

Marine  
Conservation  
Society

January 2009

## Parliamentary Briefing

# Marine and Coastal Access Bill Amendment

### Expansion on the term 'relevant considerations'

The organisations listed above are all members of Wildlife and Countryside Link's Marine Task Force<sup>1</sup>, which has been campaigning for several years for improvements in marine conservation. We have been closely engaged in the Marine & Coastal Access Bill process for a number of years.

#### 'Relevant considerations' when deviating from the MPS or Marine Plan

The Marine & Coastal Access Bill states that:

- Clause 49(5) "*A marine plan must be in conformity with any MPS ... unless relevant considerations indicate otherwise*"; and
- Clause 56(1) "*A public authority must take any authorisation or enforcement decision in accordance with the appropriate marine policy documents, unless relevant considerations indicate otherwise*"

The phrase "*relevant considerations*" is a new term but we assume that it carries the same connotations as the phrase "*material considerations*" that is used for terrestrial planning<sup>2</sup>, and consequently, could have the same general interpretation. However, this is not clear. We have asked Government to use the term "*material considerations*" as is used on land, so that the interpretation is clear. However, the response to date has been that the use of the terrestrial term would bring with it a body of case law that is terrestrially focussed and hence not suitable for use in the marine area. Therefore, we believe that should Government continue to insist on using a different term for marine planning, there should be greater detail in the Bill regarding "*relevant considerations*", prescribing the circumstances where plans can deviate from the MPS and where decisions are allowed to deviate from the marine policy documents (MPS and marine plans). Sections 104-105 of the Planning Act 2008, include examples of such an approach.

We also believe that there should be a requirement to produce guidance that would include examples on what were "*relevant considerations*", and prescribe the circumstances where plans and decisions are allowed to deviate from the agreed marine policy. The production of guidance is the minimum that we would expect.

We have proposed the addition of amendments to ensure that "*relevant considerations*" for deviation from the agreed marine policy are more clearly defined.

<sup>1</sup> 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.

<sup>2</sup> The Planning & Compulsory Purchase Act 2004 – s38(6) "*... the determination must be made in accordance with the plan unless material considerations indicate otherwise*".

## Annex – Amendments

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

(i) Relevant considerations for marine plans to deviate from the MPS

Clause	Clause 49 Marine plans for marine plan areas
Amendment	<p>Page 25, line 5: at end insert 2 new sub-clauses:</p> <p>“(5A) Circumstances where relevant considerations are to be considered arise when one or more of the following apply:--</p> <ul style="list-style-type: none"><li>(a) that any condition prescribed for marine plans otherwise than in conformity with the MPS is met.</li><li>(b) &amp;tc.”</li></ul> <p>“(5B) The relevant policy authorities must produce guidance regarding relevant considerations including providing examples of considerations that would allow marine plans to not be in conformity with the MPS and authorisation or enforcement decisions as set out in section 56(4) to not be in accordance with marine policy documents.”</p>

(ii) Relevant considerations for decisions to deviate from marine policy documents

Clause	Clause 56 Decisions affected by marine policy documents
Amendment	<p>Page 28, line 36: at end insert a new sub-clause:</p> <p>“(1A) Circumstances where relevant considerations are to be considered arise , but are not limited to, situations when one or more of the following apply:--</p> <ul style="list-style-type: none"><li>(a) Decisions in accordance with the appropriate marine policy documents would lead to the United Kingdom being in breach of any of its international obligations.</li><li>(b) Decisions in accordance with the appropriate marine policy documents would lead to the public authority, being in breach of any duty imposed on it by or under any enactment.</li><li>(c) Decisions in accordance with the appropriate marine policy documents would be unlawful by virtue of any enactment.</li><li>(d) If the public authority is satisfied that the adverse impact of the proposed development would outweigh its benefits.</li><li>(e) If the public authority is satisfied that any condition prescribed for deciding an application otherwise than in accordance with the appropriate marine policy documents is met.</li><li>(f) &amp;tc.”</li></ul>