Wildlife and Countryside LINK

CONSULTATION ON THE DRAFT MARINE BILL

Wildlife and Countryside Link Response

June 2008

Wildlife and Countryside LINK

Consultation on the Draft Marine Bill

Wildlife and Countryside Link Response

June 2008

Wildlife and Countryside Link (Link) is a coalition of the UK's major voluntary 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 8 million people in the UK.

This response is supported by the following Link members:

- Buglife – the Invertebrate Conservation Trust
- Herpetological Conservation Trust
- IFAW – International Fund for Animal Welfare
- Marine Connection
- Marine Conservation Society
- Royal Society for the Protection of Birds
- Shark Trust
- The Wildlife Trusts
- The Ramblers' Association
- Whale and Dolphin Conservation Society
- Wildfowl and Wetlands Trust
- WWF - UK

Contents

Appendices (attached separately)

Appendix 1: WCL & SUDG Joint Statement on the draft Marine Bill
Appendix 2: Legal Advice - Marine Planning
Appendix 3: Legal Advice - Nature Conservation
Appendix 4: Legal Advice -MCZs & socio-economics
Appendix 5: Legal Advice - Fisheries & Enforcement

Wildlife and Countryside LINK

Consultation on the Draft Marine Bill

Wildlife and Countryside Link Response

1. Introduction

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

In order to deliver proper protection of marine biodiversity and sustainable management of all UK seas, it is imperative that the UK Marine Bill and complementary devolved marine legislation provide comprehensive and coherent coverage. Link works closely with its sister Link organisations in Scotland, Wales and Northern Ireland, which will each be providing a consultation response on issues that particularly affect each devolved administration. Due to the complex mix of reserved and devolved powers within and beyond 12 nautical miles, and in order to meet international commitments and secure an Ecosystem-Based approach to the future management of UK seas, it is essential that Marine Bills are passed in both Westminster and Scotland, with appropriate devolved legislation in Northern Ireland. We therefore welcome the fact that the Scottish Government has committed to a Scottish Marine Bill. We call on all four administrations to ensure that their marine legislation dovetails closely together in order to deliver a joined-up approach to the management of all UK seas.

Link strongly welcomes the Government's continuing commitment to a Marine Bill, and the wide-ranging scope of the current draft Bill. This draft Bill proposes an ambitious new approach to managing the marine environment which, if improved and implemented effectively, could result in the UK Government being seen as a world class leader in the sustainable management of its marine resources.

Link wishes to commend the Government, and Defra in particular, for the extensive consultation that has been carried out, and the vast amount of work that has gone into developing the draft Marine Bill. While we are broadly supportive of the proposals outlined in the draft Bill, we believe that it needs to be made stronger to ensure that the final Marine Bill is fit for purpose to deliver its aims and objectives. In particular, we have significant concerns that parts of the draft Bill, especially section 4 (Marine Conservation Zones), are weak and, if unaltered, may cause the Government to fail to achieve its objectives for marine nature conservation. The Government should be seeking to fully implement international obligations such as the WSSD[1] and OSPAR[2] as well as new European obligations under the Marine Strategy Directive through the Marine Bill.

Whilst we have welcomed pre-legislative scrutiny and further consultation on the draft Bill, because review by stakeholders on such a wide-ranging piece of legislation is important, we hope that this will be the final stage in a long consultation process. We were pleased at the

[1] The UN General Assembly endorsed the Johannesburg Declaration on Sustainable Development and the Plan of Implementation of the World Summit on Sustainable Development on 12 Dec 2002.

[2] OSPAR Convention for the Protection of the Marine Environment of the North-East Atlantic. Meeting of the OSPAR Commission 23-27 June 2003.

inclusion of the Marine Bill in the Draft Legislative Programme and now call on the Government to ensure that the Bill is included in this year's Queen's Speech and introduced into Parliament at the earliest opportunity in the next (2008-2009) Session, in order to secure delivery of the manifesto commitment to a Marine Act during this Parliament. The UK's seas urgently need better protection and management.

We hope that our response will serve as constructive input to the final deliberations on the shape of the final Marine Bill.

2. Overarching Comments

2.1 International conservation commitments

As mentioned above, Link firmly believes that the draft Marine Bill needs to be stronger in order to deliver the UK's international obligations for our seas, including establishing a coherent network of Marine Protected Areas (MPAs), implementing the Ecosystem Approach, achieving Good Environmental Status (under the EU Marine Strategy Directive) and halting biodiversity loss.

Whilst we are very pleased that the draft Bill includes measures for establishing Marine Conservation Zones (MCZs), we do not believe it is currently strong enough to deliver a network of sites[3]. We want to see a clear statutory purpose for an ecologically coherent network of MPAs along with a duty to designate MCZs in line with this purpose and a timetable for its delivery. Furthermore, we believe that MCZs should be identified on scientific grounds alone. We are concerned that, as currently drafted, the legislation has the potential to allow socio-economic factors to override national and international conservation priorities and hinder site designation. MCZs are the primary measures in the draft Bill for delivering marine nature conservation and therefore the integrity of a network of sites is paramount.

2.2 Ecosystem Approach and Precautionary Principle

Link believes that the Marine Bill should provide a coherent legislative framework to deliver the Government's stated goal of 'clean, healthy, safe, productive and biologically diverse oceans and seas'[4]. This should be delivered through an Ecosystem-Based approach, placing the environment at the heart of the management of marine activities.

The marine environment is not sustainably managed at present, and the need for a new approach is urgent – 'business as usual' is not an option. This new approach, underpinned by the precautionary principle, must be based on an explicit recognition of the goods and services derived from healthy marine ecosystems, including many direct economic and social benefits. We are thus disappointed that the ecosystem-based approach and precautionary principle are not given more prominence in the draft Marine Bill.

2.3 Duties and timescale

We are concerned that in some areas of the draft Bill a duty and a timescale for delivery of its measures is lacking, and we believe that this could lead to a delay in implementation. In particular, we are concerned that there is no duty to prepare and adopt a Marine Policy Statement (MPS) and marine plans or a deadline for the completion of the first MPS (that coincides with the development of the terrestrial National Policy Statements) and a timetable for the delivery of marine plans. Without these requirements, we fear that the MPS and marine plans may never be developed. We urge the Government to ensure that the Marine Management Organisation (MMO) has capacity to take forward production of more than one plan at any one time (not only will this expedite the planning process, it will allow lessons to be learned at an earlier stage if plans are developed for contrasting areas).

[3] NB In all references to provisions for a 'network' of MCZs/MPAs/sites within our response, we are referring to a network of Marine Protected Areas comprising Marine Conservation Zones (MCZs) and European Marine Sites (i.e. Special Protection Areas and Special Areas of Conservation).

[4] Defra 2002. Safeguarding Our Seas – A Strategy for the Conservation and Sustainable Development of our Marine Environment.

2.4 Marine and Planning Bills

Links strongly supports the MMO as the licensing authority for all marine projects in English waters, and non-devolved projects in Welsh waters and offshore waters. We are therefore very concerned by the Government's proposal to give the Infrastructure Planning Commission (IPC), currently proposed under the Planning Bill, responsibility for licensing the largest ports and larger offshore wind farms. This goes against the Government's goal of a more strategic and streamlined approach to managing human activities at sea by bringing planning and licensing responsibilities together in one body. The MMO, an independent body, will be the coordinator of marine expertise with responsibility for marine planning and licensing a number of marine activities. As such, we believe it will be far better placed and qualified to determine the biggest and most important projects in the marine environment than the primarily terrestrial-focussed IPC. Delegating certain functions to the IPC undermines the power and function of the MMO.

Should the Government continue to reject this view, we would like clarification of how the IPC will interact with the MMO and Welsh Ministers. We also require clarification on how the MPS will interact with the National Policy Statements, also proposed under the Planning Bill. We would be concerned were the NPS to have implications for the primacy of the MPS in decisions affecting the marine environment.

2.5 Marine Vision and Objectives

The Policy Paper contained in the draft Marine Bill describes how a framework of High Level Marine Objectives (HLMOs) will be developed and translated into the UK MPS at a later stage. We are encouraged that work has already commenced on this and pleased to have already had the opportunity to provide comments to Defra. We look forward to further engagement of marine stakeholders in the future.

We recognise that the HLMOs will be vital in determining how the Marine Bill will be implemented. It is therefore crucial that they provide a strong steer for the sustainable development of the marine environment, based on an Ecosystem-Based approach and the precautionary principle. We welcome that the new HLMOs will not replace any of the previously agreed strategic goals for the marine environment, including those developed in the Marine Stewardship report and Review of Marine Nature Conservation, and believe that a statement to this effect should be included in the MPS.

2.6 Climate change

Link considers climate change to be one of the most serious threats to biodiversity in UK waters. In combination with pressure from over-fishing and the current mismanagement of our seas, it has the potential to push the marine ecosystem beyond its capacity to cope or recover. In the immediate term, it is essential that we manage our marine environment in a more sustainable manner, in order to ensure that marine ecosystems are resilient to the effects of climate change, enabling them to adapt as the climate changes. Resilient marine ecosystems are themselves a key factor in mitigating climate change impacts. The oceans' phytoplankton is estimated to absorb about half of the CO2 generated by humans, making our seas as important as rainforests in mitigating climate change impacts. However, if our seas are to retain this function, they must be healthy, functioning ecosystems. Thus, we strongly believe that climate change makes the protection of marine biodiversity even more critical.

Allowing biodiversity to adapt to a changing climate is perhaps one of the key challenges we face both on land and at sea. Link believes that an extensive network of Marine Conservation Zones (including Highly Protected Marine Reserves (HPMRs)), in the context

of a more sustainably managed wider sea, will be key in enabling marine species and communities to adapt geographically as the environment changes as well as recover from existing pressures. A minimalist approach to a MCZ network (e.g. covering as small an area as necessary) is likely to lead to important marine communities becoming isolated, and unable to move between suitable habitats in the migration north as seas warm. The MCZ network must include reefs and other structurally complex habitats that support the most diverse and rich communities. While it is possible that the composition of the communities may change over time, the communities are likely to remain rich due to the maintenance and protection of viable habitat structure.

2.7 Energy Bill

Climate change, CO_2 reduction, clean and secure energy are all critical issues. Following the Government's Energy Review 2006 and the Energy White Paper 2007, the Energy Bill has now been introduced into Parliament. The Energy Bill sets out the regulatory framework to allow the development of renewable energy and carbon capture and storage.

As many of these new developments will be situated or take place offshore, we believe that the new, strategic management framework proposed in the draft Marine Bill – of which protected areas will form a key element – will be key to facilitating the sustainable development of renewable energy in the marine environment (avoiding conflicts with sites of high importance for biodiversity), which we support. The identification and designation of MCZs is the first step to reducing conflict between development and nature conservation interests, and increasing certainty for developers regarding the location of sensitive wildlife sites. In our efforts to reduce carbon emissions, renewable energy projects must go hand in hand with improvements in energy efficiency, decentralised energy, and emissions reductions in other sectors including transport.

2.8 Common views between environmental NGOs and industry

Link has worked with the Seabed User and Developer Group (SUDG) to develop a joint statement on the draft Marine Bill (attached in Appendix 1). This statement demonstrates that both environmental NGOs and industry are united in their broad support for the draft Marine Bill but believe that improvements still need to be made in order to ensure that the final Bill delivers sustainable development of the marine environment.

2.9 Coastal access

Coastal access provisions are now included as part of the draft Marine Bill. Link submitted written evidence to the EFRA Committee's inquiry into the coastal access provisions in May and a copy of this evidence is included in Section 10 of this response. The organisations that supported this are listed separately in Section 10.

2.10 Comments on the sections of the draft Marine Bill

The following pages contain our views on each section of the draft Marine Bill. Link has received legal advice on the draft Marine Bill, which we have used to inform our consultation response. This advice is used throughout our response and is attached in full in Appendices 2-5.

3. Devolved aspects of the draft Marine Bill

The devolved administrations are involved to differing extents with the draft Marine Bill. Most parts of the draft Bill apply to Wales, setting out powers for Welsh Ministers as for the Secretary of State. The most notable exception is that no MMO is being created to undertake devolved functions on behalf of the Welsh Assembly Government. In addition, there are crucial omissions on fisheries management.

The territorial waters adjacent to Scotland are excluded from the draft Bill while Northern Ireland's territorial waters are included in some (the MPS and aspects of licensing) but excluded from other elements of the draft Bill. The Scottish Government and the Northern Ireland Executive are developing separate marine legislation to cover their territorial waters, and remaining devolved functions.

Link is working with its sister organisations in Scotland, Wales and Northern Ireland to call on all four administrations to ensure that these separate pieces of legislation are compatible, and that their implementation delivers comprehensive and coherent protection and management throughout UK seas. We have identified a number of key areas below where the draft Bill could be strengthened to secure this aim:

3.1 Marine Management Organisation (MMO)

The MMO will deliver reserved marine management functions on behalf of the UK Government, and Welsh Ministers will be responsible for devolved functions in Welsh territorial waters. The Scottish Government is proposing creating a Scottish MMO through its own legislation to undertake devolved functions, while the Northern Ireland Executive is considering various delivery options, including an MMO. It will be crucial that all of these bodies have strong working links, both to manage the interface between reserved and devolved functions, and to secure joined-up management across borders throughout UK seas.

3.2 Marine Planning

In order for marine management to encompass an Ecosystem-Based approach and ensure sustainable development in the marine environment it must follow ecological rather than political boundaries, as per the biogeographical Regional Seas defined by JNCC[5]. This would require administrations to work together across administrative boundaries, jurisdictions and also between territorial waters and the offshore area. The draft Bill does not enable different marine planning authorities (either those it identifies, or future authorities that may be created under Scottish and Northern Irish legislation) to produce joint plans – e.g. the situation could arise where at least four separate plans are produced for the Irish Sea. We would like to see powers in the Marine Bill for the administrations to prepare joint plans.

3.3 The Marine Policy Statement (MPS)

One of our greatest concerns about the draft Marine Bill is that Scottish Ministers are not involved in developing an MPS in conjunction with the other administrations. We believe that a shared, high level policy statement is essential to secure coherent marine management, and we hope this situation will be reviewed and joint planning taken forward. A further weakness is that the draft Bill does not require the three participating administrations to jointly develop a shared MPS, instead the Bill allows the Secretary of State to act unilaterally. It also allows the administrations to opt out of an existing MPS. The Secretary of State could

[5] Defra 2004. Review of Marine Nature Conservation Working Group Report to Government, July 2004.

effectively nullify a shared MPS (by opting out), and institute a replacement to which the other administrations had not signed up. The Marine Bill should include greater safeguards to avoid this eventuality.

3.4 Marine Licensing

The updated licensing provisions will not apply in Scottish inshore waters, which means that sea users operating both in this area and elsewhere in UK seas will be subject to different licensing regimes. In addition, applicants seeking licences in cross-border areas, such as the Severn Estuary, will have to apply to the licensing authority on either side of the border. Provisions to enable authorities to work together in these circumstances could be beneficial both to sea users and to regulators seeking to ensure joined-up, ecosystem-based management. Furthermore, there may be delay in the implementation of the different regimes in the different countries. For example, in Northern Ireland the licensing provisions under the UK Marine Bill (covering FEPA and aggregates) will come into force sooner than the remainder of licensing under the Northern Ireland Assembly Bill expected in 2010/11.

3.5 Nature Conservation

No body is given the responsibility of enforcing Marine Conservation Zones in the offshore waters adjacent to Scotland, and clarity is needed on this point. In tandem with our sister Link organisations in Scotland and Northern Ireland, we are calling on the Scottish and Northern Ireland administrations to introduce similar provisions to those in the draft Bill (for MCZs) for their inshore waters, and believe that all four administrations will need to work together to ensure the UK as a whole delivers on its international commitments to creating networks of well-managed MPAs by 2012.

4. Part 1: The Marine Management Organisation

Link welcomes and supports the creation of an 'independent' Marine Management Organisation (MMO). In particular, we support the aspiration of an MMO which will deliver marine planning, marine licensing and enforcement and the associated benefits of producing a joined-up strategic approach. Responsibility for planning and the majority of non-devolved licensing should give the MMO a strategic overview of marine activities.

The MMO should become a focal point for marine expertise, knowledge and data, able to identify strategic data gaps and get advice from experts on filling those gaps. This should put the MMO in the ideal position to ensure that the use of marine space and resources is sustainable and marine wildlife is properly protected.

4.1 The MMO's Objective

While Link welcomes the MMO's sustainable development 'general objective' (or statutory purpose) [s2(1)], we believe that to achieve sustainable development in the marine area the 'general objective' must be more positive and proactive. The current "…objective of making a contribution to the achievement of sustainable development" would be strengthened by replacing it with a more robust phrase, e.g., "…furthering" or "…promoting" sustainable development.

However, to be truly effective, the Bill should be clear about what factors need to be taken into account in the achievement of sustainable development. In particular, the MMO should seek to protect and enhance the marine environment, its ecosystems, biodiversity and natural resources. However, we are aware that it is a politically unpalatable idea to define sustainable development in legislation. Suggested amendment to s2(1), which would achieve these points, is made in the table below.

4.2 The MMO's roles

We welcome the introduction of a power for the MMO to manage unregulated activities affecting Marine Conservation Zones (MCZs), through conservation orders. This is an essential tool to control activities that are not managed through other licensing regimes.

However, Link is very concerned by the Government's proposal to give the Infrastructure Planning Commission (IPC) responsibility for licensing some marine projects – the largest ports and larger offshore wind farms. We strongly oppose the IPC (a primarily terrestrial-focussed body) being given this responsibility and support the MMO as envisaged by Government (an independent body with marine expertise) [PP §3.10], as the licensing authority for all non-devolved marine projects in English and Welsh territorial waters (working with Welsh Ministers) and UK offshore waters (for non-devolved issues). This would allow the Government to achieve its goal of a more strategic and streamlined approach to managing human activities at sea by bringing planning and licensing responsibilities together in one body. Having another body, the IPC (a primarily terrestrial-focussed body), licensing some marine projects adds unnecessary complexity to the marine system. To give this responsibility to the MMO would require an amendment to the Planning Act (once it is enacted) in the Marine Bill.

The Government's approach to licensing reform is further complicated as oil and gas licensing and CCS licensing is going to remain with central Government, licensed by the Department for Business, Enterprise and Regulatory Reform (BERR).

4.3 The MMO's interactions with other bodies

While carrying out its functions, whether for licensing, planning or enforcement of nature conservation and fisheries, the MMO must be obliged to seek and take account of advice from experts. Where that advice has not been followed, the MMO should be required to publish the reason. For example, the MMO should be required to seek and take account of environmental advice from the statutory nature conservation bodies (SNCBs) and other environmental experts. While this requirement is mentioned in the Policy Paper [PP §3.18], it is not included in the draft Bill.

Should the Government reject our preferred view that the MMO should have responsibility for licensing all reserved marine projects (see above), we wish to have clarification on how the IPC will interact with the MMO, and for projects in Welsh waters, the MMO and Welsh Ministers. The Planning Act would have to be amended, placing a duty on the IPC to seek and take account of, advice from the MMO and other marine experts when licensing marine projects. We also require clarification on how the Marine Policy Statement (MPS) will interact with the National Policy Statements, or its status relative to them. Should the IPC be given responsibility for licensing any marine projects, there should be a requirement for its decisions to be made in accordance with the MPS. Again, this is likely to require amendments to the Planning Act.

4.4 The MMO's interactions with the Devolved Administrations

The MMO will deliver reserved marine management functions on behalf of the UK Government, and Welsh Ministers will be responsible for devolved functions in Welsh territorial waters. To undertake devolved functions, the Scottish Government is proposing creating a Scottish MMO through its own Marine Bill, while the Northern Ireland Executive is considering various delivery options, including a Northern Ireland MMO through its own marine legislation. Link would support the Devolved Administrations where they decided to create MMO-style bodies to carry out their corresponding devolved functions.

It will be crucial that all of these bodies have strong working links, both to manage the interface between reserved and devolved functions, and to secure joined-up management across borders throughout UK seas. To secure the maximum benefits the UK MMO must be designed to facilitate formalised working arrangements, including the provision of advice and assistance, with any such organisations or alternatively, the appropriate authority in those administrations carrying out those functions. This will assist sharing of information and best practice, and ensure that the UK's seas are managed in a coordinated and coherent manner; essential for adequate ecological management.

The draft Bill sets out a wide range of powers for the MMO (besides the core functions of planning and licensing). However, the MMO will not undertake any devolved functions in Welsh waters; these will be the responsibility of Welsh Ministers. It is vital that all the powers and functions being given to the MMO are also available, and properly resourced, for Wales. Link has identified two areas where the powers to be given to the MMO may need to be provided separately for Welsh Ministers. Firstly, the power to commence proceedings for civil penalties and secondly, the possibility for appeals to be made in relation to licensing decisions. The draft Bill empowers the Secretary of State to delegate licensing functions to the MMO by means of an order, which can include provision for appeals against licensing decisions taken by the MMO. Welsh Ministers will not be delegating their licensing functions, so the ability to provide for an appeals process is currently not available. In addition, we note there will be a formal reporting schedule for the MMO, but no equivalent schedule has yet been suggested in Wales. We believe a formalised process for Welsh Ministers to report to the National Assembly on the delivery of their marine management functions, in the context of objectives, will be needed. This may need to be provided for in the Marine Bill.

It is also essential that Welsh Ministers can benefit from the UK MMO's expertise and data capabilities, and so deliver a joined up approach to marine management, both within Welsh waters and in cross-border areas. Much of the data and information that the MMO will be co-ordinating is aggregated for England and Wales, therefore, the MMO must be able to release appropriate data to counterparts in Wales and provide advice to ensure marine plans are based on the same quality of data and are co-ordinated across borders. As a result, Link believes there should be a duty placed on the MMO to advise and assist Welsh Ministers (on request), in addition to the current duty to advise public bodies on request [s24].

4.5 Transition from the Marine & Fisheries Agency (MFA) to the MMO

Link supports the aspirations for an 'independent' MMO that is strategic and delivers a range of Government's functions and policy as set out in the MPS, and ensures that the marine area and its resources are used sustainably and biodiversity is properly protected. However, following the MFA's oral evidence session with the Pre-legislative Scrutiny Joint Committee (3rd June) we are concerned that the MFA (Board and staff) have not yet grasped the concept of what the MMO must be if it is to deliver the Government's aspirations, as well as those of stakeholders. Consequently, we have some significant concerns about the MFA in its current form being the basis upon which the MMO is built.

During the Joint Committee evidence session, the MFA presented a view of a body that sees itself as a regulator (licensing body) and fisheries manager, admittedly the MFA's current roles, but which has limited experience of the full spectrum of marine management to date outside delivering regulation. In addition, the MFA saw stakeholder engagement as consulting the fishing sector – a very limited definition of 'stakeholders' in our view. In terms of evolving into the MMO, we believe that these are very narrow views of the MFA's future role. Link believes that the MFA must undergo a significant transformation if it is to become the MMO that most stakeholders envisaged and have supported. As with the transition from SFCs to IFCAs (see response to Part 6), we want reassurance that there really will be a culture change during the transition from the MFA to the MMO with its wider sphere of responsibility. In particular, as the MMO, the MFA will have to ensure that it furthers sustainable development, and part of that process will be achieving environmental sustainability through the full protection of marine biodiversity.

The MMO and its staff must be sufficiently resourced and trained to meet all of its new functions and responsibilities, including having access to expert advice and data. We are also concerned that there is no concrete timetable for establishing the MMO.

We welcome the setting up of Committees and sub-committees [s21], particularly a Stakeholder Advisory Committee [PP §3.17]. This Committee should facilitate the MMO with building the wider stakeholder engagement that it will need if it is to deliver its many new roles. Link would expect there to be environmental NGO representation on such a committee.

***Detailed comments or proposed amendments to the MMO Part of the draft Marine Bill*:**

Part 1: The MMO	
General Objective 2(1)	The MMO should have a stronger sustainable development objective or purpose: We would suggest amending the current s2(1), replacing "*making a contribution to the achievement of sustainable development*" with "*furthering*". We also believe there should be more detail about the considerations that must be taken into account when 'furthering' sustainable development. We would suggest that the explanatory notes should refer to the UK Sustainable Development Strategy (UK SDS) produced by Government and the Devolved Administrations. The UK SDS would provide a steer on the issues that the MMO should consider when carrying out its functions and its objective would be updated when the SDS is updated, ensuring that it would always be relevant.
2(2)	While the power for the Secretary of State (SoS) to issue guidance to the MMO on how to meet the 'general objective' is in this clause, there is no requirement to have regard to that guidance. That requirement – to have regard to any guidance issued by the SoS – is in s36. There should be a link made to s36. However, we believe that it could be a stronger requirement, i.e. the MMO should have to "act in accordance with" with the guidance on how to deliver sustainable development issued by the SoS.
2(3)	There is a drafting inconsistency between s2(3) (requiring the SoS to consult the MMO before giving any guidance under s2(2)); and s36 which requires the SoS to consult the MMO plus such other appropriate bodies or persons as the SoS thinks appropriate "*before giving <u>any</u> guidance*". These two clauses need to be aligned.
s9 & s11	There could be practical difficulties in terms of licensing under the WCA or the Habitats Regulations 1994, if the applicant has to make two separate licence applications to two licensing authorities (MMO and Natural England) for a species (e.g. otter) which are present or cross the marine-terrestrial boundary. A solution might be that Natural England is added to the list of designated bodies (s16(1) – see response to that clause, below), allowing the MMO to authorise Natural England to carry out its licensing function, thereby allowing one licensing authority to deal with species that cross the marine-terrestrial boundary.
16(1)	The SNCBs (e.g. Natural England) should be added to the list of designated bodies. The MMO could then authorise Natural England to carry out the nature conservation licensing functions under s8-s12 (see above), enabling one body (the SNCAs) to deal with licences for species or habitats that cross the marine-terrestrial boundary.
16(3)	There should be a duty on the MMO to satisfy itself that any designated body has the appropriate skills and experience to carry out the relevant function, to ensure that the functions are carried out properly. While s17(3)(a) provides that a function may not be delegated to a body whose purposes are incompatible with the specific function this is different to having to check experience, skills and ability to fulfil the role.
23(1)	This clause refers to the "*general objective*", however, s2(1) only refers to "*the objective of making a contribution…*", not the 'general objective'. Our understanding is that the title of s2 does not constitute a legal definition, therefore, this may need aligning or a definition of the 'general objective' provided.

24	This clause imposes an obligation on the MMO to provide advice and assistance to the SoS and (subject to certain limitations) to any public body. Since it is uncertain whether the Welsh Ministers are a public *body*, it would be appropriate to have a separate provision which placed a specific duty on the MMO to advise and assist the Welsh Ministers
28	Welsh Ministers will need an express power to institute proceedings for civil penalties, in order to ensure there are no gaps in powers for Wales.
36	The MMO is required to have regard to any guidance issued by the SoS. However, a stronger clause would be for the MMO to have to "act in accordance with" with any guidance issued by the SoS.
Schedules 1-3	
Sch1 para5 (1(3))	We would like greater clarity regarding the skills required for the chair and Board members of the MMO. At present, there is only reference to the "functions" of the MMO [Sch1 para5(a)] but while PP §3.17 does give some examples, there is not a clear list anywhere in the draft Bill of what those functions are, hence no clarity. For example drafting, see the Climate Change Bill [Sch1, para1(2)(3)] which gives 9 criteria (experience or knowledge) which the Committee as a whole must meet. Following this approach, the Marine Bill should refer to the chair and Board members of the MMO having skills or experience that include "*conservation of marine biodiversity, living organisms and the ecological systems of which they form part and marine natural resources*".
Sch1 para25 (1(3))	As well as the MMO's functions, the annual report should also require reporting on how the MMO is meeting/achieving its general objective relating to sustainable development. Functions are not the same as the objective. In addition, this provision should also make clear that the report should cover all the MMO's functions including those that have been delegated [s16], or performed by a designated body or any person authorised by a designated body.

5. Part 2: Marine Planning

Overview

Link believes that Marine Planning could be a key tool to deliver sustainable development and protection of our precious marine resources and space through an Ecosystem-Based approach to the planning and management of activities in UK seas. We look to Marine Planning to help us achieve sustainable development and Good Environmental Status (under the EU Marine Strategy Directive).

That said, we welcome the proposals for an overarching Marine Policy Statement (MPS) to articulate the Government's policy for the marine area and sectors. However, we are very disappointed that Scottish Ministers are not involved in its development. We agree that marine plans should apply at the regional and local scale, but believe the regional level should be related to biogeographic Regional Seas. We endorse Marine Planning that covers all marine activities and with decisions by public bodies being taken in accordance with the marine planning system.

The question is whether such wide drafting can achieve the type of integration and holistic decision-making that the government has professed in the past it hopes to achieve with the Marine Bill. It is arguable that without the draft Bill providing more particular rules of a substantive and procedural nature for the preparation of marine plans, the MPS and plans will at best provide a mere frame of reference for other decision making bodies. The consequence is that it will be extremely difficult for the decision-maker to demonstrate that any one particular management system or decision is more integrated than another.

While we strongly welcome the Government's proposals for a new planning system and the majority of the processes outlined in the draft Bill, we have serious concerns about the ability of this tool, as currently drafted, to achieve Good Environmental Status or to implement an Ecosystem-Based Approach to marine management. If the Government is not aiming to achieve Good Environmental Status through the Marine Bill, we fear it is likely to achieve the opposite. Link along with our sister organisations in Scotland, Wales and Northern Ireland, would like to see greater ambition from all administrations to work together to achieve agreement on how to deliver the Ecosystem Approach by implementing Marine Planning at the Regional Seas scale. We feel these are critical omissions in the Marine Planning proposals.

5.1 Duty to produce the plans

Link believes that there should be a duty to prepare and adopt the MPS and marine plans and a deadline for completion of the first MPS and a timetable for delivery of marine plans, as without these we are concerned that they may never be developed. We believe that there should be a commitment to produce plans for all UK waters, while accepting that plans will vary considerably in detail.

5.2 Plans lack detail and hence steer

Link supports the development of a marine planning system, however, we are extremely concerned that the planning system set out in the draft Bill will not fully meet the aspirations detailed in the Policy Paper. While we accept that the Marine Bill will only provide framework legislation, we are concerned that both the MPS and marine plans will be so high-level or framework in nature, that without a commitment in the Bill to producing guidance of a substantive and procedural nature for the preparation of marine plans they will not achieve the objective of steering decision-making. This will make it difficult for decision-makers to

demonstrate that their decisions are in accordance with the policy/plan and that planning is achieving its objectives.

Whilst it may be true that a Marine Plan could include policies of sufficient detail at the regional level, there is certainly no requirement for them to do so as currently framed in the draft Marine Bill. We also believe that the planning proposals are so focussed on economic and regulatory benefits, that potential environmental benefits (e.g. delivering an Ecosystem-Based Approach) are not regarded equally.

5.3 The Marine Policy Statement (MPS):

An MPS should be developed and agreed jointly by all four administrations and we therefore urge the UK Government to work with Scottish Ministers, and *vice versa*, to ensure full participation in the joint UK-wide MPS. Additionally, we want to see high level objectives which deliver the Ecosystem Approach and Good Environmental Status, forming the basis of such an MPS. Unfortunately, the draft Bill does not require the three participating administrations to jointly develop a shared MPS, instead the draft Bill allows the Secretary of State to act unilaterally. It also allows the administrations to opt out of an existing MPS. The Secretary of State could effectively nullify a shared MPS (by opting out), and institute a replacement to which the other administrations had not signed up. The Marine Bill should include greater safeguards to avoid this eventuality.

5.4 SEA Directive

Link is seriously concerned that Sch5 (7)(2-3) could undermine the objective of the EU Strategic Environmental Assessment (SEA) Directive. As drafted, the outcomes of the environmental assessments of plans are balanced against those from social or economic assessments in the Sustainability Appraisal (SA). This is not *integrating* environmental considerations into decision-making, but the traditional approach of *trading them off against* social or economic considerations. Our preference is that plans should be assessed by SEA alone rather than through SA. If an economic and social appraisal is to be carried out, it should be done distinctly from the SEA. We are concerned that the use of SA for spatial plans on land has at times led to environmental issues being considered superficially, hence a loss of depth to the assessment compared to what was envisaged under the SEA Directive. In addition, the MPS, should also be subject to an SEA, to assess any strategic level environmental impacts.

5.5 EU Marine Strategy Directive (MSD)

We believe that the opportunity should be taken to ensure that the Marine Bill enacts as much of the EU MSD as possible and is consistent with the MSD provisions, as described in the Policy Paper (PP Annex A § 7). Arguably, the approach adopted by the MSD is more eco-centric in its focus and member states will need to do more than produce policies that achieve the least environmentally harmful option. The main aim of the MSD is "*to achieve or maintain Good Environmental Status* [GES] *in the marine environment*" by 2020, for Marine (Sub-)Regions. To deliver GES, Member States are required to develop measures to "*apply an ecosystem-based approach to the management of human activities, ensuring that the collective pressure of such activities is kept within levels compatible with the achievement of Good Environmental Status…"* for the Marine Regions, working cooperatively with other Member States.

.

This provides a strong rationale for achieving Ecosystem-Based marine planning through the application of a bio-geographical Regional Seas approach. Administrations would plan jointly in areas where there is shared responsibility to produce one plan at the Regional Sea scale.

At present, it does not seem likely that Marine Planning will significantly contribute to the aims of the MSD because the political commitment to joint planning has not been made yet. However, Link believes this should be a key objective of Marine Planning. The MSD could be seen as providing a statutory rationale for the need for a UK-wide MPS and joint planning, involving all UK administrations. Otherwise the provision to produce MSD Marine Strategies for the UK's waters will need to be provided for in Regulations.

5.6 Regional Seas Marine Planning

The draft Bill does not enable different marine planning authorities (either those it identifies, or future authorities that may be created under Scottish and Northern Irish legislation) to produce joint plans – e.g. the situation could arise where at least four separate plans are produced for the Irish Sea. We believe that joined-up marine planning and management at the Regional Seas scale is the best way to deliver an Ecosystem-Based Approach and ensure sustainable development in the marine environment and achievement of Good Environmental Status. We would like to see powers in the Marine Bill to enable the UK's administrations to prepare joint plans.

5.7 Sustainable Development Purpose

Link welcomes the sustainable development purpose of the MPS [s40(1) (a)] and marine plans [s46(2)(b)]. However, we believe this should be strengthened with a more robust purpose (see the table below for details).

We are very concerned that as drafted the Marine Planning proposals will do little to implement the Ecosystem Approach. Without an Ecosystem Approach purpose, we also fear that the marine plans will prevent rather than contribute to implementation of the MSD. The draft Bill merely refers to general policies that will contribute to the achievement of sustainable development [s40]. Thus, there is nothing in the current drafting of the Marine Bill, nor apparently in the high level objectives of the MPS, to guide the decision maker necessarily on the approach to be taken to achieving integrated management. For instance, it has been argued that where an objective is achievable in a variety of ways, as for instance taking action to contribute to sustainable development, the integration principle merely entails a choice in accordance with the proportionality principle, namely adopting the 'least environmentally harmful approach'. It is arguable whether taking the 'least environmentally harmful approach' is the same as adopting an Ecosystem-Based Approach.

At present, the draft Bill does not even state that the purpose of Marine Planning is *spatial* planning, rather than just *policy integration* [s46(2)]. The MPS should articulate a spatial vision of what the region will look like at the end of the period of the strategy and show how this will further sustainable development objectives. Guidance must be produced on how the complex and difficult choices of using the oceans and coastal regions will be determined in a sustainable way.

5.8 Marine Nature Conservation

We consider the swift designation of a network of Marine Conservation Zones (MCZs) will considerably aid Marine Planning and increase certainty. Where plans precede MCZ designation, the precautionary principle will need to be implemented in relation to all nationally important habitats and species.

5.9 Implementation

We believe that Marine Planning should help guide developers on where applications are more likely to succeed or fail, thus increasing certainty and reducing risks for investors,

offering numerous benefits for industry, Government and marine biodiversity. We support public authorities taking licensing decisions 'in accordance with' marine documents [s53(2)]. However, it will be open to argue that 'relevant considerations' indicate otherwise. There is no definition of 'relevant considerations' in the draft Bill. However, it is to be assumed that they are considerations of a lesser order than 'material considerations' commonly allowed as exceptions to following the plan in terrestrial land permissions. Furthermore, in exercising any of their other functions, public authorities must only 'have regard to' marine documents [s53(1)]. We believe that this may allow the authority too much discretion and could result in weak implementation of sustainable development and the plan's objectives. (For more detail, see the table below).

5.10 EIA and Appropriate Assessments

It is important to note that Marine Planning will not replace the need for project-specific EIA, as well as Appropriate Assessments in relation to European Marine Sites. Marine plans and associated SEAs are strategic and will always need to be supplemented with local data. The precautionary approach must be a key principle of Marine Planning where there is a lack of data, high risk of environmental damage or MCZs have not yet been designated. Monitoring and review of plans to enable future adaptive management, particularly as new data or experience becomes available, will also be essential.

5.11 Policy conflict

The draft Bill proposes resolving conflicting policies in favour of the most recently adopted policy [s53(5)]. While we understand from Defra, that policy conflict will only be resolved this way where both policies are relevant, and Link accepts that there is legal precedence for this approach, we are still concerned that this clause could be misused. Policies could be superficially updated, not requiring amendment to the MPS or plan, but then being the most recent policy adopted and so taking priority where there was conflict. Link believes that this clause needs to be considered with this consequence in mind and for Defra to consider re-drafting it to ensure that important policies are not compromised just because of age. This is often not the case on land, e.g. long-standing Green Belt policies are still considered relevant and considered equally during decision-making on more recent housing policies. A similar approach at sea would seem logical to avoid a situation where policies are updated just to take precedence.

5.12 National Policy Statements (NPSs)

Link would like clarity about the interaction between the MPS and National Policy Statements (NPSs) proposed under the Planning Bill. In addition, the first MPS must be developed and adopted in parallel with the NPSs to ensure that marine issues are adequately integrated into both processes. There seems no reason why the Secretary of State or Welsh Ministers would not have regard to the MPS when setting the NPSs. However, no cross-over between the two statutes is made.

In the Planning Bill, the Infrastructure Planning Commission (IPC) is the public body charged with determining planning applications in the light of NPSs. In the draft Marine Bill's Policy Paper [PP §3.77] the government highlights its intention that the IPC will be responsible for issuing development consents for large offshore renewable energy projects and the biggest harbour developments. However, the draft Marine Bill remains ambiguous as to whether s53 applies to decisions the IPC takes in this respect. We want to see a requirement for the IPC, if and where it is the licensing body for marine projects to be subject to taking the MPS into account before determining a major infrastructure project application, and subject to s53(3). (More detail is in the table below)

5.13 Independent Investigation

Link believes that the proposal to have an independent investigation [Sch5(10)] of plans should be mandatory as for the equivalent Examination in Public on land.

5.14 Scientific data

Link is fully supportive of the proposals in the Policy Paper for greater co-ordination, mapping, pooling and use of marine data and for the MMO to coordinate this. However, there is no Government commitment to investment in new surveys to underpin the marine plans and associated SEAs and fill key data gaps in seabed mapping and species data to inform the designation of MCZs. In fact, there seems no requirement through Marine Planning to identify and map marine landscapes or to assess their sensitivity and vulnerability to actual or likely human activities. Moreover, it does not require information from any detailed monitoring or evaluation of the marine environment or any data collected concerning any nationally important marine features or assessments of the management of designated sites, including European Marine Sites designated under the Habitats and Birds Directives. The MMO needs to not only pool data but ensure it is 'fit for purpose' and up to date; and that data gaps continue to be filled to inform planning, management, designation of MCZs and sustainable development of UK seas. Such investment in new surveys is essential, and must be in addition to existing surveys. While acknowledging there are data gaps, Link believes that there is sufficient data to develop initial marine plans, as they will be based on the same data that informs current licensing and marine management decisions. Bringing all existing data together is the first step in developing an integrated approach.

Detailed comments or proposed amendments to the Marine Spatial Planning part of the draft Marine Bill

CLAUSE	ISSUE / AMENDMENT
39(2)	Link believes the 'sea' should be defined as extending to EHWS not just MHWS to cover the entire marine area.
40(1)(a) (Priority issue)	Link would like wording for a stronger sustainable development purpose here. We would also like "and the ecosystem approach" added here, as we are very concerned that, as currently drafted, the Marine Planning proposals will do little to implement the Ecosystem Approach. In addition, it should be clear that the intention is for the MPS to contain one 'policy' rather than different policies for each of the policy authorities. We therefore suggest the following amendments: "… in which the policy authorities which prepare and adopt it state their jointly agreed policies (however expressed) for furthering Sustainable Development and delivering an ecosystem-based approach to marine management."
40(2); & 46(2)	There should be a reference to the need to set specific objectives and targets alongside the broader high level policy objectives.
40(4) (Priority issue)	Scottish Environment Link's Marine Task Force and Wildlife & Countryside Link would encourage the Scottish Government to participate along with other UK administrations in developing a UK MPS and that the clauses should be amended accordingly. At the very least we want some wording to allow the Scottish Government to contribute and sign up to the MPS at a later date, should they choose to.
41(1); & 46(1) (Priority issue)	Link wants to see a clear duty not just a power on the policy and planning authorities (e.g. SoS, Welsh Ministers, DoE(NI)) to produce marine plans and the MPS. There should be a deadline for completion of the first MPS (that runs in parallel to and is integrated with the NPS process on land) and a timetable for delivery of marine plans. We want to see plans for the whole UKCS though we accept they will differ greatly in detail.
41(1)	We would like clarification on whether the SoS can act alone in Wales. The draft Bill does not require the three participating administrations to jointly develop a shared MPS, instead the Secretary of State could act unilaterally. It also allows the administrations to opt out of an existing MPS. (see s43 below)
41(3)	The MPS and marine plans come into effect when they have been adopted **and** published. But there is poor drafting in some places in the legislation and/or explanatory notes which is leading to confusion. These drafting errors need to be corrected.
42(1)	There is no timetable for revisions of the MPS. There should at least be a deadline date for review
43	We appreciate that due to devolution it is up to each administration's Ministers to decide whether they wish to withdraw from an MPS. We also appreciate that it would be an extremely unusual step for a Minister to opt out of a policy document like the MPS. However, we are still concerned that it is too easy for a policy authority to opt out of an MPS. We would like clauses to make it more difficult for a policy authority to opt out and we recommend that they should at least have

	to undertake an inquiry or consult stakeholders before withdrawing. There should also be a prescribed period of notification to the other policy authorities. The SoS could effectively nullify a shared MPS (by opting out), and institute a replacement to which the other administrations had not signed up. The Marine Bill should include greater safeguards to avoid this eventuality. These issues also arise re: marine plans, s48 & s49.
43 (6)	Whereas this section tells us the status of the Marine Plan when an MPS is withdrawn, it does not provide a clear steer on what happens when a new MPS is adopted, i.e. should the marine plans now be interpreted in accordance with the new MPS (see s46(4)) or should a new marine plan be prepared? Clarity would be helpful.
45(1)	We would like clarity, that as drafted, this clause does not, unintentionally act as a barrier to Scotland and Northern Ireland producing their owning planning systems within their own territorial waters or being the planning authority in relation to their own plans.
45(4)(a)	The SoS is the marine plan authority for Great Britain offshore waters, including adjacent to Scotland [s45(4)(a)] but marine policy documents and plans do not have any effect on Scottish Ministers' decisions in that area or in Scottish inshore waters, except for reserved functions [s53(4) & EN144]. We urge the Scottish Government (as well as the other UK Administrations) to agree to joint-planning to enable marine planning to be introduced at the regional seas level (see view on s46(1)(a) below).
46(1)(a) (Priority issue)	We strongly believe this clause should be amended to provide a commitment (duty rather than power) to produce marine plans and that they should cover all areas of the UK as was originally proposed (and which we supported) in the Marine Bill White Paper last year. We accept that these plans will vary in detail with, for example, those far offshore off North West Scotland covering less detail than coastal plans where there is more information and more activities, however, we believe that Marine Planning should cover all activities in all areas.
46(1)(a) (Priority issue)	We want Marine Planning to be implemented at the Regional Seas level rather than being constrained by political or administrative boundaries. Link is concerned that, as currently drafted, the draft Marine Bill would not for example, enable a single Marine Plan to be developed in for example, the Irish sea, Severn Estuary or North Sea. Defra has confirmed that the only way to produce a Marine Plan for the Irish Sea for example, would be to knit together the plans of various authorities. The only place where there is formal joint planning is for the Northern Ireland Offshore Zone, i.e. where Northern Ireland and the SoS have agreed to plan jointly. We urge all the administrations to work together to implement Marine Planning through a Regional Seas Approach to achieve and therefore ensure the delivery of an Ecosystem Approach to the management of human activities. If no agreement is reached now the Marine Bill needs to at least allow for joint working arrangements in the future by including enabling powers.
46(1)(a)	Link would like to see mention of the Regional Seas and Ecosystem Approach in this clause. As currently worded, the marine plan authority can designate any area regardless of whether it is

	ecologically coherent.
46(2)(b) (Priority issue)	There is no specific requirement in the draft Bill for the provision of spatial plans. This section states that the Marine Plan is a document that states "policies (however expressed) for, and in connection with, sustainable development of the [marine] area". The drafting makes no mention of any purpose connected to the spatial development or integrated management of any part of the marine area. Therefore, the current drafting could result in a plan that is no more than a statement of policies. In addition, the same issues as highlighted for the MPS [s40(1)(a)] re: the sustainable development purpose, are also relevant for marine plans.
46(4)	The Marine Plan must express policies that are in conformity with any MPS that has effect for its Marine Plan area (unless relevant considerations indicate otherwise). However, it is not clear that these policies will have the level of practical detail required of a spatial plan in order to resolve complex and difficult choices of use of the oceans and coastal regions. For instance, there is no requirement to identify and map marine landscapes or to assess their sensitivity and vulnerability to actual or likely human activities.
47	Some indication of what matters plans must take into account can be obtained from the s47 duty of review imposed on the marine plan authorities. However, these matters are extremely limited and arguably insufficient to establish a well drafted regional plan. For instance, there is no requirement to identify and map marine landscapes or to assess their sensitivity and vulnerability to actual or likely human activities. There is no timetable for the review of plans, Link believes that there should at least be a deadline for plan review. Moreover, this review does not require information from any detailed monitoring or evaluation of the marine environment or any data collected concerning any nationally important marine features or assessments of the management of designated sites, including European Marine Sites designated under the Habitats and Birds Directives
50(7)	We understand this is being re-drafted to ensure Wales devolved functions are not compromised.
53(1)&(2)	We support s53(2) stating that public authorities must take any decisions re. licensing "in accordance with" the Marine Plan. However, we are concerned that s53(1) states that public authorities only need to "have regard to" the plans when "taking a decision in the relation to the exercise of any function". While we appreciate that this is slightly different circumstance than licensing, we still question whether "have regard to" is strong enough. We consider this leaves public bodies with too much discretion. So long as the decision maker can show it has considered the relevant documents it will be very difficult to demonstrate a failure to comply with the provision in any given circumstance.
53(2)	States that a public authority must take decisions in accordance with the appropriate marine policy document unless relevant considerations indicate otherwise. Does this mean that Natural England can consider the Habitats Regulations etc above the marine

	policy document or that NE as a public authority must have regard to the plan over their other commitments? There should also be stronger wording than 'relevant' to ensure Appropriate Assessments or EIAs can be taken into account in decision making. There is no definition of 'relevant considerations' in the draft Bill. Link believes that the use of the existing phrase 'material considerations' commonly allowed as exceptions to following the plan in terrestrial land permissions could be adapted for use in the marine environment. This would require that guidance be produced that described how to interpret it for the marine area and give marine examples. (This issue is also relevant for the MPS [s46(4)])
53(5) (Priority issue)	Link is concerned that there is an issue over policy priorities and that where there is a conflict between policies, this will be resolved in favour of the most recently adopted policy. We believe that this has consequences for the frequency that different policies within the MPS are updated in relation to each other. While we understand from Defra, that policy conflict will only be resolved this way where both policies are relevant, and Link accepts that there is legal precedence for this approach, we are still concerned that this could be used as a loophole for certain policies to always take priority to the detriment of those policies that are not reviewed as often. Policies could be superficially updated and adopted, but not requiring amendment to the MPS or plan, so taking priority where there was conflict. Link believes that this clause needs to be considered with this consequence in mind and for Defra to consider re-drafting it to ensure that important policies are not compromised just because of age.
53(5) (Priority issue)	Link would like to see further clarity in the Marine Bill as to which takes precedence the MPS or the NPS. The IPC is the public body charged with determining planning applications in the light of the National Policy Statement (NPS) proposed under the Planning Bill. However, the draft Marine Bill remains ambiguous as to whether section 53 applies to decisions the IPC takes in this respect. In other words, assuming the IPC qualifies as a public authority under the terms of the draft Marine Bill, is it then subject to taking the marine policy documents into account before determining a planning application of a major infrastructure project as a decision for an authorisation under section 53 (3). It seems unlikely that this is the Government's intention but the draft Marine Bill is not explicit on the point. If such is the case, this begs the question how the NPS will demonstrate the type of marine spatial planning that is intended at the Regional Seas level under the draft Marine Bill. There seems no reason in principle why the draft Marine Bill should not provide for regulations to be made in this respect as and when the statutes become law. We would like clarification on how the MPS will interact with the NPS, or its status relative to them. It is unclear whether the MPS is to be considered as an NPS? Under the Planning Bill (s97), the IPC is required to make decisions 'in accordance with any relevant NPS'. §3.77 of the Policy Paper is very vague and we fear that in such cases, unless it is specified that the MPS takes precedence at sea, that the IPC will ignore it in favour of the sectoral NPS to push through big development.

	We believe that should the IPC be given responsibility for licensing any marine projects, there should be a requirement for its decisions to be made in accordance with the MPS, which may require amendments to be made to the Planning Act.
54	Link welcomes the proposal for monitoring of, and reporting on, implementation and where necessary making amends to or replacing the Marine Plan. However, we are not sure this fully covers compliance monitoring - monitoring & reporting on implementation will also find instances where it is not be the plan that needs amending but rather the behaviour of the MMO and public authorities in implementing the plan. We feel this should be made more apparent. We would also welcome a clause on the need for monitoring and review of plans to enable future adaptive management, particularly as new data or experience becomes available. Nor is there an enforcement mechanism to ensure compliance with the primary duty of furthering [contributing to the achievement of] sustainable development. Proper use of Guidance, regulations and directions can all assist in exerting control and compelling performance with duties. There seems little emphasis in the draft Marine Bill on these types of controls and a few mechanisms for ensuring proper monitoring and accountability of Ministers when carrying out their functions.
55	Link consider that the grounds for challenge are far too restrictive and need to be made more open. While EN149 states that this clause "sets out how people may challenge the content of marine policy documents … in court", in reality, s55(3)-(4)&(6) only enable challenges to the procedure and powers held by the policy/planning authorities. There is no mention of challenge to the content of the policy/plan within this clause, therefore, the only route is by judicial review. Furthermore, a challenge can only be made by a "person aggrieved by a relevant document" [s55(4)] – does this limit who can bring a challenge, and if so, in what way? We would also like clarification as to which court would challenges in Scottish offshore waters fall to – the Scottish courts or 'English' courts?
57(3)	While Link supports the plan authorities (SoS etc) being able to issue guidance and the MMO and public authorities having to have regard to this guidance, we would also like to see the MMO with powers to issue guidance and for public authorities to have due regard to this too.
Schedules 4 & 5	
Sch4(5)(6)	We understand that the intention is to allow stakeholders to make representations & raise objections about the consultation process at the start when the Statement of Public Participation (SPP) is published, but believe this point needs to be clarified. At present there does not appear to be any process for interested persons to object to the SPP (or the Statement of Public Involvement (SPI)) in Sch5(3)) if they feel the proposed process for developing the MPS is in some way unfair, e.g. consultation timetable is too short, etc.
Sch4(12)(3)	This gives some leeway for policy authorities to adopt an MPS after others have done so, but does not seem to allow them to do this after the MPS has been published. This should be amended to ensure policy authorities are not 'locked-out' of an MPS.
Sch5(1)(2)	The provisions for adjoining or adjacent planning authorities to 'take all reasonable steps to secure that the plans are compatible' is weak

	and will not lead to Regional Seas management (see section 6 main text).
Sch5(5)	Link would like to see more information from Defra on what the Advisory/consultative groups status and role would be as well as their legal status e.g. if they were called Steering Groups would they have a different legal status?
Sch5(6)(1);& (6)(2)(a)	The requirement on the marine plan authority to have regard to the MPS is at odds with s46(4) which requires conformity with the MPS unless relevant considerations indicate otherwise.
Sch5(7)(2)&(3) (Priority issue)	Link is extremely concerned about Schedule 5 and the legal advice we have received confirms that, as drafted, the Schedule undermines the SEA Directive. As such it is imperative that this be re-worded. The Schedule currently balances the outcomes of the environmental assessments of plans against those from economic or social assessments. This is not *integrating* environmental considerations into decision-making, but the traditional approach of *trading them off against* social or economic considerations. We believe that this does not meet the requirements of the SEA Directive, which is to ensure that environmental issues are properly considered and environmental considerations should no longer be traded off against social or economic considerations. Additionally, Link believe the MPS, must be subject to an SEA, to assess any strategic level environmental impacts, as it will be driving the content of the marine plans.
Sch5(10)	Link believes there should be a compulsory independent investigation as there is on land.
Sch5(10)(2)(a)&(b)	As detailed above unders55, Link has concerns that interested persons seem unable to object if they feel the SPI process is unfair e.g. consultation timetable is too short, does not involve the right stakeholders, there is no examination in public (EiP), etc.
Sch5(11)(3)	Link is pleased to learn that Defra and WAG are trying to resolve the issues arising from this Schedule as currently worded, namely that WAG would need SoS agreement on devolved functions.
Sch5(11)(5)	There should be a specified period between plan adoption and publication of the plan to avoid delays and uncertainty and ultimately avoid the plan never being published.

6. Part 3: Marine Licensing

The draft Marine Bill proposes improving the complex way activities at sea are administered and consented – including reforms to update some of the environmental elements of licensing projects and activities. However, we are concerned that in looking to reduce the burden on applicants, that marine biodiversity issues may not be properly considered and that the new environmental safeguards may not be strong enough.

6.1 Positive Points (overview)

The reform of marine licensing regimes removes unnecessary duplication in a number of existing pieces of licensing legislation. We welcome the provisions of the reformed licensing regime to allow precautionary [e.g. s96(4)(b)] and preventative measures [s80(4); s81(5); s96(3)-(4)] to be taken where negative impacts will or would be likely to occur, including the power to stop damaging actions [s96-97]. We also support the power to carry out remedial action where damage has occurred or where it appears necessary to protect the environment or human health [s98].

Proposals which allow licensing authorities to not only consider the construction phase impacts of a project but also the intended use of the structure when determining an application or deciding on licensing conditions are welcomed [s63(2); s65(2)]. This ensures that how the structure will be used in the future can be considered when deciding whether to issue a licence and what conditions to apply.

We are pleased to see that the proposals are worded to ensure that all methods of dredging will be covered by the Marine Act licence irrespective of the dredging technique used [s60(1)(9); s60(2)(a)].

6.2 Environmental Safeguards on Marine Licences

We are concerned that in streamlining licensing and reducing the burden on applicants, the environmental safeguards are not strong enough. Licensing is one of the main mechanisms for managing human impacts on the marine environment and therefore safeguards are important. As currently drafted, licensing is the main tool for ensuring the protection of Marine Conservation Zones (MCZs) (though there will be other mechanisms for IFCAs to manage fisheries impacts).

There is a duty to have regard to the need to protect the environment when determining applications [s63(1)]. However, the term “environment” is defined so broadly [EN175] that it could result in every project trading off site-specific biodiversity loss or damage against an undefined global environmental gain. We would note that there are global benefits to protecting biodiversity and that the UK is home to internationally important marine wildlife. Therefore, the definition should encompass biodiversity. In addition, we believe that the general duty on all public bodies to have regard to the purpose of conserving biodiversity in the NERC Act 2006 should be extended to the marine environment. We have suggested amendments to s63(1) in the table below which would achieve these objectives.

We believe that the term “serious-harm” should be defined in relation to the use of compliance notices [s80(4)], remediation notices [s81(5)] and stop notices [s96(5)]. The lack of a definition creates ambiguity that is likely to result in a lack of subsequent action or legal challenge. See the table below for more detailed comments on this point in relation to these clauses.

6.3 Requirements to seek Advice from Experts

When assessing applications it should be mandatory rather than discretionary for the licensing authority to consult experts [s63(4)]. For example, the statutory nature conservation bodies (SNCBs) should be consulted on all marine applications to provide expert advice on the potential environmental impacts of the project, how to mitigate those impacts, what conditions to put on the licence or whether the project should be rejected on environmental grounds. The licensing authority must take account of expert advice and where that advice is not followed, should be required to publish its rationale. It should also be a requirement to consult the public on applications [s63(3)]. We suggest amendments to s63(3) & (4) to achieve these objectives in the table below.

6.4 Exemptions

While licensing exemptions [s67] are not ideal, we concede that they would reduce the regulatory burden. However, in the draft Bill, there are no environmental safeguards or checks in relation to exemptions – there is no description of the types of activities that could qualify for exemption, no requirements for assessing impacts and consultation is not mandatory. At the very least, it should be compulsory for the licensing authority to be notified every time an exempted activity is carried out, and for this information to be included in the proposed 'register of licensed activities' [s95]. This would ensure that licensing and planning authorities could base decisions on a complete record of all the (licensable) activities happening in the marine area at any time and allow them to properly determine the cumulative impacts of these activities on the marine environment. This is the only way to ensure sustainable development in the marine environment. We supply further details on s67 in the table below.

However, the proposed exemption for harbour maintenance dredging through Harbour Orders [s68] is poorly drafted and appears to include all dredging activities, not just those for harbour maintenance. We believe that while this may be unintentional, it must be amended in the Marine Bill (see the table below for our suggestions regarding s68).

6.5 Overlapping Licensing Regimes

Where more than one licence is still required, i.e. a Harbours Act or Electricity Act as well as a Marine Act licence, and there is procedural overlap, the intention is to disapply the Marine Act procedures in favour of those in the other Acts [s72; s73, respectively]. We are concerned that the proposals to remove duplication are so flexible as to create a loophole where Marine Act procedures (i.e. environmental safeguards or stakeholder consultation, etc) could be downgraded, ignored or even omitted. It is not specified in the draft Bill that the modified procedures should be of the same standard as those under the Marine Act. Moreover, as the Marine Act will be the more recent legislation, it would be more logical for its procedures to be applied where there is overlap and ensure greater consistency across licensing regimes. More detailed views on s72 and s73 are included in the table below.

6.6 Marine Licensing & Devolved Administrations

The regulatory reforms are not universal throughout UK waters – Scottish territorial waters and functions are not included [s101(2)], and the amendments to the Harbours legislation will not apply to Northern Ireland [PP Box1.3]. Therefore, operators that work throughout UK waters will be subject to different regimes – requiring a Marine Act licence for projects outside and a FEPA and/or CPA consent within Scottish inshore waters and for devolved Scottish functions. This will be even more complex for projects that straddle Scotland's 12 nautical mile boundary. Such complexity must be managed by the UK and Scottish

Administrations to ensure that the licensing reforms in the draft Marine Bill and in Scotland's proposed Marine Bill are coherent and do not disadvantage users and interested third parties.

Even where the licensing system is reformed, there are potential administrative complexities. For example, applicants seeking licenses in cross-border areas, such as the Severn Estuary, will have to apply to the licensing authority on either side of the border. Some renewable energy installations in Welsh waters will require a licence from both Welsh Ministers (Marine Act) and the Secretary of State (BERR) (under the Electricity Act, administered by the MMO). It is essential that in such circumstances, the Secretary of State/MMO and Welsh Ministers have a close working relationship. Provisions to enable authorities to work together in these circumstances could be beneficial both to sea users and to regulators seeking to ensure joined-up, ecosystem-based management.

The draft Bill empowers the Secretary of State to delegate licensing functions to the MMO by means of an order [s93], which can include provision for appeals against licensing decisions taken by the MMO [s94(4)(g)]. Welsh Ministers will not be delegating their licensing functions, so the ability to provide for an appeals process is currently not available. Therefore, in parallel to the draft Marine Bill process, we are seeking clarity (through our sister organisation, Wales Environment Link) from WAG as to how the right to appeal will be provided for sea users in Wales. See the table below for further comments regarding the appeals process [s94].

6.7 Environmental Impact Assessments

We would like a formal commitment from Government that the Environmental Impact Assessment (EIA) Regulations, which require the environmental impacts and cumulative effects of projects to be determined, will be updated in secondary legislation.

6.8 The Licensing Body

Link believes that it would increase complexity and regulatory burden if the Infrastructure Planning Commission (IPC) (proposed under the Planning Bill), and not the MMO, is given responsibility for licensing the largest ports and larger offshore wind farms (see our response to Part 1 the MMO).

***Detailed comments or proposed amendments to the Marine Licensing part of the draft Marine Bill*:**

Part 3: Marine Licensing	
60(1)(2)	This clause - "*depositing of substances or objects in the sea or on or under the seabed from a British vessel, aircraft or marine structure or a container if the deposit is controlled from a British vessel, aircraft or marine structure*", includes the Scottish inshore region. This is probably unintentional but the implication of this is that Scottish Ministers would be the licensing authority for the offshore area adjacent to Scotland, but the licensing authority for the inshore region would be the Secretary of State. It should refer to "*depositing of substances or objects within the UK marine licensing area, either in the sea or on or under the seabed from* …" as in the rest of s60(1), where the "*marine licensing area*" does not include the Scottish inshore region [s101(2)]. Similarly, there are other examples in s60 where no geographic limit has been specified.
60(3)	Each licensing authority, i.e. each UK Administration, can amend (adding to or subtracting from) by Order the list of activities requiring a licence for its area of licensing responsibility. The potential result will be different licensing regimes in each marine licensing area, creating a very complex system for users and complicated enforcement where an activity straddles two licensing authorities' areas. It also could lead to "jurisdiction shopping" by developers and commercial operators. In addition, where the controls in other legislation (e.g. see s75 in relation to electronic communications apparatus) are being disapplied on the basis that the activity (in this case, cable laying) is included within Part 3 of the Marine Bill, if a licensing authority alters the remit of Part 3 under this clause then there is a possibility that certain activities could become unregulated. There should at least be a requirement for liaison between licensing authorities to agree proposed changes within the different licensing areas. We would suggest that it should require agreement from all the licensing authorities and appropriate alternative safeguards instituted before removing an activity from the list, to reduce the risk of a new set of 'unregulated' activities being created either intentionally or unintentionally.
61(3)	This clause is likely to result in inequality across the UK's seas as each licensing authority determines their own form of application and fees within their marine licensing area for the same activities. There should at least be a process for the different licensing authorities to agree on standard fees.
61(4)	It be should mandatory rather than discretionary for all marine licence applications to contain information addressing the three items listed in s63(1)(a)-(c). We would expect the licensing authority to need environmental information under s61(4)(a), except where it is provided as the result of the requirements of the EU EIA Directive (in which case the provision of environmental information would follow the statutory EIA procedure). Therefore s61(4)(a) should be amended to include the requirement for information to be provided relating to the main environmental impacts and for that information to be made available to the public. The authority must consider that information when making its decision – this should be linked to s63 (determination of an application). We would not expect these requirements to be as strict and detailed as those in the EIA Directive.
62(6)	EN172 sets out the circumstances in which the authority is not required to

	publish a notice. While these justifications appear reasonable, the legislation provides no constraints, leaving it to the discretion of the licensing authority to choose not to publish the notice. It would be straightforward drafting to add the justifications set out in the explanatory notes to the legislation.
63	s8(2) of FEPA requires applications for disposals to be subjected to an analysis of the availability of alternatives to disposal – this is a sensible provision that we would like to see added to the draft Bill.
63(1)	The term "environment" must have a proper definition. The Environmental Protection Act 1990 defines 'environment' as "*the air, water and land …*" and in the absence of a definition in the Marine Bill, lawyers are likely to turn to other legislation for interpretation. FEPA s8(1) provides greater clarity by requiring the licensing authority "*to protect the environment* [and] *the living resources which it supports*…". To have some detail set out in the explanatory notes [EN175], while s104(2) formally provides that in Part 3 "environment" includes "*sites of historic or archaeological interest*", is neither sufficient or consistent. We are also worried that "environment" is described so broadly in EN175 that whilst it is inclusive, we fear this will result in <u>every</u> project trading off site-specific biodiversity loss against an indeterminate global environmental gain. It should be noted that UK waters are home to internationally important marine biodiversity. "Environment" (in the context of 63 (1)) must be defined so as to encompass biodiversity. In addition, we believe that the Natural Environment and Rural Communities Act 2006 general duty (NERC s40) should be extended to the marine area. This would put a duty on all public bodies in exercising their "*marine functions*" (as defined in s14(2)) to "*have regard, so far as is consistent with the proper exercise of their functions, to the purpose of conserving biodiversity*", with Ministers having to have particular regard to the CBD (United Nations Environmental Programme Convention on Biological Diversity of 1992). This would ensure consistent protection for biodiversity through the whole of the UK, whether marine or terrestrial. We would also note that there would be additional assessments of the potential environmental impacts of projects required under the EU EIA Directive and the EU Birds and Habitats Directives (i.e. appropriate assessments) that will influence decision-making on licences.
63(3)	While the licensing authority must have regard to representations on applications, there is no procedure set out here as to how/when the licensing authority will seek these representations or consult with interested stakeholders (third parties). There should be a clear obligation to consult with stakeholders including statutory bodies (also see our response to s63(4) below) on <u>all</u> applications. The application decision should include details of how the licensing authority has taken account of the representations and provide reasons where advice from statutory bodies or 'experts' has not been followed. s63(6) should include regulations containing the detail of this procedure.
63(4)	To ensure that 'experts', such as Government's statutory advisors, are consulted on <u>all</u> marine licence applications, change "*licensing authority may … consult any person or body which has particular expertise*" to "*must … consult any person or body which has particular expertise*": The application decision should include details of how the licensing authority has taken account of the advice from experts and to give reasons where that advice has not been followed. s63(6) should include regulations containing the detail of this procedure.

63(5)	Third parties should also be entitled to make representations on such observations received under s63(4)(b). The licensing authority ought to be required to consider these observations and the representations received on them when making its decision.
64	Notwithstanding the cross-reference to other legislation, further detail of the inquiry procedure is required.
65	While we welcome the provision to put conditions on licences, there is no reference to setting standards that licensees would have to achieve. This would be a valuable addition to this clause.
65(3)(f)	This should cover not just a specified site, but also a specified time e.g. there may be nature conservation or other reasons for requiring that an activity does or doesn't takes place at a certain time of year, to minimise impacts.
66(1)	It should be made clear that "*provisions*" also includes conditions on licences.
66(3)	Refer to s63(1) above for our comments regarding granting licences – the same issues are relevant to this clause, regarding the definition of "environment". We note that FEPA s8(11)(a) (which s66(3) this is based on) also refers to "*a change in circumstances relating to the environment, the living resources which it supports or human health*". Where licences are to be varied, etc, for reasons that appear to the authority to be relevant, there ought to be a formal check (appraisal) first to ensure that the changes do not result in unintended environmental consequences.
67	This provision to exempt activities from requiring a licence is not acceptable in its present form. It is vague, with no constraints in the legislation regarding the circumstances in which an exemption would be acceptable or not, or detail on the types of activities that would merit exemption. It creates a potential loophole allowing possibly environmentally damaging activities to proceed unchecked. Link would advocate the following amendments. It must be mandatory to: (1) Ensure that any exemptions do not compromise the licensing authority's 'purpose' in s63(1) (as amended by our suggestions above), i.e. to protect the environment and human health and to prevent interference with legitimate uses of the sea; (2) Carry out an EIA (and an Appropriate Assessment where an activity is likely to impact on a site protected under the Birds or Habitats Directives) and an impact assessment [IA §24] of the proposal; (3) Seek advice from 'experts'; (4) Consult with interested parties (to strengthen s67(4)); (5) Take account of the advice from experts and the representations received from interested parties when making the decision on whether to allow the exemption; (6) Publish the reason where expert advice is not followed; (7) If the Order is granted, the licensee must get approval and/or notify (depending on the conditions in the Order) the licensing authority every time it carries out or repeats the activity (to strengthen s67(2)&(3)); (8) Monitor and review the exempted activities to ensure that conditions are being met and that unintended environmental damage isn't occurring; and (9) Record information about exempted activities in the register of licensed activities [s95].
68	We note that the Policy Paper [PP §3.71] envisages that the majority of harbour 'maintenance' dredging would be exempt from requiring a licence. However, we question the need to exempt dredging and deposit of the

	dredged materials by or on behalf of a harbour authority from requiring a licence when under s72 (and in Sch12) of the draft Bill provision is made for the Marine Act licensing and Harbours Act procedures to come together and so the application procedure for dredging in ports need not be cumbersome. (See our comments on s72 below.) Though, we concede that with proper environmental safeguards and assessments (see response to s67, above for our full analysis), regularly occurring, repetitive activities such as harbour maintenance dredging and associated deposit might be exempted. However, this clause is drafted so that it includes all dredging activities in the exemption not just 'maintenance dredging'. While we believe that this may be poor drafting as the Policy Paper states that the intention is to exempt 'maintenance' dredging, this clause must be amended to ensure it relates to maintenance dredging only.
72 & 73	While we would agree that it is duplication for an applicant to have to go through two similar procedural processes for one project, the mechanism proposed in s72 & s73 is inappropriate. The provisions have the effect of leaving open the legislative procedure to be adopted for making marine licensing decisions regarding harbour works and electricity generation works, creating potential uncertainty for applicants and interested stakeholders. Where more than one licence is still required, i.e. a Harbours Act [s72] or Electricity Act [s73] as well as a Marine Act licence, and there is procedural overlap, these clauses give the SoS discretion (when making Orders) to disapply the Marine Act licensing (Part 3) procedures in favour of those already existing in the other Acts. We are concerned that the proposals to remove duplication are so flexible that they create a loophole whereby critical Marine Act procedures (i.e. environmental safeguards or stakeholder consultation, etc) could be ignored or even omitted. In addition, it is not specified in the draft Bill that the procedures modified through such Orders should be of the same standard as the procedures under the Marine Act. The proposals in the draft Bill also appear to permit the SoS's Order to modify the Harbours or Electricity Act procedures. The result being that every application could be different, increasing rather than reducing complexity regarding application procedures. We believe that the only way to make these clauses acceptable is to require the Order to disapply the Harbours or Electricity Acts procedures where there is procedural overlap or duplication provisions, applying the Marine Act procedures. As the Marine Act will be the more recent legislation, it would be more logical for its procedures to be applied and would also ensure greater certainty and consistency of procedures across licensing regimes.
74	The Policy Paper para 3.65 refers to integration of both flood risk matters as dealt with under the WRA 1991 and land drainage matters as dealt with under the Land Drainage Act 1991 – however s74 deals only with the WRA 1991 (flood risk); it does not deal with land drainage matters in the Land Drainage Act 1991. This is confusing. In addition, s74 only deals with s109 of the WRA but omits consents in byelaws made under paragraph 5 of Schedule 25 (WRA) despite the fact that both together are referred to as 'Flood Defence Consents'. Schedule 5 of the WRA should also be modified in line with the changes to s109. The problem with s74 is that it provides for the disapplication of s109 WRA 1991 in circumstances where the Agency consents, but it says nothing about the circumstances under which the Agency is *permitted* to consent

	(i.e. this should be where the Agency is satisfied that equivalent controls are imposed in some other way) or what then should happen to ensure that s109 equivalent controls are applied to the proposed work. What we need here is an assurance that if s109 is disapplied and so the Agency ceases to be involved, equivalent controls will be imposed by the licensing authority in lieu of the Agency.
77(4)	This clause should be widened to include negligent actions, i.e. "...*due to the fault **or neglect** of the defendant*".
80(3)(b)	This sub-clause should also include "*or is likely to fail to comply with a condition*..."
80(4); 81(5); 96(5)	A definition is required for "*serious harm*" and "*serious interference*" because the use by enforcement authorities of a compliance notice [s80(4)], a remediation notice [s81(5)] or a stop notice [s96(5)] is dependent on whether or not one of these tests have been met – i.e. there has been/is/is likely to be "*serious harm*" to the environment or human health or there has been/is/is likely to be "*serious interference*" with legitimate uses of the sea. The lack of a definition creates ambiguity likely to result in legal challenge when these enforcement tools are used or a lack of subsequent action. We believe that all these enforcement tools should be available where there has been/is/is likely to be any harm or interference. The enforcement authority can then choose the most appropriate tool or combination of tools to use. Guidance could be provided on their use. Finally, the compliance notice test [s80(4)] should apply not only where the activity "*has not caused*" and "*is not likely to cause*", but also where "*it is not causing*" serious harm or interference.
82(1)(b); 97(1)(b)	It is essential that the licensee is notified of any breach of his licence; therefore, this should be obligatory not discretionary to serve the licensee with any compliance notices, remediation notices [s82(1)(b)] and stop notices [97(1)(b)].
93	This clause should refer to refer to delegating licensing functions to a public 'body' only, not to a 'person' as that appears to be the intention, i.e. to the MMO in England [EN233-234]. The equivalent s50 regarding marine plans in Part 2 only refers to a 'body'. There should also be a provision requiring the licensing authority to satisfy itself that the body it is delegating to has the appropriate skills, knowledge and experience.
s94(4)(g)	The appeals process mentioned in the Policy Paper [PP §3.64; PP Annex H §6-7] (an independent appeals mechanism which will work to a clearly defined and transparent process) only appears as a supplementary provision relating to delegating marine licensing under s94(4)(g) and therefore would benefit from greater elaboration to define the process. s94(4)(g) enables the SoS/Welsh Ministers, when delegating, to make regulations providing for appeals from the delegate either to the SoS/Welsh Ministers or to another person. Welsh Ministers do not intend to delegate these functions and therefore will not have the ability to create an appeals system under this sub-clause.
95(2)	The proposed register of licensing information currently should be required to contain information about exempted activities. (See also our response to s67 above) This ensures that licensing authorities can adequately consider the requirements of the EIA Directive in relation to cumulative effects, and the Habitats and Birds Directives in relation to proposed plans and projects "in combination" with other plans or projects. This also enables licensing (and planning) authorities to properly determine the cumulative and combined

	impacts of all (licensable) activities on the marine environment.
95(5)(b)	As drafted, the licensing authority's discretion to exclude information from the register if they determine that "*disclosure ... would be unduly prejudicial to any person's commercial interests*" is not clear. We believe it would be more appropriate to use language from the Environment Information Regulations 2004 (Reg12(5)) – a public authority may refuse to disclose information to the extent that its disclosure "*would adversely affect the confidentiality of commercial or industrial information where such confidentiality is provided by law to protect a legitimate economic interest*". This is more definite and has legal precedent.
104	The definition of "*marine structure*" does not include pipelines. However, substances or objects could well be deposited in the sea/seabed by/*via* a pipeline. So it is not clear why depositing substances from a pipeline is excluded here.
Schedules 6 & 12	
Sch6, para2(2)	It would seem unduly restrictive not to allow compliance/remediation notices to be issued together with fixed monetary penalties. It is also noted that variable monetary penalties (Sch6, para3) can be used with a remediation notice but not with a compliance notice. The lack of consistency is unhelpful.
Sch6, para10	There must be a requirement for the licensing authority to seek advice from statutory 'experts' and be required to take account of that advice and any consultation responses.
Sch12, para3	The delegating body must be required to satisfy itself that the body to which it is delegating decision making under the Harbours Act has the appropriate skills and qualifications. While we assume it will be the MMO in England, it is not specified here. Furthermore, reference should be to a "public body" rather than to a "person" as the delegate (same issue as s93 above). It is not appropriate for the legislation to make possible delegation of these important functions to private companies or individuals.
Sch12, para5	We support the removal of the right of a single objector to call a public inquiry, because of the associated safeguards provided, e.g. the discretion for an inquiry to take place in most cases but a mandatory inquiry where requested by the statutory nature conservation agencies (i.e. NE and CCW). We agree that it would be unreasonable for the existing law to stand.
Issues in the accompanying documents but not in the draft Marine Bill	
PP §3.61; PP Annex H §2	The Policy Paper explains that the draft Bill consolidates and modernises FEPA and CPA and that Part 3 (marine licensing) will to replace them, as we would expect. However, there are no provisions in the draft Bill repealing the regulatory controls (for England, Wales, Northern Ireland and the offshore) in FEPA Part 2 or the CPA. Therefore, it appears that FEPA and CPA will remain legally relevant and applicable, creating duplication with the Marine Act regime and two licensing regimes capable of licensing the same projects.

7. Parts 4 and 5: Marine Conservation Zones and other conservation sites

Main issues

7.1 Precautionary principle and Ecosystem Approach

The Government has stated that the marine nature conservation proposals in the draft Bill will help it to deliver its OSPAR commitments and implement the Marine Strategy Directive (MSD). Both OSPAR and the MSD require the application of the precautionary principle and the Ecosystem Approach. As currently drafted, we believe that the draft Bill does not adequately reflect this.

By way of example as to the implications of complying with the precautionary principle, s116(3) of the Bill, relating to English interim orders, states that an order must contain a description of the boundaries of the area to which it applies and that these "must be no greater than necessary for the purpose of protecting the feature in question" (similar provision is made for Wales in s120(3)).

This provision can be interpreted consistently with the precautionary principle if "necessary" is taken to mean "necessary in the light of the precautionary and preventive principles". In other words, where there is scientific uncertainty as to the scale of threat to the area concerned, this should not prevent the whole of the relevant area being made subject to an order. On the other hand, if the clause were to be interpreted in such a way that the boundaries would be drawn so as to exclude areas where the threat/adverse impact has not been conclusively proved, this would in our view be inconsistent with the precautionary principle, for example as formulated in Article 2 of the OSPAR Convention.

Link also feels that the language used does not clearly express the Ecosystem Approach. If the Bill is to implement fully the MSD, this language should be expressly reflected in the provisions for site designation and management.

7.2 Proportionality

In a number of places the Policy Paper, Explanatory Notes (EN) and draft guidance refer to the need to avoid "disproportionate" impact on the functions and efficiency of public authorities. There is a strong emphasis on applying the Marine Conservation Zone (MCZ) regime in a "proportionate way". The difficulty is that it is not entirely clear how this is meant to work in practice. We would like to see this clarified further, and brought into line with the approach taken in the Habitats Directive.

7.3 Statutory purpose

In order to meet the UK's international obligations (under OSPAR, the MSD and WSSD) and achieve the Government's vision of 'clean, healthy, productive and biologically diverse oceans and seas', it is critical that the Bill provides for the development of a network of protected areas[6], rather than individual sites only. While the goal of a network of sites is expressed in the accompanying Policy Paper and in the draft guidance on MCZs (Note 1), the legislation itself, as currently drafted, makes no provision for this. We believe that the legislation should include a clear statutory purpose for an ecologically coherent, representative network of MPAs, together with a duty to designate MCZs in line with this purpose. Decisions on individual sites would thus be taken in the context of achieving the

[6] NB In all references to provisions for a 'network' of MCZs/MPAs/sites within our response, we are referring to a network of Marine Protected Areas comprising Marine Conservation Zones (MCZs) and European marine sites (i.e. Special Protection Areas and Special Areas of Conservation

purpose of the whole network. In order to bring about efficiency and ensure the coherence of the network, the requirement to consult on the designation of MCZs should be expanded to require consultation on individual sites and/or networks of sites.

7.4 Duty to designate

Link believes that it is necessary to have a statutory requirement to ensure that the network of sites is created, as MCZs are the primary measure in the draft Bill for delivering marine nature conservation and helping to achieve sustainable development. This is particularly important in the context of the proposed stakeholder-led process for designing the MPA network. In the event of stakeholders being unable to agree on a network design, the onus must be on the designating body to intervene and ensure that a coherent network is achieved.

Experience of designating Special Areas of Conservation (SACs) under the Habitats Directive and Marine Nature Reserves (MNRs) under the Wildlife and Countryside Act holds many important lessons that should inform the development of any new Marine Protected Area designation mechanism. The failure to designate more than three MNRs in over 25 years clearly shows that strong legislation is needed as well as the political will to ensure that sites are designated. The Bill should also specify a time period from the point at which a site is recommended for designation, in which the designating body must take the decision.

In addition to there being a statutory requirement to ensure that a network is created, we believe that there should also be a duty on the statutory nature conservation bodies (SNCBs) to bring forward site proposals.

7.5 Data and monitoring

Link believes that there is already ample biological data to start designating MCZs, particularly in inshore areas. It is important not to expect full information, as in the marine environment it will always be necessary to operate with a level of uncertainty. It is vital that the general need for more marine information does not delay the designation of specific sites that are already well described and known to merit protection. There must also be provision for addition or alteration to the network as new information becomes available. This will be particularly relevant in the offshore area, where the state of knowledge could advance rapidly with sufficient investment in data collection.

To complete the designation of a network of sites that protects the full range of our marine biodiversity, including offshore areas, will require more recent and comprehensive marine data than is widely available at present. Such data once collected will have many potential uses, e.g. for better informed planning and licensing decisions. The UK government and devolved administrations must dedicate significantly more resources to collecting new marine data, and using it to establish a comprehensive network of protected areas.

Sites must be monitored so that they can be managed adaptively. Link would like to see a duty on the SNCBs to monitor and report on site condition, achievement of site conservation objectives (including the site's contribution to the coherence of the network) and, on a wider scale, fulfilment of the purposes of the network.

7.6 Highly protected sites

In order for the UK to meet its international commitments (e.g. halting biodiversity loss, achieving Good Environmental Status) it is important that some sites within the protected area network are highly protected. Rather than advocating a specific proportion of the network that is highly protected, Link would rather see the management of all sites dictated

by the nature of the site and therefore the specific conservation objectives. The Bill should include a duty on the SNCBs to define a site's conservation objectives prior to designation. Where strict protection would further conservation objectives, we believe that the site should be highly protected.

7.7 Duties on public bodies

In order to ensure that the required level of protection is achieved (whether highly protected or less so), there should be a duty on public bodies to consult the SNCBs when they consider that exercising their functions – including consenting to any development – might hinder achievement of site objectives. Furthermore, the authority should be required to "take account of" any advice received from the SNCB, rather than the weaker "have regard to" which is currently used.

7.8 Consideration of socio-economic factors

MCZs are the primary measures in the draft Bill for delivering marine nature conservation. Link therefore believes that the integrity of a network of MCZs is paramount. We consider that sites should be identified using scientific criteria alone (as is the case for protected areas on land and all Natura 2000 sites), and that the network design must be scientific and rigorous. Link is concerned that, as currently drafted, the legislation has the potential to allow socio-economic factors to override national and international conservation priorities and hinder site designation (particularly for any sites requiring strict protection). This is likely to result in fewer sites being designated, the most important sites for biodiversity potentially remaining unprotected, and a network that as a whole is neither comprehensive nor ecologically coherent.

The identification and designation of MCZs is the first step to reducing conflict between development and conservation, and increasing certainty for developers regarding the location of sensitive wildlife sites. Therefore, there is an urgent need to designate sites.

7.9 Conservation orders

The draft Bill describes a direct power for the Marine Management Organisation (MMO) and Welsh Ministers to manage unregulated activities affecting MCZs, by means of conservation orders. We welcome the introduction of this tool, as we believe it is essential to have some way of controlling activities that are not managed through other licensing regimes. We also welcome the power to make urgent conservation orders that can be introduced without lengthy consultation, and interim orders where there is an urgent need to protect features that are not yet designated as MCZs.

However, Link feels that the draft Bill as it stands requires some amendments to improve the tool. The MMO/Welsh Ministers must be able to use conservation orders to take proactive management action before harm to an MCZ occurs, and this must be made clear in the Bill. We would also like to see a requirement for them to take the advice of the relevant SNCB when drafting conservation orders. We would like to see power to create conservation orders extended to cover all waters, not just inshore waters, and to apply to activities outside of MCZs e.g. affecting mobile and migratory species (such as unregulated powerboat racing).

7.10 General offence

Site protection in the draft Bill is undermined by the fact that there is no general offence of damage to (including destruction or disturbance of) an MCZ or its protected features. We feel that this is an important gap, and that this general offence (proposed in the White Paper last year) should be included in the Bill. Concerns over the potential lack of clarity for sea users if

this offence were in place should be addressed by ensuring that the offence is worded so that it is limited to “intentional” or “reckless” damage, destruction or disturbance only.

Detailed comments or proposed amendments to the Marine Conservation Zone part of the draft Marine Bill

	Part 4 – Marine Conservation Zones
	Designation of zones
C105 (1) EN 252	Link welcomes the proposal to create MCZs to contribute to a UK network of marine protected areas (MPAs). We also welcome the 2011 deadline for site proposals to be submitted to the designating body. However, we believe that it is necessary that the Bill includes a **statutory requirement to designate MCZs**, rather than a power, to ensure that a coherent network of MPAs is created. The Wildlife and Countryside Act (1981) includes a power to designate MNRs, yet only three sites have been protected in more than 25 years. MCZs are the primary measure in the draft Bill for delivering marine nature conservation, thus it is critical that the measure is effective. This is particularly important in the context of the proposed stakeholder-led process for designing the MPA network. In the event of stakeholders being unable to agree on a network design, the onus must be on the designating body to intervene and ensure that a coherent network is achieved. In the same vein, we believe that the Bill must specify a time limit from the point at which a recommendation to designate a site is received, within which the designating body must reach a decision as to whether or not to designate. The lack of such a provision in the legislation for MNRs was a major stumbling block and contributed to the failure to designate sites. It is critical that the Bill provides for the development of a network of MPAs, rather than individual sites only. While the goal of a network of sites is expressed in the Bill's accompanying Policy Paper, the legislation itself as currently drafted makes no provision for this, not even referring to, or defining a "network". We believe that the legislation should include (either by amendment of s105, or addition of an entirely new clause) **a clear statutory purpose** for an ecologically coherent, representative network of sites. S105 should be amended to include a **duty to designate MCZs in line with this purpose**. The definition of a "network" should be included by amendment to s132 (see comments on that clause, below). Decisions on individual sites would thus be taken in the context of achieving the purpose of the whole network. It is important to put the purpose of the network on a firm statutory footing in order to reinforce the commitment in the 2007 White Paper to the Ecosystem Approach and to conserving biodiversity. These objectives can best be delivered and safeguarded across a network of sites rather than by considering each MCZ in isolation. **Suggested amendment to s105(1):** **S105(1):** Insert after first sentence: *"In designating an MCZ, the appropriate authority shall have regard to the need to establish and maintain a coherent and [ecologically] representative [national] ecological network of MCZs. The Secretary of State and Welsh Ministers shall issue guidance on the establishment and maintenance of a*

	coherent and representative national ecological network of MCZs. [In publishing such guidance, the Ministers shall seek the advice of the statutory conservation bodies]" Alternatively, the reference to seeking SNCB advice could be inserted into **s111(1) as an additional new subparagraph (f)**: *"(f) how a coherent and [ecologically] representative [national] ecological network of MCZ can be established and maintained".* ***Suggested amendment to Explanatory note**: The reference to a network of MCZs in clause 105(1) confirms the statutory requirement to establish and maintain such a network. Further elaboration of the criteria for the establishment and maintenance of a network of MCZs will be published by Ministers, following consultation with the statutory nature conservation bodies.* For further detail on this, see the attached legal advice, Appendix 3, pg. 17-18.
105 (3)	If the duty to designate MCZs rests with the SoS/Welsh Ministers, we would welcome a duty on the SNCBs to bring forward site proposals. **Suggested amendment to s105** (see the attached legal advice, Appendix 3, pg. 20). The following could be inserted as a new s105(3)bis: *"The appropriate statutory conservation body must put forward to the appropriate authority [by specified date] a list of sites which, in its opinion, are suitable for designation as an MCZ by the appropriate authority. The list of proposed sites can be reviewed and amended by the statutory conservation body thereafter as necessary."*
106 (1) and 106 (3)	We welcome that the draft Bill sets out the circumstances in which Ministers may designate an MCZ. We support points a) - c), and particularly point b), referring to "marine habitats or types of marine habitat". In combination with s106 (3), this enables the protection of habitats representing the full range found in UK seas. However, we feel that this section on the grounds for designation would be greatly improved and clarified by the inclusion of, or reference to, a statutory purpose for an ecologically coherent, representative network of sites (see our comments in reference to s105 (1) and the attached legal advice, Appendix 3, pg. 18), which would provide a clear context for site designation. We also feel that the reference to "desirability" clearly weakens the obligation on the appropriate authority to designate an MCZ (by introducing a stronger element of subjective judgment) and seems inappropriate for a conservation regime (which aims to protect the marine environment from what might be irreversible loss/damage in some cases). A provision akin to that in the Countryside and Rights of Way (CROW) Act (see below) would be preferable: *"(1) Where the Nature Conservancy Council are of the opinion that any*

	area of land is of special interest by reason of any of its flora, fauna, or geological or physiographical features, it ***shall be the duty of the Council*** *to notify that fact."* Link also feels that the language used does not clearly cover the need for healthy ecosystem function. If the Bill is to implement fully the MSD, this language should be expressly reflected in the provision for designation (so that it is fully taken into account in the management of the site). **Suggested amendment to s106(1)** *"for the purpose of conserving:* *marine flora and fauna,* ***having regard to the need to restore or maintain a healthy marine ecosystem;"*** For further detail on this opinion, see the attached legal advice, Appendix 3, pg. 21-23.
106 (2)	Link is concerned that while this sub-clause adequately describes conditions under which a species is considered to be rare, it may not describe the conditions under which a species is considered to be threatened. Instances in which a widespread species is under pressure across its entire range may not be encompassed by the current wording. **Suggested amendment to s106(2)** *"(c) a reduction in population size;* *(d) a fragmentation, decline or fluctuation in geographic range; or* *(e) a fragmentation, decline or fluctuation in area of occupancy."* For further detail on this opinion, see the attached legal advice, Appendix 3, pg. 23-24.
106 (4)	We strongly support the reference to "enabling or facilitating recovery or increase". The word "thing" should be replaced by a reference to s106 (1a)-c)).
106 (5)	Link objects to the proposal that the designating body "may have regard to any economic or social consequences" of designating MCZs. While not averse to the concept of public consultation around site designation (see our comments on s107, below) we consider that sites should be identified using scientific criteria alone (as is the case for protected areas on land and all Natura 2000 sites), and that the network design must be scientific and rigorous. Link is concerned that, as currently drafted, the legislation has the potential to allow socio-economic factors to override national and international conservation priorities and hinder site designation (particularly for any sites requiring strict protection). This is likely to result in fewer sites being designated, the most important sites for biodiversity potentially remaining unprotected, and a network that as a whole is neither comprehensive nor ecologically coherent. Link has taken legal advice regarding the extent to which the UK is required, under the European Convention on Human Rights (ECHR), to take socio-economic considerations into account in the selection and designation of MCZs. Under the ECHR, the Government is obliged to consult affected parties and provide them with an opportunity to make representations during the designation process.

	An affected individual with proprietary rights is free to challenge the impact of MCZ designation or other measures as disproportionate under the Human Rights Act (HRA). The Government is not, however, obliged to include reference to socio-economic considerations and is free to adopt statutory criteria which are exclusively scientific. For the full legal advice, see Appendix 4.
107	Link supports the requirement for the designating authority to carry out public consultation before designating an MCZ (though we consider that sites should be identified using scientific criteria alone - as is the case for protected areas on land and all Natura 2000 sites). We welcome the exemption in the case of sites that need urgent protection. In order to bring efficiency and ensure the coherence of the network, the requirement to consult on the designation of MCZs should be expanded to allow for consultation on individual sites or networks of sites. To remain consistent with the added duty to designate the network of sites, we would recommend the following amendment: **Suggested amendment to s107(1):** *"Before-* *(a) taking steps to establish and maintain a network under section 105; or* *(b) making an order under section 105, the appropriate authority must comply with subsections (2) to (8)…"* For further detail on this opinion, see the attached legal advice, Appendix 3, pg. 25-26.
108 (1) EN 261	Link supports the clarification of items to be included in an order to designate an MCZ. We believe that conservation objectives are critical to the success of MCZs and the MCZ network, and it is important that objectives are developed pre-designation. Conservation objectives would set out not only the intentions for the individual sites, but also the contribution that individual MCZs would make to the coherent network. We believe that the SNCBs would be best placed to develop conservation objectives for MCZs, and that the Bill should include a duty on the SNCBs to this effect. We welcome that conservation objectives could be worded to exclude "all extractive uses or damaging activities" (EN 261), effectively creating highly protected marine reserves (HPMRs). We feel that it is critical that this wording is retained in the EN. Highly protected sites are integral to the success of the MCZ network, and that the Bill must be robust enough to deliver the required level of protection. We would like to see the reference to objectives in this clause elaborated along the lines of the comments in EN 261 by including a definition of conservation objectives at clause 132 (see comments on that clause below), and by including the following additional sub-clause 108(1)(d): **Suggested amendment to s108(1)(d):** *"(d) state the management-focussed objectives for the MCZ"*

Strengthening clauses/explanatory notes for nature conservation:

The EN could refer back to the definition of "conserving" contained in s106(4) as including assisting in conservation and enabling or facilitating recovery or increase to emphasise that recovery and increase are also key considerations.

Drawing on the statements made in the White Paper, the EN could also explain that conservation objectives will describe the aims of a MCZ. For instance, whether they include:

- avoiding deterioration of a habitat from its current conservation condition
- maintaining or enhancing current population levels of a particular species; or
- restoring or enabling the recovery of a habitat to a good condition.

In relation to highly protected MCZs (HPMRs), specific provision could be made by including the following additional wording:

"(c) state the conservation objectives for the MCZ and specify whether, in the light of these objectives, a higher level of protection is appropriate".

For more detail on the above opinion, see the attached legal advice, Appendix 3, pg. 26-27.

We are disappointed by the lack of ambition expressed in the Policy Paper, which states that "in most cases" conservation objectives would allow sustainable activities to take place, while "a number of" highly protected sites would be included in the network. We believe that conservation objectives should be developed on a site by site basis according to the purpose of the network and the sensitivity and vulnerability of the features to be protected. This should be driven by clear written guidance on the development of conservation objectives, rather than by such un-ambitious and pre-emptive policy statements.

Post-designation, we believe that the SNCBs should be empowered to develop a management scheme for each site. While these schemes might vary considerably in the level of detail, it is important to go through the process of developing the management framework for each MCZ. Without a scheme, it may be very difficult for public bodies to fulfil their duties in relation to MCZs, as has been the case for some European Marine Sites.

An appropriate provision (modelled on section 28J of the 1981 Act) might be as below, which is supported by the attached legal advice, Appendix 3, pg. 34-36:

"The appropriate authority may formulate a management scheme for all or part of an MCZ.
(2) A management scheme is a scheme for—
(a) conserving the flora, fauna, or geological or geomorphological features by reason of which the MCZ (or the part of it to which the scheme relates) has been designated; or
(b) restoring them; or

	(c) both. *(3) The appropriate authority shall serve notice of a proposed management scheme on [those persons listed in section 107(4)] but it may be served on them only after they have been consulted about the proposed management scheme.* *(4) The notice of a proposed management scheme must include a copy of the proposed scheme.* *(5) The notice must specify the time (not being less than three months from the date of the giving of the notice) within which, and the manner in which, representations or objections with respect to the proposed management scheme may be made; and the appropriate authority shall consider any representation or objection duly made.* *(6) Where a notice under subsection (3) has been given, the appropriate authority may within the period of nine months beginning with the date on which the notice was served either—* *(a) give notice to the consultees withdrawing the notice, or* *(b) give notice to them confirming the management scheme (with or without modifications), and if notice under paragraph (b) is given, the management scheme shall have effect from the time the notice is served on all of the relevant consultees.* *(7) A notice under subsection (3) shall cease to have effect—* *(a) on the giving of a notice of withdrawal under to any of the relevant consultees; or* *(b) if not withdrawn or confirmed by notice under subsection (8) within the period of nine months referred to there, at the end of that period.* *(8) The appropriate authority's power to confirm a management scheme with modifications shall not be exercised so as to make complying with it more onerous.* *(9) The appropriate authority may at any time cancel or propose the modification of a management scheme.* *(10) In relation to—* *(a) the cancellation of a management scheme, subsections [(3) to (5) apply,] and* *(b) a proposal to modify a management scheme, subsections [(3) to (10)] apply, as they apply in relation to a proposal for a management scheme."* Further provisions could be to include dealing with management notices where those responsible are not giving effect to a scheme and rights of appeal against such notices (modelled on sections 28K and 28L of the 1981 Act). Furthermore, sites must be monitored so that they can be managed adaptively. Link would like a duty on the SNCBs to monitor and report on site condition, achievement of site conservation objectives (including the site's contribution to the coherence of the network) and, on a wider scale, fulfilment of the purposes of the network.
108 (2)-(7)	We support the proposals under these sub-clauses relating to boundaries and extensions. We believe that s108(4) would be helpfully accompanied by a definition of "island", as this would potentially be open to wide interpretation. Where an MCZ is extended above high water level, we are concerned that there may potentially be a mismatch in powers to manage activities in the two parts of the site. We would like clarification as to the powers and

	responsibilities in relation to these sites.
	Duties of public authorities
109 EN 266-9	We welcome the general duty on public authorities, particularly the broad definition of damage that includes reference to ecological and geomorphological processes. The framing of this duty and that at s110 is of great importance, as they apply to all functions of public authorities "capable of affecting (other than insignificantly)" the protected features of an MCZ or any ecological or geomorphological processes on which the feature's conservation is wholly or partly dependent. This should mean that the duties apply to functions in relation to oil and gas licensing; defence exercises and other activities which are not regulated elsewhere in the draft Bill e.g. under Part 3 . However, it should be noted that the definition of "public authority" in s132 has been omitted (although EN 266 and EN 270 both refer to it) and the scope of the definition could in turn affect the scope of the duty significantly, if it were to omit for example, Department for Business, Enterprise and Regulatory Reform (BERR) or the Ministry of Defence for at least some of their functions. We are concerned at several aspects of the wording of the duty. The SNCBs will have extremely limited powers with which to ensure the achievement of conservation objectives, having to rely mostly on other public bodies to deliver conservation management. As such, it is vital that this duty, and the duty under s110, is sufficiently strong. Firstly we are concerned about the proviso that the duty applies when the exercise of a function is capable of affecting, "other than insignificantly", the features or processes of the site. We believe that public bodies typically lack the knowledge to make sound judgements as to the significance or otherwise of impacts on protected features. To operate effectively, public bodies must be issued with clear guidance as to the application of this principle. In circumstances in which the public body deems that there is likely to be a significant impact or where there is any doubt, the public body should be required to consult the SNCB. Furthermore, the authority should be required to "take account of" any advice received from the SNCB, rather than the weaker "have regard to" which is currently used. Secondly, while we welcome the requirement to exercise their functions in a way that "best furthers" the conservation objectives, we feel that this is greatly weakened by the option to "least hinder" the achievement of those objectives. A better formulation for **s109(2)(a)** might therefore be: *"exercise those functions in the manner which best furthers the conservation objectives…"* This opinion is supported by the attached legal advice, Appendix 3, pg. 27-28.
110	This duty raises a number of concerns that we have already expressed in the comments under s109. We would like this clause to include a duty on

	the public authorities to consult the SNCB in the prescribed circumstances. This should include consulting on "compensatory measures of equivalent environmental benefit", as we believe that the SNCB would be much better placed than the public authorities to make a sound judgement in this respect. Furthermore, the authority should be required to "take account of" any advice received from the SNCB, rather than the weaker "have regard to" which is currently used. We welcome that the conditions listed in s110 (4)a) - c) operate additionally (i.e. a) and b) and c) rather than optionally (a) or b) or c)). However, we are concerned that the condition whereby "the benefit to the public of proceeding with the act clearly outweighs the damage to the environment" would allow acts to proceed where there were benefits to the public at regional or local level. Given that MCZs should form a coherent national network, it would only be appropriate for justification for damage to be measured against national priorities. ***Suggested amendment to s110(5):*** *"(5) In a case falling within subsection (4), the authority must:* *(a) if it has power to do so, …are undertaken; and* ***(b) seek the advice of the appropriate statutory conservation body as to whether the measures proposed pursuant to subsection 4(c) are of equivalent environmental benefit."*** ***Suggested amendment to s110(2)*** *"….In determining whether or not either of the conditions in subsections (3) and (4) is met, the public authority must seek the advice of the appropriate statutory conservation body."* We would also recommend an amendment to **s110(4)(a)**as follows: *"it is impossible or impracticable,* ***having regard to all available alternatives****, to proceed with an act at a location, or in a manner, which would not hinder etc…"* This is akin to the language used in the Environmental Impact Assessment (EIA) regulations and sets a higher threshold for establishing that an activity is unavoidable in that location. For further detail on this opinion, see the attached legal advice, Appendix 3, pg. 28-29.
111	We believe that this clause should be accompanied by a duty on public bodies under s109 and s110 to seek advice from the SNCBs (see comments under s109 and s110) and a requirement to "take account of" any advice received from the SNCB, rather than the weaker "have regard to" which is currently used.
112	We support the power for the SNCBs to seek explanation from the public authority as to why it has failed to comply with its duties in relation to s109 - 111. We would welcome a duty to also notify the SoS or Welsh Ministers, which could be included as follows: **Suggested amendment to s112(2)(b)** (as supported by the attached legal advice, Appendix 3, pg. 29-30): *"(2) (b) on such a request, the authority must provide an explanation in*

	writing and a copy of this explanation must be forwarded to [the Secretary of State or Welsh Ministers].” We also support the suggestion in EN 279 that the SNCB should be allowed to publish any explanation received. However, this is not actually mentioned in the draft legislation and we feel that s112 should be amended to make this clearer. The draft Bill currently lacks a procedure whereby Ministers can call in decisions in instances that a public body is minded to authorise an activity, which hinders the achievement of MCZ conservation objectives on the grounds of public interest. We believe that the legislation should include such a procedure, to safeguard protected areas from inappropriate development.
113 Conservation orders for protection of MCZs in England	This clause gives the MMO the power to make conservation orders for the purpose of furthering the conservation objectives of an English MCZ. This must include the ability to make conservation orders that apply beyond the boundaries of MCZs to activities that are or might be affecting MCZs. Link would welcome the following amendment to s113(3) to make this more explicit: **Suggested amendment to s113** *“(3).....provision-* *...* *(g) prohibiting or restricting the doing of anything outside the MCZ which will interfere with the seabed or damage or disturb any object in the MCZ.”* We would also like to see amendment to this clause to ensure that the MMO must make conservation orders based on the advice of the SNCB (Natural England). This could be achieved through the following amendment: **Suggested amendment to s113** *(1)(bis): “The MMO shall seek the advice of Natural England before making a conservation order”.* For further detail on the suggested amendments to s113, see the attached legal advice, Appendix 3, pg. 30-31. It is noticeable that, compared to last year’s White Paper, the draft Bill contains no species protection measures outside MCZs. The White Paper (paragraph 6.129) originally suggested that the MMO conservation order package could have applied to important mobile species outside MCZs, but this has now been dropped. Link would like to see the power to use conservation orders to protect mobile species outside MCZs reinstated.
113(1)	Link welcomes the fact that the drafting of s113(3) and (4) seems to capture all activities that could hinder the achievement of the MCZ conservation objectives. However, we do not believe that it is sufficiently clear whether this would allow for the making of a conservation order before any damage had been proved. The guidance (Note 3) does clarify this issue, and states that in some cases it will be necessary to use conservation orders as preventative, or precautionary measures (e.g.

	paragraphs 7.6-7.7). However, a simple redraft of (1) as follows would be helpful:- *"For the purpose of furthering the conservation objectives of* ***and preventing harm or damage occurring to*** *an MCZ in England."*
113(6)	This subsection restricts the power to make conservation orders to only the inshore region. We would suggest that clause 113 should be amended to ensure full protection for any MCZ wherever designated – with the power to make conservation orders extended throughout the area that MCZs can be designated. An example of where a conservation order might be needed beyond 12nm might be to restrict powerboat races or high speed ferries at certain times of year in Basking Shark hotspots in the Irish Sea.
113(7) + (8)	Link welcomes the fact that the MMO will be able to control activities using permit schemes, and that conditions may be attached to these permits. However, we would like clarification that the MMO will be able to limit the number of permits issued under such a scheme.
114(2) Consultation etc regarding English conservation orders	We welcome the general consultation requirement (the duty to publish notice of the proposal to make the conservation order – s.114(6)) in addition to the detail of certain specific bodies that have to be consulted (listed in s.114(2)). Although the MMO may send a copy of the draft order to any other person who may have a particular interest in the making of the order, no specific mention is made of voluntary conservation bodies either here or in the guidance (Note 3, paragraphs 10.1-10.2). Link feels that this omission should be rectified by advising the consultation of the voluntary conservation bodies in the guidance (Note 3).
115 Urgent conservation orders	The comments made above on the geographical scope for application of conservation orders apply equally to urgent conservation orders. We would like to see the power to make urgent conservation orders extended beyond inshore waters, to cover all MCZs. While we welcome the power to make urgent conservation orders, there is little set out in this section to explain why and when the MMO can use this power. We feel the draft Bill lacks detail on how these urgent conservation orders will be policed and activities regulated, and if there are licensed activities causing damage, how they will be dealt with. We would like to see much more detail in the Bill and EN (or in Guidance, Note 3) on the practicalities of introducing and enforcing urgent conservation orders.
116 English interim orders	We welcome the power for the MMO to make interim orders where there is an urgent need to protect features that are not yet designated as MCZs. We would argue that this power should be extended beyond the inshore region, to offer protection to areas pending designation as MCZs further offshore. This clause should be amended (in line with amendments to s113 and s115) to ensure that interim orders can apply beyond the inshore region.
118(4) Conservation orders for the protection of MCZs in Wales	Welsh Ministers should be required to take the advice of the SNCB (i.e. Countryside Council for Wales) when formulating conservation orders. As for English conservation orders, Link would like these to apply proactively to activities outside MCZs that affect sites, as well as to mobile species outside MCZs.
118(7)	This sub-clause provides for a Welsh conservation order to apply to one or

	more MCZ – this is different for English conservation orders (see s113). We would like to see some clarification of why the tools should be different in this respect in England compared to Wales. Technically, there does not seem to be anything in s113 that would prevent a conservation order being made to apply to more than one MCZ, but it would help to see clarification on this point particularly since it is made so clear here relating to MCZs in Wales.
119(1) Consultation etc. regarding Welsh conservation orders	We note that far less prescription is provided as to who must be consulted over Welsh conservation orders when compared to English conservation orders. We assume this is because the responsibility is to rest with Welsh Ministers rather than the MMO, and we would expect Welsh Ministers to develop a list of regular consultees. We welcome the reference to "any other person" so that the short list of statutory consultees is not limiting. Link members would expect to be consulted under this provision.
119(2)etc	There seems to be no 12 month upper limit to the duration of Welsh urgent conservation orders (c.f. 115 (1) (b)): we would be interested to know why this should be different from English conservation orders.
120 Welsh interim orders	There is no upper “aggregate” period of 12 months as stipulated for English conservation orders (see s116 (10)) – again, we would welcome more information on why these differences exist.
122(1)(b) Exceptions to requirements in conservation orders and interim orders	This subsection specifies that conservation orders cannot affect any licensed activities, and includes activities “necessarily incidental” to the licensed activity in this - therefore also excusing methods, processes or manners of carrying out licensed activities. We would like to see this latter detail (“necessarily incidental” activities) removed, particularly since the licensing process should have considered such activities. Such activities should therefore either be part of the authorisation or would not be consented, in which case they should not be excusable in this subsection.
123(2) Offences against orders	We understand that the details of the offences and penalties will be supplied in each conservation order, but we would still like to see a general provision stating that any breach of a conservation order, without reasonable excuse as listed in s122(1), is automatically an offence.
General offence of damage to MCZ	The general offence of damaging or destroying any species or habitat or other feature for which a site has been designated (as proposed in the White Paper paragraph 6.95) has been dropped from the draft Bill, in favour of more specific offences linked to conservation orders. In our view, this is a very important omission and should be rectified. Concerns over the potential lack of clarity for sea users if this offence were in place should be addressed by ensuring that the offence is worded so that it is limited to “intentional” or “reckless” damage, destruction or disturbance only. The general offence is important to pick up damage (including destroying a site or its features, or disturbance to site features) to sites that cannot be regulated using the conservation orders – conservation orders can only be applied to unregulated activities, whereas a general offence would pick up any damage caused by any activity. Use of conservation orders also has the potential to be an inefficient way of preventing damage to sites – as it will be necessary to put a conservation order in place for every site, for every potentially damaging activity.

	Therefore, Link believes that the Bill should contain a general offence of damaging (including destruction or disturbance of) any feature of an MCZ. This could be achieved by including an additional s123(bis). For further detail on this, see the attached legal advice, Appendix 3, pg. 18, 19 & 32). **New s123bis:** *"(1) A person who without reasonable excuse—* *(a) intentionally or recklessly destroys or damages any of the marine flora, fauna, marine habitats or features of geological or geomorphological interest by reason of which [a conservation order or interim order has been made/an MCZ has been designated],or intentionally or recklessly disturbs any of those marine fauna, and* *(b) knew that what he destroyed, damaged or disturbed was [within an MCZ/subject to an order], is guilty of an offence and is liable on summary conviction to [a fine not exceeding £50,000] or on conviction on indictment to a fine.* *(2) It is a reasonable excuse in any event for a person to do what is mentioned in subsection (1) if—* *(a) paragraph (a) or (b) of subsection (3) is satisfied in relation to what was done.* *(3) For the purposes of subsection (1), it is a reasonable excuse in any event for a person to carry out an operation if—* *(a) the operation in question was authorised by a [marine licence under Part 3 of the Bill/other relevant statutory licence]; or* *(b) the operation in question was an emergency operation, particulars of which (including details of the emergency) were notified to the appropriate authority as soon as practicable after the commencement of the operation.* ***Explanatory Note:** This offence provides general protection for MCZs against reckless or intentional damage to a protected feature and corresponds to the protection afforded to terrestrial sites such as that afforded to SSSIs under section 28P of the Wildlife and Countryside Act 1981.*
127 Fixed monetary penalties	We welcome this section, giving the Secretary of State and Welsh Ministers the power to create (by Statutory Instrument) an order to delegate to the appropriate enforcement authority the power to impose fixed monetary penalties when needed. We feel that this could encourage the enforcement authority (the MMO for England) to be proactive when dealing with offences, which could act as an effective deterrent.
129 Enforcement undertakings	We welcome this section introducing the use of enforcement undertakings in certain circumstances, and will be interested to see how these work in practice. We would welcome a requirement for the Secretary of State and Welsh Ministers to consult the MMO and the Welsh enforcement authority respectively in order to give the latter more input, before accepting an undertaking. **<u>Suggested amendment to s129</u>** s129(1)bis: *"(1bis) Before making an order under subsection (1), the appropriate authority must consult the appropriate enforcement authority".*

	(See the attached legal advice, Appendix 3, pg. 33-34).
131 Hearings by appropriate authority	We welcome the fact that this section empowers the Secretary of State and Welsh Ministers to create a hearing procedure for contentious orders.
132	This clause should be amended to include the following definitions: **Additional suggested definition of "network"** (see the attached legal advice, Appendix 3, pg. 17):: *"network" means a coherent and [ecologically] representative [national] ecological network of marine protected areas"* Useful elaboration could perhaps be provided in guidance, which could be put on a statutory basis by inserting a provision requiring the [Secretary of State and Welsh Ministers] to publish guidance on the approach to establishing and maintaining a coherent and representative network. **Additional suggested definition of "conservation objectives"** (see the attached legal advice, Appendix 3, pg. 26): *""conservation objectives" means the objectives stated under section 108(1)(c) and may include objectives which allow benign or sustainable activities to take place as well as objectives which exclude all extractive uses or damaging activities".* In addition, we note that "public authority" is not defined in s132, although EN270 states that it is. *(see our comments above on s108)..*
	Part 5 – Other conservation sites
133-137	Generally, we support the measures laid out in these clauses. However, as expressed above in reference to supralittoral extensions of MCZs, we are concerned that there may potentially be a mismatch in powers to manage activities in the two parts of the site. We would like clarification as to the powers and responsibilities in relation to these sites.
135 Denotification of SSSI on designation of area as MCZ	Although it is helpful clarification that an area cannot be a SSSI and an MCZ simultaneously, it is not clearly set out which designation should take preference for which areas. We are concerned that this could lead to some management confusion. We appreciate that there is duty in s107 to consult the MMO and relevant SNCB before designating an MCZ. We would be more comfortable if the SNCB were involved in either advising or deciding which designation applies to the area.
Marine Nature Reserves	The draft Bill fails to include clauses repealing the MNRs provisions in the Wildlife and Countryside Act and establishing existing MNRs as MCZs. We have been assured that this important omission was an error and will be rectified.

8. Parts 6 & 7: IFCAs and Fisheries

Summary of main points

Link supports the modernisation and improvement of inshore marine fisheries management (in England and Wales) proposed in the draft Bill, and is pleased to see the retention of the model of local fisheries management in the creation of the new Inshore Fisheries and Conservation Authorities (IFCAs). However, we feel that the provisions for the structure, powers and duties for the IFCAs in the draft Bill could be improved, and have suggested several amendments to this end. We have also included suggestions for further amendments to existing fisheries legislation that we feel the Marine Bill could usefully achieve.

8.1 Geographical scope

Link welcomes the proposed geographical scope for the provisions for the IFCAs – which are extended in the current draft Bill to England and Wales, in contrast to the inshore fisheries provisions of the White Paper which only applied to England. However, we note that this is at odds with the intentions of the Welsh Assembly Government (WAG). WAG has recently published a proposal that inshore fisheries management in Wales should be delivered directly by WAG in the future, instead of by Sea Fisheries Committees (SFCs) or their replacements. If this policy proceeds, we believe that the Marine Bill will have to be used to update WAG's fisheries powers and duties. We do not believe that WAG's existing fisheries management powers and duties are equivalent to the new management powers outlined for IFCAs (subject to the amendments discussed below), and we therefore feel that they are not sufficient to secure an improved basis for inshore fisheries management, an essential outcome of the Marine Bill. The opportunity must not be lost to secure all the necessary powers for modernised inshore fisheries management in Wales through the Marine Bill.

8.2 Conservation duties

Although the draft Bill proposes new statutory bodies (and notwithstanding the Common Fisheries Policy), Government will still have considerable power and influence in the management of inshore fisheries, and its statutory duties toward conservation will continue to be those of the Sea Fisheries (Wildlife Conservation) Act 1992 and (for specific powers) section 5A of the Sea Fish (Conservation) Act 1967. The former duty is weak and divided, and ought to be improved, whilst the scope of the latter could helpfully be widened. A new Marine Act could be used to improve these duties, and we have proposed some amendments in the detailed comments below.

8.3 Inshore Fisheries Conservation Authorities (IFCAs): structure and duties

The abolition of SFCs and the creation of IFCAs, with statutory duties that mention sustainability, protection of the environment and the promotion of recovery from the effects of exploitation, is welcome and timely. We also welcome the fact that there will be more secure funding for the IFCAs. Link has long campaigned for a more secure funding framework for the SFCs that removes the uncertainty over their future support and enables them to perform their duties to the full. But the detail of the wording of the IFCA duties needs close attention, and in a number of places there is room for improvement, as for example, there is currently no reference to the precautionary principle, or the Ecosystem-Based Approach.

We welcome the strong duty given to the IFCAs with respect to furthering the conservation objectives of MCZs – though we would like to see this duty applied to IFCAs in Wales as well as England. We feel that some further clarification of the role of IFCAs in marine

environmental protection in inshore waters is necessary. It would be beneficial if the Marine Bill highlighted the IFCAs' wider nature conservation responsibilities in Part 6, including the creation of specific nature conservation powers and duties.

A number of important areas throughout this part of the draft Bill are left to Statutory Instrument, including details of the composition and balance of an IFCA committee. We welcome the detail provided in the Policy Paper on the proposed membership structure for the IFCAs, but would like to see more of this detail translated across into the final Bill. It is important to ensure that marine environmental expertise on an IFCA committee is more than a token gesture. The draft Bill makes some welcome improvements to the accountability of committee members, but then also allows this to be weakened in the Order establishing the authority. A full understanding of Government's intention in this area is not possible until a pro forma draft establishing order is produced.

Some clarification of the seaward boundary of the IFC districts is required. Because of the Common Fisheries Policy, the powers of IFCAs will be limited to inshore waters up to 6nm. Between 6 and 12nm, measures additional to those of the CFP are possible, but only with the consent of the Commission. Beyond 12nm there is no ability to control the activity of vessels of other Member States other than through the CFP. We would like to see the establishing Orders for the IFC districts and the IFCAs allowing for extension of IFCA controls out to 12nm in the future, while recognising that this will only be possible with the agreement of the European Commission.

8.4 IFCAs: Remit and management powers

Link welcomes the introduction of comprehensive byelaw making powers to improve the legislative "toolkit" that the IFCAs have at their disposal for the delivery of sustainable management of inshore fisheries. In particular, Link supports the proposal to introduce an emergency measure that can be used at short notice in particular circumstances.

Byelaws will continue to be the essential mechanism for the control of inshore fisheries. The draft Bill is helpful in that it increases the penalty for byelaw offences to £50,000, whilst clarifying and widening the scope of byelaw control. However, several important areas – most of which seemed from the White Paper 'A Sea Change' to have Government support – are not dealt with adequately, including:

- detail on what could be achieved with a permit scheme introduced under a byelaw. In particular, it is not clear that permit schemes introduced under a byelaw could be used to limit numbers prosecuting a fishery – an essential tool for proper management, facilitating the sustainable exploitation of all fish stocks.
- powers to require fishermen to mark their gears and employ gears or devices – including those yet to be invented – to deter bycatch.
- The nature and workings of the proposed system to require inshore fishermen to provide details of catch, effort and location – there are significant potential EU pitfalls here.

Furthermore, if it is proposed that MCZs are to be protected from commercial fishing by IFCA byelaws (a suggestion found in the draft Bill's notes rather than its clauses) it would mean that the penalties available for illegal fishing in an MCZ would be the lowest that the Bill contains – this must be rectified (see also our comments on Part 8 of the Bill).

Link is also disappointed to note that the emergency byelaw power is limited. The draft Bill does contemplate emergency byelaws – and to the extent that there is no such system at the moment, and Ministerial Orders under the 1967 Act are notoriously difficult to secure – this is

welcome. However, the circumstances in which emergency byelaws can be made are too narrow and insufficiently forward-looking.

We note that the procedures to be followed when making byelaws (both emergency and ordinary) including details of consultation and confirmation are to be dealt with by Statutory Instrument. Again, full comment is not possible until this area is clarified. It is difficult to properly understand the emergency byelaw provisions until there is an indication of the timescales likely to be involved in the creation of the two kinds of byelaw (emergency and ordinary).

The draft Bill makes no proposals for the regulation of private fisheries for conservation purposes. Private fisheries that are in neither SSSIs nor MCZs will remain essentially unprotected.

Link would urge Government to produce comprehensive guidance for the IFCAs, clarifying how they should use their new powers in order to fulfil their new duties. This guidance should cover several issues not dealt with in the draft Bill itself, including:

- Requirement for SEA/EIA – IFCAs should be required to cooperate in the production of multi-sectoral SEAs within their areas (extending SEA to fisheries was recommended by 'Net Benefits'); and EIA should be compulsory for all new inshore fishery projects.
- Promotion of certification of fisheries: IFCAs should be encouraged to seek certification (e.g. Marine Stewardship Council) for their sustainable fisheries.

8.5 Amendments to existing legislation

Link welcomes the proposed amendments to the Sea Fisheries (Conservation) Act 1967 but, would like to see the opportunity taken to make further amendments that would help to ensure the environmental sustainability of our fisheries management.

Link supports the proposed amendments to the legislation governing the use of Several and Regulating Orders (SROs) for shellfish, as we consider that they could be very useful tools for promoting sustainable inshore fisheries management of some shellfish species, if some important changes can be made to their focus and delivery.

Link has made several recommendations on the reform of inshore fisheries legislation in the past that have not been reflected in the draft Bill. For example, the draft Bill does not, but should, provide that only IFCAs (where they exist) can be the grantee for SROs. Link would also recommend introduction of a Ministerial power to withdraw a Regulating or Several Order where (significant) environmental damage is occurring, either directly within the Order areas, or where it is having impacts outside the boundary, or where stock sustainability is at risk (with a requirement for full consultation before withdrawal).

Detailed comments or proposed amendments to the Fisheries part of the draft Marine Bill

Clause/ Subject	Issues
138 Establishment of inshore fisheries and conservation districts	The draft Bill does not set out to establish the actual districts or committees – this is to be left to Orders, and there is discretion as to whether districts would be established by a single overarching Order, or on a piecemeal basis. Individual Orders for each district are the more likely option, though they will have much in common. Link would like to see a draft of the common parts of proposed establishing orders before closing comment on this part of the draft Bill. Link notes that there is no requirement to create IFC districts, only a power. We would like to see a duty for IFC districts to be created (at least in England), particularly as the requirement to create the IFC Authorities only applies once a district is formed (s.139). The situation is more complicated for Wales due to WAG's stated intention to deliver fisheries management themselves – however we would still advocate the retention of the power to create IFC districts for Wales. Link supports proposals to reduce the number of Inshore Fisheries and Conservation (IFC) districts around the coast (when compared to Sea Fisheries Committee, or SFC, districts) to increase the potential for consistency, sophistication and economies of scale. We look forward to contributing to the consultation on options later in the year.
138(2)	The Policy Paper (page 42, §3.90) states that IFC districts will extend seawards out to the 6nm limit, as well as inland in estuaries. As currently drafted, s.138 (using the definition of "sea" at s.169) would allow for IFCA districts to extend out to 12nm. There are complications of competency between 6 and 12nm due to the allowed continuation of historical use of these areas by foreign vessels under the Common Fisheries Policy (CFP). Any IFCA actively involved beyond 6nm will require Commission consent for any measures additional to those of the CFP, with the likelihood of objections by affected neighbouring States and the certainty of delay. However, Link recommends, for 'future-proofing' purposes – that the various establishing Orders should define the IFCA districts as extending to 12nm (as the Bill would currently allow, because of the definition of "sea" in s.169). This would allow full byelaw control within 6nm and leave open the possibility of the Commission agreeing further byelaw control between 6 and 12nm. For further detail on this opinion, see the attached legal advice (§42-47) Appendix 5] For clarity, the continental shelf, including seabed and subsoil, should also be included in the area covered by IFC districts, as it will be particularly relevant for shellfisheries. Technically, since s.138 and the definitions (s.169) do not include these areas, this could potentially limit the extent of the new enforcement powers for the IFCAs.
138(3)	Link is pleased to see the duty to consult on Orders establishing IFC districts, however, there is no requirement to take the results of this consultation into account. We would hope that it is assumed that if a consultation is carried out then account has to be taken of the responses, but we would like to see this made clear.

	This subsection refers to the consultation of "any other person likely to be affected by the making of the order" – we assume that as well as persons such as fishermen and grantees or lessees of Regulating and Several Orders, Link and its members should properly be included in this list.
140(1) Membership and proceedings of IFC authorities	The full detail of the proposed membership structure for IFCAs is not contained within the draft Bill but is instead laid out in the Policy Paper (page 42, §3.91). The draft Bill provides for three classes of IFCA member, but it does not stipulate numbers or ratios. The Policy Paper states that total membership will be limited to 21, comprising (in England) 1/3 local authority members, single appointees from the MMO, Environment Agency (EA) and Natural England (NE), and the rest appointed by the MMO with expertise in fishing and environmental matters – but the Bill does not confirm this. Link supports the proposals in the Policy Paper for the membership structure of the IFCAs. One of the strengths of SFCs is that they provide stakeholder input to local fisheries management. While this needs to include local authority membership, it is also desirable, given the proposed new purpose and duties for the IFCAs, to build on the present arrangements for representation from the fishing industry and environmental interests. Link therefore supports the proposal to limit the proportion of local authority members on each IFCA, as such a reduction would allow an increase for other interests (such as environmental or recreational angling). We would prefer that, given that s.140 is already quite detailed (with 8 subsections), more of the specifics were clearly included on the face of the Bill. Link would be particularly keen to see stipulation in the Bill that the EA and the relevant Statutory Nature Conservation Body (SNCB) are to have seats on any IFCAs. There is precedent (for detail see the attached legal advice §56-60 Appendix 5) for authorities of this sort to be named in the main statute itself. At the least, explanation for this absence would be helpful, especially as the Policy Paper clearly states that the relevant SNCB will have a seat.
140(2)	At present, it is often the experience with SFCs that the tendency is for *de facto* domination of the committee by representatives of a wide spectrum of fishing interests. In the light of this experience, Link feels that it would be helpful for the Bill to be amended to show clearly that the environmental representation is to be (unlike at present) more than a token gesture. See the suggested amendment below, and also further detail in the legal advice attached (§55-59) Appendix 5. **Suggested amendment to s140 of the draft Marine Bill** 140(2) The persons appointed as members of the authority for the district by virtue of subsection 1(b) must comprise <u>in equal numbers</u> -
140(3)	S140(3) would allow the Government to *add, vary or remove descriptions* of persons appointed by the MMO. It may be that this is e.g. to allow

	expertise in novel environmental issues to be brought on board, with a consequential need to keep the fishing/environmental balance equalised, but clarification from Government on why this subsection is considered necessary would be helpful.
140(4)	The draft Bill specifies that the individual establishing Orders will specify the total number of members in an IFCA. Some flexibility could be appropriate as there will most likely be different needs in different districts. However, given that the Policy Paper (page 42, §3.91) states clearly that it has already been agreed that the maximum size of an IFCA will be 21 members, Link questions why this cannot be included in this subsection.
140(7)	S140(7) incorporates a number of provisions from other statutes, making improvements to the accountability of IFCA committee members. We welcome these provisions as they look squarely at one of the main practical problems with SFCs, setting out in writing modern standards of governance. However, this subsection then also allows these provisions to be weakened in the Order establishing the authority. A full understanding of Government's intention in this area is not possible until a pro forma draft establishing order is produced, therefore we would like to defer closing comment on this section of the Bill until such time as draft establishing orders might be available.
140(8)	Link feels that the use of the term "the fishing community" (in s.140(2)(a)) and its definition at s.140(8) is an improvement on the current position, mentioned above (see comments on s.140(2) and further detail in attached legal advice §53-60 Appendix 5).
142 Management of inshore fisheries	The Bill amends the Sea Fisheries (Wildlife Conservation) Act 1992 so that the (weak) duty in that Act, to "have regard to the conservation of flora and fauna" when discharging functions (in balance with other considerations) does not apply to the IFCAs (see comments below on s.168). This duty is replaced by the new duty laid out in this section. The wording of s.142, even as it stands, seems at least as strong as the 1992 duty (for further detail, see attached legal advice §32-33 Appendix 5). In particular, we are pleased to see reference to the need to "protect the marine environment from, or promote its recovery from" the effects of any exploitation. However, Link is still concerned that this duty falls short of creating a wholly new, wider, environmental stewardship remit for the IFCAs when compared to the existing SFCs and their fisheries management responsibilities. We are concerned that this section omits clear reference to the precautionary principle, and the Ecosystem-Based Approach. The duty also lacks any goal e.g. working towards something like the Marine Strategy Directive's Good Environmental Status. Much mention has been made of the need to encourage a fundamental change in culture from the SFCs to the new IFCAs. Link believes therefore that it is imperative to give the IFCAs a clearly-defined, updated core purpose that ensures the integration of environmental considerations into fishery management. Therefore, we suggest the following amendments to this section: (1) The authority for an IFC district must manage the exploitation of sea fisheries resources in that district. (2) In performing its duty under subsection (1), the authority must –

	(a) ensure that the exploitation of sea fisheries resources is carried out in a sustainable way, (b) seek to balance the social and economic benefits of exploiting sea fisheries resources of the district in that way with the protection of ~~need to protect~~ the marine environment from, and ~~or~~ the promotion of ~~promote~~ its recovery from, the effects of such exploitation including past exploitation, and (c) seek to balance the different needs of persons engaged in the exploitation of sea fisheries resources in the district whether commercial or otherwise. … (5) In this Part "sea fisheries resources" means any living animals or plants, other than fish falling within subsection (6), that habitually live in the sea or its subsoil, including those that are cultivated in the sea. As part of these suggested amendments the words *or its subsoil* have been added to cover burrowing animals such as ragworms. This is less to ensure the inclusion of such creatures in the definition of sea fisheries resources as we believe that this is already the case, and more to stress that damage to substrate is an issue. For more details on the proposed amendments and the rationale behind specifics of the amendments, see attached legal advice §35-37 Appendix 5.. We would also like to see the definition of "marine environment" at s.169 amended to include reference to the concept of marine ecosystems: … "the marine environment" includes - (a) … (b) … (c) ecosystems flora and fauna which are dependant on, or associated with, a marine or coastal environment;
142(1)	Concerns have been raised over whether the drafting of this subsection in fact gives the IFCAs an "absolute power" over the management of the exploitation of sea fisheries resources within their districts. It is our opinion that this is not the case. IFCAs will remain subject to the general law, and as well as having an obligation to have regard to any Government guidance, will also have the potential to be overruled by Government under the provisions of the Sea Fish (Conservation) Act 1967. For further detail on this point, please see attached legal advice §67-69 Appendix 5.
142(7)	Paragraph 7.40 of the Marine Bill White Paper suggested that "fishing, taking, retaining on board, trans-shipping, landing, transporting, storing, selling, displaying, exposing or offering for sale or possessing living aquatic resources" would be controlled by byelaws. This is achieved, albeit rather obscurely, by the definition at s142(7). With regards to the "selling, displaying, exposing or offering for sale" sea fisheries resources, Link would welcome clarification from Government

	on whether the provisions of the Registration of Fish Buyers and Sellers and Designation of Fish Auction Sites Regulations 2005 will be made to apply to catches from the inshore fleet, and to catches of shellfish, which are not always auctioned in the way that fish tend to be. It would also be very interesting to know whether the 2005 Regulations can distinguish between wild-caught shellfish and those from the area of a Several Order, as this distinction is very important. For further detail, please see the attached legal advice §98-100 Appendix 5.
143(1) Protection of marine conservation zones	Link welcomes the strong, positive wording of this duty to further the conservation objectives of MCZs. This means not only that an IFCA must refrain from action inimical to the conservation objectives of an MCZ, but, if it has the statutory power to do something that will further the conservation objectives, it must seek to use that power for that purpose. However, Link notes that the draft Bill does not provide for a good 'fit' between MCZ designation and the IFCA byelaw regime. Since there is no timetabling mechanism applicable to either IFCA byelaws or to MCZ designation it could well follow than an MCZ that is designated either before or after the creation of IFCA byelaws is (at least for a while) unprotected from fishing (see later comments on s152). This subsection starts with "The authority for an IFC district that includes a local authority area in England…" explicitly excluding Wales, even though Wales are included in the previous sections relating to the establishment of IFC districts and authorities. This must be rectified so that IFCAs in Wales are included in this duty to further the conservation objectives of MCZs. If, as is currently proposed, Welsh Ministers are to be responsible for inshore fisheries management in Wales, they should be placed under an equivalent duty (we do not consider their current environmental duties relating to fisheries management to be equivalent).
143(2)	We welcome the clear statement that once an MCZ has been designated, and its conservation objectives stated, socio-economic factors must not be balanced with the measures taken by an IFCA to ensure that conservation objectives are furthered. As the drafting of the Bill stands therefore, economic issues will be considered during the MCZ designation procedure, but not in terms of fisheries management after this point. (but see our comments on Part 4 of the Bill in relation to the consideration of socioeconomic factors when designating MCZs).
Extent of IFCA conservation duties	The Policy Paper (page 50, §3.135) states that, from the baselines to 6nm (including estuaries, river channels etc), management and enforcement of nature conservation will be shared between the MMO, EA and the IFCAs. It also states that the IFCAs are to take the lead on measures where fisheries adversely impact the wider marine environment, with the MMO dealing with nature conservation issues from non-fishing threats. This implies that the IFCAs will be *the* management and enforcement authority for the areas in their districts for fishing-related nature conservation issues. Appendix G (page 72) of the Policy Paper further states that IFCAs will have enforcement responsibilities for MCZ conservation orders, nature conservation species protection legislation (under the Wildlife and Countryside Act) and the Habitat Regulations. It would be beneficial if the Marine Bill highlighted these nature conservation responsibilities in Part 6, including the creation of specific

	nature conservation powers and duties (since any secondary legislation for the IFCAs will not be able to extend power or duties beyond what is already created by the Bill). Since it is the Marine Bill that gives the power to create IFCAs, it must ensure that this creation includes references to other relevant pieces of legislation. This would not be without precedent: the NERC Act, in creating Natural England, states at s1(2) that "Natural England is to have the functions conferred on it by or under this Act or any other enactment". Similar provision for IFCAs should be in the Marine Bill.
144 Power to make byelaws	This section states that byelaws can be made either to manage the sea fisheries resources, or to further the objectives of an MCZ (s.144(1)).
144(4)	IFCA byelaws (other than emergency ones) must be confirmed by the Secretary of State (or Welsh Ministers), who may order a public inquiry. 144(4) appears to suggest that the Secretary of State's discretion is limited to confirming byelaws in a form agreed by the IFCA, or refusing to confirm at all. There does not seem to be provision for Government (perhaps following a public inquiry) to confirm a byelaw in a form not endorsed by the IFCA. This partly re-enacts section 7 of the Sea Fisheries Regulation Act 1966, though that section is worded differently. Link would welcome Government's view on whether this is the intention.
145 Provision that may be made by byelaw	There is much within Heads 1 to 5 that is important and clear, but some useful provisions are missing, and there is a lack of clarity as to how the permit system is intended to work and the extent to which vessels and catches are to be monitored. Whilst 3 of the 5 Heads are described in non-exhaustive terms (ie Head X is provision … *including* …) it does not follow that relatively novel or controversial provisions can be included in byelaws if they are not expressly mentioned under one of the 5 headings. The 2007 Marine Bill White Paper contained some important suggestions, including the following, which were described as 'key proposals' for byelaws: • Para. 7.37. Marking of fishing gear. • Para. 7.38. Permit schemes, with the important qualification: 'We intend, however, to put beyond doubt the use of permit schemes to control fishing effort for conservation and enforcement purposes *by enabling SFCs to restrict the number of permits issued*' (our italics). • Para. 7.41. Basic information about the numbers of fish caught, where they were caught and the fishing effort employed is *fundamental to effective fisheries management. Without this information it is not possible to set realistic catch or effort limits or to know when and where seasonal or area closures might serve a useful purpose* … We intend to provide SFCs with a clear authority to require the provision of the full range of information they require (our italics). These are all important regulatory mechanisms, with potential benefit to conservation, but (to varying extents) they are not clearly carried through into the draft Bill. We would therefore suggest the amendments below to s145. For more details on the proposed amendments and the rationale

behind specifics of the amendments, see attached legal advice § 81-113 Appendix 5.

145 Provision that may be made by byelaw

(1) The provision that may be made by byelaw under section 144 includes provision falling within any one or more of the Heads set out in -
(a) subsection (3) (prohibition or restriction of exploitation of sea fisheries resources),
(b) subsection (4) (permits),
(c) subsection (5) (vessels, methods and gear),
(d) subsection (6) (shellfish),
(e) subsection (7) (districts of oyster cultivation etc).

(2) In the following provisions of this section "specified" means specified in the byelaw.

(3) **Head 1** is provision prohibiting or restricting the exploitation of sea fisheries resources, including -
(a) provision prohibiting or restricting such exploitation in specified areas or during specified periods;
(b) provision limiting the amount of sea fisheries resources a person or vessel may take in a specified period;
(c) provision limiting the amount of time a person or vessel may spend fishing for or taking sea fisheries resources in a specified period.

(4) **Head 2** is provision prohibiting the exploitation of sea fisheries resources without a permit issued by an IFC authority, including -
(a) provision for the charging of fees for permits;
(b) provision enabling conditions to be attached to a permit, including conditions as to the area within which fishing is permitted, the periods, times or particular voyages during which fishing is permitted, the descriptions and quantities of fish which may be taken and the methods of fishing and equipment used;
and the number of permits available for issue from time to time may be limited by [an IFC authority/the MMO/the Minister].

(5) **Head 3** is -
(a) provision prohibiting or restricting the use of vessels of specified descriptions;
(b) provision prohibiting or restricting any method of exploiting sea fisheries resources;
(c) provision prohibiting or restricting the possession, use, retention on board, storage or transportation of specified items, or items of a specified description, that are used in the exploitation of sea fisheries resources;
(d) provision for determining whether such items are of a specified description;
(e) provision requiring the use of equipment methods or materials the purpose of which is to seek to prevent by-catch;
(f) provisions requiring the individual marking of fishing gear.

Whilst the draft Marine Bill does allow an establishing Order to define an IFCA district to include the intertidal area (through the definition of *sea* at

	s.169), and for byelaws to control exploitation of animals and plants etc. in that area – we would like further clarification on whether the scheme allows for the ability of the IFCAs to control vehicles used by shellfishermen e.g. to land catch, or the grounding of vessels on intertidal land.
145(3)	Head 1 starts with the powers already available to SFCs when making byelaws – to restrict fishing by species and period and to restrict the use of certain gear – and adds clarity and further powers. The inter-relationship between Head 1 – "provision limiting the amount of sea fisheries resources a person or vessel may take in a specified period and provision limiting the amount of time a person or vessel may spend fishing for or taking sea fisheries resources in a specified period" – and the Head 2, permit system is not very clear. It may be that taken together, the system would actually allow a capped permitting system – but Link feels that this could be expressed much more clearly. It should not be assumed that the use of the term "permit" in a statute implies that permits may be limited in number. The draft Bill does not actually say that an IFCA will have the power to limit the number of permits that it issues under a byelaw. When legislation intends this to be the case it says so – see, for instance, the Sea Fisheries (Shellfish) Act 1967 s.4(4), by which the holder of Regulating Order powers may impose a permit system that has an upper limit on the number of permits to be issued (and amounts of shellfish to be taken). Since in practice this is going to be the most controversial aspect of the entire inshore fisheries part of the Marine Bill, and it was named as a priority issue in the White Paper – it ought to be clearer. There are other statutory licensing or permit systems where the number of permits may not be capped, and the purpose of the system is not to limit the activity but to raise revenue and aid monitoring or control. It should not be assumed that the use of the term 'permit' in a statue implies that permits may be limited in number.
145(5)	Some of the powers set out at Head 3 are already available to SFCs, but they are more clearly set out here, and this is welcomed. The Marine Bill White Paper indicated an intention to be able to require fishing gear to be marked, so that its owner could be readily identifiable, but this has not been carried over into the draft Bill. However, such a measure would be an aid to monitoring and enforcement and it should be included. Link would also recommend altering the wording of Head 3 to include a power to require specific additions to certain fishing gear – meaning a power to ensure that gears incorporate technologies (including ones yet to be invented) designed to deter bycatch – pingers etc. Since a requirement of this sort is not a "prohibition" or "restriction" per se, and might involve fishermen in positive expenditure, it should not be assumed that the existing wording of Head 3 implies this power and should be clearly set out.
145(7)	The extra protection for edible crabs during moulting that would be allowed by s145(7)(b) is welcome as a means of controlling crab-tiling.
146 Emergency	Currently, SFCs have no emergency byelaw powers. Whilst Ministerial Orders under the Sea Fish (Conservation) Act 1967 can be used for

byelaws	purely environmental purposes and may, in theory, not take very long to make – the fact is that in 'pure conservation' cases the Minister cannot be relied upon to act promptly. Therefore, the provision of an emergency power for the IFCAs is a welcome improvement. Unfortunately, s146 (2)(a) and (b) make urgency a precondition and limit emergency byelaws to circumstances that "could not reasonably have been foreseen". The express requirement for "urgent need" and lack of foresight suggest that the power to create emergency byelaws is intended to apply only once a clearly observable phenomenon is underway. This suggests that these emergency powers cannot be used by IFCAs to head off a crisis, before damage has already occurred – seriously reducing the IFCAs' potential for proactive fishery management to protect the environment. The wording of s146(2)(b) creates further potential problems. For example, if conservationists call for the closure of a fishery, but are ignored or (if they are members of the IFCA) outvoted, and subsequently, fresh evidence comes to light confirming the need for action – the very fact that the situation had been previously raised could (by confirming the reasonable foresight of the need to act) prevent the creation of an emergency byelaw. Link also questions the timescales involved in the creation of both emergency and ordinary byelaws. We cannot know the answer to this until a draft of the Regulations referred to at s149 is produced – as these will contain provisions about consultation and the procedure for confirmation of ordinary byelaws, as well as the procedure for making emergency byelaws. As mentioned below, in relation to s149 itself, there has been a suggestion that a Regulatory Impact Assessment will be required, with the possibility of a counter suggestion of an EIA or even an SEA. It would therefore seem that the timescale for the creation of a significant new byelaw (rather than a small amendment to an existing one) might take over 6 months, and (more likely) over a year – by the ordinary route. Thus, emergency byelaws can only be created once something unforseen and harmful has already begun – and if the situation has not reached this serious point nothing can be done unless things get worse, or within a year or so (the time it might take to make a new byelaw). Link therefore suggests that s146 of the draft Bill would be improved by the deletion of s146(2)(b) and the addition of words that seek to import aspects of the precautionary approach. For further detail on the suggested amendment and the rationale behind it, please refer to the attached legal advice §115-124, Appendix 5. **Suggested amendment to draft Marine Bill s146** (1) A byelaw that is made by an IFC authority in the circumstances described in subsection (2) has effect without being confirmed by the appropriate national authority. (2) The circumstances are that - (a) the IFC authority considers that there is an urgent need for the byelaw, and

	~~(b) the need to make the byelaw could not have reasonably have been forseen.~~ (b) In considering whether such need is urgent the IFC authority shall not be required to treat the absence of scientific information as a reason for concluding that the need is not urgent. … (6) The appropriate national authority may not give the approval referred to in subsection (4) unless the authority is satisfied that - (a) ~~during the period for which the emergency byelaw has been in force, the IFC authority has used its best endeavours to make a byelaw that will make the emergency byelaw unnecessary, and~~ (b) there would be a significant and adverse effect on the marine environment if the approval was not given.
149 Byelaws: procedure	S149 relates these issues to Regulations, and therefore full comment on the draft Bill cannot close until draft Regulations are seen. However, in the White Paper (paragraph 7.32) it was stated that a Regulatory Impact Assessment must be produced at the consultation stage. Link also believes that inshore fisheries regulation should be informed by SEA or EIA.
152 Offences	It appears from Note 281 and paragraph 3.83 of the draft Bill's introductory text that it is intended that the IFCA byelaw regime be used to control fishing in MCZs. However, by clause 152 it is provided that breach of byelaw will be no more than a summary offence, whilst breach of a Conservation Order will be an either-way offence with the possibility of an unlimited fine. Link believes that illegal fishing in an MCZ should be an either-way offence, with the possibility of a custodial sentence in the gravest cases (see attached legal advice, §71-78, Appendix 5).
157 Powers of IFC Officers	We welcome the new suite of powers provided for IFC Officers, and the attempt to coordinate enforcement powers across the various organisations that will be working together at sea. It is helpful in terms of enforcement that civil sanctions are included in the IFCAs new powers since this should encourage enforcement action with the rigours of prosecutions, acting as a deterrent. (See comments on Part 8 for further details). We would like to see provision for IFCA staff to receive comprehensive training on appointment and subsequent training updates (which must focus at least in part on IFCA powers and duties relating to the marine environment) at least twice a year. It may not be appropriate to stipulate this in the legislation, but it should at the very least be incorporated into extensive guidance for the IFCAs.
159 Information	This is an exceptionally important area, as SFCs are often unaware of the detail of activity in their areas, partly due to a lack of powers to require that information be given to them. At paragraph 7.41 of the Marine Bill White Paper it was rightly stressed that basic information about the numbers of fish caught, where they were caught and the fishing effort deployed is fundamental to effective

	fisheries management. In light of this it was said that Government intends to provide SFCs with a clear authority to require provision of the full range of information they require. This commitment is carried into the draft Marine Bill by s159(3), which provides that an IFC may require any person involved in the exploitation of sea fisheries resources in its district to provide the authority with such information as it may reasonably require. However, there is no clarity as to how an IFCA is to achieve this or the sanction available if there is a failure to provide information. A difficulty posed by the CFP Framework Regulation's is that they suggest that obligations of this sort might constitute a disproportionate burden. Fortunately, the Court of Appeal in *R–v–Bossom and Joy* [2006] has confirmed that, in respect of fish weights, it is appropriate for an inshore fisherman to monitor his own catch by way of "some sort of record of the quantity of fish which is caught and sold" – in ways that, being less detailed and onerous than the CFP's logbook requirements, are not disproportionate. And the same must apply to satellite monitoring systems, which can be vastly simpler than those required by the CFP. It is submitted that requirements to disclose the size and location of catches (etc.) and the location of fishing effort should fall within the byelaw regime described at s145 of the draft Bill and that this should be clearly expressed, in order that there can be no doubt that: • IFCA byelaws can require a vessel's location, catch and landings to be revealed; • IFCA byelaws can require positive actions or expenditure on the part of vessel owners (etc), including the purchase and use of simple GPS devices and the keeping of simple records; and that; • Failure to provide the necessary information carries penal sanction. Link further questions why the duty in this section is limited to the IFCAs' duty under s.142, excluding their duty under s.143? It would also be very useful to collect this information to inform the duty towards furthering the conservation objectives of MCZs. The draft Bill/Explanatory Notes do not specify what information should be targeted by the IFCAs, or what (level of) information they should be required to collect as a minimum. We would like to see this kind of detail in full guidance for the IFCAs on their new roles and responsibilities.
161(2)(c) Miscellaneous powers	This subsection allows for the IFCAs to "enter into arrangements with other IFC authorities for the establishment of a body to coordinate the activities of those authorities which are party to the arrangements". This remains a power rather than a duty. Link believes that some form of national coordination of the IFCAs is essential, for promoting consistency in byelaws, promulgating best practice, and coordinating recruitment and training of officers. Such an organisation could also be tasked with reviewing IFCA effectiveness (as recommended in the Bradley Review regarding SFCs, page 114, paragraph A14.5), and with continuing the development of clear lines of communication between the IFCAs and

	Central Government departments. There may be no need for the existence or role of an Association of IFCAs to have a stronger statutory base than is provided for at present, but it is of vital importance that Government support the creation of such an organisation.
162	Link welcomes the provision for more secure funding for the IFCAs. Link has long campaigned for a more secure funding framework for the SFCs that removes the uncertainty over their future support and enables them to perform their fisheries and environmental duties to the full.
164/165 Annual plan and Annual Report	Link would welcome clarification of the intent of s.164 and s.165. We welcome the duty for IFCAs to produce an annual plan setting out their objectives and priorities for the coming year, and then to report at the end of each year on their activities. However, we would like confirmation that this planning and reporting duty will require IFCAs to set out their plans for fishery and environmental management each year, and then be held accountable to those plans when reporting at the end of each year. Link feels that the IFCAs should be obliged to undertake assessment of any known or potential environmental impacts of existing or proposed fisheries in their districts for the coming year, setting out this information, along with how they intend to manage these impacts, in their annual plan. The annual end-of-year reports should then reflect, amongst other things, how each IFCA has performed in fisheries/environmental management terms against the aims and objectives it laid out for that year, and against its remit in general. We have suggested in our response to Part 1 that a formalised process should be established for Welsh Ministers to report to the National Assembly on the delivery of marine management functions and how they are enabling objectives to be furthered in Welsh waters. If WAG takes over the role of inshore fisheries management as proposed, we suggest this should be incorporated in such a reporting process.
168 Minor and consequential amendments	This section confirms that Schedule 8 has effect. Schedule 8, section 11 amends the Sea Fisheries (Wildlife Conservation) Act 1992, which placed a duty on Ministers and "other relevant bodies" – including the SFCs – to "have regard to the conservation of marine flora and fauna". The amendments in this Schedule remove the reference to "other relevant bodies" from this Act – thus removing the application of this duty from the SFCs (or IFCAs). While we are happy that the general duty in this Act need not apply to IFCAs, we believe that the duty on IFCAs outlined in s.142 will need to be strengthened to make it very clear that it is a conservation duty that can replace this (see also our comments on s.142). The draft Marine Bill also applies the 1992 Act's environmental duties to the MMO (s.10). So, the 1992 Act's environmental duties will continue to apply to Government, will start to apply to the MMO and will not apply to bodies that replace SFCs. As regards conservation, the 1992 Act duties are heavily diluted; in particular with the use of the words "have regard to" creating a 'soft' duty. Link therefore suggests that the Marine Bill could be used to update the 1992 Act, perhaps as follows: (1) In discharging any functions conferred or imposed on him or them

	by or under the Sea Fisheries Acts, the Minister or Ministers [~~or~~ and the Marine Management Organisation[7]] shall, so far as is consistent with the proper and efficient discharge of those functions – (a) ~~have regard to~~ take reasonable steps to further the conservation and enhancement of marine ecosystems flora and fauna; and (b) seek to ~~endeavour to achieve a reasonable~~ balance ~~between~~ that consideration and any other considerations to which he is or they are required to have regard. For more details on the proposed amendments and the rationale behind specifics of the amendments, see attached legal advice [§24, Appendix 5]
General - Guidance for IFCAs	We believe that the IFCAs need comprehensive guidance, clarifying how they should use their new powers and fulfil their new duties. This guidance should cover several issues not dealt with in the draft Bill itself, including: • Requirement for SEA/EIA – IFCAs should be required to cooperate in the production of multi-sectoral SEAs within their areas (extending SEA to fisheries was recommended by 'Net Benefits'); and EIA should be compulsory for all new inshore fishery projects. • Promotion of certification of fisheries: IFCAs should be encouraged to seek certification (e.g. Marine Stewardship Council) for all fisheries in their districts.
Part 7, Chapter 1	Chapter 1 of Part 7 of the draft Bill introduces several amendments to the Sea Fish (Conservation) Act 1967. In general, Link welcomes these amendments – see detailed comments on particular clauses below. However, Link feels that this part of the draft Bill could be used to make several more, useful, amendments to this Act. Section 5A of the 1967 Act (as inserted by the Environment Act 1995) gives a power allowing the Minister to restrict fishing for "marine environmental purposes". The draft Bill makes no change to this, but Link suggests that the scope of section 5A(3)(b) might helpfully be broadened as follows: 5A(3)(b) of conserving or enhancing ecosystems flora or fauna which are dependent on, or associated with, a marine or coastal environment. Some Orders made under the 1967 Act to prevent harmful methods of fishing for purely conservation purposes (i.e. for marine environmental purposes) have been made under section 3 of the 1967 Act, and not section 5. Section 3 allows detailed limitations to be placed on the nature of nets etc., and Orders made under it are welcome. However, where the purpose of a Section 3 Order is the conservation of something other than a fish stock (e.g. maerl, seagrass beds) the Order would appear to be ultra vires. This is an argument that need not arise, and a simple amendment to section 5A would prevent it:

[7] Clause 10, with a suggested amendment.

	Suggested amendment to section 5A of the Sea Fish (Conservation) Act 1967 (1) Any power to make an order under section 3 or section 5 above may be exercised for marine environmental purposes. The above suggestion omits the vessel licensing regime (section 4 of the 1967 Act) from the scope of the suggested change. This is because the licence for a vessel of over 10m may already contain 'conditions which do not relate directly to fishing'. However, vessel licences for the under-10m fleet may not contain conditions whose purpose is purely environmental. This is because of the terms of the Sea Fish (Conservation) Act 1992 which inserted the words quoted above, but also provided for the under-10m exemption. Section 11 of the Sea Fish (Conservation) Act 1992 provides that the under-10m exemption can be removed by Order, and it is suggested that it should be. The reason for this exemption is plainly that it is contemplated that the under-10m fleet (which is thought by Govt. to stay mostly within 6nm) will be adequately regulated by SFC (or IFCA byelaws). However, vessel licensing has shown itself to be a system of regulation that can react rapidly (by way of periodic licence variations) to changes in circumstances and which is, perforce, able to respond to the behaviour of individual vessels and to deal with members of the under-10m fleet fishing outside of 6nm. It is therefore suggested that vessel licensing of the under-10m fleet, for non-fisheries purposes, would be a useful addition to the toolkit. Link would therefore request Ministers to make an Order under section 11(2) of the Sea Fish (Conservation) Act 1992, bringing the under-10m fleet within the full scope of section 4(6) of the Sea Fish (Conservation) Act 1967. For further detail on these proposed amendments, and the rationale for their suggestion, please refer to the attached legal advice (§26-27; 142-145) Appendix 5.
170 Size limits for sea fish	Link welcomes the proposed amendment to the 1967 Act, to allow for maximum size limits (as well as minimum limits) or size ranges to be set by order.
171 Regulation of nets and other fishing gear	Link welcomes the proposed amendments to section 3 of the 1967 Act, and in particular the extension of controls to fishing from the shore. While we are satisfied that orders under this section would be able to deal with novel catching techniques, we feel it is not clear that this section can be used to require the addition of extra features to fishing gears for conservation reasons – for instance, pingers or long-line weights or streamers. A small addition to section 3(1) by way of clause 171 of the draft Bill would clarify this: **Suggested amendment to s171(2) of the draft Marine Bill** (2C) An order under this section may require the use of equipment methods or materials the purpose of which is to seek to prevent by-catch. For further detail on this proposed amendment, see attached legal advice §146-147 Appendix 5]

172 Charging for commercial fishing licences	We support the amendment introducing the power to charge more flexibly for commercial fishing licences. We would welcome any future moves to introduce variable charges for commercial fishing licences based on, for example, gear type if this could be used to provide greater incentives to move towards more 'environmentally friendly' fishing methods (e.g. by charging less for a licence for more environmentally sensitive gear types).
173 Power to restrict fishing for sea fish	The amendment to section 5 of the 1967 Act to extend controls to persons fishing from the shore is welcome. However, Link requests further clarification of the reasons for the amendments providing for restrictions to be imposed by way of catch limits per person or boat (s.173(2)). As a concept, the idea of adding partial closure or TAC to a toolkit that already includes full closure can be looked at in two ways: either as a useful refinement, or as a way of allowing a weakened response to significant problems. We note the provision that fish caught but subsequently returned to the sea do not count towards the limit imposed by the order in question (Explanatory Note 405). Link feels that this is, at face value, tantamount to sanctioning the practice of remaining within quota by jettisoning small fish of the quota species once quota has been reached. We recognise however that this is not expressed as a mandatory part of any partial closure order, and might be designed to allow catch and return hobby angling in areas otherwise protected by a partial closure. We therefore request that Government justify the proposed subsection 5(1B) of the Sea Fish (Conservation) Act 1967.
Part 7, Chapter 2	The majority of the proposals made in s174 to 184 of the draft Marine Bill are generally welcome – see detailed comments on sections below. However, Link does also have some further comments on recommended changes to provisions for Several and Regulating Orders (SROs) that are not proposed by the Bill; including limiting the grantees of SROs, clarification on the nature of leases to shellfish lays, revocation or amendment of SROs, and guidance on their use – these are dealt with first below.
Grantee of a SRO	In practice, the SRO grantee tends to be the local SFC – which then leases out shellfish lays under a Several Order, or puts in place a licensing regime under a Regulating Order. It is suggested that this practice be put on a statutory basis (in respect of IFCAs, rather than SFCs) – in order to ensure that the grantee of a SRO is a body with perpetually traceable existence, proper governance, established statutory duties & Human Rights Act duties and subject to judicial review: **Suggested amendment to section 1(3) Sea Fisheries (Shellfish) Act 1967** An order under this section may confer on <u>the Inshore Fishery and Conservation Authority for the area of the fishery to which the order relates</u> ~~such persons as may be specified in the order~~ - (a) a right of several fishery with respect to the whole of the area of the fishery to which the order relates, <u>and the right to grant leases or licences of the same,</u> or (b) a right of regulating a fishery with respect to the whole of that

	area, or (c) a right of several fishery with respect to such part of that area as may be specified by or under the order, and the right to grant leases or licences of the same …, but shall not confer either right for a longer period at one time than twenty ~~sixty years~~. The suggested amendments include a cap on the maximum duration of an order, as suggested by Link in previous submissions to Government. Since the primary legislation contains a capping figure of 60 years, it is appropriate for primary legislation to amend this. 60 years seems far too long, and none of the capital assets necessary to exploit an SRO have lifespans of anything like this length. For further detail on these suggested amendments, see attached legal advice. (§156-158) Appendix 5. We note that WAG's current consultation on the future of inshore fisheries management in Wales seeks views on how SROs should be managed in Wales in future, given the proposal that WAG should be directly responsible for inshore fisheries management (i.e. there will be no SFCs or IFCAs). Link members will respond to WAG's consultation in due course, but we would emphasise that the principles set out above (e.g. traceability and proper governance) will be as important in Wales. We trust that our analysis of these issues, in response to WAG's consultation, will be taken into account in further consideration of the Marine Bill.
Leases of shellfish lays	On the subject of leases of shellfish lays within the area of a Several Order – it would be helpful if there were guidance on the nature of the leases themselves – the extent of the tenant's covenants and the circumstances in which the landlord is entitled to predetermine the lease. In the very recent case of *Isle of Anglesey CC & Crown Estate Commissioners – v – The Welsh Ministers & ors.* [2008] it was agreed by the parties that certain leases of shellfish lays within a Several Order area, granted by the local SFC to shellfish farmers, were not subject to statutory rights of renewal on expiry. We would like it to be made clear that shellfish leases are not subject to the statutory right of renewal of business leases when they expire – this could be achieved through the Marine Bill.
Revocation or amendment of SROs	Link believes that Ministers should be able to withdraw an SRO if necessary, with the proviso that a moratorium on fishing within the area is put in place on its withdrawal while effective management is established. It would be safer if the withdrawal of a SRO by Ministers were only possible subsequent to prompt and expeditious consultation, including the SNCAs, marine and fisheries scientists as consultees. Subsection 1(6) of the 1967 Act allows amendment of existing orders. Section 5 of the Act allows the Minister to put an end to an SRO, in whole or part, if not satisfied that the grantees of the order are properly complying with it. In addition, we would recommend the following amendment (for more detail, see attached legal advice §176-179 Appendix 5. **Suggested amendment to section 5 of the Sea Fisheries (Shellfish)**

	Act 1967 (1) If, in the case of any right of several fishery or of regulating a fishery conferred by an order made under section 1 of this Act, the appropriate Minister is not satisfied, either as respects the whole of the area within which that right is exercisable or as respects any part of that area, that the grantees are properly cultivating the ground for shellfish of any description to which the order applies within the limits of that area or part or properly carrying into effect and enforcing any restrictions and regulations contained in the order and levying any tolls or royalties imposed thereby, or if the appropriate Minister is satisfied that the effect of such order is detrimental to the conservation and enhancement of marine ecosystems flora or fauna or that he may make a certificate to that effect and thereupon that right shall be absolutely determined as respects that area or, as the case may be, that part thereof, and the provisions of this Act shall cease to operate in relation to that area, or as the case may be, that part thereof as, or, as the case may be, as part of, a several or regulated fishery.
Guidance on the use of SROs	We also believe that there is a need for detailed guidance on the use of SROs, covering issues such as: • Maximum extent for Several Order areas: there is currently no upper limit to the size of several order areas permitted; • Clarification on methods of harvesting covered: we would like to see that Regulating Orders and ensuing regulations apply clearly and unambiguously to all vehicles (tractor dredgers as well as boats) and methods of fishing – including hand-gathering in particular. This may not need alteration in primary legislation, but it should be made clear in guidance.
174 Power to make orders as to fisheries for shellfish	We welcome the provision to allow orders to be made in relation to all types of shellfish, including those not already listed in the legislation, without the present requirement for regulations to be made each time a new type of shellfish is added to the list.
175 Application of tolls etc for purposes related to regulation of fishery	Link welcomes the amendment in this section, which establishes that monies collected by way of tolls and royalties can be used for purposes connected with the regulation of the fishery, not just strictly for the improvement of the fishery as is currently stipulated. In addition, Link would like to see in the inclusion of a further clause 175A to the Marine Bill, and further amendment of s175 (see attached legal advice, §170-175 Appendix 5): **Suggested s175A of the draft Marine Bill:** (1) Section 1 of the Sea Fisheries (Shellfish) Act 1967 (power to make orders as to fisheries for shellfish) is amended as follows: (a) In subsection (1) the words "(including regulation for marine environmental purposes)" shall be inserted after the words "…, and for the maintenance and regulation". (b) Insert "(1AA) 'marine environmental purposes' means the purposes of

	conserving or enhancing ecosystems flora or fauna which are dependant on, or associated with, a marine or coastal environment." **Suggested addition to s175 of the draft Marine Bill:** … (5) In this section 'regulation' shall include regulation for marine environmental purposes which means the purposes of conserving or enhancing ecosystems flora or fauna which are dependant on, or associated with, a marine or coastal environment.
178 Cancellation of licence after single relevant conviction	Link welcomes this section of the draft Bill – by which it is proposed that a person who holds a licence to fish within the area of a Regulating Order can have his licence revoked if he is convicted of a first offence of breach of the order – as an improvement on the current situation.
181 Use of implements of fishing	Link is pleased to see the amendment to the Sea Fisheries (Shellfish) Act 1967, section 7, allowing provision to be made for certain types of fishing (as specified in the Order) to take place in Several Order areas, and the power to introduce seasonal and other restrictions.
184 Power to appoint inspector before making orders as to fisheries for shellfish	This section grants the Secretary of State (or Welsh Minister) greater discretionary powers in making decisions on the calling of public inquiries. It is difficult to defend a regime that makes a public inquiry mandatory as soon as a single proper objection is made, but it would be preferable for an alternative regime to specifically require consideration of environmental issues. While we welcome the reduction in the likelihood of a public inquiry to be called, we would like to see an emphasis remaining on the need to develop a comprehensive management plan when applying for Several and Regulating Orders.
188 Limitation of licences	Link notes that 188(3) inserts a new subsection into the Salmon and Freshwater Fisheries Act 1975, stipulating that the EA may only make an order limiting the number of fishing licences issued "for the purposes of maintaining, improving or developing fisheries". It is of utmost importance that the Environment Agency is given the power to limit the number of licences issued not only for strict fisheries management purposes, but also for marine nature conservation purposes.
195 Byelaws: conservation objectives of MCZs	Link welcomes the extension to the EA's byelaw making powers to include byelaws in relation to the conservation objectives of any MCZ. However, we question the restriction of this power to MCZs in England – this section must be amended so that the power applies to Wales also. We note that WAG's current inshore fisheries consultation proposes the EA should retain its role in regulating salmonid fisheries.
202 Repeal of spent or obsolete enactments	Whilst some of the enactments listed at s202 of the draft Bill were originally intended as conservation measures they are all now obsolete, and Link has no concerns about their repeal.
General - Sea Fish Industry Authority	Link feels that Part 7 of the draft Bill could also helpfully be used to amend the Fisheries Act 1981 to bring the duties of the Sea Fish Industry Authority (Seafish) more in line with other marine and fisheries imperatives. We suggest that the following amendment should be included in this Part of the draft Bill (for further detail, see attached legal advice §39, Appendix 5).

	Suggested amendment to section 2 of the Fisheries Act 1981 (1) … It shall be the duty of the Authority to exercise its powers under this Part of this Act for the purpose of promoting the sustainability and efficiency of the sea fish industry and so as to serve the interests of that industry as a whole. (2) In exercising its powers under this Part of this Act the Authority shall have regard to the marine environment and to the interest of consumers of sea fish and sea fish products.

9. Part 8: Enforcement

Summary of main points

Link believes that the draft Marine Bill would clarify and improve investigatory and other powers in ways that are entirely welcome (though certain further amendments and clarifications are suggested below). Link welcomes that the draft Marine Bill's attempt to clarify the existing enforcement powers, spread them more evenly and to add to them in positive ways. Whilst the drafting is sometimes quite complex it is plainly appreciated that the current regime needs improvement, and real improvements are suggested. A new class of enforcement officer is proposed, with a remit including marine licensing, conservation functions and fisheries.

The draft Bill proposes powers allowing enforcement authorities to administer 'civil sanctions' and/or 'administrative penalties' in lieu of criminal prosecution. Non-criminal punishments of this sort are associated with the 'light-touch' regulatory proposals of the Hampton Report and have no track record in fisheries and conservation cases. Link believes that the use of the civil standard of proof and rules of evidence may aid enforcement, but hopes that an overly cautious fixed penalty regime does not simply allow fishermen to buy the right to commit crimes against the environment.

Detailed comments or proposed amendments to the Enforcement part of the draft Marine Bill

Clause/subject	Issues
214 Power of MMO to appoint sea-fishery officers	The draft Bill provides that the MMO may appoint persons to be BSFOs. (s215 provides the same power for Welsh Ministers). It is not clear whether BSFOs (created under s214) will transfer to MMO employment or will remain as a third enforcement body in the direct service of Government. The Policy Paper (§3.139) also alludes to this problem.
Part 8, Chapters 2&3 Power to seize fish and fishing gear	The Common Enforcement Powers allow *seizure* of 'items' – a term whose definition in s.225 makes no clear reference to fish or any reference to fishing gear. Amongst the extra Fisheries Enforcement Powers provided to MEOs, WEOs and to inshore fisheries and conservation officers by Chapter 3 of Part 8 are: • Power to inspect and *seize* objects at sea (s.236) • Power of seizure of fish and gear *for purposes of forfeiture* – s.240 and 241. [Italics added] The s.236 power (notwithstanding the clause heading) appears designed to allow gear etc. to be taken 'out of the sea' for examination and perhaps seizure for evidential purposes. This is most welcome, though clearly it does not empower the seizure of fish or gears from a vessel for evidential purposes. It is suggested that it would be helpful to clarify that either: • The Common Enforcement Powers allow seizure (for evidential purposes) of fish and gears – perhaps by extension of the definition of 'item' in s.225(8); or

	• That there are to be express fisheries enforcement powers under Chapter 3 of Part 8 to seize fish and gears from vessels etc (*for evidential purposes*) as well as the new powers to seize these things for the *purposes of forfeiture.*
236 Power to inspect and seize objects at sea	Link welcomes the draft power in this clause – to lift objects out of the sea and examine, seize and detain them. Such a power would fit well with a power to require gear to be individually marked (see comments on s.145 of Part 6).
240 Power to seize fish for purposes of forfeiture	The draft Bill provides new and detailed provisions for the seizure of fish and gear for the purposes of forfeiture. Link welcomes the new provisions allowing up-front forfeiture in circumstances where an officer believes an offence (that carries forfeiture as a potential penalty) to have been committed.
247, 248, Schedule 11 Forfeiture etc. of prohibited items, undersized fish	S.247 and s.248 allow for the permanent forfeiture of gear or under-sized fish, found on a boat at sea, that are incapable of innocent use or explanation. Schedule 11 provides procedural safeguards. **Suggested alterations to Schedule 11:** Paragraph 9 – we believe that it would be appropriate for the choice of venue to be the County Court (rather than the Magistrates' Court) and the High Court. The County Court has limitless experience in dealing with civil disputes about the provenance of goods and a more rigorous approach to costs sanctions. Paragraph 10(2) – the meaning of 'claimant'. It appears clear that 'claimant' refers to the person who serves a Notice of Claim, under paragraph 3. However, it is the authority who must start condemnation proceedings and who is therefore, in the parlance of the civil courts, the 'claimant' in those proceedings. It is therefore not clear which party may, under paragraph 10(2) be ordered to give security for costs. It is submitted that it can only be the person who is seeking the return of ostensibly illegal goods.
256	It is difficult to understand what is intended by this section. The reference to recording or transmitting equipment appears to be to VMS, but where VMS is a CFP obligation there are already power to require its production, under the Sea Fishing (Enforcement of Community Satellite Monitoring Measures) Order 2000. Where VMS is not a CFP obligation it tends not to be used. If Defra think that this is a necessary measure in relation to equipment required to be used as a condition of vessel licence (under clause 4(6) or 4A(6) of the Sea Fish (Conservation) Act 1967) it might also be useful to include this in the proposed IFCA byelaw permitting regime. **Suggested amendment to s256:** An enforcement officer who has the power conferred by this section may require any person on board a vessel to produce any automatic recording equipment used in accordance with a condition included in a licence by virtue of Section 4(6) or 4A(6) of the Sea Fish (Conservation) Act 1967 or required by a byelaw

	made by an IFC authority.
230; 262 Power to record evidence of offences; Power to take sound recordings	Link would be grateful for an explanation as to why the power to take sound recordings (s262) is applicable to some, but not all, of the nature conservation legislation to be enforced by MEOs and WEOs. This is in contrast to the power to take photographs, which is a common enforcement power. How are video cameras, recording sound and images at the same time, to be used? Similarly, we would be grateful to understand why offences under the Wildlife and Countryside Act 1981 have been divided into 2 groups, when there does not appear to be any difference in the proposed treatment of the 2 groups. Lastly, on this subject, we suggest the addition of the words 'and any such visual images/sound recordings [as appropriate to s.230 and 262] may be given in evidence…'
263	s.267 makes it clear that it will be an offence to obstruct (etc) an MEO or WEO just as it is already an offence to obstruct (etc) a BSFO and an SFC officer. However, it is not clear from 263 that the same will apply to inshore fisheries and conservation officers. By s.263 the officers who are protected by s.267 are defined as persons who have powers under Part 8 of the Bill – namely MEOs and WEOs. Inshore fisheries and conservation officers would derive their powers from Part 6, and there is no offence in Part 6 of obstructing an officer. Therefore, in order to apply to inshore fisheries and conservation officers, we suggest that s.263 should read: In this Chapter "enforcement officer" means a person who has any power conferred by this Part or by s157.
Protection of MCZs	As discussed in our comments on Parts 6&7, it appears to be envisaged that commercial fishing within MCZs will be regulated by IFCA byelaws, rather than by Conservation Order (at least in England). The effect of this would be that illegal fishing in an MCZ would merely be a summary offence. Contrast this with offences against the licensing regime – which can lead to imprisonment. Link feels that this is unacceptable, and that the penalties for illegal fishing in an MCZ must be increased in line with other Parts of the Bill.
Anomaly in relation to definition of "Wales"	In Part 8, s.208(3) indicates that the term "Wales" has a different meaning in Part 8 compared to Part 3 (it states that "*Any term used in this section and in Part 3 of this Act (other than "Wales") has the same meaning in this section as it has in that Part*"). Wales is defined in Part 8 (219(1)), which applies only to Part 8 and therefore includes s.208(3) as having the same meaning as in the Government of Wales Act 2006. Although Wales is used extensively elsewhere in the Bill (including in Part 3), it is not defined. We would welcome clarity on this point.

10. Part 9: Coastal Access

This is a copy of Link's written evidence to the EFRA Committee's inquiry into the coastal access provisions of the draft Marine Bill, which was submitted in May. This evidence is supported by the following Link organisations:

- British Mountaineering Council
- Council for British Archaeology
- Council for National Parks
- Open Spaces Society
- Royal Society for the Protection of Birds
- The National Trust
- The Ramblers' Association
- The Wildlife Trusts

10.1 The Government's vision for coastal access, and the extent to which the draft Bill provides for it

Link supports the Government's vision for coastal access. We feel it is an effective method of establishing improved access around the English coast, which works with coastal change and at the same time seeks to improve the landscape and wildlife quality of the coast. In particular, we welcome recognition of the role that the natural environment plays in contributing to the quality of experience enjoyed by the user. The legislative proposals in the draft Bill, bringing together the creation of long distance routes through the National Parks and Access to the Countryside Act 1949 and the use of the Countryside and Rights of Way Act 2000 (CRoW) to establish the right of access in a coastal margin, are an effective way of achieving the Government's access side of the vision.

We believe the approach can deliver for access whilst providing a sound framework for addressing potential adverse effects on the natural environment.

However, we are disappointed that steps to deliver environmental enhancement and habitat restoration programmes, as part of Natural England's Outline Scheme, have not been carried through into the draft Bill or associated documents. We believe there is a strong case for the draft Bill to make provision for the report containing proposals for the coastal route and coastal margin to also include proposals (if any), as Natural England may feel appropriate to enhance the quality of the coastal environment, whether to increase the quality of experience for users or mitigate any adverse impacts of access on wildlife.

10.2 Whether new legislation is the best or most cost-effective means of providing increased access to the coast

We agree with Natural England's recommendation that new legislation is needed and believe that, by extending and combining existing legislation, the current suggestion minimises the legislative process at the same time as offering customised powers and providing the flexibility in approach required.

10.3 The case for exceptions to, and deviations from, a route giving continuous access to the coast itself

Link believes that the integrity of the route, the public's confidence in the route and a route which provides as pleasant a walking environment as possible, are all very important. However, we accept the need for some deviations from a route giving continuous access, for

example sensitive wildlife sites. However, these should be kept to a minimum and based on evidence and common principles via the locally negotiated approach put forward.

10.4 Whether the draft Bill strikes the right balance between the rights of access and the rights of owners and occupiers, and whether there should be compensation in any circumstances for the creation of coastal access rights

Given the inclusion of the consideration of safety and fair balance and that the provisions for closure and restrictions system as set out in CRoW will apply, we believe that the appropriate checks and balances between the rights of access and those of owners and occupiers have been put in place.

10.5 What classes of land should be excepted from access rights;

A vast majority of these cases are covered by the land types that are identified in the CRoW Act - schedule 1 and, as such, we would not like to see any significant alterations to this schedule in relation to its enforcement on the coast. However, we do expect a greater use of the restrictions system on the coast for conservation and wildlife.

10.6 The need for restrictions and exclusion from the right of access for conservation and wildlife

Some habitats and species found in coastal locations are sensitive to disturbance or interference from human related activity and will need restrictions and exclusion from the right of access. Of main concern to Link are estuaries, flats and saltmarsh, which in many cases unrestricted open access will be inappropriate.

10.7 Whether there should be access rights for other users such as cyclists or horse riders.

The priority focus should be on providing access to the coast on foot. However, in preparing coastal reports, Natural England should also factor in other rights of access that currently exist on the coast.

10.8 Dogs

We are concerned that the draft Bill and associated amendments to the CRoW Act proposes that CRoW Schedule 2 (4) – (6) (requirements for dogs to be on leads at set times of the year) will not apply on the coast and that the current requirements found on Public Rights of Way (of dogs being under close control at all times) will apply.

Dogs can cause stock worrying and disturbance to wildlife in coastal environments, notably ground nesting birds and over wintering shoreline birds. Therefore, we believe that a greater level of restrictions on dogs will be needed in many locations on the coast beyond close control.

10.9 Funding for access management

We are concerned that the current level of funding proposed may not be sufficient to allow Natural England to deliver both the wider environmental benefits implied in the Government's vision and the conservation assessments and consultation necessary to deliver coastal access. As such, we would like to see details put forward as to how these wider benefits are to be met.

10.10 Localised consultation and implementation via reports

We welcome the localised nature of delivery and believe this will give the flexibility needed. However, we believe that other interested parties from a user, conservation and land use perspective should have a fuller role in the early stages of the process to enable a more balanced approach to the setting of the route and spreading room.

10.11 Erosion and Coastal Line Change

Coastlines are subject to erosion and change and, as a result, public rights of way can disappear or become unsafe over time. We believe that this legislation and the approach being proposed in the coastal access scheme takes this into account at the same time as taking steps to identify the likelihood of change when determining the alignment of the route and its associated spreading room.