



January 2009

Parliamentary Briefing

Marine and Coastal Access Bill Amendment

Consideration of Stakeholders views through Consultation on Marine Licences (Clause 66)

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

(i) Requirement to consult

When assessing and determining applications it is currently discretionary in the Marine & Coastal Access Bill for the licensing authority to consult either with interested parties or with “*any person or body which has particular expertise in any matter arising in relation to that application*” (clause 66(4)). This means that those who may be affected by a marine project or who have valuable knowledge about the location may not be consulted or made aware of a project and therefore, be unable to make representations.

We believe that it must be a requirement for regulators to consult with all interested parties on a marine project and to seek and take account of advice from ‘experts’. For example, the statutory conservation bodies (SCBs) should be consulted on all marine applications, particularly those which are likely to affect important species or marine protected areas such as MCZs, to ensure that they can give expert advice to the licensing authority 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 or conservation grounds. Another example would be the Maritime & Coastguard Agency (MCA) who should be consulted to ensure that they could give expert advice on the navigational safety implications of all marine projects.

The Government's response, “*Taking forward the Marine Bill*”, to the Joint Committee's Report on the Draft Marine Bill focussed on why a list of statutory consultees was not desirable in the Bill as such lists can go out of date quickly and are difficult to update (response to Recommendation 21). Therefore, we believe that a simple requirement to consult without naming persons or bodies specifically bypasses this concern. In addition, we believe that in the age of electronic communication it is unacceptable for the Government to imply that issues of time and cost should be considered more

¹ Wildlife and Countryside Link is a coalition of the UK's major environmental organisations working together for the conservation and protection of wildlife, the countryside and the marine environment.

important than the right of interested persons to provide their views on marine project applications (see Government's response, paragraph 3.3.20). Those persons that are not interested or affected will simply not respond. Furthermore, the Government's response goes on to state that there will be a requirement to consult on the Marine Policy Statement with "*any person likely to be interested in, or affected by the proposals should be consulted*" (in response to Recommendation 34). It therefore seems illogical not to have the same consultation requirements for marine licences, and ensure consistency throughout the Marine & Coastal Access Bill.

Therefore, clause 66 must be amended to make it a requirement to consult both interested persons and 'experts' on all marine licences. In addition, an amendment will be needed to provide details of how the consultation process and any subsequent representations are to be dealt with by the licensing authority (see below).

(ii) Consultation process

While clause 66(3) requires the licensing authority to have regard to any representations on applications that it receives from any person, there is no requirement, as highlighted above, for the licensing authority to seek these representations or consult with interested stakeholders (third parties) in the first place.

Furthermore, once representations have been received, from the public and from 'experts', the licensing authority should be required to take account of expert advice and where that advice is not followed, to publish the rationale. The published application decision should include these details, i.e. of how the licensing authority has taken account of the representations and give reasons where advice from 'experts' such as statutory conservation bodies has not been followed. Clause 66(6) should include an additional sub-clause to refer to the production of regulations containing the detail of the consultation procedure.

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Annex – Amendments

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

Requirement to consult and process

Clause	Clause 66 Determination of applications
Amendment	Page 37, leave out lines 38-40 and insert: “(3) The appropriate licensing authority must:-- (a) have regard to any representations which it receives from any person having an interest in the outcome of the application (b) take account of any representations which it receives from those with particular expertise, and (c) publish details of how it dealt with any representations, especially representations from those with particular expertise, stating its reasons where expert advice is not followed.”
Amendment	Page 37, line 41: leave out “may” and insert “must”
Amendment	Page 37, line 42: leave out “from time to time”
Amendment	Page 38, line 13: at end insert new sub-clause: “(c) the consultation process for applications”