.53 MFA and enforcement of nature conservation measures and enforcement of marine licences, and enforcement of mineral licences

As stated above in answer to question 79, the MFA should contribute to enforcement and monitoring in UK seas, not only for fisheries and 'no take zones', but for nature conservation and the protection of marine species and habitats. This could include enforcement of licences if the MMO is given licensing responsibilities. Link would like to stress the importance of monitoring and enforcement of licence conditions. This should include enforcement of licences for aggregate extraction, and oil and gas extraction, including monitoring of pollution incidents.

11.54 The MFA and potential ELD (European Liability Directive) Potential Competent Authority Role in relation to biodiversity (new role)

The MMO is likely to be best placed to administer the 'polluter pays' principle under this Directive in the marine environment. The MMO should work to enforce this Directive in close collaboration with other authorities, such as the Environment Agency and the MCA.

11.55 – 11.58 The role of CEFAS

Marine research on behalf of UK Government & Marine Monitoring on behalf of government

CEFAS and others could have a special relationship with the MMO to provide the services required for these functions, without the functions being subsumed into the MMO.

11.57 Targeted additional marine data collection (new role)

Link agrees with the statement that “*central to the success of many of the UK’s policies will be the collection, management and availability of marine data and information.*” Data access should be managed and facilitated centrally and to common standards. The MMO could have a role in data management, establishing a centralised marine data portal to enable organisations and government departments to find and access information quickly so that, once recorded, the knowledge can be used repeatedly for different purposes, therefore greatly increasing its value.

Other:

11.58 Co-ordination of existing data (MDIP)

The MMO should have overall responsibility for this, but could delegate the role.

11.59 Support and guidance functions for ICZM (new role)

It would be advantageous for the MMO to take on the role of centralised support and guidance for ICZM initiatives. Existing ICZM fora could provide useful stakeholder input to planning at the coast, where coherence between MSP and land-use planning will be crucial.

11.60 Marine Ecosystems Objectives – stakeholder engagement & consultation; consideration & agreement; monitoring & reporting on delivery (new role)

The MMO is likely to be well-placed to carry out the appropriate consultation with stakeholders and to communicate information about MEOs and what they mean in terms of regulation and management. While consultation will be important in developing an initial set of MEOs (and revising them in the future), we are not convinced that it will be possible or appropriate to develop consensus on where “targets” for specific ecosystem elements should be set (as outlined in our response to Section 10, we do not believe it will be possible to set specific target or limit reference points for all ecosystem elements in any case). We would like to stress the importance of scientific input to the development of MEOs, including from the nature conservation agencies.

11.61 Environmental byelaws: identification of need for controls; their development; Stakeholder engagement & consultation; consideration and agreement of controls; appeals (new roles)

Link advocates the use of byelaw making powers for the purpose of nature conservation. We suggest that SNCOs as well as the MMO should use such powers. The MMO could facilitate appropriate consultation with respect to byelaws.

11.62 Statutory (marine) nature conservation advisory role (EN, JNCC)

Advice on marine nature conservation should remain with the SNCOs.

Q84: Do you agree that we should exclude the potential transfer of statutory (marine) nature conservation advisory roles to the MMO from further consideration?

Link believes that the SNCOs must retain their powers to play a primary role in designation of MPAs and protection of marine species and habitats. As independent government bodies, they should not be subsumed by the MMO, and they should continue to give advice in an independent capacity.

11.63 (Marine) Historic environment advisory role (EH)

Independent advice on marine heritage should remain with English Heritage and the heritage offices of devolved administrations. However, there must be arrangements for close collaboration and integrated involvement in MSP.

11.64 Potential EU Marine Strategy Directive functions (new role)

It is likely that a new MMO will be an appropriate body to take on functions under the Marine Strategy Directive – we believe that this role would fit with the Core functions of the MMO (above). More information is needed both on the MMO itself, and on the final form of the Directive, before proper assessment can be made on this point.

Q85: Are there any other 'non-core' functions that we should be considering for inclusion in an MMO?

We have no further non-core functions to suggest at this stage.

Q86: Are there functions you consider incompatible - i.e. they should not be undertaken in combination – whether by an MMO or another body?

Link reiterates here that the SNCOs must retain their powers to play a primary role in designation of MPAs and protection of marine species and habitats.

Q87: Are there functions that you consider should be grouped together - i.e. undertaken within the same organisation? If so, should this be the MMO or not?

See our comments above, with reference to Table 2.

Q88: Do you have views on the most appropriate status for an MMO?

At this stage in development of the Government's Marine Bill, Link is merely concerned that the MMO will be empowered to undertake the functions discussed in several answers above. Link wishes the MMO to have appropriate status to allow it to be effective in delivering the functions we have favoured in our answers to the above questions.

Q89: Do you have views on the nature of the relationship that an MMO would need with other bodies?

The MMO could be a cross-border UK body where reserved functions and responsibility for overarching issues were retained by Westminster, for example in dealing with oil and gas. However, this system should allow both reserved and devolved issues to be dealt with in a coordinated manner. The overarching body could be established using the UK Bill, and the requirement for the UK and country 'sections' to coordinate this function. This would also allow for 'future proofing' for example: in case of further devolution as well as the future development of a Marine (Scotland) Act, for which Scottish Environment Link are lobbying, which could then specify the powers, functions and duties of this Scottish MMO in regard to devolved matters. This would also allow full integration of any future Scottish Marine Bill as well as facilitating and streamlining the establishment of a Scottish MMO. Likewise in Wales, the Welsh Assembly Government could use its powers to provide for marine representation to collaborate with the UK MMO, and in Northern Ireland the Administration could outline responsibilities for a Northern Ireland MMO.